



AGENDA
CITY COUNCIL MEETING
7651 E. Central Park Ave, Bel Aire, KS
June 07, 2022 7:00 PM



I. CALL TO ORDER: Mayor Jim Benage

II. ROLL CALL

Greg Davied ____ Emily Hamburg ____ Justin Smith ____ John Welch ____

III. OPENING PRAYER: Gary Green

IV. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG

V. PROCLAMATION:

A. National Flag Week - June 12-18, 2022

VI. DETERMINE AGENDA ADDITIONS

VII. CONSENT AGENDA

A. Minutes of the May 17, 2022 City Council meeting.

Action: Motion to (approve / table / deny) the Consent Agenda as (listed / amended) and authorize the Mayor to sign.

Motion ____ Second ____ Vote ____

VIII. DISCUSSION AND APPROVAL OF APPROPRIATIONS ORDINANCE

A. Consideration of Appropriations Ordinance 22-10 in the amount of \$1,101,280.89

Action: Motion to (approve / deny / table) Appropriations Ordinance 22-10.

Motion ____ Second ____ Vote ____

IX. CITY REQUESTED APPEARANCES

A. MKEC - Woodlawn update

B. Waste Connections – Herschel West

- X. CITIZEN CONCERNS:** *Persons who wish to speak should fill out a "Request to Speak" card at the podium and give it to the City Clerk before the meeting begins. When you are called on by the Mayor, please go to the podium, speak into the microphone, and state your name and address before giving your comments. Please limit your comments to 3 minutes in the interest of time. If more time is needed, you may request an extension from the Mayor..*

XI. REPORTS

- A. Council Member Reports**
- B. Mayor's Report**
- C. City Attorney Report**
- D. City Manager Report**

XII. ORDINANCES, RESOLUTIONS AND FINAL ACTIONS

- A. Consideration of confirming the Mayor's appointment of Tyler Dehn to fill the seat vacated by Diane Wynn. The seat will be up for re-election in November of 2023.**

Action: Motion to (confirm / deny / table) the appointment of Tyler Dehn to fill Diane Wynn's seat.

Motion _____ Second _____ Vote _____

- B. Swearing-In for New Councilmember**

C. Consideration of a Revised Industrial Revenue Bond Policy.

Action: Motion to (approve / deny / table) the IRB Policy as (presented / Amended) and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

D. Consideration of A Resolution Amending Resolution No. R-22-12 Of The City Of Bel Aire, Kansas, Which Determined The Advisability Of Issuing Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, In One Or More Series, To Provide Funds For The Purpose Of Financing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Authorized Execution Of Certain Related Documents.

Action: Motion to (approve / deny / table) A Resolution Amending Resolution No. R-22-12 Of The City Of Bel Aire, Kansas, Which Determined The Advisability Of Issuing Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, with the following fees: _____, In One Or More Series, To Provide Funds For The Purpose Of Financing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Authorized Execution Of Certain Related Documents, and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

E. Consideration of An Ordinance Authorizing The City Of Bel Aire, Kansas To Issue Its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) For The Purpose Of Paying Costs To Acquire, Construct And Equip A Senior Residence Facility; And Authorizing Certain Other Related Documents And Actions.

Action: Motion to (approve / deny / table) An Ordinance Authorizing The City Of Bel Aire, Kansas To Issue Its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) For The Purpose Of Paying Costs To Acquire, Construct And Equip A Senior Residence Facility; And Authorizing Certain Other Related Documents And Actions (as presented / amended) and authorize the mayor to sign.

Motion _____ Second _____ Vote:

Greg Davied _____ Emily Hamburg _____ Justin Smith _____ John Welch _____

F. Consideration of a request from Waste Connections to increase trash rates by 2%.

Action: Motion to (approve / deny / table) a ____% rate increase for trash and recycling to Waste Connections effective July 1, 2022 and adjust Bel Aire utility rates to reflect the increase.

Motion _____ Second _____ Vote _____

G. Consideration of accepting a Consent to Annex from Marjorie Wirth incorporating approximately 70 acres along Webb Road into the City of Bel Aire.

Action: Motion to (accept / deny / table) the Consent to Annex from Marjorie Wirth and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

H. Consideration of An Ordinance Annexing And Incorporating A Portion Of Section 21 Into The Boundaries Of The City Of Bel Aire, Kansas (Wirth property).

Action: Motion to (accept / deny / table) An Ordinance Annexing And Incorporating A Portion Of Section 21 Into The Boundaries Of The City Of Bel Aire, Kansas, and authorize the Mayor to sign.

Motion _____ Second _____ Vote:

Greg Davied _____ Emily Hamburg _____ Justin Smith _____ John Welch _____

I. Consideration of A Charter Ordinance Amending The Terms Of Elected Officials Of The City Of Bel Aire, Kansas, And Providing Substitute And Additional Provisions For The Same.

Action: Motion to (approve/ deny/ table) A Charter Ordinance Amending The Terms Of Elected Officials Of The City Of Bel Aire, Kansas, And Providing Substitute And Additional Provisions For The Same, and authorize the Mayor to sign.

Motion _____ Second _____ Vote:

Jim Benage ____ Greg Davied ____ Emily Hamburg ____

Justin Smith ____ John Welch ____

J. Consideration of accepting a bid for water services installation in Chapel Landing 3rd. Three bids were received:

Nowak Construction \$51,800.00

Duling Construction \$75,900.00

Utility Maintenance Contractors \$38,600.00

Action: Motion to (accept / deny / table) the bid from _____ in the amount of \$_____ for water services installation in Chapel Landing 3rd, and authorize all required signatures.

Motion _____ Second _____ Vote _____

K. Consideration of a Development Agreement for Prairie Preserve.

Action: Motion to (accept / deny / table) the Development Agreement for Prairie Preserve and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

L. Consideration of a Development Agreement for Skyview at Block 49 3rd Addition.

Action: Motion to (accept / deny / table) the Development Agreement for Skyview at Block 49 3rd Addition and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

M. Consideration of a Development Agreement for Chapel Landing 5th.

Action: Motion to (accept / deny / table) the Development Agreement for Chapel Landing 5th and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

N. Consideration of an Agreement for Professional Services with Garver for Chapel Landing 5th – Phase 1 in the amount of \$267,900.00.

Action: Motion to (approve / deny / table) an Agreement for Professional Services with Garver for Chapel Landing 5th in the amount of \$_____ and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

O. Consideration of confirming Mayor Benage's appointment of Jesse Miller to the Bel Aire Tree Board. The term will be for four years, expiring in June 2026.

Action: Motion to (confirm / deny / table) the Mayor's Appointment of Jesse Miller to the Bel Aire Tree Board.

Motion _____ Second _____ Vote _____

XIII. EXECUTIVE SESSION

Action: Motion to go into executive session for the sole purpose of discussion the subject of: (_____), pursuant to the KSA 75-4319 exception for: (_____). Invite the City Manager and the City Attorney. The meeting will be for a period of (__) minutes, and the open meeting will resume in City Council Chambers at (_____) PM.

Motion _____ Second _____ Vote _____

XIV. DISCUSSION AND FUTURE ISSUES

XV. ADJOURNMENT

Action: Motion to adjourn.

Motion _____ Second _____ Vote _____

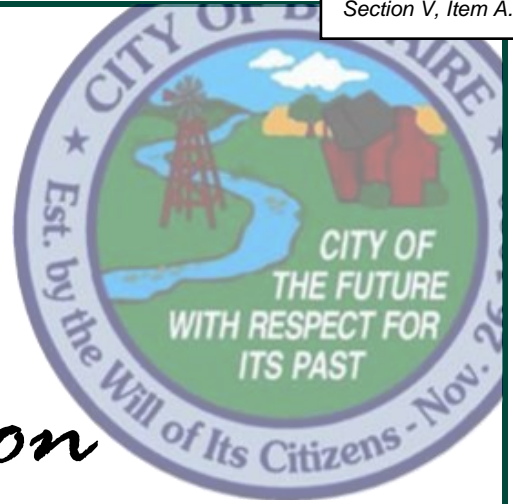
Additional Attachments

A. Public Works Report - May 2022

B. City Manager's Report- June 7, 2022

Notice

It is possible that sometime between 6:30 and 7:00 PM immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Governing Body may be present in the Council Chambers or the lobby of City Hall. No one is excluded from these areas during these times. Cox Cable Channel 7 rebroadcasts of this meeting are scheduled daily or can be streamed on YouTube and at www.belaireks.gov. Please make sure all cell phones and other electronics are turned off and put away.



Proclamation

National Flag Week - June 12-18, 2022

TO THE CITIZENS OF BEL AIRE, KANSAS, GREETINGS:

WHEREAS, the Second Continental Congress adopted the American Flag on June 14, 1777; and

WHEREAS, June 14, 2022 marks 246 years of displaying our American Flag; and

WHEREAS, it is fitting and proper to officially recognize “Old Glory” as a symbol of hope, inspiration and pride for the people of the United States and around the world; and

WHEREAS, in order to commemorate the adoption of our flag, on August 3, 1949, the Congress, by joint resolution, designated June 14 of each year as “*Flag Day*” and requested that the President issue an annual proclamation designating the week in which June 14 occurs as “National Flag Week” and call upon citizens of the United States to display the flag during that week; and

NOW, THEREFORE, I, Jim Benage, by the power vested in me as Mayor of the City of Bel Aire, and on behalf of the City Council and Citizens of Bel Aire, do hereby proclaim the week of June 12-18, 2022 as “*NATIONAL FLAG WEEK*” in the City of Bel Aire, Kansas and ask our citizens to reaffirm the ideals of our County by displaying our American Flag at their homes.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of Bel Aire, Kansas this 7th day of June, 2022.

Jim Benage, Mayor





MINUTES
CITY COUNCIL MEETING
7651 E. Central Park Ave, Bel Aire, KS
May 17, 2022 7:00 PM



I. CALL TO ORDER: Mayor Jim Benage called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present were Greg Davied, Emily Hamburg, Justin Smith, and John Welch.

Also present were City Manager Ty Lasher, City Attorney Jacqueline Kelly, City Clerk Melissa Krehbiel, and Bond Counsel Kevin Cowan of Gilmore and Bell, PA.

III. OPENING PRAYER: Father Terry Hedrick provided the opening prayer.

IV. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG

Mayor Benage led the pledge of allegiance.

V. PROCLAMATION:

A. Public Works Week - May 16-20, 2022

B. Kids to Parks Day, May 21, 2022

C. Memorial Day - May 30, 2022

The proclamations were read aloud and Mayor Benage signed each proclamation.

VI. DETERMINE AGENDA ADDITIONS

VII. CONSENT AGENDA

A. Minutes of the May 3, 2022 City Council meeting.

B. City Council Minutes of the May 10, 2022 Special Meeting.

C. Accept Petitions for Paving, Sanitary Sewer, Storm Water Drain, and Water Distribution System Improvements to serve Cedar Pass, Phases 1 and 2.

D. Approve Authorizing Resolutions for Paving, Sanitary Sewer, Storm Water Drain, and Water Distribution System Improvements to serve Cedar Pass, Phases 1 and 2.

- E. **Accept Petitions for Paving, Sanitary Sewer, Storm Water Drain, and Water Distribution System to serve Chapel Landing 5th Phases 1 and 2.**
- F. **Approve Authorizing Resolutions for Paving, Sanitary Sewer, Storm Water Drain, and Water Distribution System to serve Chapel Landing 5th Phases 1 and 2.**
- G. **Accept Petitions for Paving, Sidewalk, Sewer, Storm Water Drain, and Water Distribution System Improvements to serve Skyview at Block 49 2nd Addition Phase 1.**
- H. **Approve Authorizing Resolutions for Paving, Sidewalk, Sewer, Storm Water Drain, and Water Distribution System Improvements to serve Skyview at Block 49 2nd Addition Phase 1.**

MOTION: Councilmember Smith moved to approve the Consent Agenda.
 Councilmember Davied seconded the motion. ***Motion carried 4-0.***

VIII. DISCUSSION AND APPROVAL OF APPROPRIATIONS ORDINANCE

- A. **Consideration of Appropriations Ordinance 22-09 in the amount of \$2,204,531.19.**

MOTION: Councilmember Davied moved to approve Appropriations Ordinance 22-09. Councilmember Hamburg seconded the motion. ***Motion carried 4-0.***

IX. CITY REQUESTED APPEARANCES

- A. **Woodlawn update from MKEC**

 MKEC representatives were unable to attend. Their presentation will be rescheduled.

- B. **Catholic Care Center**

 Cindy McClure, CEO, spoke on behalf of Catholic Care Center. She asked that the Council consider eliminating or reducing the fees associated with processing the Health Care Facilities Revenue Bonds, which the Council will consider issuing tonight.

X. CITIZEN CONCERNS: No one spoke.

XI. PUBLIC HEARING

- A. **Catholic Care Center** - The purpose of the public hearing is to give property owners and other interested parties the opportunity to speak on the proposed issuance by the City of its Health Care Facilities Revenue Bonds (Catholic Care Center) in one or more series (the “Bonds”), in an aggregate principal amount of not to exceed \$25,000,000, the proceeds of which will be loaned to Catholic Care Center, Inc., a Kansas not for profit corporation.

 Mayor Benage opened the public hearing. No one spoke.

MOTION: Councilmember Davied moved to close the public hearing. Councilmember Smith seconded the motion. ***Motion carried 4-0.***

XII. REPORTS

A. Council Member Reports

Councilmember Hamburg briefly reported on the recent E-recycling and Shred Day, the Bel Aire Lion’s Club meeting, and the tour of the Chisholm Creek Utility Authority plant attended by the Utility Advisory Committee. Coming up, Spring Curbside Cleanup will be Saturday at 7 a.m.

Councilmember Smith briefly reported on the recent meeting of the Sedgwick County Association of Cities (SCAC).

Councilmember Davied briefly reported on the tour of the CCUA plant with UAC.

B. Mayor's Report

Mayor Benage briefly reported on several recent meetings: the Wichita Area Metropolitan Planning Organization (WAMPO), K-254 Corridor Development Association, and Sedgwick County Association of Cities (SCAC).

He briefly reported on the open house for Clinic In A Can.

Regarding a recent alarming increase in fentanyl overdose deaths in Sedgwick County, Mayor Benage encouraged citizens to do what they can to prevent more overdose deaths. Sedgwick County Sheriff Jeff Easter has provided information about preventing drug deaths which will be shared on the City’s website.

He congratulated Brooklyn Hicks of Wichita Northeast Magnet High School for winning the People’s Choice award in the 2022 Congressional Art Competition.

Regarding Diane Wynn’s vacant Council seat, applications for appointment will be accepted through May 19th.

C. City Attorney Report

City Attorney Kelly briefly reported on the quorum requirements for City Council and the policy to limit public comments to five minutes per speaker.

D. City Manager Report

City Manager Lasher reported that City offices will be closed for Memorial Day on May 30th. He briefly reported on road construction: turn lanes are being constructed on Highway K-254 and Rock Road under the supervision of KDOT and a new four-way stop was installed at Rock Road and 53rd Street. The four-way stop was recommended by a recent traffic study conducted by TranSystems.

XIII. ORDINANCES, RESOLUTIONS AND FINAL ACTIONS

- A. **Consideration of A Resolution Amending Resolution No. R-22-12 Of The City Of Bel Aire, Kansas, Which Determined The Advisability Of Issuing Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, In One Or More Series, To Provide Funds For The Purpose Of Financing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Authorized Execution Of Certain Related Documents.**

Councilmembers discussed Catholic Care Center’s request to waive or reduce certain fees related to the issuance of the IRB. Councilmembers stated they would like for staff to do research into the issue and bring more information back to the Council.

MOTION: Councilmember Welch moved to table A Resolution Amending Resolution No. R-22-12 Of The City Of Bel Aire, Kansas, Which Determined The Advisability Of Issuing Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, with the following fees: _____, In One Or More Series, To Provide Funds For The Purpose Of Financing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Authorized Execution Of Certain Related Documents. Councilmember Davied seconded the motion. *Motion carried 4-0.*

- B. **Consideration of An Ordinance Authorizing The City Of Bel Aire, Kansas, To Issue Its Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, In One Or More Series, To Provide Funds For The Purpose Of Financing And Refinancing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Approving Certain Documents And Actions In Connection With The Issuance Of Said Bonds.**

MOTION: Councilmember Smith moved to approve An Ordinance Authorizing The City Of Bel Aire, Kansas, To Issue Its Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, In One Or More Series, To Provide Funds For The Purpose Of Financing And Refinancing Improvements To Health Care And Retirement Facilities Owned And Operated By Catholic Care Center, Inc.; And Approving Certain Documents And Actions In Connection With The Issuance Of Said Bonds, and authorize the Mayor to sign. Councilmember Davied seconded the motion.

Roll Call Vote:

Greg Davied – Aye Emily Hamburg– Aye Justin Smith – Aye
John Welch – Aye

Motion carried 4-0.

- C. **Consideration of An Ordinance Authorizing The City Of Bel Aire, Kansas To Issue Its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) For The Purpose Of Paying Costs To Acquire, Construct And Equip A Senior Residence Facility; And Authorizing Certain Other Related Documents And Actions.**

Bond Counsel Kevin Cowan requested that this item be tabled on behalf of the applicant.

MOTION: Councilmember Smith moved to table An Ordinance Authorizing The City Of Bel Aire, Kansas To Issue Its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) For The Purpose Of Paying Costs To Acquire, Construct And Equip A Senior Residence Facility; And Authorizing Certain Other Related Documents And Actions. Councilmember Hamburg seconded the motion.

Roll Call Vote:

Greg Davied – Aye Emily Hamburg– Aye Justin Smith – Aye
John Welch – Aye
Motion carried 4-0.

D. Consideration of a bid for removal and replacement of fire hydrants and installation of valves at various locations. Three bids were received:

McCullough Excavation	\$71,350
Nowak Construction	\$44,400
Utility Maintenance Contractors (UMC)	\$39,175

MOTION: Councilmember Smith moved to accept the bid from Utility Maintenance Contractors in the amount not-to-exceed \$39,175 for removal and replacement of fire hydrants and installation of valves, and authorize all required signatures. Councilmember Davied seconded the motion. *Motion carried 4-0.*

E. Consideration of a bid for 2022 Outsourced Sanitary Sewer cleaning and televising. Two bids were received:

Mayer Specialty Services	\$52, 850.00
Utility Maintenance Contractors (UMC)	\$50,313.20

MOTION: Councilmember Smith moved to accept the bid from Utility Maintenance Contractors in the amount of \$50,313.20 for 2022 Outsourced Sanitary Sewer cleaning and televising. Councilmember Davied seconded the motion. *Motion carried 4-0.*

F. Consideration of a Memorandum of Understanding between the City of Bel Aire, Kansas and Terry Beall (Municipal Court Judge).

MOTION: Councilmember Smith moved to approve the Memorandum of Understanding between the City of Bel Aire, Kansas and Terry Beall and authorize the Mayor to sign. Councilmember Welch seconded the motion. *Motion carried 4-0.*

G. Consideration of an Agreement for Professional Services with Garver for Cedar Pass (Rock Spring 5th) in the amount of \$507,000.

MOTION: Councilmember Davied moved to approve an Agreement for Professional Services with Garver for Cedar Pass (Rock Spring 5th) in the amount of \$507,000 and authorize the Mayor to sign. Councilmember Hamburg seconded the motion. *Motion carried 4-0.*

H. Consideration of a Development Agreement for Cedar Pass Addition.

MOTION: Councilmember Davied moved to accept the Development Agreement for Cedar Pass Addition and authorize the Mayor to sign. Councilmember Smith seconded the motion. *Motion carried 4-0.*

I. Consideration of a Developer’s Agreement for Homestead Senior Landing.

MOTION: Councilmember Smith moved to accept the Developer’s Agreement for Homestead Senior Landing and authorize the Mayor to sign. Councilmember Davied seconded the motion. *Motion carried 4-0.*

XIV. EXECUTIVE SESSION

Mayor Benage noted that an executive session was necessary and that the first five minutes would be used for a break.

MOTION: Councilmember Smith moved to go into executive session for the sole purpose of discussion the subject of: non-elected personnel, pursuant to the KSA 75-4319 exception for: the same. Invite the City Council and the Mayor. The meeting will be for a period of 15 minutes, and the open meeting will resume in City Council Chambers at 8:57 PM. Councilmember Welch seconded the motion. *Motion carried 4-0.*

The Council then recessed for Executive Session. At 9:00 p.m. the Council members returned to the Council Chambers. Mayor Benage noted that no binding action had been taken, and called the meeting back to order in open session.

XV. DISCUSSION AND FUTURE ISSUES – No future issues were discussed.

XVI. ADJOURNMENT

MOTION: Councilmember Davied moved to adjourn. Councilmember Hamburg seconded the motion. *Motion carried 4-0.*

CLAIMS REPORT

Vendor Checks: 5/10/2022- 5/26/2022

Section VIII, Item A.

Payroll Checks: 5/10/2022- 5/26/2022

AP ORD 22-10

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK CHECK#	CHECK DATE
GENERAL					
ADOBE SYSTEMS, INC	ADOBE SUBSCRIPTION:PD		16.11	1280318	5/23/22
AFLAC	EMPLOYEE MONTHLY PREMIUM		611.88	1280319	5/13/22
AMAZON CAPITAL SERVICES, INC	PW:STAFF UNIFORMS & OFFICE SUPP/EQUIP		699.08	1280320	5/20/22
STRUNK PUBLISHING, LLC	BREEZE AD;LEGAL PUBLICATIONS		1,493.36	67842	5/16/22
ASCENSION VIA CHRISTI REHAB HO	PRE-EMPLY SCREENING:DAY CAMP		84.00	67843	5/16/22
ATLAS ELECTRIC LLC	SR ROOM BALLAST REPLACE		219.25	67844	5/16/22
DARRELL ATTEBERRY	KACP LEADERSHIP CONF		323.76	67845	5/16/22
BEALL & MITCHELL, LLC	05/22 JUDGE TERRY BEALL		971.29	67846	5/16/22
BLUE CROSS & BLUE SHIELD OF KS	06/22 ID:0421210		34,433.04	1280331	5/17/22
CARROT-TOP INDUSTRIES, INC	FLAGS FOR CITY HALL & RAB		569.38	67847	5/16/22
CASEYS GEN STORE 2289	REC VOLUNTEER LUNCH		43.97	1280318	5/23/22
AMERICAN FUTURE SYSTEMS,INC	PUBLIC EMP LAW DESKBOOK		159.00	67848	5/16/22
MARTINS CENTRAL SAND CO, INC	ROCK FOR PW SHOP YARD		64.63	67850	5/16/22
CHARLIES CAR WASH LLC	FLEET CAR WASH		100.00	1280318	5/23/22
CHIPOTLE 0546	PLANNING COMMISH TRAINING MEAL		176.52	1280318	5/23/22
CINTAS CORPORATION	PD MAT RENTAL	98.29		1280199	5/10/22
CINTAS CORPORATION	PD MAT RENTAL	98.29		1280200	5/10/22
CINTAS CORPORATION	PD MAT RENTAL	98.29		1280201	5/10/22
CINTAS CORPORATION	PD MAT RENTAL	98.29	393.16	1280202	5/10/22
CENTRAL MECHANICAL WICHITA,LLC	REPAIR UNIT#4:CH COMM RM		313.86	67892	5/24/22
COMFORT SUITES	HOTEL:OFFICER SMTHWICK		203.00	1280318	5/23/22
COUNTRYSIDE LAWN & TREE CARE	CITY HALL	2,683.92		67854	5/16/22
COUNTRYSIDE LAWN & TREE CARE	ALLEY PARK	924.64	3,608.56	67893	5/24/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		754.59	1280215	5/16/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		79.13	1280213	5/16/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		194.64	1280214	5/16/22
CREATIVE AWARDS & SCREEN PRINT	PLAQUE NAME PLATES		14.50	67855	5/16/22
DIGITAL OFFICE SYSTEMS	KONICA MINOLTA C224:		74.87	67856	5/16/22
DILLONS #0056	MARCH MADNESS CONTEST		70.30	1280318	5/23/22
DYNAMIC DISTRIBUTION CO	DISC GOLF BASKET POLES		64.63	67894	5/24/22
EMPOWER RETIREMENT 457	EMP VLNTRY 457	250.00		1280236	5/11/22
EMPOWER RETIREMENT 457	EMP VLNTRY 457	250.00	500.00	1280325	5/25/22
EPIC SPORTS, INC.	BASEBALL EQUIPMENT		249.60	1280318	5/23/22
EVERGREEN RECYCLE	TREE MULCH		520.00	67858	5/16/22
EWING	IRRIGATION SUPPLIES		266.93	67859	5/16/22
FICA/FEDERAL W/H	FED/FICA TAX	16,287.67		1280232	5/11/22
FICA/FEDERAL W/H	FED/FICA TAX	16,098.75	32,386.42	1280321	5/25/22
BRIDGESTONE AMERICAS, INC	FLEET MAINTENANCE #32		1,195.51	67860	5/16/22
FIZZ BURGERS & BOTTLES	SOCAIL MEDIA TOOL		50.15	1280318	5/23/22
GALLS, LLC	UNIFORM/ACCESSORIES & SUPPLIES		4.75	67861	5/16/22
GILMORE SOLUTIONS INC	COMPUTER PY1-FRNT DSK/CNCL MTG	1,300.00		1280332	5/20/22
GILMORE SOLUTIONS INC	OFFICE 365 MONTHLY-MAY'22	573.00	1,873.00	1280333	5/20/22
HAWKS INTER-STATE PESTMASTERS	05/22:PEST CONTROL:REC		160.52	67896	5/24/22
HILTON INN	HOTEL:MAYOR BENAGE		120.40	1280318	5/23/22
WR-4 DEVELOPMENT LP-HOG WILD	SENIOR CLUB MEAL		398.70	1280318	5/23/22
THE IMA FINANCIAL GROUP, INC	HEALTH BENEFITS ADMIN JUN #9		833.00	1280334	5/11/22
INDEED	JOB POSTINGS-PZ DIR, UB CLERK		613.34	1280318	5/23/22
JULIAN MICKENS	BEL AIRE COURT RESTITUTION		50.00	67897	5/24/22
KANSAS GOLF & TURF, INC	MOWER BLADES		301.59	67864	5/16/22
KTA - TRANSA TEMP - RET	TOLLS		20.60	1280318	5/23/22
KS DEPT OF ADMINISTRATION	2021 AUDIT FILING FEE		175.00	1280318	5/23/22
KANSAS DEPT OF REVENUE	STATE TAX	2,781.93		1280235	5/11/22

CLAIMS REPORT

Vendor Checks: 5/10/2022- 5/26/2022

Section VIII, Item A.

Payroll Checks: 5/10/2022- 5/26/2022

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK CHECK#	CHECK DATE
KANSAS DEPT OF REVENUE	STATE TAX	2,667.82	5,449.75	1280324	5/25/22
KANSAS GAS SERVICE	GAS SVC:MAINT SHOP		52.30	1280338	5/24/22
KANSAS GAS SERVICE	GAS SVC:REC		208.08	1280336	5/24/22
KANSAS GAS SERVICE	GAS SVC:CH		229.62	1280337	5/24/22
KANSAS GAS SERVICE	GAS SVC:POOL		53.59	1280339	5/24/22
K P E R S	KPERS 2	10,762.16		1280234	5/11/22
K P E R S	KPERS 2	10,004.27	20,766.43	1280323	5/25/22
LAUTZ LAW LLC	CRT APPTD DEFENSE ATTY		272.00	67867	5/16/22
MICHAEL D FERGUSON	CPR TRAINING:MCNOWN		70.00	67899	5/24/22
LINDSAY VANDELLEN	COMM RM DEPOSIT REFUND		150.00	67868	5/16/22
LOGMEIN USA, INC	REMOTE SOFTWARE		149.60	1280318	5/23/22
CRAIG A MCCOSKEY	CONTRACT MOWING		400.00	67870	5/16/22
MENARDS WICHITA EAST	ALLEY PARK BRIDGE SUPPLIES		1,459.63	1280318	5/23/22
MOORE WATER TREATMENT	04/22 WATER SERVICE		63.20	67871	5/16/22
NAT'L ALLIANCE - YOUTH SPORTS	COACH CERTIFICATION		40.00	1280318	5/23/22
NATIONAL SCREENING BUREAU	VENDOR/EMP-BACKGROUND CHECK		225.00	67872	5/16/22
SPORTS ENGINE	COACHES-BACKGROUND CHECK		17.50	67874	5/16/22
OFFICE DEPOT	PLANNING COMMISH CODE BOOKS		272.13	1280318	5/23/22
OILFIELD SHELTERS, INC.	DUGOUT ROOF REPAIRS		225.00	1280318	5/23/22
ONE BEAT CPR LEARNING CENTER	PD:AED PADS		87.82	1280318	5/23/22
PAYLOCITY CORPORATION	FSA EMPLOYEE EXPENSE	687.69		1280344	5/13/22
PAYLOCITY CORPORATION	FSA EMPLOYEE EXPENSE	99.11		1280345	5/20/22
PAYLOCITY CORPORATION	FSA EMPLOYEE EXPENSE	25.50	812.30	1280346	5/20/22
PITNEY BOWES	POSTAGE METER SUPPLIES		80.74	1280348	5/11/22
PITNEY BOWES GLOBAL FINANCIAL	MONTHLY POSTAGE		500.00	1280347	5/20/22
QUALIFICATION TARGETS INC	FIREARM TARGETS		150.50	1280318	5/23/22
QUILL	OFFICE SUPPLIES/EQUIP		807.57	1280351	5/23/22
RESTREAM, INC.	LIVE STREAM SERVICE		15.20	1280318	5/23/22
SAMSLUB #6418	OFFICE SUPPLIES		484.23	1280318	5/23/22
SEDGWICK CO DEPT OF FINANCE	04/22 PRISONER HOUSING FEES		1,627.08	67877	5/16/22
SEWING & EMBROIDERY WORKS LLC	BA LOGO EMBROIDERY		10.00	67878	5/16/22
WITHERS ENTERPRISES, INC	DISC GOLF DECALS-LIONS CLUB		121.78	67879	5/16/22
RASHELL D LASHBROOK	06/22 JANITORIAL SVC:CH		2,618.19	67880	5/16/22
JR SIMPLOT COMPANY	OUTRIDER HERBACIDE		480.00	67881	5/16/22
SPECTRUM PROMOTIONAL PRODUCTS	REC SPORT SHIRTS		361.90	67905	5/24/22
SQUARESPACE INC.	BETTERONEDGE DOMAIN RENEWAL		20.00	1280318	5/23/22
SUMNER GROUP INC	PRINTER CONTRACTS/TONER		610.51	67882	5/16/22
SUN LIFE & HEALTH INS CO	05/22 VOLUNTARY LIFE PYMNT		459.52	67883	5/16/22
SUPERIOR RUBBER STAMP & SEAL	LASERFICHE SCAN STAMPS		93.50	67906	5/24/22
THE HOME DEPOT 2204	GRASS SEED, BAR OIL		652.77	1280318	5/23/22
TREE TOP NURSERY & LANDSCAPE	CONTRACT MOWING		2,901.36	67884	5/16/22
TSYS MERCHANT SOLUTIONS	CREDIT CARD PROCESSING FEES		5,207.72	1280352	5/10/22
UNDERGROUND VAULTS & STORAGE	DOCUMENT SHREDDING	10.00		67885	5/16/22
UNDERGROUND VAULTS & STORAGE	PD:FILE RETRIEVAL/INTERFILING	602.64	612.64	67907	5/24/22
UNITED INDUSTRIES INC	POOL:CHEMICALS		4,563.00	67908	5/24/22
ICMA RETIREMENT 304804	CITY MGR 457	998.82		1280233	5/11/22
ICMA RETIREMENT 304804	CITY MGR 457	998.82	1,997.64	1280322	5/25/22
VISTA PRINT	BUS CARDS:HENRY, LEIKER, HEILMAN		78.20	1280318	5/23/22
WAL-MART #1507	MARCH MADNESS CONTEST		296.19	1280318	5/23/22
WEX BANK	FUEL	3,181.05		1280353	5/18/22
WEX BANK	FUEL	3,156.67	6,337.72	1280354	5/18/22
LAFF T WILLIAMS & ASSOCIATES,	JANITORIAL SUPPLIES		89.40	67889	5/16/22
WICHITA STATE UNIVERSITY	KSGFOA CONF:APPEL		130.00	1280318	5/23/22

CLAIMS REPORT

Vendor Checks: 5/10/2022- 5/26/2022

Section VIII, Item A.

Payroll Checks: 5/10/2022- 5/26/2022

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK #	CHECK DATE
01 GENERAL TOTAL			147,767.33		
WATER UTILITY					
AMAZON CAPITAL SERVICES, INC	PW:STAFF UNIFORMS		431.15	1280320	5/20/22
BANK OF NEW YORK MELLON TRUST	05/22 WATER DEBT SVC	48,152.53		1280327	5/15/22
BANK OF NEW YORK MELLON TRUST	541071:05/22 O&M WATER	39,351.50	87,504.03	1280329	5/15/22
BLUE CROSS & BLUE SHIELD OF KS	06/22 ID:0421210		4,545.75	1280331	5/17/22
MARTINS CENTRAL SAND CO, INC	ROCK FOR PW SHOP YARD		64.63	67850	5/16/22
CHISHOLM CREEK UTILITY AUTH.	05/22 CCUA CONTINGENCY		3,000.00	67852	5/16/22
CITY BLUE PRINT	METAL DETECTOR		470.00	67853	5/16/22
COX COMMUNICATIONS, INC	I.T.BACKUP:WATER TOWER		77.48	1280212	5/14/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		51.45	1280215	5/16/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		94.96	1280213	5/16/22
DITCH WITCH OF WEST TEXAS	SPRAY HOSE		221.91	1280318	5/23/22
FICA/FEDERAL W/H	FED/FICA TAX	2,488.15		1280232	5/11/22
FICA/FEDERAL W/H	FED/FICA TAX	2,366.27	4,854.42	1280321	5/25/22
FIZZ BURGERS & BOTTLES	STAFF MEALS		75.95	1280318	5/23/22
KANSAS ONE-CALL SYSTEM, INC.	LOCATE FEES:556 FOR 04/22		333.60	67865	5/16/22
KANSAS DEPT OF REVENUE	STATE TAX	439.32		1280235	5/11/22
KANSAS DEPT OF REVENUE	STATE TAX	413.00	852.32	1280324	5/25/22
KANSAS GAS SERVICE	GAS SVC:MAINT SHOP		62.75	1280338	5/24/22
KANSAS GAS SERVICE	GAS SVC:PUMPHOUSE		59.32	1280335	5/24/22
KANSAS GAS SERVICE	GAS SVC:CH		15.66	1280337	5/24/22
K P E R S	KPERS TIER 3	1,461.79		1280234	5/11/22
K P E R S	KPERS TIER 3	1,391.38	2,853.17	1280323	5/25/22
KS SOCIETY PROFESSIONAL ENGINE	KSPE CONF:STEPHENS		140.00	1280318	5/23/22
MIDWEST SINGLE SOURCE, INC	06/22-23 MAINT CONTRACT:FOLDER		833.50	67901	5/24/22
NOWAK CONSTRUCTION CO INC.	DANBURY UNDER TRIB 7		14,000.00	67875	5/16/22
OFFICE DEPOT	PW:DRY ERASE BOARD		151.47	1280318	5/23/22
PIZZA HUT 029874	PW STAFF TRAINING MEAL		35.97	1280318	5/23/22
POSTMASTER	05/22 POSTAGE:UTILITY BILLS		415.61	67890	5/19/22
PUBLIC WORKS & UTILITIES	10,880,250 GAL:04/05-05/04/22		49,008.12	1280349	5/16/22
QUICK TRIP	FUEL:STEPHENS		65.65	1280318	5/23/22
RASHELL D LASHBROOK	06/22 JANITORIAL SVC:PW		103.22	67880	5/16/22
GREEN GLO, INC	SOD-WATER LEAK REPAIR		135.70	67904	5/24/22
SUN LIFE & HEALTH INS CO	05/22 VOLUNTARY LIFE PYMNT		17.44	67883	5/16/22
THE HOME DEPOT 2204	SEEDS, BOLTS		177.65	1280318	5/23/22
HD SUPPLY FACILITIES MAINTENAN	HYDRANT TESTING SUPPLIES		505.76	67909	5/24/22
USPS PO 1946750085	MAIL WATER SAMPLES		28.80	1280318	5/23/22
UTILITY MAINTENANCE CONTRACTOR	WATER METER INSTALLS x7		9,212.00	67888	5/16/22
VISTA PRINT	BUS CARDS:HENRY,LEIKER,HEILMAN		39.10	1280318	5/23/22
WEX BANK	FUEL	125.82		1280353	5/18/22
WEX BANK	FUEL	71.36	197.18	1280354	5/18/22
WICHITA STATE UNIVERSITY	WOMEN PUBLIC SVC CONF;STEPHENS		50.00	1280318	5/23/22
02 WATER UTILITY TOTAL			180,685.72		
SEWER UTILITY					
AMAZON CAPITAL SERVICES, INC	PW:STAFF UNIFORMS		431.15	1280320	5/20/22
BANK OF NEW YORK MELLON TRUST	05/22 WASTEWATER DEBT SVC	60,746.55		1280328	5/15/22
BANK OF NEW YORK MELLON TRUST	541071:05/22 O&M WASTEWATER	25,926.17	86,672.72	1280330	5/15/22
BLUE CROSS & BLUE SHIELD OF KS	06/22 ID:0421210		1,683.92	1280331	5/17/22

CLAIMS REPORT

Vendor Checks: 5/10/2022- 5/26/2022

Section VIII, Item A.

Payroll Checks: 5/10/2022- 5/26/2022

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK CHECK#	CHECK DATE
CENTRAL KEY & SAFE COMPANY, INC	PADLOCK		32.47	67849	5/16/22
MARTINS CENTRAL SAND CO, INC	ROCK FOR PW SHOP YARD		64.63	67850	5/16/22
CHISHOLM CREEK UTILITY AUTH.	05/22 CCUA CONTINGENCY		2,820.00	67852	5/16/22
CITY BLUE PRINT	METAL DETECTOR		470.00	67853	5/16/22
COX COMMUNICATIONS, INC	I.T.BACKUP:WATER TOWER		77.47	1280212	5/14/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		51.45	1280215	5/16/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		94.96	1280213	5/16/22
EMPOWER RETIREMENT 457	EMP VLNTRY 457	400.00		1280236	5/11/22
EMPOWER RETIREMENT 457	EMP VLNTRY 457	400.00	800.00	1280325	5/25/22
FICA/FEDERAL W/H	FED/FICA TAX	2,208.83		1280232	5/11/22
FICA/FEDERAL W/H	FED/FICA TAX	2,264.31	4,473.14	1280321	5/25/22
KANSAS ONE-CALL SYSTEM, INC.	LOCATE FEES:556 FOR 04/22		333.60	67865	5/16/22
KANSAS DEPT OF REVENUE	STATE TAX	360.55		1280235	5/11/22
KANSAS DEPT OF REVENUE	STATE TAX	370.80	731.35	1280324	5/25/22
KANSAS GAS SERVICE	GAS SVC:MAINT SHOP		62.75	1280338	5/24/22
KANSAS GAS SERVICE	GAS SVC:CH		15.64	1280337	5/24/22
K P E R S	KPERS TIER 3	1,317.09		1280234	5/11/22
K P E R S	KPERS TIER 3	1,343.91	2,661.00	1280323	5/25/22
MIDWEST SINGLE SOURCE, INC	06/22-23 MAINT CONTRACT:FOLDER		833.50	67901	5/24/22
OFFICE DEPOT	PW:DRY ERASE BOARD		136.98	1280318	5/23/22
POSTMASTER	05/22 POSTAGE:UTILITY BILLS		415.61	67890	5/19/22
PUBLIC WORKS & UTILITIES	BULK SEWER 03/31-04/30/22		36.18	1280350	5/11/22
QUICK TRIP	FUEL:STEPHENS		53.48	1280318	5/23/22
RASHELL D LASHBROOK	06/22 JANITORIAL SVC:PW		103.19	67880	5/16/22
SUN LIFE & HEALTH INS CO	05/22 VOLUNTARY LIFE PYMNT		79.30	67883	5/16/22
THE HOME DEPOT 2204	SHOP SUPPLIES		93.94	1280318	5/23/22
HD SUPPLY FACILITIES MAINTENAN	MANHOLE LIFTING BAR		262.86	67887	5/16/22
03 SEWER UTILITY TOTAL			103,491.29		
SPECIAL STREET & HIWAY					
AFLAC	EMPLOYEE MONTHLY PREMIUM		262.71	1280319	5/13/22
AMAZON CAPITAL SERVICES, INC	PW:STAFF UNIFORMS		431.15	1280320	5/20/22
BLUE CROSS & BLUE SHIELD OF KS	06/22 ID:0421210		2,083.06	1280331	5/17/22
MARTINS CENTRAL SAND CO, INC	ROCK FOR PW SHOP YARD		64.66	67850	5/16/22
COX COMMUNICATIONS, INC	INTERNET/PHONE SVC		47.48	1280213	5/16/22
EVERGY KANSAS CENTRAL INC	ELEC SVC:STREET LIGHTING		7,775.84	1280219	5/16/22
FICA/FEDERAL W/H	FED/FICA TAX	356.19		1280232	5/11/22
FICA/FEDERAL W/H	FED/FICA TAX	356.19	712.38	1280321	5/25/22
INTERSTATE BILLING SERVIC	INTERNATIONAL SWAY BAR REPAIR		457.83	67862	5/16/22
KANSAS GENERAL WIRE & SUPPLY	SIGN POSTS		242.39	67863	5/16/22
KEY EQUIPMENT & SUPPLY CO	STREET BROOMS/DRAGS/SUPPLIES		2,131.33	67898	5/24/22
KANSAS DEPT OF REVENUE	STATE TAX	43.94		1280235	5/11/22
KANSAS DEPT OF REVENUE	STATE TAX	43.94	87.88	1280324	5/25/22
KANSAS GAS SERVICE	GAS SVC:MAINT SHOP		31.38	1280338	5/24/22
K P E R S	KPERS	274.16		1280234	5/11/22
K P E R S	KPERS	274.16	548.32	1280323	5/25/22
MCCONNELL & ASSOCIATES	FLAGS FOR SIGNS		47.88	67869	5/16/22
NATIONAL SIGN COMPANY, INC.	SIGNS, MATERIALS/SUPPLIES		204.41	67873	5/16/22
PAYNE TOWNSHIP	ANNUAL MAINT SVC AGREEMENT		5,000.00	67903	5/24/22
PIZZA HUT 029874	SUNRISE STUDENT MEALS		224.36	1280318	5/23/22
SAMSLUB #6418	SUNRISE STUDENTS MEAL		38.28	1280318	5/23/22
SUN LIFE & HEALTH INS CO	05/22 VOLUNTARY LIFE PYMNT		64.80	67883	5/16/22

CLAIMS REPORT

Vendor Checks: 5/10/2022- 5/26/2022

Section VIII, Item A.

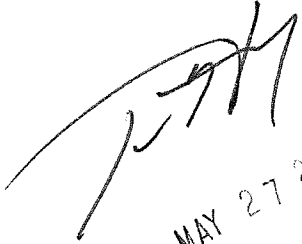
Payroll Checks: 5/10/2022- 5/26/2022

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK CHECK#	CHECK DATE
WEX BANK	FUEL	232.91		1280353	5/18/22
WEX BANK	FUEL	213.73	446.64	1280354	5/18/22
	04 SPECIAL STREET & HIWAY TOTAL		20,902.78		
CAPITAL IMPRV RESERVE GARVER	53RD OLIVER/WOODLAWN DESIGN		25,987.50	67895	5/24/22
	05 CAPITAL IMPRV RESERVE TOTAL		25,987.50		
EQUIPMENT RESERVE SCHMIDT & SONS	DELIVERY OF 2022 MOWER		175.00	67876	5/16/22
	06 EQUIPMENT RESERVE TOTAL		175.00		
STORMWATER UTILITY EVERGREEN RECYCLE	BRUSH DISPOSAL		184.84	67858	5/16/22
	14 STORMWATER UTILITY TOTAL		184.84		
CAPITAL PROJECTS #2 FUND					
CHERRYWOOD CONSTRUCTION, INC	ROCK SPR SPRINKLER REP/SS PROJ		3,826.00	67851	5/16/22
DONDLINGER & SONS CONSTRUCTION	WOODLAWN UTILITY RELOCATE		186,803.97	67857	5/16/22
GARVER	SKYVIEW BLOCK 49:IMPROVEMENTS		30,864.32	67895	5/24/22
CONSPEC INC	SKYVIEW PAVING		132,439.31	67866	5/16/22
MCCULLOUGH EXCAVATION, INC.	ROCK SPR 4:SWD/WDS/SS		135,311.38	67900	5/24/22
MKEC ENGINEERING, INC	VILLAS PRESTIWCK-DRAINAGE		1,455.00	67902	5/24/22
UNION PACIFIC RAILROAD COMPANY	PRELIM ENG:WOODLAWN XING		4,223.34	67886	5/16/22
	33 CAPITAL PROJECTS #2 FUND TOTAL		494,923.32		
	Accounts Payable Total		974,117.78		
Payroll Checks					
	01 GENERAL		49,701.99		
	02 WATER UTILITY		6,682.98		
	03 SEWER UTILITY		5,835.20		
	04 SPECIAL STREET & HIWAY		1,245.97		
	Total Paid On: 5/11/22		63,466.14		
	01 GENERAL		50,147.81		
	02 WATER UTILITY		6,350.77		
	03 SEWER UTILITY		5,952.42		
	04 SPECIAL STREET & HIWAY		1,245.97		
	Total Paid On: 5/25/22		63,696.97		

CLAIMS REPORT
 Vendor Checks: 5/10/2022- 5/26/2022

Payroll Checks: 5/10/2022- 5/26/2022

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK CHECK#	CHECK DATE
Total Payroll Paid			127,163.11		
Report Total			1,101,280.89		


 MAY 27 2022

CITY OF BEL AIRE

INDUSTRIAL REVENUE BOND AND TAX EXEMPTION/ABATEMENT POLICY

Adopted: 11/2/2009

Revised: 7/16/2012; 6/7/2022

STATEMENT OF POLICY ON IRB's

The City Council's primary goal when considering the issuance of industrial revenue bonds (IRBs) or the granting of property tax abatements, exemptions and incentives or both shall be to encourage economic growth in the corporate City limits and the growth area of the City. Industrial revenue bonds are not considered a debt of the city; rather, they are debts of the business/organization that utilizes the bond proceeds. The city is merely a conduit for the business/organization to obtain tax-exempt financing for its project.

Industrial revenue bonds will not be utilized when it is determined that doing so would give the recipient an unfair advantage over a business or organization currently engaged in a similar venture within the city or its growth area.

When considering a request for IRBs, the city will evaluate the types of jobs proposed to be created, the amount of capital investment that will be made, and the ability of the business to meet a recognized need in Bel Aire's economic base. Upon review and consideration of these factors, the City Manager will make a recommendation to the City Council, which shall approve or deny the request. In the event the City Council approves the request to issue IRBs, the City Manager shall contact the City's bond counsel and begin the process of issuing the bonds. The applicant for the IRBs shall be responsible for any bond counsel, financial advisor, and any other fees incurred by the applicant that are associated with the issuance of the bonds.

STATEMENT OF POLICY ON TAX EXEMPTIONS AND/OR ABATEMENTS

Section

1. Purpose
2. General Objective
3. Legal Authority
4. General Procedure
5. "Tax Incentive" Defined
6. Jurisdiction
7. Nominal Tax Determination
8. Minimum Payment in Lieu of Taxes
9. Special Assessments
10. Pirating
11. Application of "But For" Principle
12. Analysis of Costs and Benefits
13. No Exemptions
14. Amount of Tax Incentives
15. Application Required
16. Application and Renewal Fees
17. Initial Review Process
18. Administrative Review Committee
19. Initial Governing Body Action
20. Notice and Hearing
21. Letters of Intent
22. Annual Renewal Subject to Review
23. Transfer of Ownership or Use
24. Distribution of Revenue
25. Exemption Ordinance
26. Exemption Forms
27. Waiver of Statement Requirements
28. Definitions

Section 1. Purpose. The purpose of this statement is to establish the official policy and procedures of the City of Bel Aire, for the issuance of IRBs or granting of property tax exemptions and tax incentives for real and personal property used for economic development purposes or both.

Section 2. General Objective. The securing of private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of this City. The issuance of IRBs or granting of property tax exemptions and tax incentives or both are tools available under Kansas law to help secure these public objectives. This statement is intended to establish the procedure and policy standards to govern the fair, effective, and judicious use of the power to issue IRBs or grant such exemptions and tax incentives or both in this City.

Section 3. Legal Authority. The governing bodies of Kansas counties and cities may issue IRBs in accordance with the provision of K.S.A. 12-1740 *et seq.*, or exempt certain property used for economic development purposes from taxes for a maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to the requirements of KSA 79-251 *et seq.* or both. This authority is discretionary with the City, and the City may issue IRBs or provide for tax exemptions-incentives in an amount and for purposes more restrictive than that authorized by the Constitution or state laws. Pursuant to its home rule powers, the City may (1) require the owners of any property for which IRB issuance is requested or an exemption is requested or both to provide certain information, (2) condition the issuance of IRBs or granting of an exemption or both to an agreement providing for the payment of in lieu charges or taxes under the provisions of 12-1740 *et seq.* or KSA 12-147 and 12-148, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 4. General Procedure. The following basic procedure shall govern the issuance of IRBs or tax exemptions-incentives or both within Bel Aire:

1. The applicant business shall apply for IRB issuance or a tax exemption-incentive or both by filing a written application as provided in this policy.
2. If the City determines the requested IRB issuance or tax exemption-incentive or both (a) may be lawfully granted, and (b) the initial request is worthy of further consideration, the City shall, if applicable, prepare a cost-benefit analysis report of the requested tax exemption-incentive as provided in Section 12.
3. The City shall then determine whether the IRB issuance or proposed tax exemption-incentive or both should be granted, following, if required by statute, a public hearing after the required notice.
4. If it is determined that some tax exemption-incentive should be granted, a maximum of 100% exemption of that property of the business legally eligible for exemption may be provided, but may be subject to an agreement of the business to make an in lieu tax payment as may be required by the City. The City reserves the right to set the tax exemption at a rate less than 100% and for a timeframe of less than 10 years.
5. The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with this

Statement.

6. Upon the failure of the business to fully and timely pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the City and reasonably necessary for the implementation of this policy, the City may either deny, revoke, or not renew the authorization of such an exemption. All requests for a tax exemption-incentive for economic development purposes shall be considered and acted upon in accordance with this Statement.

Section 5. “Tax Incentive” Defined. Various words and terms used in this statement are defined in Section 28. The terms “tax incentive” or “tax exemption-incentive” shall both mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no City-granted exemption and the amount required to be paid as in lieu taxes or charges. For example, if the taxes required with no exemption were \$5,000, and the required in lieu payments were \$3,000, the “tax incentive” or “tax exemption-incentive” would be \$2,000.

Section 6. Jurisdiction. The City shall issue IRBs or grant tax exemptions-incentives or both only for property located within the City.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption-incentive under this Statement shall be annually assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the County Clerk and Treasurer, in the same manner as if the property were not exempt, but such shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any taxable tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the city with this information as early as possible, but not later than November 15 of each year.

Section 8. Payment in Lieu of Taxes (PILOTs). Applicants receiving a tax exemption-incentive pursuant to this statement may be required to make a minimum payment in lieu of taxes which will be determined by the Governing Body based on economic incentives and benefits.

Section 9. Special Assessments. Any tax exemption granted for real property under this statement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 10. Pirating. It shall be the policy of the City to discourage applications for IRB issuance or tax exemptions-incentives or both, or to grant such IRBs or tax incentives or both, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the city to avoid participation in “bidding wars” between cities or areas competing for the location of new businesses or expansion of existing businesses through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state’s economy and the public interest. As provided in KSA 1991 Supp. 79-252, the City shall not exempt any tangible

personal property of a business if such property is currently subject to ad valorem taxation within the State of Kansas or has been exempted from taxation pursuant to section 13 of article 11 of the Kansas Constitution, except if the governing body makes a factual determination that such an exemption is required to retain jobs in the state of Kansas, an exemption may be granted for such tangible personal property.

Section 11. Application of “But-For” Principle. Any tax exemption-incentive granted by the City shall be subject to the “but-for” principle, i.e., the tax incentive must make such a difference in determining the establishment of expansion of the business that the business would not otherwise be established or expanded in the City but for the availability of the tax incentive. It is the policy of the City Council that private businesses should not be subsidized with public funds, the indirect consequence of tax exemptions-incentives, unless some public good results and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development and the creation of new jobs within the City.

Section 12. Analysis of Costs and Benefits. The City will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the City through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. Before a tax exemption-incentive is granted to an application, a cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption-incentive will be required. Analysis will be completed by a designated agent of the city and all associated costs will be the responsibility of the applicant. The cost-benefit analysis report shall consider but not be limited to the following factors, as applicable:

- (a) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- (b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.
- (c) The contribution that the new or expanded business will make towards increased employment and earnings within the community.
- (d) The number of new jobs created directly by the business in relations to the amount of tax incentives granted.
- (e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (f) The utilization by the business of labor skills and abilities of unemployed persons in the community.
- (g) The degree to which the business improves the diversification of the economy of the city and its environs.
- (h) The degree to which the ultimate market for the manufactured products is outside the community, recognizing that outside markets bring in “new money” to the local economy.
- (i) The potential of the business for future expansion and additional job creation.
- (j) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- (k) The beneficial economic impact the business will have on a particular area of the city,

including designated enterprise zones and areas of needed revitalization or redevelopment.

- (l) The compatibility of the location of the business with land use and development plans of the city and the availability of the existing infrastructure facilities and essential public services.
- (m) The extent to which additional direct or indirect public costs to the city and to other local units would be necessary, such as the cost of the extension of public facilities.
- (n) The extent to which the economic and employment benefits of the tax incentive accrue to the residents and taxpayers of those taxing subdivisions which indirectly “subsidize” the business as a result of the forgone tax revenue.

Section 13. No Exemptions. (1) No tax exemption shall be granted if the exemption would create, in the judgment of the City Council, an unfair advantage for one business over another competing business within the City. (2) No tax exemption shall be granted to any business which commenced operations prior to August 5, 1986, nor for the expansion of a business unless such expansion created new employment.

Section 14. Amount of Tax Incentives. The two primary objectives of the City in granting tax exemptions for economic development are to (1) provide needed jobs, and (2) expand the economic and tax base of the City. Property taxes may be abated for new improvements to real property and for newly acquired items of personal property used by an eligible business in connection with an expansion or relocation of the business’ operations in Bel Aire. Land and existing buildings are not generally eligible for property tax-exemption incentive but may be considered for tax exemption-incentive. Motor vehicles are not eligible for property tax exemption-incentive under this policy.

An initial maximum term of ten (10) years can be granted subject to review and approval of the City Council. Recommended percentages of property tax exemption-incentives shall be based on new job creation and capital investment by the eligible business.

Section 15. Application Required. The City will not consider the issuance of IRBs or granting of any tax exemption-incentive or both unless the business submits a full and complete application and provides such additional information as may be requested by the City Council. The application is included in this policy, upon completion, will provide the City Council with adequate and sufficient information to determine whether IRB issuance or a tax incentive or both should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any ordinance or resolution adopted in reliance on said information.

Section 16. Application and Renewal Fees. Any business requesting IRB issuance or a tax exemption or both pursuant to this statement shall pay to the City an application fee of \$1,500, which shall cover administrative and professional costs by the City in processing this application, including any required cost-benefit analysis. The fee shall be submitted at the same time the application form required by Section 15 is submitted. In addition, any business which has been granted a tax exemption shall pay an annual, non-refundable administrative fee in the amount of

\$2,500.

Section 17. Initial Review Procedure. On receipt of the completed application form and the required fee, the City Manager shall determine (a) whether the application is complete and sufficient for review, and (b) whether the applicant business is eligible for IRB issuance or an exemption, or both, under the Kansas Constitution, this statement, and any other applicable laws. If the application is incomplete, the City Manager shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for IRB issuance or an exemption or both, the matter shall be referred to the City Attorney, who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the City Manager shall make a recommendation to the City Council for consideration.

Section 18. Initial Governing Body Action. Upon receiving the recommendations of the City Manager, the City Council shall first determine whether to reject the requested IRB issuance or exemption or both, or to further consider the request. Upon a favorable vote for further consideration, the City Council shall either (1) issue a letter of intent as provided by Section 20, or (2) schedule any required public hearing to consider granting a tax exemption-incentive.

Section 19. Notice and Hearing. No tax exemption shall be granted by the City prior to notice and a public hearing as required by K.S.A. 12-1740 *et seq.*, or KSA 1991 Supp. 79-251. Notice of the public hearing shall be published at least seven days prior to the hearing in the official City newspaper, giving the purpose, time and place, and the hearing may be held at a regular or special meeting of the City Council. The City Clerk shall thereupon notify in writing the Board of County Commissioners, the appropriate school district, and the clerk of any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business, advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City Clerk shall provide such public agency with a copy of the application. The applicant business shall be invited, but not required, to attend the public hearing.

Section 20. Letters of Intent. Upon receiving the recommendations of the City Manager, the City Council may issue a letter of intent, setting for in general terms its proposed plans for issuing IRBs or granting a tax exemption-incentive or both, and any conditions thereto. Such letters of intent shall be issued only with the approval of the City Council, and as an expression of good faith intent, but shall not in any way bind the City to IRB issuance or the granting of an exemption-incentive or both. Such letters of intent shall expire six months after issuance but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No elected or appointed officer, employee or committee of the City, and no chamber of commerce, board, development council or other public or private body or individual, shall be authorized to speak for and commit the City Council to IRB issuance or the granting of a tax exemption-incentive or both.

Section 21. Annual Renewal Subject to Review. The extent and term of any tax exemption-incentive granted shall be subject to annual review by the City Council to ensure that the ownership and use of the property and any other qualifying criteria of the business for the tax exemption-incentive continue to exist. The review shall be completed by not later than February

1 of each year. The city may require an annual renewal application to be filed by the business. The annual renewal application shall include information from the business indicating compliance with any terms or conditions established by the City Council for the granting of the exemption, such as number, quality of jobs created, etc. Upon a finding that the property continues to meet all the terms and conditions established as a condition of granting the exemption, the City Clerk shall so certify to the owner for submission to the assessing officer, as provided by KSA 79-210a.

Section 22. Transfer of Ownership or Use. No exemption or tax incentives granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for tax exemption-incentive. Further, the City shall be notified by the business of any substantive change in the use of tax-exempt property (see Section 26).

Section 23. Distribution of Revenue. The granting of tax exemptions-incentives by the City is hereby declared to be a contract under the provisions of K.S.A. 12-1740 *et seq.* and KSA 12-147. The in lieu of taxes payment which may be required of a business granted a tax exemption under this statement shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is directed to apportion the payment, under the provisions of subsection (3) of KSA 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

Section 24. Origination Fee. The applicant for IRB issuance or tax exemption-incentive or both shall pay to the City an origination fee in an amount equal to 1% of the par value of the IRB, if applicable, or, if IRBs are not issued, 1% of the value of the property to be exempted. The origination fee shall apply equally to for-profit as well as not-for-profit issuances. The fee may be reduced or waived due to a higher economic value as recommended by the City Manager. The fee shall be capped at \$100,000 per IRB issuance or tax exemption-incentive.

As authorized by K.S.A. 12-1742, origination fees collected by the City shall be used by the City for the purpose of promoting and furthering local economic development activities.

The fee is due and payable at the time of IRB issuance, or, if IRBs are not issued, at the time of a Board of Tax Appeals order exempting property under a tax exemption-incentive. The City will, upon the request of the applicant, allow the applicant to pay the origination fee over a ten-year period of time. If payable over time, the fee shall be treated as a loan, amortized at the rate of 5%, and paid in 20 equal installments due on the first day of January and June of each year.

Section 25. Exemption Ordinance. The City Clerk shall provide a copy of the ordinance, as published in the official City newspaper, granting an exemption from taxation and any other necessary documents to the applicant for use in filing an initial request for tax exemption as required by KSA 79-213, and by KSA 79-210 for subsequent years.

Section 26. Exemption Forms. A copy of the exemption applications required by KSA 79-213 and by 79-210, and the statement required by KSA 79-214 for the cessation of an exempt use of

property, shall be filed with the City Clerk by the property owner.

Section 27. Waiver of Statement Requirements. The City Council reserves the right to grant or not to issue IRBs or grant a tax exemption-incentive or both under the circumstances beyond the scope of this statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Council that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The City Council shall not waive any procedural requirements required by state law.

Section 28. Definitions. For the purposes of this statement, in application to this City, the words or phrases as used in either the Constitution, applicable state law, or this statement shall have meaning or be construed as follows:

- (a) “Applicant” shall mean and include the business, property owner or owners, and their officers, employees, and agents.
- (b) “Associated therewith” as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.
- (c) “Commenced operations” shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.
- (d) “Economic development purposes” shall mean the establishment of a new business or the expansion of an existing business, engage in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment.
- (e) “Expansion” shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or an combination thereof, which increases the employment capacity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.
- (f) “Manufacturing articles of commerce” shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the North American Industry Classification System (NAICS) Manual.
- (g) “Research and development” shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.
- (h) “Storing goods or commodities which are sold or traded in interstate commerce” shall refer to the business or storing property which may be exempt from ad valorem taxation under the provisions of KSA 79-201f.
- (i) “Tangible personal property” shall mean machinery and equipment used during the term of the tax exemption which may be granted.
- (j) “Tax incentive” or “tax exemption-incentive”, see Section 5.

Section 29. Sliding Scale for Tax Exemption-Incentives. New jobs and capital investment will be the main factors for tax exemption-incentives. New job creation will be based on Full-time Equivalent (FTE) jobs based on 2080 hours per year. A sliding scale system may be utilized as example below.

The City reserves the right to use whatever scale it deems appropriate to the development situation, but will generally follow the below schedule:

SLIDING SCALE OF ABATEMENT BY PERCENTAGE										
Year	1	2	3	4	5	6	7	8	9	10
Exemption (%)	100	90	80	70	60	50	40	30	20	10

APPLICATION FOR EXEMPTION

CITY OF BEL AIRE, KANSAS
APPLICATION FOR IRB ISSUANCE OR PROPERTY TAX EXEMPTION OR
BOTHFOR ECONOMIC DEVELOPMENT PURPOSES

Industrial Revenue Bond issuance, or abatement from Ad Valorem property taxation or both pursuant to K.S.A. 12-1740 *et seq.* or Article II, §13 of the Kansas Constitution is requested for all or any portion of facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes, with respect to issuance of industrial revenue bonds, or the appraised valuation of property used for the purpose of manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, with respect to other tax exemption-incentives, as described herein. This application is submitted in conformance with the applicable Statement of Policy and Procedures of the City and it is understood that the City may require in lieu of payments for property, which becomes tax-exempt. The attached sheets, if any, are submitted as a part of this application.

Part I. Applicant Identification

Name of Applicant firm:_____

Contact Person (Name and Title):_____

Address:_____

Street or P.O. Box

City

State

Zip

Telephone Number: _____

Names and percent of ownership of all principal owners and officers of the Applicant

Firm:_____

Part II. Property Identification

List only taxable property for which IRB issuance or tax exemp;tion-incentives or both is requested.

_____ Land. Attach legal description of property and plat showing location of buildings,

added improvements to buildings, or both.

_____ Building(s). Attach description.

_____ Added improvements to buildings. Attach description and estimated cost.

_____ Tangible personal property. Attach list of each item with identifying nomenclature and cost. Proof of purchase after August 5, 1986 must be provided for each item on list.

Part III. Business Information

Type of business organization: _____
(i.e. corporation, subsidiary, partnership, sole proprietorship, etc.)

Date and place business organized or incorporated: _____

Name and parent company, if applicable: _____

Type of business: _____

Line or lines or products manufactured or research and development conducted, or goods or commodities stored in buildings, for which IRB issuance or tax exemption or both is requested.

Business is... (Please check one) ☐ New ☐ Existing

If NEW Business:

Date Operations will Commence: _____

If business is relocated to this City, give previous location(s): _____

If construction of a new building for a new business is involved, give anticipated date of completed construction: _____

If EXISTING Business:

Date expansion will be completed: _____

Purpose of expansion:_____

Does expansion involve?

- _____Acquisition of existing building
- _____Enlargement of existing building
- _____Construction of new building

Describe how property identified above facilitates the expansion of such existing business:

Part IV. Employment Data

Existing Business: Describe how expansion has or will create new employment include wage for each new position:

New Business: Describe how many new jobs will be created in total as well as over the 10 year period. Identify average wage for each new job:

Part V - Financial Responsibility

Attach a description of the businesses’ financial situation. This may include a financial statement, audit and other relevant information to assess the stability of the business. Indicate whether there is any pending or threatening litigation affecting the viability of the business.

Part VI. Certification of Applicant

I, _____, hereby certify that the foregoing attached information is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City to assist the Governing Body in its consideration of this matter.

Date_____Signed_____

Name

Title

Part VII. Acknowledgment of Receipt

Receipt of \$1,500.00 fee is hereby acknowledged:

Date: _____ City Manager:_____

PROJECT APPLICATION (CITY OF BEL AIRE, KS)

Name of Corporation/Partnership

Date of Request

Address

Primary Contact

Address

Phone

Fax

E-mail

A. APPLICANT INFORMATION

B. Name and addresses of all persons or corporations who would be obligated as either applicant or personal guarantors of subsidy:

Name:

Address:

Name:

Address:

Name:

Address:

C. Name and addresses of the principal officers and directors of the applicant:

Name:

Address:

Name:

Address:

Name:

Address:

D. Applicant's Attorney

Name

Phone Number

E. Applicant's Financial Advisor

Name

Phone Number

F. Applicant's Accountant

Name

Phone Number

G. Requested Subsidy:

Category:	Source/Type/Description:	Requested Amount
Tax Increment Financing		\$
Tax Abatement		\$
Industrial Revenue Bonds		\$
Other – Land Write-Down		\$
Other – Special Assessments		\$
Other – Public Improvements		\$
TOTAL REQUEST		\$

H. Complete Project Sources and Uses:

Sources:

Private Bank Loan	\$
Private Equity	\$
State/Local Loan/Grant Funds	\$
Tax Increment/Tax Abatement	\$
Other (specify_____)	\$
Total Sources:	\$

Uses:

Land Acquisition	\$
Building Construction/Reconstruction	\$
Machinery/Equipment	\$
Site Improvements	\$
Installation of Public Utilities	\$
Parking Improvements	\$
Legal/Financial Costs	\$
Surveying/Platting/Permitting	\$
Other (specify_____)	\$
Total Uses:	\$

I. Use of Subsidy:

Amount requested for purchase of land:	\$
Amount requested for building:	\$
Amount requested for equipment:	\$
Amount requested for site improvements:	\$
Amount requested for public utilities:	\$
Working capital:	\$
Other (specify):_____	\$

TOTAL REQUEST \$

J. Project Details:

1. Include the following project details on a separate sheet:
- breakdown of commercial square footage, i.e., office, retail, manufacturing, industrial, hospitality, entertainment, etc

▪ cost per square footage of construction of each type of housing unit and each type of commercial use

▪ commencement and completion for each project component, include site improvements and public infrastructure

▪ dates for sale or lease of units, occupancy start, and full occupancy, etc

▪ estimated appraised value of project when complete, separated by use

▪ describe how the property will be subdivided by uses

▪ estimated taxable sales per s.f. of retail, hospitality, etc.

2. Name and address of Contractor

Name and address of Architect:

3. What type of equipment will be financed, if any?

K. Proposed Location/Timing of Construction:

1. Location of the project:

2. What percentage of the building will be occupied by the applicant?

3. Is the project properly zoned?

4. If a zoning change is pending, cite application number and present status. If application has not been made, briefly describe what change will be needed and plans for submitting application:

5. If unusual demands for water or sewer services or police or fire protection will be made, specify the demands:

L. Ownership and Management:

1. Describe the development company, ownership, affiliated/partner companies (identify membership entities):

2. What portion of the project is being financed from other affiliate or partner funds?

\$

Please Explain

3. Will portions of the project be sold to other entities? If so, please explain

4. Describe all threatened or pending/outstanding litigation and legal claims or regulatory issues:

Disclosure items:

Has the applicant or any affiliated party defaulted on a real estate obligation?

Has the applicant or any affiliated party declared bankruptcy?

Has the applicant or any affiliated party had judgments recorded against them?

If the answer is yes to any of the above, please explain.

M. Job Creation Detail:

Type of Job	No. of this Type	Average Annual Wage
Professional		
Technical		
Clerical		
General Labor		
Other: (specify_____)		
What is the total Annual Payroll?		

N. Financial Capacity:

1. Provide copies of applicant's financial statements (balance sheets and income statements) for the past three years certified as correct by the owner or an authorized officer (or audited) and current (year to date)

- 2. Provide current (year to date) and three years historical financial statements (balance sheets and income statements) for the affiliated/partner entities, to demonstrate financial capacity
- 3. Provide last three years income tax returns for development principals, if applicable.
- 4. Audited financials are required, and if not available, provide an explanation.
- 5. Letter from the primary lender(s) stating the amount of conventional financing available for the project

O. References and Relevant Experience:

- 1. Provide names and locations of recent comparable projects
- 2. Provide private, public, and non-profit sector references from comparable projects. Please include names of government contacts with which the developer worked, if applicable.
- 3. Include three relevant experiences.

I, _____, hereby certify that the foregoing attached information is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City to assist the Governing Body in its consideration of this matter. A non-refundable application fee of \$1,500.00 will be paid upon submission of application.

Date_____Signed _____

Name

Title

Receipt is hereby acknowledged:

Date: _____

City Manager:_____

City of Bel Aire, Kansas

STAFF REPORT

DATE: June 1, 2022

TO: Mayor Benage & City Council

FROM: Ty Lasher, City Manager & Ted Henry, Assistant City Manager / Finance Director

RE: IRB Funding and Policy



BACKGROUND:

At the May 17, 2022 City Council meeting, staff was asked to determine the cost of issuance incurred by the City for an IRB, budget impacts from an origination fee, benefits of an IRB to Bel Aire and what is the common practice regarding origination fees in Kansas.

DISCUSSION:

K.S.A. 12- 1742 specifically address fees that can be assessed with an IRB issuance. Here is the language contained in the statute:

12-1742. Conditions of leases and lease-purchase agreements; origination fee; apportionment of payments in lieu of taxes; administrative costs. Such agreements shall provide for a rental sufficient to repay the principal of and the interest on the revenue bonds. Such agreements also may provide that the lessee shall reimburse the city or county for its actual costs of administering and supervising the issue. The city or county may charge an origination fee. Such fee shall not be deemed a payment in lieu of taxes hereunder. Such fee shall be used exclusively for local economic development activities but shall not be used to pay any administrative costs of the city or county. Except for the origination fee, all other fees paid in excess of such actual costs and any other obligation assumed under the contract shall be deemed payments in lieu of taxes and distributed as provided herein. If the agreement provides for a payment in lieu of taxes to the city or county, such payment, immediately upon receipt of same, shall be transmitted by the city or county to the county treasurer of the county in which the city is located. Payments in lieu of taxes received pursuant to agreements entered into after the effective date of this act shall include all fees or charges paid for services normally and customarily paid from the proceeds of general property tax levies, except for extraordinary services provided for the facility or an extraordinary level of services required by a facility. Payments in lieu of taxes may be required only upon property for which an exemption from ad valorem property taxes has been granted by the state court of tax appeals. The county treasurer shall apportion such payment among the taxing subdivisions of this state in the territory in which the facility is located. Any payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion that the amount of the total mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts to the taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them. Based upon the assessed valuation which such facility would have if it were upon the tax rolls of the county, the county clerk shall compute the total of the property taxes which would be levied upon such facility by all taxing subdivisions within which the facility is located if such property were taxable.

As you can see, an origination fee can be assessed by the city and payment remains with the city. However, the origination fee must be used for economic development purpose.

In 2002, Bel Aire purchased 2,000 acres of land for economic growth which included 800 acres set aside for the Sunflower Commerce Park. As such, the city was responsible for over \$1 million annually in debt service payments. The city developed phase 1 of Sunflower Commerce Park for shovel ready sites and as such has been paying special assessments for infrastructure on lots owned by Bel Aire. Lastly, the city was the developer of Central Park that allowed for residential development and was responsible for those special assessments as well. All of these actions and costs were tied to economic development and growing Bel Aire.

In looking at revenues from IRB origination fees, the graph below shows how much was spent to fund economic development verses the amount paid in origination fees and the remaining funds paid by taxpayers. These numbers do not include staff time.

Year	Origination Fee	Land Debt	SCP Specials	Marketing	Total
2013	\$20,800	\$1,255,953	\$0	\$2,164	\$1,258,117
2014	55,000	1,235,631	0	7,446	1,243,077
2015	80,000	1,163,980	0	19,888	1,183,868
2016	0	1,038,535	157,551	7,432	1,203,518
2017	30,000	944,992	157,551	22,977	1,125,520
2018	55,000	948,490	125,551	18,817	1,092,858
2019	0	1,071,068	125,551	16,212	1,212,831
2020	0	1,158,918	125,551	18,222	1,302,691
2021	30,000	1,122,364	88,345	9,397	1,220,106
2022	130,000	1,158,310	32,548	11,315	1,202,173
	\$400,800	\$11,098,241	\$812,648	\$133,870	\$12,044,759

IRB fees are not budgeted as we do not know if, when and how much an IRB origination fee might be. The origination fees are simply used to subsidize economic development expenses listed above.

IRB costs of issuance fees are paid by the borrow at closing from bond proceeds. Bond counsel, banks, financial advisors and the city are each paid individually at closing. So, the city only bills for and is paid for the origination fee. City staff do spend time assisting with the processes. However, KSA 12-742 specifically states these fees cannot be used to pay administrative costs of the city. Therefore, those proceeds go to fund economic development initiatives within the city. The annual \$2,500 administrative fee can cover staff costs which is where those monies go. In addition, origination fees cannot be used as a PILOT to cover lost property taxes. A PILOT can be used for lost taxes but must be shared with each taxing authority where the organization resides.

In looking at cities around the Wichita metro, including the City of Wichita, no cities charge origination fees. Some do charge the annual administrative fee. Looking statewide, there are a number of cities that do charge origination fees and those amounts vary. The issue of charging an origination fee is really a policy related question. Past Councils felt an origination fee was appropriate to fund economic development expenses such as land debt, special assessments and marketing costs. Your decision hinges on whether funding economic development costs such as land debt payments are

important, should that be done through an IRB origination fee, should for-profit and non-profit companies be charged the same or differently and how much should the origination fee be. Each question has its own determinations.

RECOMMENDATION: Staff believes Bel Aire has taken the lead in the use of origination fees that have helped in growing the City. Eliminating the fee would reduce the amount of economic development costs we can cover and spread those to current taxpayers. In addition, removing the fee would put past IRB borrows at a disadvantage in that they paid those fees. We believe having separate structures for not-for-profit and for-profit issuances does not equitably share the cost of economic development for Bel Aire. We believe the 1% has been used in the past and is a good figure for the future. If there are any changes to consider, staff could support a cap. There is definitely a disadvantage to large companies wanting to borrow a lot of money for a big development and 1% could become an issue for say a \$100 million dollar investor. So, the idea of a cap can make sense. Based on past issuances and future borrows, staff would recommend a \$100,000 cap if this is something the governing body would like to consider. There has been no issuer to date that has paid more than \$100,000.

CITY OF BEL AIRE

COMPREHENSIVE ECONOMIC DEVELOPMENT POLICY

Adopted: November 2, 2009

Revised: July 16, 2012

TABLE OF CONTENTS

PURPOSE 1

TYPES OF ECONOMIC DEVELOPMENT TOOLS AVAILABLE 2

BASIC ECONOMIC DEVELOPMENT REQUIREMENTS 2

POLICY ON CASH INCENTIVES AND GRANT PROGRAMS..... 5

POLICY ON INFRASTRUCTURE DEVELOPMENT 6

POLICY ON TAX EXEMPTIONS AND/OR ABATEMENTS 7

POLICY ON TRANSPORTATION DEVELOPMENT DISTRICTS..... 16

POLICY ON COMMUNITY IMPROVEMENT DISTRICTS..... 17

POLICY ON TAX INCREMENT FINANCING DISTRICTS 18

POLICY ON INDUSTRIAL REVENUE BONDS 20

APPLICATION REVIEW AND ASSESSMENT PROCESS 21

APPLICATION FOR EXEMPTION 22

PURPOSE

The appropriate purpose and use of incentives is to broaden and diversify the tax base, create new job opportunities for the citizens of Bel Aire, and promote the economic growth and welfare of the City of Bel Aire. This policy is a statement establishing the procedures for granting of economic development incentives in accordance with the provisions of Section 13 of Article 12 of the Constitution of the State of Kansas and K.S.A. 79-251 and amendments thereto.

Any business, developer or entity wishing to utilize any type of economic assistance from the City of Bel Aire must complete a project application form included in this policy and pay the appropriate fee. The intent of the fee is to reimburse the City for consulting costs associated with evaluating the feasibility, types of incentives and benefits of the project for the City of Bel Aire.

The evaluation of economic development proposals shall be conducted with consideration given to state statute(s) governing the general use of public funds applicable to Bel Aire. Consideration will also be given to any statutory requirements or authority afforded the City to use specific economic development tools as outlined herein to facilitate economic development.

Depending on the size and scope of a specific project, Sedgwick County may be requested (or required by state law or otherwise) to take certain actions on City initiated economic development proposals. In these instances, businesses seeking assistance from both entities should expect to provide additional information for review by Sedgwick County. Lastly, it is the responsibility of the developer and/or business seeking economic development assistance to ensure the project for which they are seeking assistance conforms to all applicable planning and zoning requirements prior to the finalization and submission of the economic development application.

All economic development proposals will first be reviewed by the City Manager based on the information provided. The goal of protecting public funds shall be considered primary. This goal will be balanced with the City’s objectives of retaining business, creating jobs, increasing the tax base, growing the population, and improving the general well-being of the citizens of Bel Aire. Provided these conditions are met, the City Manager will forward the request on to the City Council.

TYPES OF ECONOMIC DEVELOPMENT TOOLS AVAILABLE

Several economic development tools are available to Bel Aire. In addition, the state legislature may enact or authorize new tools which the City will evaluate and may utilize. Current assistance includes (authority cited in parentheses):

- 1. *Cash Incentives and Grant Programs (KSA 12-101);*
- 2. *Infrastructure development (KSA 12-6a01 et. seq.);*
- 3. *Tax exemptions and/or abatements (KSA 79-251, Kansas Constitution, Article 11 Section 13);*
- 4. *Community Development Districts (KSA 74-115 et seq.);*
- 5. *Transportation Development Districts (KSA 12-17,140 et seq.);*
- 6. *Tax Increment Finance Districts (KSA 12-1770 et. seq.)*
- 7. *Industrial Revenue Bonds (KSA 12-1740 et seq.);*

Additional details and guidance on the use of these tools follows. City staff will assist anyone interested in economic development in Bel Aire to understand the process and this policy. The City will develop an incentives package tailored to meet the needs of specific applicants.

BASIC ECONOMIC DEVELOPMENT REQUIREMENTS

To be eligible for any public incentives of any kind, a business must be engaged in one or more of the following activities:

- **Manufacturing:** Determined by the North American Industry Classification System (NAICS) and consistent with the stated policies concerning industrial restrictions within the commercial City limits of Bel Aire.
- **Service Sector:** Majority of revenues must be generated through transactions of service and must demonstrate revenue-generating potential from areas outside of Sedgwick County.
- **Research and Development:** The conducting of research, development, or testing for scientific, medical, food or industrial products.
- **Warehousing and Distribution:** Majority of goods stored/shipped must be destined for end users located outside of Sedgwick County.

- **Corporate Headquarters:** May include “back office” operations and customer service activities, but shall not include outbound call centers.
- **Transportation:** Freight or passenger transportation services. Majority of revenue must be derived from interstate commerce or travel.
- **Tourism:** Attractions and events to considered likely to attract at least 30% of attendees from outside of Sedgwick County.
- **Medical Services:** Regional medical centers and specialty hospitals considered likely to attract at least 30% of patients from outside of Sedgwick County.

The basic requirements for any economic development assistance request follows:

1. A demonstrated positive return on investment from the use of economic development assistance. All requests for local incentives will have an Economic Impact Analysis (EIA) and a Return on Investment (ROI) calculation prior to consideration. A designated agent of the City will conduct the analyses and any fees associated with this application are the responsibility of the applicant. Analyzing the EIA and ROI will include projections on job creation and wages paid, increases to the tax base, population growth, and improved quality of life to the citizens of Bel Aire.
2. The assistance shall not be deemed a “speculative use” of public funds. “Speculative use” shall be defined as any analysis requiring adjustments to estimates used to calculate a return on investment to encourage a positive recommendation by the City Manager to the City Council.
3. Any requests for assistance (from the City only) on projects within the corporate City limits of Bel Aire shall require approval by the City Council. Requests for assistance from the City and county within the City limits of Bel Aire (or any requests for assistance in the Bel Aire Growth Area) shall require approval by both governing bodies. Additionally, when requests are made to both governing bodies, all application materials provided to Bel Aire and analyses performed by the City for consideration of an economic development request shall also be provided to Sedgwick County.
4. Any request for the use of a specific tool listed previously shall also conform to that tool’s specific policy requirements listed below. Furthermore, the City may require the applicant to reimburse the City for any expenses incurred as a result of the application. The amount reimbursed shall be for actual expenses incurred by the City. These expense reimbursements are considered in addition to any fees that may be required by the following economic development programs and are subject to statutory limitations of the tools selected.

All economic incentives will be formalized, in a written agreement, between the City of Bel Aire and the recipient company. The recipient company will be required to meet all the performance criteria associated with the respective incentive.

The City of Bel Aire reserves the right to audit a company to assure compliance with the Economic Development Incentive Agreement. The City Council may discontinue any ongoing incentives and require the incentives already received to be repaid in full or in part, as set forth in the Economic Development Incentives Agreement, if agreed upon performance criteria are not met.

POLICY ON CASH INCENTIVES AND GRANT PROGRAMS

Bel Aire will not provide unrestricted cash incentives for any business to locate within the City. Furthermore, the City will not provide cash incentives to perform feasibility studies for proposed projects. These are deemed improper uses of tax dollars by the City Council and any request for such cash assistance will be rejected.

The City will consider submitting or endorsing an application to any federal or state grant program for which a request for assistance is eligible. The applicant will be required to submit all information under the relevant grant program and meet all of the requirements of the respective grant program in the event the application for grant assistance is successful. The business will be responsible for providing information that is accurate and truthful and shall be fully responsible and liable in all regards to the grant program that is providing the business with assistance.

Additionally, the City may consider the use of a “Conditional Economic Development Reimbursement Agreement.” A reimbursement agreement allows the City to pledge a prospective business’ City property tax payments to be returned to the taxpayer in return for certain conditions being met by the business. The business, upon providing evidence verified by the City Clerk that the conditions set forth in the contract have been met (i.e. number of jobs pledged are in fact created and at wages provided for in the contract) and upon providing a copy of its paid property tax receipt from the County Treasurer’s office, will receive a reimbursement from the City for the City’s portion of the property taxes. The amount of eligibility for a reimbursement agreement will vary based on the pledges made by the business and its ability to fulfill the City’s economic development goals.

POLICY ON INFRASTRUCTURE DEVELOPMENT

Bel Aire may facilitate, when appropriate and or petitioned, the development of public infrastructures within the corporate limits of the City. Whenever the total costs of the public infrastructure can be tied to a fixed and known group of benefiting properties, special assessments may be levied and placed on the tax rolls for those properties.

Infrastructure shall mean for the purposes of this policy: streets, sidewalks, sewers and sewer systems, water production and distribution systems, and storm drainage and control systems.

Expenses that may be assessed to benefiting properties under this policy include the cost to prepare preliminary and final engineering plans/specifications, easement and right of way acquisition, supervision/inspection of the project, actual construction costs, and any administrative or finance costs the City shall incur as a result of the project, as permitted by law. Construction costs for improvements designed and constructed under this policy shall also include an administrative fee paid to the City in an amount equal to 5% of the special assessment bond principal issued.

Assurances are to be considered provided whenever the City has been furnished a financial guarantee (irrevocable letter of credit, corporate completion bond, cashiers check, escrow account or cash) on 35% of the estimated principal cost of the project (engineering design, construction, inspections, temp note interest and administration?). The letter of credit (LOC) or bond will be in a form approved by the City, and name the City of Bel Aire as beneficiary. The assurance will serve to protect the general taxpayers of Bel Aire from subsidizing the special assessment debt. The assurance shall be filed prior to any debt being issued by the City for any of the expenses mentioned above and be in an amount equal to 35% of these same costs. Provided there are no delinquent taxes owed by the developer, the financial guarantee will be released upon request of the developer when certificates of occupancy are issued for at least 35% of the development that received improvements.

Should special assessments on all or a portion of the properties not be paid, the financial guarantee will be applied to the annual certification of special assessments to the Sedgwick County Clerk to satisfy the cost of public improvements of such properties.

Any developer with delinquent special assessments on existing development will not be considered for a new development under this policy. All developers filing an application under this policy will be required to certify, under oath, that no person having a financial interest in the lands in the benefit district is delinquent in special assessments for any city special assessment project within or outside the city. In addition, all developers must provide a list of all properties in which they hold a substantial ownership interest.

The City Council may waive or alter certain portions of this policy for special assessments issued to finance improvements to new infrastructures within the corporate City limits of Bel Aire at the request of the benefiting property owners. However, a substantial public benefit must be identified to waive or alter the policy.

POLICY ON TAX EXEMPTIONS AND/OR ABATEMENTS

Section

- | | |
|--|--------------------------------------|
| 1. Purpose | 15. Application Required |
| 2. General Objective | 16. Application and Renewal Fees |
| 3. Legal Authority | 17. Initial Review Process |
| 4. General Procedure | 18. Administrative Review Committee |
| 5. “Tax Incentive” Defined | 19. Initial Governing Body Action |
| 6. Jurisdiction | 20. Notice and Hearing |
| 7. Nominal Tax Determination | 21. Letters of Intent |
| 8. Minimum Payment in Lieu of Taxes | 22. Annual Renewal Subject to Review |
| 9. Special Assessments | 23. Transfer of Ownership or Use |
| 10. Pirating | 24. Distribution of Revenue |
| 11. Application of “But For” Principle | 25. Exemption Ordinance |
| 12. Analysis of Costs and Benefits | 26. Exemption Forms |
| 13. No Exemptions | 27. Waiver of Statement Requirements |
| 14. Amount of Tax Incentives | 28. Definitions |

Section 1. Purpose. The purpose of this statement is to establish the official policy and procedures of the City of Bel Aire, for the granting of property tax exemptions and tax incentives for real and personal property used for economic development purposes.

Section 2. General Objective. The securing of private economic growth and development and the addition of new jobs within the community are important current and long-term objectives of this City. The granting of property tax exemptions and tax incentives is one of the tools available under Kansas law to help secure these public objectives. This statement is intended to establish the procedure and policy standards to govern the fair, effective, and judicious use of the power to grant such exemptions and tax incentives in this City.

Section 3. Legal Authority. The governing bodies of Kansas counties and cities may exempt certain property used for economic development purposes from taxes for a maximum of 10 years, in accordance with the provisions of Section 13 of Article 11 of the Kansas Constitution, subject to the requirements of KSA 79-251 et. seq. This authority is discretionary with the City, and the City may provide for tax exemptions-incentives in an amount and for purposes more restrictive than that authorized by the Constitution or state laws. Pursuant to its home rule powers, the City may (1) require the owners of any property for which an exemption is requested to provide certain information, (2) condition the granting of an exemption to an agreement providing for the payment of in lieu charges or taxes under the provisions of KSA 12-147 and 12-148, and (3) require the payment of initial application and annual renewal fees reasonably necessary to cover the costs of administration.

Section 4. General Procedure. The following basic procedure shall govern the issuance of tax exemptions-incentives within this City:

1. The applicant business shall apply for a tax exemption-incentive by filing a written application as provided in this policy.
2. If the City determines the requested tax exemption-incentive (a) may be lawfully granted,

and (b) the initial request is worthy of further consideration, the City shall prepare a cost-benefit analysis report of the requested tax exemption-incentive as provided in Section 12.

3. The City shall then determine whether the proposed tax exemption-incentive should be granted, following public hearing after the required notice.
4. If it is determined that some tax exemption-incentive should be granted, a maximum of 100% exemption of that property of the business legally eligible for exemption may be provided, but may be subject to an agreement of the business to make an in lieu tax payment as may be required by the City. The City reserves the right to set the tax exemption at a rate less than 100% and for a timeframe of less than 10 years.
5. The amount of the tax incentive, which will be an amount less than the taxes otherwise payable if the property were not exempt, will then be determined in accordance with this Statement.
6. Upon the failure of the business to fully and timely pay the in lieu tax payments, as may be required as a condition of the granting of an exemption, or to provide reports or other information requested by the City and reasonably necessary for the implementation of this policy, the City may either deny, revoke, or not renew the authorization of such an exemption. All requests for a tax exemption-incentive for economic development purposes shall be considered and acted upon in accordance with this Statement.

Section 5. “Tax Incentive” Defined. Various words and terms used in this statement are defined in Section 28. The terms “tax incentive” or “tax exemption-incentive” shall both mean the difference between the amount of ad valorem property taxes the affected business would pay if there were no City-granted exemption and the amount required to be paid as in lieu taxes or charges. For example, if the taxes required with no exemption were \$5,000, and the required in lieu payments were \$3,000, the “tax incentive” or “tax exemption-incentive” would be \$2,000.

Section 6. Jurisdiction. The City shall grant tax exemptions-incentives only for property located within the City.

Section 7. Nominal Tax Determination. All tangible property of a business receiving a tax exemption-incentive under this Statement shall be annually assessed by the county appraiser in the same manner as if it were not exempt, but the amount thereof shall not be placed on the assessment rolls. The amount of the property taxes which would be payable shall also be determined annually by the County Clerk and Treasurer, in the same manner as if the property were not exempt, but such shall not be placed on the tax rolls. Separate assessment and tax calculations shall be made for the land, for the improvements thereon, and for any taxable tangible personal property associated therewith, of the exempt business. The appropriate county officers are requested to provide the City with this information as early as possible, but not later than November 15 of each year.

Section 8. Minimum Payment in Lieu of Taxes (PILOTs). Except for property located within a Premium Zone, any applicant receiving a tax exemption-incentive pursuant to this statement shall be required to make a minimum payment in lieu of taxes which equals the amount of property tax which was paid or was payable for the most recent year on the appraised valuation of the real estate, including either buildings together with land or land only, prior to the

construction of new buildings or added improvements to buildings on such property or prior to the acquisition of the property by the new business.

The purpose of requiring this minimum in lieu tax payment is to ensure that the City, county, school district and any other taxing jurisdictions affected by the exemption will not receive less tax revenue from the exempted property than was received prior to the exemption. For extraordinary reasons, such as when vacant buildings are acquired for a new business or when the market value of the property decreases, this requirement may be waived in part or in whole by the governing body, as provided in Section 27.

Section 9. Special Assessments. Any tax exemption granted for real property under this statement shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 10. Pirating. It shall be the policy of the City to discourage applications for tax exemptions-incentives, or to grant such tax incentives, which deliberately encourage and cause the pirating of business from another Kansas community to this community, or from this community to another Kansas community. It is the intent of the City to avoid participation in “bidding wars” between cities or areas competing for the location of new businesses or expansion of existing businesses through attempts to offer the largest tax incentive or other public inducement, which is detrimental to the state’s economy and the public interest. As provided in KSA 1991 Supp. 79-252, the City shall not exempt any tangible personal property of a business if such property is currently subject to ad valorem taxation within the State of Kansas or has been exempted from taxation pursuant to section 13 of article 11 of the Kansas Constitution, except if the governing body makes a factual determination that such an exemption is required to retain jobs in the state of Kansas, an exemption may be granted for such tangible personal property.

Section 11. Application of “But-For” Principle. Any tax exemption-incentive granted by the City shall be subject to the “but-for” principle, i.e., the tax incentive must make such a difference in determining the establishment of expansion of the business that the business would not otherwise be established or expanded in the City but for the availability of the tax incentive. It is the policy of the City Council that private businesses should not be subsidized with public funds, the indirect consequence of tax exemptions-incentives, unless some public good results and the public subsidization can reasonably be expected to make a significant difference in achieving economic growth and development and the creation of new jobs within the City.

Section 12. Analysis of Costs and Benefits. The City will consider granting tax exemptions-incentives only upon a clear and factual showing of direct economic benefit to the City through advancement of its economic development goals, including the creation of additional jobs and the stimulation of additional private investment. Before a tax exemption-incentive is granted to an application, a cost-benefit analysis report which shall examine the costs and benefits to the public of the proposed tax exemption-incentive will be required. Analysis will be completed by a designated agent of the City and all associated costs will be the responsibility of the applicant. The cost-benefit analysis report shall consider but not be limited to the following factors, as applicable:

- (a) The appraised valuation of the property in relation to the economic benefit to the City of increased employment.
- (b) The gain in tax revenue which may result from the new or expanded business, including the increase in the property tax base upon the expiration of the exemption.
- (c) The contribution that the new or expanded business will make towards increased employment and earnings within the community.
- (d) The number of new jobs created directly by the business in relations to the amount of tax incentives granted.
- (e) The kinds of jobs created in relation to the type of skills available from the local labor market.
- (f) The utilization by the business of labor skills and abilities of unemployed persons in the community.
- (g) The degree to which the business improves the diversification of the economy of the City and its environs.
- (h) The degree to which the ultimate market for the manufactured products is outside the community, recognizing that outside markets bring in “new money” to the local economy.
- (i) The potential of the business for future expansion and additional job creation.
- (j) The beneficial impacts the business may have by creating other new jobs and businesses, including the utilization of local products or other materials and substances in manufacturing.
- (k) The beneficial economic impact the business will have on a particular area of the City, including designated enterprise zones and areas of needed revitalization or redevelopment.
- (l) The compatibility of the location of the business with land use and development plans of the City and the availability of the existing infrastructure facilities and essential public services.
- (m) The extent to which additional direct or indirect public costs to the City and to other local units would be necessary, such as the cost of the extension of public facilities.
- (n) The extent to which the economic and employment benefits of the tax incentive accrue to the residents and taxpayers of those taxing subdivisions which indirectly “subsidize” the business as a result of the forgone tax revenue.

Section 13. No Exemptions. (1) No tax exemption shall be granted if the exemption would create, in the judgment of the City Council, an unfair advantage for one business over another competing business within the City. (2) No tax exemption shall be granted to any business which commenced operations prior to August 5, 1986, nor for the expansion of a business unless such expansion created new employment.

Section 14. Amount of Tax Incentives. The two primary objectives of the City in granting tax exemptions for economic development are to (1) provide needed jobs, and (2) expand the economic and tax base of the City. Property taxes may be abated for new improvements to real property and for newly acquired items of personal property used by an eligible business in connection with an expansion or relocation of the business’ operations in Bel Aire. Land and existing building are not generally eligible for property tax abatement. Existing buildings within the City of Bel Aire will only be considered for tax abatement if the building has been vacant for

at least three years and is acquired by a party not related to the previous owner. Motor vehicles are not eligible for property tax abatement under this definition.

An initial maximum term of ten (10) years can be granted subject to review and approval of the City Council. Recommended percentages of property tax abatements shall be based on new job creation and capital investment by the eligible business. A sliding scale percentage system shall be used to determine abatement. Detailed scales are found in Section 29.

Section 15. Application Required. The City will not consider the granting of any tax exemption-incentive unless the business submits a full and complete application and provides such additional information as may be requested by the City Council. The application is included in this policy, upon completion, will provide the City Council with adequate and sufficient information to determine whether a tax incentive should be granted and the amount thereof. The accuracy of the information provided in the application shall be verified by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any ordinance adopted in reliance on said information.

Section 16. Application and Renewal Fees. Any business requesting a tax exemption pursuant to this statement shall pay to the City an application fee of \$1,000, which shall include a non-refundable fee of \$500 to cover administrative costs of the City and \$500 which will be applied to professional fees incurred on behalf of the City in processing this application, including a cost-benefit analysis. The fee shall be submitted at the same time the application form required by Section 15 is submitted. In addition, any business which has been granted a tax exemption shall pay an annual, non-refundable renewal fee in the amount of \$300.

Section 17. Initial Review Procedure. On receipt of the completed application form and the required fee, the City Manager shall determine (a) whether the application is complete and sufficient for review, and (b) whether the applicant business is eligible for an exemption under the Kansas Constitution, this statement, and any other applicable laws. If the application is incomplete, the City Manager shall immediately notify the applicant, noting the need for such changes or additions as deemed necessary. If questions arise as to whether the business is legally eligible for an exemption, the matter shall be referred to the City Attorney, who shall consult with the applicant business. If the application is found complete, and is for a purpose which appears to be authorized by law, the City Manager shall so notify the Administrative Review Committee.

Section 18. Administrative Review Committee. There is hereby created an Administrative Review Committee (ARC), which shall be composed of the mayor or other member of the City Council designated by the Mayor, who shall serve as chairman; the Assistant City Manager/Finance Director; and the City Manager. The ARC shall meet on call of the chairman. The purpose of the ARC shall be to receive and review requests and applications for tax exemptions-incentives, to gather and review such additional information as may be deemed necessary, to prepare or cause to be prepared a cost-benefit analysis report, to conduct preliminary negotiations with the applicant business, and to make such recommendations as deemed advisable to the City Council. The ARC records, including applications for tax exemptions, may be withheld from public disclosure under the Kansas Open Records Act as

provided for under subsections (20) and (31) and other subsections of KSA Supp. 45-221, but shall be available for public inspection when otherwise required by law. The committee is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the City or the expansion of an existing business. Such administrative letters of intent shall not be binding on the City Council, and shall be superseded by any final action by the City Council or by any letter of intent issued by the City Council under Section 21.

Section 19. Initial Governing Body Action. Upon receiving the recommendations of the ARC, the City Council shall first determine whether to reject the requested exemption or to further consider the request. Upon a favorable vote for further consideration, the City Council shall either (1) issue a letter of intent as provided by Section 21, or (2) schedule a public hearing to consider granting a tax exemption-incentive.

Section 20. Notice and Hearing. No tax exemption shall be granted by the City prior to notice and a public hearing as required by KSA 1991 Supp. 79-251. Notice of the public hearing shall be published at least seven days prior to the hearing in the official City newspaper, giving the purpose, time and place, and the hearing may be held at a regular or special meeting of the City Council. The City Clerk shall thereupon notify in writing the Board of County Commissioners, the appropriate school district, and the clerk of any other taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business, advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City Clerk shall provide such public agency with a copy of the application. The applicant business shall be invited, but not required, to attend the public hearing.

Section 21. Letters of Intent. Upon receiving the recommendations of the ARC, the City Council may issue a letter of intent, setting for in general terms its proposed plans for granting a tax exemption-incentive and any conditions thereto. Such letters of intent shall be issued only with the approval of the City Council, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an exemption-incentive. Such letters of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of letters of intent. No elected or appointed officer, employee or committee of the City, and no chamber of commerce, board, development council or other public or private body or individual, shall be authorized to speak for and commit the City Council to the granting of a tax exemption-incentive. Letters of intent issued by the City Council shall supersede any letters issued by the ARC.

Section 22. Annual Renewal Subject to Review. The extent and term of any tax exemption-incentive granted shall be subject to annual review by the City Council to ensure that the ownership and use of the property and any other qualifying criteria of the business for the tax exemption-incentive continue to exist. The review shall be completed by not later than February 1 of each year. The City shall require an annual renewal application to be filed by the business. The annual renewal application shall include information from the business indicating compliance with any terms or conditions established by the City Council for the granting of the exemption, such as number, quality of jobs created, etc. Upon a finding that the property

continues to meet all the terms and conditions established as a condition of granting the exemption, the City Clerk shall so certify to the owner for submission to the assessing officer, as provided by KSA 79-210a.

Section 23. Transfer of Ownership or Use. No exemption or tax incentives granted by the City shall be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application for tax exemption-incentive. Further, the City shall be notified by the business of any substantive change in the use of tax exempt property (see Section 26).

Section 24. Distribution of Revenue. The granting of tax exemptions-incentives by the City is hereby declared to be a contract under the provisions of KSA 12-147. The in lieu of taxes payment which may be required of a business granted a tax exemption under this statement shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is directed to apportion the payment, under the provisions of subsection (3) of KSA 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes, by each of the applicable taxing subdivisions.

Section 25. Origination Fee. The applicant shall pay to the City an origination fee in an amount equal to 6% of the value of property to be abated. If the applicant is locating within a designated “Premium Zone”, the City may lower the origination fee at their discretion down to 2.5%.

As authorized by K.S.A. 12-1742, origination fees collected by the City shall be used by the City for the purpose of promoting and furthering local economic development activities.

The fee is due and payable at the time of industrial revenue bonds being issued. The City will, upon the request of the applicant, will allow the applicant to pay the origination fee over a ten-year period of time. The fee shall be treated as a loan, amortized at the rate of 5%, and paid in 20 equal installments due on the first day of January and June of each year.

Section 25. Exemption Ordinance. The City Clerk shall provide a copy of the ordinance, as published in the official City newspaper, granting an exemption from taxation to the applicant for use in filing an initial request for tax exemption as required by KSA 79-213, and by KSA 79-210 for subsequent years.

Section 26. Exemption Forms. A copy of the exemption applications required by KSA 79-213 and by 79-210, and the statement required by KSA 79-214 for the cessation of an exempt use of property, shall be filed with the City Clerk by the property owner.

Section 27. Waiver of Statement Requirements. The City Council reserves the right to grant or not to grant a tax exemption-incentive under the circumstances beyond the scope of this statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Council that a compelling or imperative reason

or emergency exists, and that such action or waiver is found and declared to be in the public interest. The City Council shall not waive any procedural requirements required by state law.

Section 28. Definitions. For the purposes of this statement, in application to this City, the words or phrases as used in either the Constitution, applicable state law, or this statement shall have meaning or be construed as follows:

- (a) “Applicant” shall mean and include the business, property owner or owners, and their officers, employees, and agents.
- (b) “Associated therewith” as used with respect to tangible personal property shall mean being located within, upon or adjacent to buildings or added improvements to buildings.
- (c) “Commenced operations” shall mean the start of the business activity housed in the building for which a tax exemption-incentive is requested.
- (d) “Economic development purposes” shall mean the establishment of a new business or the expansion of an existing business, engage in manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, which results in additional employment.
- (e) “Expansion” shall mean the enlargement of a building or buildings, construction of a new building, the addition of tangible personal property, or an combination thereof, which increases the employment capaCity of a business eligible for a tax exemption-incentive and which results in the creation of new employment.
- (f) “Manufacturing articles of commerce” shall mean a business engaged in the mechanical or chemical transformation of materials or substances into new products, as defined in the North American Industry Classification System (NAICS) Manual.
- (g) “Premium Zone” shall mean an area within the City, where the Council has selected as a special development area and wishes to give a premium incentive treatment to a company locating within. A Premium Zone selection must be determined by separate action of the governing body.
- (h) “Research and development” shall mean the application of science or technology to the improvement of either the process of manufacturing or manufactured products or both.
- (i) “Storing goods or commodities which are sold or traded in interstate commerce” shall refer to the business or storing property which may be exempt from ad valorem taxation under the provisions of KSA 79-201f.
- (j) “Tangible personal property” shall mean machinery and equipment used during the term of the tax exemption which may be granted.
- (k) “Tax incentive” or “tax exemption-incentive”, see Section 5.

Section 29. Sliding Scale for Tax Abatements. New job creation will be based on Full-time Equivalent (FTE) jobs based on 2080 hours per year. New job numbers will be adjusted by a factor based on the relationship between wages paid for the new jobs and the average wage for all jobs in the Wichita MSA. For example, if the area average wage is \$40,000 and the average wage for the created jobs is \$50,000, the factor for adjustment of FTEs would be 125%. If 60 FTEs are created at \$50,000, a total adjusted total of 75 FTEs would be used to compute tax abatement levels.

3% PER NEW JOB: 1-5					
New Jobs (#)	1	2	3	4	5
Exemption (%)	3%	6%	9%	12%	15%

2% PER NEW JOB: 6-10					
New Jobs (#)	6	7	8	9	10
Exemption (%)	17%	19%	21%	23%	25%

1.5% PER NEW JOB: 11-20										
New Jobs (#)	11	12	13	14	15	16	17	18	19	20
Exemption (%)	26.5%	28%	29.5%	31%	32.5%	34%	35.5%	37%	38%	40%

1% PER NEW JOB: 21-50							
New Jobs (#)	21	25	30	35	40	45	50
Exemption (%)	41%	45%	50%	55%	60%	65%	50%

.6% PER NEW JOB ABOVE 50					
New Jobs (#)	60	70	80	90	100
Exemption (%)	75%	82%	88%	94%	100%

Property tax abatements may also be granted for capital investment. Property tax abatement may be recommended for private investment in plant and equipment in \$50,000 increments. A sliding scale system will be utilized, reducing the percentage of abatement per \$50,000 at set benchmarks.

1% PER EACH \$50,000 INVESTED BETWEEN \$50,000 - \$500,000										
Expenditure (\$1,000s)	50	100	150	200	250	300	350	400	450	500
Exemption (%)	1	2	3	4	5	6	7	8	9	10

.75% PER EACH \$50,000 INVESTED BETWEEN \$550,000 - \$1,000,000											
Expenditure (\$1,000s)	550	600	650	700	750	800	850	900	950	1000	
Exemption (%)	10.75	11.5	12.25	13	13.75	14.5	15.25	16	16.75	17.5	

.5% PER EACH \$50,000 INVESTED BETWEEN \$1,000,000 - \$2,000,000											
Expenditure (\$1,000s)	1050	1200	1300	1400	1500	1600	1700	1800	1900	2000	
Exemption (%)	18	19.5	20.5	21.5	22.5	23.5	24.5	25.5	26.5	27.5	

.25% PER EACH \$50,000 INVESTED BETWEEN \$2,000,000 - \$5,000,000											
Expenditure (\$1,000s)	2100	2200	2400	2600	2800	3000	3500	4000	4500	5000	
Exemption (%)	28	28.5	29.5	30.5	31.5	32.5	35	37.5	40	42.5	

.1% PER EACH \$50,000 INVESTED ABOVE \$5,000,000									
Expenditure (\$1,000s)	10000	15000	20000	25000	30000	33500	40000	50000	
Exemption (%)	52.5	62.5	72.5	82.5	92.5	100	100	100	

Location premiums shall also be available to businesses who locate and/or expand within special development areas of the City. To foster such action, businesses may receive additional recommended tax abatement equal to **20%** (up to 100% abatement) for locating in premium zones. Discretion on premium zone selection remains with the City Council and must be determined by separate action of the governing body.

As part of the tax abatement agreement, the City Council may wish to use a sliding scale percentage of abatement. The City reserves the right to use whatever scale it deems appropriate to the development situation, but will generally follow the below schedule:

SLIDING SCALE OF ABATEMENT BY PERCENTAGE										
Year	1	2	3	4	5	6	7	8	9	10
Exemption (%)	100	90	80	70	60	50	40	30	20	10

POLICY ON TRANSPORTATION DEVELOPMENT DISTRICTS

A transportation development district (TDD, cited KSA 12-17,140 through 12-17,149) may be formed by the City Council for the purpose of constructing public infrastructure. The monies used to pay for this infrastructure are generated from a transportation development district sales tax which is in addition to any sales taxes authorized under KSA 12-187 through 12-197. Bonds issued in accordance with the TDD statutes are not general obligations of the City.

The City Council may establish a transportation development district (TDD) upon the receipt of a petition containing information on:

1. The general nature of the proposed project;
2. The maximum cost of the project;
3. The proposed method of financing the project;
4. The proposed amount and method of assessment;
5. The proposed amount of TDD sales tax;
6. A map or boundary description of the proposed district.
7. The legal description of the boundaries of the proposed district; and
8. A statement acknowledging that (1) The names of the signers may not be withdrawn from the petitions by the signers thereof after the City Council commences consideration of the petitions or later than seven days after the filing of such petition with the clerk of the City, whichever occurs first; and (2) the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

All costs associated with the development and submission of a CID application and petition shall be borne by the petitioners.

This petition shall be signed by the owners of all of the land within the proposed district. Upon the receipt of this petition, the City Manager will review the proposal in its entirety to ensure that the proposal is fiscally sound and meets all public infrastructure standards. Staff will then provide its recommendation to the City Council which shall approve or deny the proposal.

Prior to consideration by the City Council, parties intending to request the creation of a TDD must submit a draft version of the intended petition to the City Manager and any other City Staff designated by the City Manager. Such draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Within ten (10) days after the submission of any such draft petition, the City Manager and other City Staff designated by the City Manager shall hold a pre-petition meeting with the party submitting such petition to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

TDD projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that the project would not otherwise be possible without the use of TDD funding (“gap” analysis). TDD projects financed on a “pay-as-you-go” basis do not require a “gap” analysis. Any applicant requesting use of special obligation bonds will be required to provide, in addition to all other documents requested by City Staff, pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment. “Gap” financing, including TDD and any other public financing, should not exceed 30% of the total project cost.

All TDD petitioners and their project partners are required to consent to background checks as part of their submittal of a petition. Petitioners and project partners are required to pay all costs associated with and to furnish City Staff the personal and business information needed to carry out such background checks. Such information will be treated as confidential information to the maximum extent permitted under state and federal law.

TDD funds may not be used to pay development fees. Project management fees may be financed through TDD revenues only if the need for such financing is established through analysis of financial information showing that private funding is not available to pay such costs based on a market rate of return on investment. If allowed, project management fees paid through TDD revenues must be documented as actual costs incurred.

In addition to any other TDD application and petition costs, the City shall be paid a non-refundable application fee of \$5,000 with the formal submittal of any TDD petition. For any approved TDD, the City shall be paid an on-going administrative service fee in an amount equal to 5% of the total TDD revenues received by the City.

All property improvements commenced under an approved TDD shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the

City Inspector and any suggestions provided thereby shall be incorporated into the design of the project unless expressly overruled by the City Manager.

Developer will provide a certified annual accounting to the City on the amount and use of TDD funds used to pay TDD costs. City reserves the right to audit the use of TDD financing at its discretion and expense.

Subject to provisions contained in development agreements, the City shall take appropriate action to terminate TDDs when all eligible project costs have been fully paid, including the principal and interest on any special obligation TDD bonds, or, in the case of pay-as-you-go projects, the maximum TDD funding amount provided in the petition.

Should the City Council determine the terms of this policy inappropriate to evaluate a particular TDD application, it may, by majority vote, waive the binding effect of this policy in regard to that application.

POLICY ON COMMUNITY IMPROVEMENT DISTRICTS

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the “CID Act”), pursuant to which municipalities may create districts in which certain special taxes imposed and the revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs within the geographic bounds of the specified district. The creation of a Community Improvement District (“CID”) is a particularly useful tool of economic development in that it can help facilitate beneficial private development and redevelopment without negatively impacting the tax base of the approving municipality. It is the policy of the City of Bel Aire to utilize the provisions of the CID Act to assist private developers by providing financing for commercial, industrial and mixed-use projects that meet the local eligibility criteria outlined below, subject to certain special local policy limitations outlined below. A CID can exist for a maximum of 22 years.

Purpose and Background

Local Eligibility Criteria

It shall be the policy of the City to create a CID if, in the opinion of the City Council, the petition satisfies all statutory requirements of the CID Act and if creation of such CID would meet with the following criteria:

1. The CID will attract development which would enhance the economic climate of the City or otherwise benefit the City or its residents.
2. The CID will result in the construction or rehabilitation of public or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible.
3. The CID will promote development, redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen.

4. The CID will be used to assist the development, redevelopment or rejuvenation of commercial, industrial and mixed-use projects.
5. The CID will not be used for projects that are incompatible or inconsistent with established local nuisance regulation, applicable land use regulations and the overall character of development in the surrounding area.

CID Petition Process

A CID is formed by petition of the landowners within the proposed CID. A CID petition must contain:

1. The general nature of the proposed project;
2. The estimated cost of the proposed project;
3. The proposed method of financing the project including, if applicable, the issuance of full faith and credit bonds;
4. The proposed amount and method of assessment, if any;
5. The proposed amount of CID sales tax, if any;
6. A map of the proposed district;
7. The legal description of the boundaries of the proposed district; and
8. A statement acknowledging that (1) The names of the signers may not be withdrawn from the petitions by the signers thereof after the City Council commences consideration of the petitions or later than seven days after the filing of such petition with the clerk of the City, whichever occurs first; and (2) the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

All costs associated with the development and submission of a CID application and petition shall be borne by the petitioners.

Sources of Funding for CID Improvements

Petitioners seeking to form a CID may request to draw upon one of the following two revenue sources, or a combination of both, to fund eligible improvements:

1. Special property tax assessments on the property within the district AND/OR
2. A special sales tax of up to 2% on all taxable sales within the district.

Upon the creation of a CID by the City Council, revenue generated by these sources is available to pay for eligible improvements and costs. This can occur in one of two ways: a bond issuance or a pay-as-you-go dedicated account.

- **Bond Issuance** – In cases in which a bond issuance is requested, City staff will work with the landowners within the CID to calculate how much revenue will be raised from the CID revenues (the special assessments and/or special sales taxes levied within the CID) and the principal amount of bonds that can be issued based on the CID revenue stream and a minimum 1.2 debt service coverage ratio. To assist in this process, petitioners will be required to submit all documents requested by City staff relating to the proposed project, which shall include an acceptable cost-benefit analysis of the project. Prior to approval, petitioners may be required by the City to enter into a Development Agreement with the City. While the CID Act permits the issuance of either full-faith and credit general obligation bonds or special obligation bonds, payable solely from the CID

revenue, it is the policy of the City of Bel Aire to issue only special obligation CID bonds.

- **Pay-As-You-Go Account** – As an alternative to a bond issuance, the landowners within the CID may request the establishment of a pay-as-you-go account. This account will be a dedicated account into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs. Funds used to pay eligible CID costs, whether from bond proceeds or a pay-as-you-go account, will be held by the City or a third-party trustee, and disbursed to pay actual costs pursuant to a Development Agreement. Preference will be given to projects that use pay-as-you-go financing.

Eligible CID Costs

The CID Act provides an exclusive list of eligible improvements and costs that may be paid for with CID funding. CID funds may be used to acquire, plan, design, engineer, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, extend or finance:

1. Buildings, structures, and facilities;
2. Site improvements, including without limit sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, and water mains and extensions;
3. Parking garages;
4. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
5. Parks, lawns, trees and other landscaping;
6. Communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
7. Paintings, murals, display cases sculptures, fountains and other cultural amenities;
8. Airports, railroads, light rail and other mass transit facilities; and
9. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

The CID Act also permits the use of CID funds to pay ongoing operating expenses, including security, entertainment, public events, business promotion, employee training, and market studies; however, it is the policy of the City of Bel Aire that CID funds may only be used to pay eligible operating costs up to the maximum amount identified in the petition. Operating expenses may also include a “Business Development Fee”. CID funds may be used to reimburse capital costs incurred not earlier than one year prior to City Council action initiating the establishment of a CID, and City administrative costs and costs of issuance.

Process for Creating a CID

All CID projects will be subject to the statutorily-prescribed notice and hearing procedures found in K.S.A. 12-6a26 et seq. A summary of these procedures is set forth below.

1. Upon receipt of a valid petition, signed by the owners of all of the land area within the proposed district that is both (1) seeking financing only by special property tax assessments and (2) not seeking the issuance of full faith and credit bonds pursuant to the CID Act, the City Council may consider whether to approve the creation of the requested CID. The City Council may proceed, with or without notice or a hearing, to make findings by ordinance as to the nature, advisability and estimated cost of the project, the boundaries of the district and the amount and method of assessment. Upon making such findings, the City Council by majority vote may authorize the project and the creation of the CID in accordance with such findings as to the advisability of the project. The ordinance shall be effective upon publication once in the official city newspaper and shall also be submitted for recording in the office of the Sedgwick County Register of Deeds.

2. Upon receipt of a petition, signed by the owners of at least 55% of the total land area and total assessed property value within the proposed district, to create a CID seeking financing in whole or in part by a proposed CID sales tax (see K.S.A. 12-6a31) or seeking the issuance of full faith and credit bonds (see K.S.A. 12-6a36), the City Council shall adopt a resolution giving notice of a public hearing to consider the advisability of creating the CID.

- (a) Such resolution shall be published once each week for two consecutive weeks in the City's official newspaper and shall be sent by certified mail to all owners of property within the proposed district. All costs associated with these publications shall be borne by the Petitioner(s) requesting the creation of the district.
- (b) The second publication of such resolution shall occur at least seven (7) days prior to the date of the hearing and the certified mailed notice shall be sent at least ten (10) days prior to the hearing.
- (c) Such resolution shall contain the following information:
 - i. Time and place of the hearing;
 - ii. General nature of the proposed project;
 - iii. Estimated cost of the project;
 - iv. Proposed method of financing the project;
 - v. The proposed amount of the CID sales tax, if any;
 - vi. The proposed amount and method of assessment, if any;
 - vii. A map of the proposed district; and
 - viii. A legal description of the proposed district.
- (d) Following the hearing described above, the City Council may, by majority vote, adopt an ordinance approving the requested CID. Such ordinance shall:
 - i. Authorize the project;
 - ii. Approve the estimated costs of the project;
 - iii. Contain a legal description and map of the proposed district;
 - iv. Levy the CID sales tax, if any;
 - v. Approve the maximum amount and method of assessment, if any; and
 - vi. Approve the method of financing.
- (e) Upon adoption by the City Council, such ordinance shall become effective upon publication once in the official city newspaper and shall also be submitted for recording in the office of the Sedgwick County Register of Deeds.

Preliminary Review Meeting

Prior to consideration by the City Council, parties intending to request the creation of a CID must submit a draft version of the intended petition to the City Manager and any other City Staff designated by the City Manager. Such draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Within ten (10) days after the submission of any such draft petition, the City Manager and other City Staff designated by the City Manager shall hold a pre-petition meeting with the party submitting such petition to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

Development Agreement Required

Concurrently with, or prior to, the creation of a CID by the City Council, the City and the petitioner shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed CID. The Development Agreement will include a site plan and elevation drawings or renderings of the CID project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement shall set forth the method and manner for disbursement of CID funds by the City, including the proceeds of bonds funded by CID funds, to pay for eligible project costs pursuant to acceptable documentation that such costs have been incurred. In addition, the agreement shall provide for rapid repayment of any bonds issued with CID sales taxes and/or assessments and for the termination of any and all CID taxes and assessments. City administrative fees and costs of issuance shall be paid from CID funds. For “pay-as-you-go” CID projects, the Development Agreement shall set forth the method and manner of disbursement of CID funds and shall include provisions for the termination of any and all CID taxes and assessments when all eligible costs incurred by the CID that are contemplated in the Development Agreement have been satisfied.

“Gap” Financing Requirement

CID projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that the project would not otherwise be possible without the use of CID funding (“gap” analysis). CID projects financed on a “pay-as-you-go” basis do not require a “gap” analysis. Any applicant requesting use of special obligation bonds will be required to provide, in addition to all other documents requested by City Staff, pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment. “Gap” financing, including CID and any other public financing, should not exceed 30% of the total project cost.

Background Check

All CID petitioners and their project partners are required to consent to background checks as part of their submittal of a petition. Petitioners and project partners are required to pay all costs associated with and to furnish City Staff the personal and business information needed to carry out such background checks. Such information will be treated as confidential information to the maximum extent permitted under state and federal law.

Project Management and Development Fees

CID funds may not be used to pay development fees. Project management fees may be financed through CID revenues only if the need for such financing is established through analysis of financial information showing that private funding is not available to pay such costs based on a market rate of return on investment. If allowed, project management fees paid through CID revenues must be documented as actual costs incurred.

City Administrative Fees

In addition to any other CID application and petition costs, the City shall be paid a non-refundable application fee of \$5,000 with the formal submittal of any CID petition. For any approved CID, the City shall be paid an on-going administrative service fee in an amount equal to 5% of the total CID revenues received by the City. The Fee may be waived if the applicant locates within a “Premium Zone” and is subject to a “Business Development Fee.

Business Development Fee

A “Business Development Fee” shall be established as part of a CID located within a “Premium Zone” as determined by the governing body. The Fee is an operational expenditure assessed against property located within the CID. The amount of the fee is 2.5% of the value of improvements as identified in the application.

Premium Zone

The governing body may select a special development area and wishes to give a premium incentive treatment to a company locating within. A Premium Zone selection must be determined by separate action of the governing body.

Standard Design Guidelines Govern

All property improvements commenced under an approved CID shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City Inspector and any suggestions provided thereby shall be incorporated into the design of the project unless expressly overruled by the City Manager.

Financial Reporting

Developer will provide a certified annual accounting to the City on the amount and use of CID funds used to pay CID costs. City reserves the right to audit the use of CID financing at its discretion and expense.

Termination of CIDs

Subject to provisions contained in development agreements, the City shall take appropriate action to terminate CIDs when all eligible project costs have been fully paid, including the principal and interest on any special obligation CID bonds, or, in the case of pay-as-you-go projects, the maximum CID funding amount provided in the petition.

Waiver of Policy

Should the City Council determine the terms of this policy inappropriate to evaluate a particular CID application, it may, by majority vote, waive the binding effect of this policy in regard to that application.

POLICY ON TAX INCREMENT FINANCING DISTRICTS

The City of Bel Aire, under the authority conferred by KSA 12-1770 et. seq., will consider the use of tax increment financing (TIF) to encourage and facilitate the development and/or redevelopment of areas within its corporate City limits or within its growth area.

The first step required in the TIF process shall be the adoption of a resolution by the City Council. This resolution shall provide for the following:

1. Notify the public that a hearing will be held to consider the establishment of a district.
The notification shall fix the time and place of the hearing;
2. Describe the proposed boundaries of the district;
3. Describe the district plan and that such plan includes a map, both of which are available for inspection at a designated time and place (i.e. City Hall, M-F, 8-5);

4. State that the City Council will consider findings necessary for the establishment of a development district.

Upon the completion of the public hearing, the City Council may pass an ordinance which shall:

1. Make findings that the district proposed to be developed is an eligible area and the development or redevelopment of the area is necessary to promote the general and economic welfare of the City;
2. Contain the district plan as approved, which will identify all of the proposed development project areas and identify in general only, all of the buildings and facilities that are proposed to be constructed or improved;
3. Contain the legal description of the district, legally establish the district, and identify the boundaries of the district. No area shall be included within the boundaries of the final development district that were not included in the original, published notice.

Under KSA 12-1771(d), the City may not acquire any privately owned property subject to ad valorem taxes in the event either the school board or the county commission finds that the impact of the proposed TIF district will have an “adverse effect” on their respective governmental entities. In the event either the school board or the county commission adopts a resolution finding their entities will experience an adverse effect, the City Council shall adopt an ordinance within 30 days of receiving said resolution from either governing body terminating the TIF district.

Provided that neither the school board nor the county commission finds an adverse effect of the proposed TIF district on their operations, the City will proceed to the development of the project plan. The project plan shall be delivered to the county commissioners and the school board. The project plan shall include:

1. A summary of the feasibility study done as defined in KSA 12-1770(a), and amendments thereto, which will be an open record;
2. A reference to the district plan established under KSA 12-1771 that identifies the development project area that is set forth in the project plan being considered;
3. A description and map of the development area;
4. The relocation assistance plan required by KSA 12-1777;
5. A detailed description of the buildings and facilities proposed to be constructed or improved in such area;
6. Any other information the City Council deems necessary to advise the public of the intent of the project plan.

The Bel Aire Planning Commission shall review the project plan to ensure it is consistent with the City’s comprehensive plan. Provided the project plan is consistent with the City’s comprehensive plan, the City Council shall adopt a resolution stating that the City is considering the adoption of the project plan. This resolution shall:

1. Notify the public that a public hearing will be held to consider the adoption of the project plan and fix the time and place of the hearing;
2. Describe the boundaries of the development district, the date of the district’s establishment, and the project’s boundaries;

3. State the project plan, including a summary of the feasibility study, relocation assistance plan, and financial guarantees of the developer and a description and map of the area to be developed are available for inspection during regular office hours at City Hall;
4. Notify, if necessary, that the City intends to issue debt backed by the full faith and credit of the City.

The City may choose to issue special obligation bonds to pay for the improvements in the district, pledging a variety of revenue sources authorized by KSA 12-1774(a)(1). If the City Council elects not to issue full faith and credit bonds to finance the improvements in the district and instead elects to issue special obligation bonds, then such special obligation bonds shall not be general obligations of the City and shall not, in any event, give rise to a charge against its general credit or taxing powers, or be payable out of any funds or properties, other than those so pledged.

The City may also issue industrial revenue bonds in accordance with 12-1740 et. seq. and amendments thereto, as well as the City of Bel Aire's Industrial Revenue Bond policy. IRB's may be used for the purchase, construction, reconstruction, equipping, maintenance and repair of buildings and facilities within a development district established under 12-1770 et. seq.

Following this second public hearing, the City Council may adopt the project plan by ordinance. A two-thirds supermajority vote is required under KSA 12-1772(e). The project must be completed within 20 years from the adoption of this project plan.

Once the project plan is adopted, the City may begin acquiring property and transfer, sell or lease this property to a developer in accordance with the development project plan and under such other conditions as may be agreed upon.

POLICY ON INDUSTRIAL REVENUE BONDS

The City Council's primary goal when considering the issuance of industrial revenue bonds (IRBs) shall be to encourage economic growth in the corporate City limits and the growth area of the City and fulfill the goals stated in the introduction to this Comprehensive Economic Development Policy. Industrial revenue bonds are not considered a debt of the City; rather, they are debts of the business/organization that utilizes the bond proceeds. The City is merely a conduit for the business/organization to obtain tax-exempt financing for its project.

Industrial revenue bonds will not be utilized when it is determined that doing so would give the recipient an unfair advantage over a business or organization currently engaged in a similar venture within the City or its growth area.

When considering a request for IRBs, the City will evaluate the types of jobs proposed to be created, the amount of capital investment that will be made, and the ability of the business to meet a recognized need in Bel Aire's economic base. Upon review and consideration of these factors, the City Manager will make a recommendation to the City Council, which shall approve or deny the request. In the event the City Council approves the request to issue IRBs, the City Manager shall contact the City's bond counsel and begin the process of issuing the bonds. The applicant for the IRBs shall be responsible for any bond counsel, financial advisor, and any other fees incurred for the applicant that are associated with the issuance of the bonds.

APPLICATION REVIEW AND ASSESSMENT PROCESS

When a request is made to the City Council to utilize one of these economic development tools, various City staff members will be involved in reviewing the applicant's materials as provided in the "General Economic Development Assistance Application." This application may be obtained from the City Manager. All requests for assistance must include this application as well as any specific requirements unique to the form of assistance being sought.

City staff will review (upon receipt of all required materials) the information and formulate a recommendation to the City Council as to the viability of the proposal based on the economic development goals of the City and any special considerations that are required to be given either in this policy or in state statute.

If the request requires county approval, all information submitted to the City will also be provided to the county.

In the event a favorable recommendation is made to the City Council and should the City Council agree “in principle” with the City Manager’s recommendation, an Economic Development Assistance Agreement will be drafted. This agreement will describe the obligations of both parties. It will also detail any performance measures that the applicant must meet. Every agreement will contain “clawback” provisions in the event these performance measures are not met. These clawback provisions are intended to indemnify the City in the event the recipient does not meet its obligations under the Economic Development Assistance Agreement. Clawback provisions can include (but not be limited to) a requirement to provide the City with a letter of credit, performance bond, or title to any asset that the City economic development assistance was used to purchase and/or construct.

APPLICATION FOR EXEMPTION

CITY OF BEL AIRE, KANSAS APPLICATION FOR PROPERTY TAX EXEMPTION FOR ECONOMIC DEVELOPMENT PURPOSES

Abatement from Ad Valorem property taxation pursuant to Article II, §13 of the Kansas Constitution is requested for all or any portion of the appraised valuation of property used for the purpose of manufacturing articles of commerce, conducting research and development, or storing goods or commodities which are sold or traded in interstate commerce, as described herein. This application is submitted in conformance with the applicable Statement of Policy and Procedures

of the City and it is understood that the City may require in lieu of payments for property, which becomes tax-exempt. The attached sheets, if any, are submitted as a part of this application.

Part I. Applicant Identification

Name of Applicant firm:_____

Contact Person (Name and Title):_____

Address:_____

Street or P.O. Box

CityStateZip

Telephone Number: _____

Names and percent of ownership of all principal owners and officers of the Applicant Firm:_____

If applicant is a tenant, identify property owner(s):

Name(s):_____

Mailing Address:_____

Street or P.O. Box

CityStateZip

Telephone Number: _____

Part II. Property Identification

List only taxable property for which abatement is requested.

- _____ Land. Attach legal description of property and plat showing location of buildings, added improvements to buildings, or both.
- _____ Building(s). Attach description.
- _____ Added improvements to buildings. Attach description and estimated cost.
- _____ Tangible personal property. Attach list of each item with identifying nomenclature and cost. Proof of purchase after August 5, 1986 must be provided for each item on list.

Part III. Business Information

Type of business organization: _____
(i.e. corporation, subsidiary, partnership, sole proprietorship, etc.)

Date and place business organized or incorporated: _____

Name and parent company, if applicable: _____

Type of business: _____
Line or lines or products manufactured or research and development conducted, or goods or commodities stored in buildings, for which tax exemption is requested.

Percentage of building occupied by applicant business qualifying for tax abatement: ____%

List principal competition of the business within the City.

Name and location of firms: _____

Describe nature of competition: _____

Business is... (Please check one) ☐ New ☐ Existing

If NEW Business:

Date Operations will Commence: _____

If business is relocated to this City, give previous location(s): _____

If construction of a new building for a new business is involved, give anticipated date of completed construction: _____

If EXISTING Business:

Date expansion will be completed:_____

Purpose of expansion:_____

Does expansion involve?

- _____Acquisition of existing building
- _____Enlargement of existing building
- _____Construction of new building

Describe how property identified above facilitates the expansion of such existing business:

Part IV. Employment Data

Existing Business: Describe how expansion has or will create new employment:

Part V. Description of Public Benefits

Please attach a narrative description, of not to exceed two pages, of the public benefits which you believe will occur if the requested exemption is granted.

Part VI - Financial Responsibility

Attach a description of the businesses’ financial situation. This may include a financial statement, audit and other relevant information to assess the stability of the business. Indicate whether there is any pending or threatening litigation affecting the viability of the business.

Part VII. Certification of Applicant

I, _____, hereby certify that the foregoing attached information is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City to assist the Governing Body in its consideration of this matter.

Date_____

Signed _____
Name _____
Title _____

Part VIII. Acknowledgment of Receipt

Receipt of \$1,000.00 fee is hereby acknowledged:

Date: _____

City Manager:_____

PROJECT APPLICATION (CITY OF BEL AIRE, KS)

Name of Corporation/Partnership _____

Date of Request _____

Address _____

Primary Contact _____

Address _____

Phone _____ Fax _____ E-mail _____

A. APPLICANT INFORMATION

B. Name and addresses of all persons or corporations who would be obligated as either applicant or personal guarantors of subsidy:

Name:

Address:

Name:

Address:

Name:

Address:

C. Name and addresses of the principal officers and directors of the applicant:

Name:

Address:

Name:

Address:

Name:

Address:

D. Applicant's Attorney

Name

Phone Number

E. Applicant's Financial Advisor

Name

Phone Number

F. Applicant's Accountant

Name

Phone Number

G. Requested Subsidy:

Category:	Source/Type/Description:	Requested Amount
Tax Increment Financing		\$
Tax Abatement		\$
Industrial Revenue Bonds		\$
Other – Land Write-Down		\$
Other – Special Assessments		\$
Other – Public Improvements		\$
TOTAL REQUEST		\$

H. Complete Project Sources and Uses:

Sources:	
Private Bank Loan	\$
Private Equity	\$
State/Local Loan/Grant Funds	\$
Tax Increment/Tax Abatement	\$
Other (specify_____)	\$
Total Sources:	\$

Uses:	
Land Acquisition	\$
Building Construction/Reconstruction	\$
Machinery/Equipment	\$
Site Improvements	\$
Installation of Public Utilities	\$
Parking Improvements	\$
Legal/Financial Costs	\$
Surveying/Platting/Permitting	\$
Other (specify_____)	\$
Total Uses:	\$

I. Use of Subsidy:

Amount requested for purchase of land:	\$
Amount requested for building:	\$
Amount requested for equipment:	\$
Amount requested for site improvements:	\$
Amount requested for public utilities:	\$
Working capital:	\$
Other (specify):_____	\$

TOTAL REQUEST \$

J. Project Details:

1. Include the following project details on a separate sheet:
- # of housing units, type of housing units, size of housing units, etc

breakdown of commercial square footage, i.e., office, retail, manufacturing, industrial, hospitality, entertainment, etc

cost per square footage of construction of each type of housing unit and each type of commercial use

commencement and completion for each project component, include site improvements and public infrastructure

dates for sale or lease of units, occupancy start, and full occupancy, etc

estimated appraised value of project when complete, separated by use

describe how the property will be subdivided by uses

estimated taxable sales per s.f. of retail, hospitality, etc.

2. Name and address of Contractor

Name and address of Architect:

3. What type of equipment will be financed, if any?

4. If the applicant will be in direct competition with local firms,

(a) name of firms:

(b) describe nature of the competition:

K. Project Operations:

1. Provide the following operating assumptions on a separate sheet:
- For property to be leased, provide the estimated lease rates by type, lease type, lease term, etc. (separate commercial uses from residential uses)
 - For property to be sold, provide the estimated gross sales price (and per unit or per s.f. measure) and cost of sales (separate commercial from residential uses)
 - Include detail of annual operating expenditures, separate commercial from residential uses
 - Prepare pro-forma statements through ten (10) years of operation beginning from initial construction, including revenue projections, operating expense projections, and a debt amortization schedule. Include hypothetical sale in the 10th year.
 - Prepare pro-forma statements with and without the requested subsidy

L. Subsidy Analysis:

1. Detail the need for the subsidy, the benefit to the applicant of the subsidy _____
- _____
2. Has additional financing, whether internally generated or through other loans, been arranged? (If yes, explain on an attached sheet) _____
- _____
3. Has the applicant investigated conventional financing? What are the proposed terms? _____
- _____
- _____

M. Proposed Location/Timing of Construction:

1. Location of the project: _____
2. What percentage of the building will be occupied by the applicant? _____
3. Is the project properly zoned? _____
4. If a zoning change is pending, cite application number and present status. If application has not been made, briefly describe what change will be needed and plans for submitting application: _____
- _____
- _____
5. If unusual demands for water or sewer services or police or fire protection will be made, specify the demands: _____
- _____
- _____

N. Ownership and Management:

1. Describe the development company, ownership, affiliated/partner companies (identify membership entities):

2. What portion of the project is being financed from other affiliate or partner funds?

\$

Please Explain

3. Will portions of the project be sold to other entities? If so, please explain

4. Describe all threatened or pending/outstanding litigation and legal claims or regulatory issues:

Disclosure items:

Has the applicant or any affiliated party defaulted on a real estate obligation?

Has the applicant or any affiliated party declared bankruptcy?

Has the applicant or any affiliated party had judgments recorded against them?

If the answer is yes to any of the above, please explain.

O. Job Creation Detail:

Type of Job	No. of this Type	Average Annual Wage
Professional		
Technical		
Clerical		
General Labor		
Other: (specify_____)		

What is the total Annual Payroll? _____

P. Financial Capacity:

- 1. Provide copies of applicant’s financial statements (balance sheets and income statements) for the past three years certified as correct by the owner or an authorized officer (or audited) and current (year to date)
- 2. Provide current (year to date) and three years historical financial statements (balance sheets and income statements) for the affiliated/partner entities, to demonstrate financial capacity
- 3. Provide last three years income tax returns for development principals, if applicable.
- 4. Audited financials are required, and if not available, provide an explanation.
- 5. Letter from the primary lender(s) stating the amount of conventional financing available for the project

Q. References and Relevant Experience:

- 1. Provide names and locations of recent comparable projects
- 2. Provide private, public, and non-profit sector references from comparable projects. Please include names of government contacts with which the developer worked, if applicable.
- 3. Include three relevant experiences.

I, _____, hereby certify that the foregoing attached information is true and correct to the best of my knowledge.

Further, it is understood that additional information may be requested by the City to assist the Governing Body in its consideration of this matter. A non-refundable application fee of \$5,000.00 will be paid upon submission of application.

Date_____Signed _____

Name

Title

Receipt is hereby acknowledged:

Date: _____

City Manager:_____

Gilmore & Bell, P.C.
05/10/2022

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF BEL AIRE, KANSAS
HELD ON JUNE 7, 2022**

The governing body met in regular session at the usual meeting place in the City, at 7:00 p.m., the following members being present and participating, to-wit:

Absent:

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

* * * * *

(Other Proceedings)

Thereupon, there was presented a Resolution entitled:

A RESOLUTION AMENDING RESOLUTION NO. R-22-12 OF THE CITY OF BEL AIRE, KANSAS, WHICH DETERMINED THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS (CATHOLIC CARE CENTER), SERIES 2022, IN ONE OR MORE SERIES, TO PROVIDE FUNDS FOR THE PURPOSE OF FINANCING IMPROVEMENTS TO HEALTH CARE AND RETIREMENT FACILITIES OWNED AND OPERATED BY CATHOLIC CARE CENTER, INC.; AND AUTHORIZED EXECUTION OF CERTAIN RELATED DOCUMENTS.

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

Yea: _____.

Nay: _____.

Thereupon, the Mayor declared said Resolution duly adopted and the Resolution was then duly numbered Resolution No. [____] and was signed by the Mayor and attested by the Clerk.

* * * * *

(Other Proceedings)

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Bel Aire, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

Clerk

Gilmore & Bell, P.C.
05/10/2022

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. R-22-12 OF THE CITY OF BEL AIRE, KANSAS, WHICH DETERMINED THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS (CATHOLIC CARE CENTER), SERIES 2022, IN ONE OR MORE SERIES, TO PROVIDE FUNDS FOR THE PURPOSE OF FINANCING IMPROVEMENTS TO HEALTH CARE AND RETIREMENT FACILITIES OWNED AND OPERATED BY CATHOLIC CARE CENTER, INC.; AND AUTHORIZED EXECUTION OF CERTAIN RELATED DOCUMENTS.

WHEREAS, the governing body of the City of Bel Aire, Kansas (the "City"), has heretofore by Resolution No. R-22-12 of the City, duly adopted on May 3, 2022, determined the advisability of issuing Health Care Facilities Revenue Bonds (Catholic Care Center), Series 2022, in one or more series, to provide funds for the purpose of financing improvements to health care and retirement facilities owned and operated by Catholic Care Center, Inc., and authorized execution of certain related documents; and

WHEREAS, the governing body of the City hereby finds and determines it necessary to amend Section 3 of Resolution No. R-22-12 of the City.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS, AS FOLLOWS:

SECTION 1. *Section 3* of Resolution No. R-22-12 hereby amended to read as follows:

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Bond Trust Indenture, Base Lease Agreement, Lease Agreement, Bond Placement Agreement or other legal documents necessary to accomplish the issuance of the Bonds, if deemed advisable by the parties, the terms of which shall be in compliance with the Act and mutually satisfactory to the City and the Corporation; (c) the successful negotiation and sale of the Bonds to Intrust Bank, N.A., as purchaser (the "Purchaser"), which sale shall be the responsibility of the Corporation and not the City; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Corporation and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Corporation or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) a \$_____ City origination fee[, an annual City administrative fee of \$_____] and other expenses of the City and the City Attorney; (ii) any placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

SECTION 2. The rest and remainder of Resolution No. R-22-12 is hereby ratified and confirmed.

SECTION 3. This Resolution shall be effective upon adoption.

ADOPTED by the governing body of the City on June 7, 2022.

(SEAL)

Jim Benage, Mayor

ATTEST:

Melissa Krehbiel, Clerk

**Outstanding Industrial Revenue Bonds
City of Ble Aire**

Section XII, Item D.

Company	IRB Amount	Origination Fee	Benefit-Cost Ratio	Tax Abatement Schedule										CTY REV
				Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	
Broadstone Villas I	\$5,500,000	1%	1.51	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	\$6,957
				100%	95%	90%	85%	80%	0%	0%	0%	0%	0%	
Broadstone Villas II	\$8,000,000	1%	1.51	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	\$8,696
				100%	100%	100%	100%	90%	85%	80%	0%	0%	0%	
Freedom Builders, LLC SCKEDD Building Factory Direct Building	\$1,500,000	1%	1.84	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	\$8,598 \$14,458
				100%	80%	60%	40%	20%	0%	0%	0%	0%	0%	
				100%	80%	60%	40%	20%	0%	0%	0%	0%	0%	
Century Manufacturing	\$2,080,000	1%	1.01	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	\$19,441
				100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Concierge SRC	\$4,745,000	0%	1.00	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	\$25,770
				100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Buzzi	\$7,500,000	0%	1.00	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	\$6,422
				100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Epic Sports	\$10,000,000	0%	1.01	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	\$151,535
				100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Empire Wall Systems	\$2,500,000	0.5%	1.60	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	\$25,265
				100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
Wickham Glass II	\$4,300,000	1%	-	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	\$24,745
				100%	100%	100%	100%	100%	TBD	TBD	TBD	TBD	TBD	
WAM Investments	\$3,000,000	1%	1.94	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	\$15,249
				95%	95%	95%	95%	95%	50%	50%	50%	50%	50%	
Clinic In a Can	\$3,000,000	1%	2.12	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	\$24,126
				100%	100%	80%	70%	60%	40%	30%	20%	10%	0%	
Webb Industrial LLC (Hoops)	\$5,500,000	1%	3.24	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	\$53,759
				100%	80%	100%	100%	100%	100%	100%	100%	100%	100%	
Webb Industrial LLC (Spec)	\$4,500,000	1%	-	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	\$32,625
				100%	100%	100%	100%	100%	50%	50%	50%	50%	50%	
Homestead Affordable Housing	\$8,000,000	1%	-	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	
				100%	100%	100%	100%	100%	TBD	TBD	TBD	TBD	TBD	

**KANSAS DEVELOPMENT FINANCE AUTHORITY
FEE SCHEDULE
Effective July 1, 2018**

**PRIVATE ACTIVITY BOND ISSUES (EXCLUDING 501(c)(3) STATE
UNIVERSITY BOND ISSUES)**

1. KDFA Application Fee:
\$1,000 non-refundable

2. KDFA Issuer's Fee:
0.35% of the bond principal issued on the first \$10 million
0.20% of the bond principal issued on the next \$40 million
0.10% of the bond principal issued on the next \$150 million
0.05% of the bond principal issued on amounts in excess of \$200 million

3. KDFA Annual Fee:
 - A. Over the life of the issue,
0.04% of bond principal outstanding on the first \$20 million
0.02% of bond principal outstanding on the next \$30 million
0.01% of bond principal outstanding on the next \$150 million
0.005% of bond principal outstanding on amounts in excess of \$200 million

 - plus*
 - B. A flat fee of \$5,000 for each of the first three years only (this flat fee will be \$2,500 on refunding bond issues)

4. KDFA Issuer's Fee and Annual Fee are capped at \$500 million per bond issue

The first annual payment (percentage and flat fee) is due at closing and subsequent payments are due annually, generally coinciding with the principal payment date.

MISCELLANEOUS FEES

1. KDFA TEFRA Hosting (**Applies only when KDFA is not the issuer**):
\$10,000 plus reimbursement of incurred hearing notice publication charges

Gilmore & Bell, P.C.
April 24, 2022

RESOLUTION NO. R-22-12

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS DETERMINING THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS (CATHOLIC CARE CENTER), SERIES 2022, IN ONE OR MORE SERIES, TO PROVIDE FUNDS FOR THE PURPOSE OF FINANCING IMPROVEMENTS TO HEALTH CARE AND RETIREMENT FACILITIES OWNED AND OPERATED BY CATHOLIC CARE CENTER, INC.; AND AUTHORIZING EXECUTION OF CERTAIN RELATED DOCUMENTS

WHEREAS, the City of Bel Aire, Kansas (the “City”) desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the “Act”), the City is authorized to issue revenue bonds to finance the acquisition, construction, equipping and furnishing of improvements to health care and retirement facilities (the “Facilities”) owned by Catholic Care Center Inc., a Kansas nonprofit corporation (the “Corporation”) and the Corporation has requested that the City issue revenue bonds for such purposes; and

WHEREAS, it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued pursuant to the Act to provide funds to finance certain improvements to the Facilities;

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

Section 1. Public Purpose. The City Council (the “Governing Body”) of the City hereby finds and determines that financing certain improvements to the Facilities will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. Intent to Issue Bonds. The City is hereby authorized to issue its revenue bonds pursuant to the Act, in one or more series, in the aggregate principal amount not to exceed \$25,000,000 (the “Bonds”) to pay the costs thereof and finance certain improvements to the Facilities, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the passage of an ordinance authorizing the issuance of the Bonds; (b) the successful negotiation of a Bond Trust Indenture, Base Lease Agreement, Lease Agreement, Bond Placement Agreement or other legal documents necessary to accomplish the issuance of the Bonds, if deemed advisable by the parties, the terms of which shall be in compliance with the Act and mutually satisfactory to the City and the Corporation; (c) the successful negotiation and sale of the Bonds to Intrust Bank, N.A., as purchaser (the “Purchaser”), which sale

shall be the responsibility of the Corporation and not the City; (d) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Corporation and the Purchaser; (e) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (f) the commitment to and payment by the Corporation or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) a \$65,000.00 City origination fee, an annual City administrative fee of:

Year 1	\$13,000.00
Year 2	\$13,000.00
Year 3	\$12,000.00
Year 4	\$6,000.00
Year 5	\$5,000.00
Year 6	\$4,000.00
Year 7	\$3,000.00
Year 8	\$2,000.00
Year 9	\$1,000.00
Year 10	\$1,000.00

and other expenses of the City and the City Attorney; (ii) any placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

Section 4. Reliance by Corporation; Limited Liability of City. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Facilities and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Corporation.


Section 5. Further Action. The City Clerk is hereby authorized to deliver an executed copy of this Resolution to the Corporation. The Mayor, City Manager, City Clerk and other officials and employees of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) execute on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; and (b) cooperate with the Corporation to maintain any *ad valorem* property tax exemption for the Facilities and related facilities which is consistent with the Corporation's charitable purposes, and execute such documents in connection therewith as are approved by the City Attorney.

Section 6. Effective Date. This resolution shall become effective upon adoption by the Governing Body.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

ADOPTED by the Governing Body of the City of Bel Aire, Kansas on May 3, 2022.

[SEAL]



Mayor

Attest:



City Clerk



CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the Governing Body on May 3, 2022, as the same appears of record in my office.

DATED: May 3, 2022.



City Clerk

GILMORE & BELL, P.C.
MAY 18, 2022

ORDINANCE NO. 689

**OF THE
CITY OF BEL AIRE, KANSAS**

**AUTHORIZING THE ISSUANCE OF
\$8,000,000
MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)**

(Published in *The Ark Valley News*, June 16, 2022)

ORDINANCE NO. 689

AN ORDINANCE AUTHORIZING THE CITY OF BEL AIRE, KANSAS TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2022 (HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC) FOR THE PURPOSE OF PAYING COSTS TO ACQUIRE, CONSTRUCT AND EQUIP A SENIOR RESIDENCE FACILITY; AND AUTHORIZING CERTAIN OTHER RELATED DOCUMENTS AND ACTIONS.

THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS HAS FOUND AND DETERMINED:

A. The City of Bel Aire, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for the facilities.

B. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) in the aggregate principal amount not to exceed \$8,000,000 (the "Series 2022 Bonds"), for the purpose of paying the costs to acquire, construct and equip a senior residence facility (the "Project"), as more fully described in the Indenture and in the Lease authorized in this Ordinance, for lease to Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant").

C. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2022 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

- (i) a Trust Indenture (the "Indenture"), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series 2022 Bonds;
- (ii) a Site Lease (the "Site Lease") with the Tenant under which the Tenant will lease an interest in the Real Property to the Issuer;
- (iii) a Project Lease (the "Project Lease") with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments;
- (iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2022 Bonds by the Issuer to Homestead Senior Residences Bel Aire, LLC, Holton, Kansas (the "Purchaser"); and
- (v) an Origination Fee Agreement (the "Origination Fee Agreement") to be entered into between the Issuer and the Tenant in conjunction with the issuance of the Series 2022 Bonds.

D. The Issuer's governing body has found that under the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project purchased or constructed with the proceeds of the Series 2022 Bonds is eligible for

exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Issuer's governing body has further found that the Project should be exempt from ad valorem property taxes for a period of 10 years. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of the exemption required by K.S.A. 12-1749d.

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

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

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

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series 2022 Bonds, to be designated "City of Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC)" in the aggregate principal amount of not to exceed \$8,000,000, for the purpose of providing funds to pay the costs to acquire, construct and equip the Project. The Series 2022 Bonds will be dated and bear interest, will mature and be payable at the times, will be in the forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series 2022 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Project Lease. The Series 2022 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2022 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Issuer will lease an interest in the Real Property and acquire, construct and equip the Project and lease it to the Tenant according to the provisions of the Site Lease and Project Lease in the form approved in this Ordinance.

Section 6. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series 2022 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 7. **Authorization of Origination Fee Agreement.** At or prior to the issuance of the Series 2022 Bonds, the Issuer will enter into the Origination Fee Agreement with the Tenant providing for the payment to the Issuer of an origination fee upon the terms and subject to the conditions set forth in the agreement, in the form approved in this Ordinance.

Section 8. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series 2022 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor, or member of the Issuer's

governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence, is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with the corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2022 Bonds, the Bond Documents and the other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 9. **Property Tax Exemption.** The Project will be exempt from ad valorem property taxes for an initial period of five (5) years, commencing in the calendar year after the calendar year in which the Series 2022 Bonds are issued, , and for an additional five (5) year period for a total of ten (10) years, if the additional five (5) year period is approved by the then current governing body of the Issuer, provided no exemption may be granted from the ad valorem property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Board of Tax Appeals.

Section 10. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project and the net rentals generated under the Project Lease to the payment of the Series 2022 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2022 Bonds are paid or deemed to have been paid under the Indenture.

Section 11. **Authority To Correct Errors and Omissions.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of the instruments or to the provisions of this Ordinance.

Section 12. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2022 Bonds and the Bond Documents.

Section 13. **Effective Date.** This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

PASSED by the governing body of the Issuer on June 7, 2022 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 689 of the City of Bel Aire, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this Ordinance, and that the signed original of the Ordinance is on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF BEL AIRE, KANSAS
HELD ON JUNE 7, 2022**

The governing body of the City of Bel Aire, Kansas met in regular session at the usual meeting place in the City, at 7:00 p.m., the following members being present and participating, to-wit:

Absent:

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

(Other Proceedings)

Thereupon, there was presented for final passage an Ordinance entitled:

**AN ORDINANCE AUTHORIZING THE CITY OF BEL AIRE, KANSAS TO
ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC) FOR THE PURPOSE
OF PAYING COSTS TO ACQUIRE, CONSTRUCT AND EQUIP A SENIOR
RESIDENCE FACILITY; AND AUTHORIZING CERTAIN OTHER RELATED
DOCUMENTS AND ACTIONS.**

Thereupon, Councilmember _____ moved that the Ordinance be passed. The motion was seconded by Councilmember _____. The Ordinance was duly read and considered, and upon being put, the motion for the final passage of the Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Mayor declared the Ordinance duly passed and the Ordinance was then duly numbered Ordinance No _____ and was signed by the Mayor and the signature attested by the City Clerk.

(Other Proceedings)

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Bel Aire, Kansas held on the date stated therein, and that the official minutes of the proceedings are on file in my office.

[SEAL]

City Clerk

(Published in *The Ark Valley News* on June 16, 2022)

SUMMARY OF ORDINANCE NO. 689

On June 7, 2022, the governing body of the City of Bel Aire, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING THE CITY OF BEL AIRE, KANSAS TO
ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC) FOR THE PURPOSE
OF PAYING COSTS TO ACQUIRE, CONSTRUCT AND EQUIP A SENIOR
RESIDENCE FACILITY; AND AUTHORIZING CERTAIN OTHER RELATED
DOCUMENTS AND ACTIONS.**

The Ordinance authorizes the Issuer to issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) in the aggregate principal amount not to exceed \$8,000,000 (the "Series 2022 Bonds"), for the purpose of paying the costs to acquire, construct and equip a senior residence facility (the "Project"), as more fully described in the Indenture, the Site Lease and the Project Lease authorized by the Ordinance. The Project will be leased by the Issuer to Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company. In connection with the issuance of the Series 2022 Bonds, the Issuer approves a five (5) year exemption from ad valorem property taxes for the Project and an additional five (5) year period for a total of ten (10) years, if the additional five (5) year period is approved by the then current governing body of the Issuer.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 7651 E. Central Park Ave., Bel Aire, Kansas A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.belaireks.gov.

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

DATED: June 7, 2022.

City Attorney

THE CITY OF BEL AIRE, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022
(HOMESTEAD AFFORDABLE HOUSING, INC.)

Section XII, Item E.

DISTRIBUTION LIST

ISSUER	BOND COUNSEL
<p>CITY OF BEL AIRE, KANSAS 7651 E. Central Park Ave. Bel Aire, Kansas 67226 Telephone: (316) 744-2451 Fax: (316) 744-3739</p> <p>Mr. Ty Lasher, City Manager (Ext 217) E-mail: tlasher@belaireks.gov</p> <p>Ms. Melissa Krehbiel, City Clerk E-mail: mkrehbiel@belaireks.gov</p> <p>Mr. Ted Henry, Finance Director E-mail: thentry@belaireks.gov</p>	<p>GILMORE & BELL, P.C. 100 N. Main, Suite 800 Wichita, Kansas 67202 Telephone: (316) 267-2091 Fax: (316) 262-6523</p> <p>Kevin M. Cowan, Esq. E-mail: kcowan@gilmorebell.com</p> <p>Sarah O. Steele, Esq. E-mail: ssteele@gilmorebell.com</p> <p>Ms. Angie Sizemore, Legal Assistant E-mail: asizemore@gilmorebell.com</p>
ISSUER'S COUNSEL	TRUSTEE
<p>Jacqueline Kelly, Esq. 7651 E. Central Park Ave. Bel Aire, Kansas 67226 Telephone: (316) 744-2451 Fax: (316) 744-3739</p> <p>Jacqueline Kelly, Esq. E-mail: JKelly@belaireks.gov</p>	<p>SECURITY BANK OF KANSAS CITY 701 Minnesota Avenue, Suite 206 P.O. Box 171297 Kansas City, Kansas 66101 Corporate Trust Department Telephone: (316) 765-2844</p> <p>Ms. Bonnie Mosher, Vice President E-mail: bmosher@securitybankkc.com</p> <p>Ms. Lisa Shatto, Corporate Trust Officer E-mail: lshatto@securitybankkc.com</p>
TENANT	TENANT'S COUNSEL
<p>HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC 603 Pennsylvania Holton, Kansas 66436 Telephone: (785) 364-0110 Fax: (785) 364-0114</p> <p>Mr. Tom Bishop E-mail: tom@homesteadks.org</p>	<p>LAW OFFICES OF MORRIS LAING 300 N. Mead Telephone: (316) 262-2671 Fax: (316) 262-6226</p> <p>Sabrina Standifer, Esq. E-mail: sstandifer@morrislaing.com</p>



CITY OF BEL AIRE, KANSAS
\$8,000,000
MULTIFAMILY HOUSING REVENUE BONDS
(Homestead Senior Residences Bel Aire, LLC PROJECT)

601000.20156

May

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

FINANCING SCHEDULE

Following is a tentative financing schedule. If you have any comments on the schedule, please get them to me as soon as possible.

City of Bel Aire, Kansas
 Jacqueline Kelly, Esq.
 Homestead Senior Residences Bel Aire, LLC
 Morris Laing Law Firm
 Gilmore & Bell, P.C.

"Issuer"
 "Issuer's Attorney"
 "Company" and "Purchaser"
 "Company's Counsel"
 "Bond Counsel"

<u>DATE</u>	<u>DESCRIPTION</u>	<u>RESPONSIBLE PARTY</u>	<u>COMPLETED</u>
	Notice of Public Hearing to newspaper	Bond Counsel	✓
	Preparation of Cost-Benefit Analysis		✓
	Publish Notice of Public Hearing	Bond Counsel/Issuer	✓
	Public Hearing and Resolution of Intent	Issuer	✓
04/25/22	Distribute first draft of bond documents	Bond Counsel	
05/06/22	Comments due on first draft bond documents	ALL	
05/10/22	Distribute revised drafts of bond documents	Bond Counsel	
05/27/22	Comments due on revised draft bond documents	ALL	
06/07/22	Final Passage of Ordinance	Issuer	
06/08/22	Ordinance to newspaper	Bond Counsel	
06/19/22	Distribute Closing Letter and Print bonds	Bond Counsel	
06/14/22	Informational Statement to BOTa (at least 7 days prior to closing)		
06/16/22	Publication of Ordinance	Bond Counsel	
06/21/22	Preclosing*	All	
06/22/22	Closing*	All	

*Attendance at preclosing and closing is optional if signature pages are furnished in advance.

GILMORE & BELL, P.C.
May 18, 2022

CITY OF BEL AIRE, KANSAS

AS ISSUER

AND

**SECURITY BANK OF KANSAS CITY
KANSAS CITY, KANSAS**

AS TRUSTEE

TRUST INDENTURE

DATED AS OF JUNE 1, 2022

**NOT TO EXCEED \$8,000,000
MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)**

TRUST INDENTURE

Table of Contents

	Page
Parties.....	1
Recitals	1
Granting Clauses	2

ARTICLE I DEFINITIONS

Section 1.01.	Definitions of Words and Terms.....	2
Section 1.02.	Rules of Interpretation.	8

ARTICLE II THE BONDS

Section 2.01.	Title and Amount of Bonds.....	9
Section 2.02.	Limited Nature of Obligations.	9
Section 2.03.	Denomination, Numbering and Dating of Bonds.....	9
Section 2.04.	Method and Place of Payment of Bonds.	10
Section 2.05.	Execution and Authentication of Bonds.	10
Section 2.06.	Registration, Transfer and Exchange of Bonds.....	10
Section 2.07.	Persons Deemed Owners of Bonds.	11
Section 2.08.	Authorization of Series 2022 Bonds.	11
Section 2.09.	Authorization of Additional Bonds.	13
Section 2.10.	Temporary Bonds.....	15
Section 2.11.	Mutilated, Lost, Stolen or Destroyed Bonds.....	15
Section 2.12.	Cancellation and Destruction of Bonds Upon Payment.....	16
Section 2.13.	Payments Due on Saturdays, Sundays and Holidays.	16
Section 2.14.	Nonpresentment of Bonds.....	16

ARTICLE III REDEMPTION OF BONDS

Section 3.01.	Redemption of Bonds Generally.....	16
Section 3.02.	Redemption of Series 2022 Bonds.....	16
Section 3.03.	Selection of Bonds to be Redeemed.....	17
Section 3.04.	Trustee's Duty to Redeem Bonds.	17
Section 3.05.	Notice of Redemption.	17
Section 3.06.	Effect of Call for Redemption.....	18

ARTICLE IV FORM OF BONDS

Section 4.01.	Forms Generally.....	18
Section 4.02.	Bond Counsel's Approving Opinion.	18

ARTICLE V CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 5.01.	Creation of Funds and Accounts.....	18
Section 5.02.	Deposit of Bond Proceeds.....	19

ARTICLE VI REVENUES AND FUNDS

Section 6.01.	Deposits into the Project Fund.	19
Section 6.02.	Disbursements from the Project Fund.	19
Section 6.03.	Disposition Upon Acceleration.	20
Section 6.04.	Deposits into the Debt Service Fund.	20
Section 6.05.	Application of Moneys in the Debt Service Fund.	20

ARTICLE VII SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 7.01.	Moneys to be Held in Trust.	21
Section 7.02.	Investment of Moneys in Funds.	21
Section 7.03.	Record Keeping.	21

ARTICLE VIII GENERAL COVENANTS AND PROVISIONS

Section 8.01.	Payment of Principal of, Premium, if any, and Interest on the Bonds.	21
Section 8.02.	Authority to Execute Indenture and Issue Bonds.	22
Section 8.03.	Performance of Covenants.	22
Section 8.04.	Instruments of Further Assurance.	22
Section 8.05.	Recording and Filing.	22
Section 8.06.	Maintenance, Taxes and Insurance.	22
Section 8.07.	Inspection of Project Books.	23
Section 8.08.	Enforcement of Rights Under the Site Lease and Project Lease.	23
Section 8.09.	Possession and Use of Project.	23

ARTICLE IX REMEDIES ON DEFAULT

Section 9.01.	Acceleration of Maturity in Event of Default.	23
Section 9.02.	Exercise of Remedies by the Trustee.	23
Section 9.03.	Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.	24
Section 9.04.	Sale in Event of Default.	24
Section 9.05.	Appointment of Receivers.	25
Section 9.06.	Limitation on Exercise of Remedies by Owner(s) of Bonds.	25
Section 9.07.	Right of Owner(s) of Bonds to Direct Proceedings.	25
Section 9.08.	Remedies Cumulative.	25
Section 9.09.	Waivers of Events of Default.	26
Section 9.10.	Application of Money Received after Event of Default.	26

ARTICLE X THE TRUSTEE

Section 10.01.	Acceptance of the Trusts.	27
Section 10.02.	Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent.	29
Section 10.03.	Notice to Owner(s) of Bonds if Default Occurs.	29
Section 10.04.	Intervention by the Trustee.	29
Section 10.05.	Successor Trustee Upon Merger, Consolidation or Sale.	29
Section 10.06.	Resignation of Trustee.	29
Section 10.07.	Removal of Trustee.	29
Section 10.08.	Qualifications of Successor Trustee.	30

Section 10.09. Vesting of Trusts in Successor Trustee..... 30
Section 10.10. Right of Trustee to Pay Taxes and Other Charges. 30
Section 10.11. Trust Estate May Be Vested in Co-trustee..... 30
Section 10.12. Annual Accounting. 31
Section 10.13. Performance of Duties under the Site Lease and Project Lease..... 31

ARTICLE XI SUPPLEMENTAL INDENTURES

Section 11.01. Supplemental Indentures Not Requiring Consent of Owner(s) of Bonds. 31
Section 11.02. Supplemental Indentures Requiring Consent of Owner(s) of Bonds. 32
Section 11.03. Tenant's Consent to Supplemental Indentures. 32

ARTICLE XII SATISFACTION AND DISCHARGE OF INDENTURE

Section 12.01. Satisfaction and Discharge of the Indenture. 32
Section 12.02. Bonds Deemed to be Paid. 33

ARTICLE XIII MISCELLANEOUS PROVISIONS

Section 13.01. Consents and Other Instruments by Owner(s) of Bonds..... 33
Section 13.02. Limitation of Rights Under the Indenture. 34
Section 13.03. Notices. 34
Section 13.04. Suspension of Mail Service..... 35
Section 13.05. Severability. 35
Section 13.06. Execution in Counterparts..... 35
Section 13.07. Governing Law. 35
Section 13.08. Electronic Transactions..... 35

Signatures and Acknowledgments 36
Appendix A, Form of Bonds A-1

TRUST INDENTURE

THIS TRUST INDENTURE, dated as of June 1, 2022 (the "Indenture"), between the City of Bel Aire, Kansas (the "Issuer"), and Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee");

WITNESSETH:

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

WHEREAS, pursuant to such authorization, the Issuer's governing body has passed an ordinance authorizing the Issuer to issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC), in the principal amount not to exceed \$8,000,000 (the "Series 2022 Bonds"), for the purpose of providing funds to acquire, construct and equip a senior residence facility (the "Project" as hereinafter more fully described), and authorizing the Issuer to lease the Project to Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant"); and

WHEREAS, pursuant to such ordinance, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Series 2022 Bonds and any Additional Bonds (collectively the "Bonds"), as hereinafter provided, (ii) to enter into a Site Lease of even date herewith (the "Site Lease"), between the Issuer and the Tenant under which the Issuer will receive a leasehold interest in the Real Property, and (iii) to enter into a Project Lease of even date herewith (the "Project Lease"), between the Issuer and the Tenant, pursuant to which Issuer shall lease the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Series 2022 Bonds as the same become due; and

WHEREAS, all things necessary to make the Series 2022 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to make this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of, premium, if any, and interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series 2022 Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Series 2022 Bonds by the Original Purchaser thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee and its successors and assigns, and grant to the Trustee and its successors and assigns a security interest in the property described in paragraphs (a) and (b) below (the 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 Site Lease and Project Lease (including, but not limited to, the right to enforce any of the terms thereof but excluding the Unassigned Issuer's Rights), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Site Lease and Project Lease;

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

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

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of the Series 2022 Bonds and any Additional Bonds issued and 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 pay, or cause to be paid, the principal of, premium, if any, and interest on all the Bonds, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in *Article XII* hereof), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

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

ARTICLE I

DEFINITIONS

Section 1.01. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Indenture, Site Lease and the Project Lease, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

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

"Additional Bonds" means any Bonds issued in addition to the Series 2022 Bonds pursuant to *Section 2.09* of this Indenture.

"Authorized Denomination" means \$5,000 or any integral multiples thereof.

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

"Bond" or **"Bonds"** means the Series 2022 Bonds and any Additional Bonds.

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

"Bond Purchase Agreement" means the Bond Purchase Agreement dated June 1, 2022, between the Issuer and the Original Purchaser.

"Bond Registrar" means the Trustee.

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

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

- (a) title to, or the temporary use of, all or any substantial part of the Project shall be condemned by any authority exercising the power of eminent domain;
- (b) title to all or any substantial portion of the Real Property is found to be deficient or nonexistent to the extent that the Project is untenable or the efficient utilization of the Project by the Tenant is substantially impaired;
- (c) all or a substantial portion of the Improvements are damaged or destroyed by fire or other casualty; or
- (d) as a result of: (i) changes in the constitution of the State; or (ii) any legislative or administrative action by the State or any political subdivision thereof, or by the United States; or (iii) any action instituted in any court, the Site Lease and Project Lease shall become void or unenforceable, or impossible of performance without unreasonable delay, or in any other way by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon Issuer or Tenant.

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

"Costs of Issuance" means any and all expenses of whatever nature incurred in connection with the issuance and sale of Bonds, including, but not limited to, underwriting fees and expenses, underwriting

discount, initial fees of the Trustee, administrative fees or expenses of the Issuer, bond and other printing expenses and legal fees and expenses of Bond Counsel, Issuer's counsel and counsel for the Tenant.

"Dated Date" means June 22, 2022.

"Debt Service Fund" means the "City of Bel Aire, Kansas Debt Service Fund (Homestead Senior Residences Bel Aire, LLC)" authorized and established with the Trustee pursuant to the Indenture.

"Default Administration Costs" means the reasonable fees, charges, costs, advances and expenses of the Trustee incurred in anticipation of an Event of Default, or after the occurrence of an Event of Default, including, but not limited to, counsel fees, litigation costs and expenses, the expenses of maintaining and preserving the Project and the expenses of re-letting or selling the Project.

"Draw Date" means each date following the Issue Date on which the Original Purchaser makes payment of all or part of the Purchase Price.

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

- (a) Default in the due and punctual payment of any interest on any Bond;
- (b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond on the Stated Maturity or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;
- (c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in any Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof shall have been given to the Issuer and the Tenant by the Trustee, or to the Trustee, the Issuer and the Tenant by Owner(s) of Bonds owning not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default shall be such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Tenant within such period and diligently pursued until such default is corrected; or
- (d) An "Event of Default" as defined in the Project Lease.

"Funds and Accounts" means funds and accounts created pursuant to or referred to in *Section 5.01* hereof.

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

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

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

"Interest Payment Date" means any date on which any interest is payable on any Bond. With respect to the Series 2022 Bonds, it means December 31, 2032.

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

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

- (a) Government Securities;
- (b) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, National Bank for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Association;
- (c) savings or other depository accounts or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee and its affiliates), provided that such deposits shall be either of a bank, trust company or national banking association continuously and fully insured by the Federal Deposit Insurance Corporation, or continuously and fully secured by excess deposit insurance purchased through a private insurer, or such securities as are described above in clauses (a) or (b), which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such deposits and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association accepting such deposit or issuing such certificate of deposit;
- (d) any Investment Contract or repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (a) or (b) above;
- (e) any investment in shares or units of a money market fund or trust rated "AAAm" or "AAAm-G" or better by S&P Global Ratings (including one offered, managed or otherwise made available through the Trustee or any affiliate);
- (f) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (a), (b) or (c) above.

"Issue Date" means the date when the Issuer delivers the Bonds to the Original Purchaser in exchange for the initial payment of all or part of the Purchase Price.

"Issuer" means the City of Bel Aire, Kansas, a city of the second class organized under the laws of the State, and its successors and assigns.

"Maturity" when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

"Notice Representative" means:

- (1) With respect to the Tenant, its Managing Member at its Notice Address (as defined in the Project Lease).

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

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

"Original Proceeds" means all sale proceeds, including accrued interest, from sale of the Series 2022 Bonds to the Original Purchaser and all investment earnings credited to the Project Fund prior to the Completion Date.

"Original Purchaser" means Homestead Senior Residences Bel Aire, LLC, Holton, Kansas.

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

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

(b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee and irrevocably pledged to such payment or redemption in accordance with the provisions of *Section 12.02* of this Indenture; and

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

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

"Paying Agent" means the Trustee.

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

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

"Principal Payment Date" means any date on which principal on any Bond is due and payable, whether at the Stated Maturity or earlier required redemption thereof. With respect to the Series 2022 Bonds, the Principal Payment Date is December 31, 2032.

"Project" means the Real Property and the Improvements.

"Project Additions" means any Improvements acquired, constructed or installed from proceeds of any series of Additional Bonds authorized and issued pursuant to this Indenture. It also includes any alterations or additions made to the Project to the extent provided in *Articles XI* and *XII* of the Project Lease.

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

(a) all costs and expenses necessary or incident to the acquisition of such of the Improvements as are acquired, constructed or in progress at the date of such issuance of the Series 2022 Bonds;

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

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

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

(e) the cost of the title insurance policies and the cost of any insurance and performance and payment bonds maintained during the Construction Period in accordance with *Article VI* of the Project Lease, respectively;

(f) interest accruing on the Series 2022 Bonds prior to the Completion Date, if and to the extent Original Proceeds deposited to the credit of the Debt Service Fund pursuant to *Section 602* of this Indenture are insufficient for payment of such interest; and

(g) Costs of Issuance.

"Project Fund" means the "City of Bel Aire, Kansas Project Fund (Homestead Senior Residences Bel Aire, LLC)" authorized and established with the Trustee pursuant to the Indenture.

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

"Purchase Price" means the amount set forth in the Bond Purchase Agreement.

"Real Property" means the real property (or interests therein) described in *Schedule I* to the Project Lease.

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

"Redemption Date" means, when used with respect to any Bond to be redeemed, the date fixed for the redemption of such Bond pursuant to the terms of this Indenture.

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

"Series 2022 Bonds" means the City of Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) dated June 22, 2022 in the aggregate principal amount not to exceed \$8,000,000.

"Site Lease" means that certain Site Lease dated as of June 1, 2022, as from time to time amended or supplemented, between the Tenant, as lessor, and the Issuer, as lessee, creating a leasehold interest of the Real Property for the Issuer.

"State" means the State of Kansas.

"Stated Maturity" when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Indenture as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

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

"Tenant" means Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company, its successors and assigns.

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

"Trustee" means Security Bank of Kansas City, Kansas City, Kansas, a banking corporation or association incorporated under the laws of the United States or one of the states thereof, in its capacity as trustee, bond registrar and paying agent, and its successor or successors serving as Trustee under this Indenture.

"Unassigned Issuer's Rights" mean the rights of the Issuer pursuant to the Project Lease to indemnification, to consent, to receive notice, to receive purchase option payments, to be insured or to receive money for its own account for payment of fees or expenses advanced by the Issuer in connection with the Project Lease, all in accordance with the terms of the Project Lease.

Section 1.02. Rules of Interpretation.

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

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

(c) All references in this Indenture to designated "Articles", "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Indenture 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 2.01. 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 Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC)," 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 total principal amount of Bonds that may be issued hereunder is hereby expressly limited to the \$8,000,000 principal amount of Series 2022 Bonds and any Additional Bonds permitted hereunder.

Section 2.02. Limited Nature of Obligations.

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

(b) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom as hereinabove provided. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

Section 2.03. Denomination, Numbering and Dating of Bonds.

(a) The Bonds shall consist of fully registered Bonds in an Authorized Denomination. The Bonds shall be substantially in the form set forth in *Article IV* of this Indenture. The Bonds of each series of Bonds shall be numbered in such manner as the Trustee shall determine.

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

exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

Section 2.04. Method and Place of Payment of Bonds. The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank ABA routing number and account number to which such Owner wishes to have such transfer directed.

Final payment of principal and redemption premium, if any, on all Bonds shall be made by check or draft upon the presentation and surrender of the certificate(s) representing such Bonds at the Maturity thereof at the principal corporate trust office of the Paying Agent.

Section 2.05. Execution and Authentication of Bonds.

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

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

Section 2.06. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of the Series 2022 Bonds and any Additional Bonds as provided in this Indenture.

(b) Bonds may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender of the certificate(s) representing such Bonds to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner(s) of Bonds or his

attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds new Bond certificate(s), registered in the name of the transferee, of any Authorized Denomination in an aggregate principal amount equal to the principal amount of such Bonds, of the same series and maturity and bearing interest at the same rate. In the event that any Owner(s) of Bonds fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner(s) of Bonds sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code of 1986, as amended, such amount may be deducted by the Paying Agent from amounts otherwise payable to any Owner(s) of Bonds.

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

(c) Any proposed transfer of Series 2022 Bonds shall be made by the Trustee only upon delivery to the Trustee, the Issuer and the Tenant of an opinion of counsel to the proposed transferor either (1) that the proposed transfer is a part of a transaction exempt from the application of the Securities Act of 1933, as amended (the "1933 Act"), or (2) that the transfer is a part of a transaction that is in compliance with the registration provisions of the 1933 Act, which opinion shall be in form and substance acceptable to both the Trustee, the Issuer and the Tenant.

(d) All of the duties of the Trustee set forth in this *Section 2.06* may be performed by any co-trustee or co-paying agent appointed by the Trustee, to the extent specified in the instrument appointing such co-trustee or co-paying agent.

Section 2.07. Persons Deemed Owners of Bonds. The person in whose name any Bond shall be registered as shown on the registration books required to be maintained by the Trustee by this Article shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of, or on account of the principal of and premium, if any, and, interest on any such Bond shall be made only to or upon the order of such registered Owner or a duly constituted legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.08. Authorization of Series 2022 Bonds.

(a) The Series 2022 Bonds shall be issued by the Issuer in an aggregate principal amount not to exceed \$8,000,000 and shall be purchased by the Original Purchaser thereof at their par principal amount for the purpose of providing the funds to pay, or reimburse the Tenant, for payment of Project Costs. The Series 2022 Bonds shall be in substantially the form attached hereto as *Exhibit A*. The Series 2022 Bonds shall be in the aggregate original principal amount of the amount advanced to the Project Fund by the Original Purchaser of the Series 2022 Bonds on the Issue Date, and each amount subsequently advanced to the Project Fund on each Draw Date, made by presenting to the Trustee a completed requisition for payment of Project Costs in the form attached as *Exhibit A* to the Project Lease, but not exceeding an aggregate

principal amount of \$8,000,000. Advances on the Series 2022 Bonds shall be made on the Issue Date and on each Draw Date; provided, however, that all advances of additional principal for the Series 2022 Bonds must occur, if at all, by the Completion Date.

Pending advancement by the Original Purchaser of the entire authorized principal amount of Series 2022 Bonds, or receipt from the Tenant of a Certificate of Completion, whichever comes first, the Trustee shall retain custody of all Series 2022 Bond certificates. The Trustee shall endorse the Schedule of Principal Amounts Advanced attached to the Series 2022 Bond certificate to reflect an increase in principal amount Outstanding each time the Original Purchaser advances money to the Project Fund to pay Project Costs as requested by the Tenant. Each such endorsement reflecting an increase in Outstanding principal amount shall constitute the Trustee's authentication of the issuance of Series 2022 Bonds reflected by such endorsement. The Issuer hereby irrevocably authorizes the Trustee to so endorse each Series 2022 Bond certificate; however, failure by the Trustee to effect any such endorsement or any error in such endorsement shall not limit the Issuer's obligations under the Series 2022 Bond certificate with respect to principal amounts which are in fact Outstanding. The Trustee shall, upon request, send written confirmation to the Tenant and the Issuer of the amount of Series 2022 Bonds Outstanding on any date. The Trustee agrees that immediately upon the making of any endorsement on the Schedule of Principal Amounts Advanced attached to the Series 2022 Bond certificate, the Trustee will forward a copy of such Schedule of Principal Amounts Advanced to Bond Counsel, via fax, email or overnight delivery, to the address set forth below:

Gilmore & Bell, P.C.
100 North Main, Suite 800
Wichita, Kansas 67202
Attention Sarah O. Steele, Esq.
Email: ssteele@gilmorebell.com

The Issuer directs the Trustee to cooperate with Bond Counsel to complete a Certificate of Issuance in the form set forth on *Exhibit B* hereto and to provide an executed copy of such Certificate of Issuance to Bond Counsel for timely filing with the State Board of Tax Appeals.

The Series 2022 Bonds shall be payable as set forth in *Appendix A* and shall be dated, bear interest, and be subject to redemption and transfer as set forth in such forms. All of the terms and provisions of the Series 2022 Bonds as set forth in *Appendix A* are incorporated into this Indenture by reference. The Series 2022 Bonds and the interest and redemption premium, if any, thereon will not be a general obligation of the Issuer, but shall be payable solely out of the revenues derived by the Issuer pursuant to the Project Lease (except to the extent payable from proceeds of sale or re-letting of the Project).

(b) Interest on the Series 2022 Bonds shall be payable to the Owners thereof in accordance with the provisions of *Article II* hereof.

(c) The Trustee is hereby designated as the Issuer's Paying Agent for the payment of the principal of, premium, if any, and interest on the Series 2022 Bonds. The Trustee may appoint one or more financial institutions to act as co-paying agent for the Series 2022 Bonds.

(d) Upon the original issuance and delivery of the Series 2022 Bonds, the effective date of registration thereof shall be their Dated Date.

(e) The Series 2022 Bonds shall be substantially in the form and manner set forth in *Article IV* hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

- (i) An original or certified copy of the Ordinance enacted by the Issuer's governing body authorizing the issuance of the Series 2022 Bonds and the execution of this Indenture and the Project Lease.
- (ii) An original executed counterpart of this Indenture.
- (iii) An original executed counterpart of the Site Lease.
- (iv) An original executed counterpart of the Project Lease.
- (v) An opinion of Bond Counsel to the effect that the Series 2022 Bonds constitute valid and legally binding obligations of the Issuer and exempt from Kansas income taxation, subject to such limitations and restrictions as shall be described therein.
- (vi) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2022 Bonds.

(f) When the documents specified in subsection (e) of this Section shall have been filed with the Trustee, and when certificates representing all the Series 2022 Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2022 Bonds to or upon the order of the Original Purchaser thereof, but only upon payment to the Trustee of the Purchase Price of the Series 2022 Bonds. The Original Proceeds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in *Article V* hereof.

Section 2.09. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2022 Bonds and any other Additional Bonds Outstanding at any time and from time to time, upon compliance with the conditions hereinafter provided in this Section, for any of the following purposes:

- (i) To provide funds to pay the costs of completing the Improvements, the total of such costs to be evidenced by a certificate signed by the Authorized Tenant Representative.
- (ii) To provide funds to pay all or any part of the costs of repairing, replacing or restoring Improvements in the event of damage, destruction or condemnation thereto or thereof.
- (iii) To provide funds to pay all or any part of the costs of acquisition, purchase or construction of such additions, improvements, extensions, alterations, expansions or modifications of the Project (including additional Real Property or Improvements) or any part thereof as the Tenant may deem necessary or desirable and as will not impair the nature of the Project as a "facility" within the meaning and purposes of the Act.
- (iv) To provide funds for refunding all or any part of the Bonds of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated Redemption Date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Original Purchaser shall be given written notice thereof by Issuer or Tenant, and the Issuer's governing body shall enact an Ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms

thereof and describing the purpose or purposes for which such Additional Bonds are being issued or describing the Bonds to be refunded, (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of providing for the issuance of and securing such Additional Bonds and, if required, (iii) authorizing the Issuer to enter into a supplemental lease with the Tenant to provide for rental payments at least sufficient to pay the principal of, premium, if any, and interest on the Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, for the acquisition, purchase, construction or installation of additional Improvements, for the inclusion of any such addition, expansion or modification as a part of the Project, and for such other matters as are appropriate because of the issuance of the Additional Bonds proposed to be issued which, in the judgment of the Issuer, is not to the prejudice of the Issuer or the owners of the Bonds previously issued.

(c) Such Additional Bonds shall have the same designation as the Series 2022 Bonds, except for an identifying series letter or date and the addition of the word "Refunding" when applicable, shall be dated, shall be stated to mature on Principal Payment Dates 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 (subject to the provisions of *Article III* of this Indenture), 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 redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2022 Bonds and any other Additional Bonds Outstanding at the time of the issuance of such Additional Bonds.

(d) Such Additional Bonds shall be substantially in the form and executed in the manner set forth in this Article and *Article IV* hereof and certificates representing such Bonds shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Bond certificates by the Trustee, there shall be filed with the Trustee the following:

(i) An original or certified copy of the ordinance enacted by the Issuer's governing body authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture and the appropriate amendments or supplements to the Project Lease.

(ii) An original executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.

(iii) An original executed counterpart of the amendment or supplement to the Project Lease, if required.

(iv) An opinion of Bond Counsel to the effect that the Additional Bonds constitute valid and legally binding obligations of the Issuer.

(v) In the case of Additional Bonds being issued to refund Outstanding Bonds, such additional documents as shall be reasonably required by the Trustee to establish that provision has been duly made for the payment of all of the Bonds to be refunded in accordance with the provisions of *Article XII* of this Indenture.

(vi) A copy of the written notice to the Original Purchaser.

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

(e) When the documents mentioned in subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers 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 (excluding accrued interest and premium, if any, which shall be deposited in the Debt Service Fund) of all Additional Bonds issued to refund Outstanding Bonds 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 in *Section 12.02* hereof and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

(f) Except as provided in this Section, the Issuer will not otherwise issue any obligations ratably secured and on a parity with the Bonds, but the Issuer may issue other obligations specifically subordinate and junior to the Bonds with the express written consent of the Tenant.

Section 2.10. Temporary Bonds.

(a) Until definitive Bonds of any series are available for delivery, the Issuer may execute, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same limitations and conditions as definitive Bonds, temporary printed, engraved, lithographed or typewritten Bonds, in the form of fully registered Bonds in denominations of \$5,000 or any integral multiple thereof, substantially of the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

(b) If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal office of any temporary Bond shall cancel the same and authenticate and deliver in exchange therefor, without charge to the Owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same series and maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder.

Section 2.11. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond certificate shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond certificate of like series, date and tenor as the Bond certificate mutilated, lost, stolen or destroyed. In the case of any mutilated Bond certificate, such mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond certificate, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond certificate the Issuer may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Bond certificate, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 2.12. Cancellation and Destruction of Bonds Upon Payment.

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

(b) All Bonds canceled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee.

Section 2.13. Payments Due on Saturdays, Sundays and Holidays. In any case where the Maturity of any Bonds shall not be a Business Day, then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of Maturity, and no interest shall accrue for the period after such date.

Section 2.14. Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due, either at its Stated Maturity or Redemption Date, or the Trustee is unable to locate the Owner for the payment of accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Owner(s) of Bonds for the payment of such Bond and accrued interest shall cease and be completely discharged, and the Trustee shall hold such funds, without interest, for the benefit of such Owner(s) of Bonds, who shall thereafter be restricted exclusively to such funds for any claim on, or with respect to, such Bond and interest. If any Bond shall not be presented for payment within four years following the date when it becomes due, whether by Maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee shall repay to the Tenant the funds theretofore held by it for payment of such Bond and interest, and such Bond and interest shall thereafter be an unsecured obligation of the Tenant, subject to the defense of any applicable statute of limitation, and the Owner thereof shall be entitled to look only to the Tenant for payment, and then only to the extent of the amount so repaid, and the Tenant shall not be liable for any additional interest thereon.

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Redemption of Bonds Generally. The Series 2022 Bonds shall be subject to redemption prior to Stated Maturity in accordance with the terms and provisions of this Article. Additional Bonds shall be subject to redemption prior to Stated 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 3.02. Redemption of Series 2022 Bonds. The Series 2022 Bonds shall be subject to optional redemption at any time prior to Stated Maturity, at the option of the Issuer, upon instructions from the Tenant, on and after June 22, 2022, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium.

Section 3.03. Selection of Bonds to be Redeemed.

(a) Bonds shall be redeemed only in Authorized Denominations. If less than all of the Outstanding Bonds of any series are to be redeemed and paid prior to Stated Maturity, such Bonds shall be redeemed as directed in writing by the Tenant. Bonds of less than a full Stated Maturity are to be selected by the Trustee in such equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each minimum Authorized Denomination of face value shall be treated as though it was a separate Bond of the minimum Authorized Denomination. If it is determined that one or more, but not all, of the minimum Authorized Denomination units of face value represented by any fully registered Bond is selected for redemption, then the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (1) for payment of the redemption price (including the premium, if any, and interest to the Redemption Date) of the minimum Authorized Denomination unit or units of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the owner of any such Bond of a denomination greater than a minimum Authorized Denomination shall fail to present such Bond to the Trustee for payment and exchange, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the principal amount thereof called for redemption (and to that extent only).

Section 3.04. Trustee's Duty to Redeem Bonds. The Trustee shall call bonds for mandatory redemption immediately upon receipt of written advice from the Issuer that the event giving rise to mandatory redemption has occurred, and stating the Redemption Date (except with respect to mandatory redemption of Term Bonds, no further notice of which is required). Upon receipt by the Trustee of such written advice, if required, and upon its own initiative if not required, the Trustee shall give at least 30 days' written notice of redemption to the Owner(s) of Bonds as provided herein. The Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided in *Section 3.05* hereof upon receipt by the Trustee at least 45 days prior to the proposed Redemption Date (unless waived) of a written request of the Issuer together with a copy of the redemption instructions of the Tenant. Such instructions shall specify the principal amount and the respective maturities of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption. In the event of a mandatory redemption as provided herein, no request from the Issuer or instructions from the Tenant shall be necessary. Such instructions may direct that the redemption be conditioned upon the availability of funds therefore from the proceeds of refunding bonds issued by the Issuer.

Section 3.05. Notice of Redemption. Notice of the call for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing by first class mail, postage prepaid, a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the Redemption Date, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds or portions of Bonds to be redeemed (and in the case of the redemption of a portion of any Bond the principal amount thereof being redeemed), the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the Redemption Date. Any notice of redemption may be conditioned upon the availability of funds therefore from the proceeds of refunding bonds to be issued by the Issuer, if so instructed by the Tenant. A

copy of each such notice of redemption shall be provided to any authorized co-paying agent appointed by the Trustee.

Section 3.06. Effect of Call for Redemption. Prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, accrued interest thereon to the Redemption Date and the redemption premium, if any. Upon the deposit of such funds or Government Securities, and notice having been given as provided in *Section 3.05* hereof, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified Redemption Date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

ARTICLE IV

FORM OF BONDS

Section 4.01. Forms Generally. The Series 2022 Bonds, and the Trustee's certificate of authentication to be endorsed thereon shall be, respectively, in substantially the form set forth in *Appendix A*. Any Additional Bonds, and the Trustee's Certificate of Authentication to be endorsed thereon shall also be in substantially such form, 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 requirement of law with respect thereto.

Section 4.02. Bond Counsel's Approving Opinion. If printed on the Bond certificates, Bond Counsel's approving opinion with respect to the authorization and issuance of the Bonds shall be preceded by the following certificate:

I, the undersigned, City Clerk of the City of Bel Aire, Kansas hereby certify that the following is a true and correct copy of the complete final legal opinion of Gilmore & Bell, P.C., Bond Counsel, on the within Bond and the series of which the Bond is a part, except that it omits the date of such opinion, that the legal opinion was manually executed and was dated and issued as of the date of delivery of and payment for such Bonds, and is on file with Security Bank of Kansas City, Kansas City, Kansas.

(facsimile signature)
City Clerk of the
City of Bel Aire, Kansas

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 5.01. Creation of Funds and Accounts. There are hereby established in the custody of the Trustee the following Funds and Accounts:

- (a) "City of Bel Aire, Kansas Project Fund (Homestead Senior Residences Bel Aire, LLC)"

- (b) "City of Bel Aire, Kansas Debt Service Fund (Homestead Senior Residences Bel Aire, LLC)"

The Trustee may create separate subaccounts in any Fund or Account for each series of Bonds issued pursuant to the Indenture.

Section 5.02. Deposit of Bond Proceeds. Except as otherwise provided in *Section 4.1* of the Project Lease, the net proceeds received from the sale of the Series 2022 Bonds as advanced shall be deposited for the purchase of the Series 2022 Bonds in the Project Fund.

ARTICLE VI

REVENUES AND FUNDS

Section 6.01. Deposits into the Project Fund. In addition to the amounts required to be paid into the Project Fund pursuant to *Section 5.02* hereof, the following funds shall be paid over to and deposited by the Trustee into the Project Fund, as and when received:

- (a) The earnings accrued on the investment of moneys in the Project Fund and required to be deposited into the Project Fund pursuant to *Section 7.02* hereof.
- (b) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, additional amounts from the proceeds of such Additional Bonds required to acquire, construct and install the Project Additions.
- (c) The Net Proceeds of casualty insurance, condemnation awards or title insurance required to be deposited into the Project Fund pursuant to the Project Lease.
- (d) Any and all payments from any contractors or other suppliers by way of breach of contract, refunds or adjustments required to be deposited into the Project Fund pursuant to the Project Lease.
- (e) Except as otherwise provided herein or in the Project Lease, any other money received by or to be paid to the Trustee from any other source for the purchase or construction of the Improvements, when accompanied by directions by the Tenant that such moneys are to be deposited into the Project Fund

Section 6.02. Disbursements from the Project Fund.

- (a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs in accordance with the provisions of *Article V* of the Project Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions. If the Issuer so requests, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer.
- (b) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Improvements have been completed the Trustee, if requested, shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Tenant.
- (c) The completion of the Improvements and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee by the Tenant of the Certificate of Completion

required by *Section 5.5* of the Project Lease. Any balance remaining in the Project Fund shall without further authorization be deposited in the Debt Service Fund and applied by the Trustee solely to the payment of principal of the Bonds through the payment on a Stated Maturity or redemption thereof on any Redemption Date specified in the optional redemption provisions of *Section 3.02* hereof, or as otherwise permissible in the opinion of Bond Counsel.

Section 6.03. Disposition Upon Acceleration. If the principal of the Bonds shall have become due and payable pursuant to *Section 9.01* of this Indenture, upon the date of payment by the Trustee of any moneys due as hereinafter provided in *Article IX*, any balance remaining in the Project Fund shall, without further authorization, be deposited in the Debt Service Fund by the Trustee.

Section 6.04. Deposits into the Debt Service Fund. In addition to the amounts required to be paid into the Debt Service Fund pursuant to *Section 5.02* hereof, the Trustee shall deposit into the Debt Service Fund, as and when received, the following:

(a) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, proceeds of such Additional Bonds in an amount not to exceed the sum which, when added to the accrued interest and premium, if any, received from the sale of such Additional Bonds, will be sufficient to pay the interest accruing on such Additional Bonds during the estimated period of construction of the Project Additions financed through the issuance of such Additional Bonds.

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

(c) Any amount in the Project Fund to be transferred to the Debt Service Fund pursuant to the provisions of this Indenture

(d) All interest and other income derived from investments of Debt Service Fund moneys as provided in *Section 7.02* hereof.

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

Section 6.05. Application of Moneys in the Debt Service Fund.

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

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

(c) The Trustee, upon written direction of the Issuer and the Tenant, shall use any excess moneys in the Debt Service Fund (other than investment earnings credited to such account) and any moneys paid to the Trustee for deposit in the Debt Service Fund pursuant to the Project Lease to redeem Outstanding Bonds, interest accruing thereon prior to such redemption, and redemption premium, if any, in accordance with and to the extent permitted by *Article III* hereof so long as the Tenant is not in default with respect to payments of Basic Rent under the Project Lease and to the extent the moneys are in excess of amounts

required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment. The Tenant may also direct such excess moneys in the Debt Service Fund or such part thereof or other moneys of the Tenant, as the Tenant may direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation.

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

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 7.01. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for the account of any fund or account under any provision of this Indenture, and all moneys deposited with or paid to the Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Project Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 7.02. Investment of Moneys in Funds. Moneys held in each of the Funds and Accounts shall be separately invested and reinvested by the Trustee in accordance with the provisions hereof, at the written direction of the Authorized Tenant Representative (or in the absence of such written direction, as provided in *subsection (e)* of the definition of Investment Securities) in Investment Securities which mature or are subject to redemption by the owner prior to the date such funds will be needed. The Trustee may make any investments permitted by this Section through its own bond department or short-term investment department and may pool moneys for investment purposes, except moneys held in the yield restricted portion of any fund or account, which shall be invested separately. Any such Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held. The interest earned on and any profit realized from Investment Securities held in any Fund or Account under this Indenture shall be deposited into the Debt Service Fund. Any loss resulting from such Investment Securities shall be charged to such Fund or Account in which such Investment Securities generating the loss are held. The Bond Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in such Fund or Account is insufficient for the purposes of such Fund or Account

Section 7.03. Record Keeping. The Trustee shall maintain records demonstrating compliance with the provisions of this Article and with the provisions of *Article VI* for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 8.01. Payment of Principal of, Premium, if any, and Interest on the Bonds. The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project (as well as moneys held for such purposes hereunder) as described herein, promptly pay or cause to

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

Section 8.02. Authority to Execute Indenture and Issue Bonds. The Issuer covenants, to the best of its knowledge and belief, that: (i) it is duly authorized under the constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth (including the creation of a security interest therein); (ii) all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and (iii) the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 8.03. Performance of Covenants. The Issuer covenants that it will endeavor to faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto.

Section 8.04. Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein and in the Project Lease provided, it will not sell, convey, lease, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Project Lease, or of its rights under the Project Lease.

Section 8.05. Recording and Filing. The Issuer shall cause the Project Lease and all amendments to the Project Lease or appropriate memoranda thereof 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 Owner(s) of Bonds and the rights of the Trustee hereunder. The Issuer hereby authorizes the Trustee to make any such filings for it. The Trustee shall cause all appropriate continuation statements of financing statements initially recorded to be recorded and filed in such manner and in such places as may be required by law to continue the effectiveness of such financing statements.

Section 8.06. Maintenance, Taxes and Insurance. The Issuer represents that pursuant to the provisions of *Articles VI, VII and X* of the Project Lease, the Tenant has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of Tenant.

Section 8.07. 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 reasonable times during regular business hours, be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 8.08. Enforcement of Rights Under the Site Lease and Project Lease. The Site Lease and Project Lease, duly executed counterparts of which has been filed with the Trustee, sets forth the covenants and obligations of the Issuer and the Tenant, including provisions that subsequent to the issuance of the Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof, the Site Lease and Project Lease may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, and reference is hereby made to the Site Lease and Project Lease for a detailed statement of the covenants and obligations of the Tenant thereunder, and the Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Tenant under and pursuant to the Site Lease and Project Lease for and on behalf of the Owners, whether or not an Event of Default exists hereunder.

Section 8.09. Possession and Use of Project. So long as not otherwise provided in this Indenture, the Tenant shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Project Lease.

ARTICLE IX

REMEDIES ON DEFAULT

Section 9.01. Acceleration of Maturity in Event of Default.

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

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

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

Section 9.02. Exercise of Remedies by the Trustee.

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and if requested to do so in writing by Owner(s) of Bonds owning not less than 25% of the aggregate principal

amount of Bonds Outstanding, and if indemnified to its satisfaction and satisfactory provision has been offered as to payment of Default Administration Costs and third-party liability, shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding or exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owner(s) of Bonds to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owner(s) of Bonds, and any recovery of judgment shall be for the equal benefit of all Outstanding Bonds.

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

Section 9.03. 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 the Trustee, by such officer or agent as it may appoint, may 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 Site Lease and Project Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements; and 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 (i) reasonable compensation to the Trustee, its agents and counsel, (ii) any charges of the Trustee hereunder, (iii) any taxes and assessments and other charges prior to the lien of this Indenture, (iv) any costs and expenses of the Issuer in connection with the Project and (v) all expenses of such repairs and improvements, and the Trustee shall apply the remainder of the moneys so received in accordance with *Section 9.10*. 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 and 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 Tenant a summarized statement of receipts and expenditures in connection therewith

Section 9.04. Sale in Event of Default. If an Event of Default shall have occurred and be continuing, the Trustee, as assignee of the Issuer, may (but shall not be required to) sell the Issuer's interest in the Project on behalf of the Issuer in accordance with the provisions of the Site Lease and Project Lease, and the Trustee or the Owner or Owners of any of the Bonds then Outstanding, whether or not then in default in the payment of principal or interest, may become the purchaser at any such sale to the highest bidder.

In the event of such a sale, the Issuer and the Trustee shall execute and deliver any necessary or appropriate instrument of conveyance of the Issuer's interest in the Project to the purchaser or purchasers

thereof, and any statement or recital of fact in such deed in relation to the nonpayment of the Bonds, default, existence of the Bonds, notice of advertisement, sale, receipt of money, and the happening of any event whereby a prima facie evidence of the truth of such statement or recital. The Bond Trustee shall receive the proceeds of sale and pay the same in accordance with *Section 9.10(b)*.

Section 9.05. Appointment of Receivers. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners 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 and of the revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 9.06. Limitation on Exercise of Remedies by Owner(s) of Bonds. No Owner(s) of Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) Owner(s) of Bonds owning at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iv) satisfactory indemnity and provision for payment of Default Administration Costs and third-party liability shall have been offered to the Trustee and (v) the Trustee shall thereafter fail or refuse to exercise the powers granted in this section to institute such action, suit or proceeding in its own name; and such knowledge and request are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owner(s) of Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bonds then Outstanding.

Section 9.07. Right of Owner(s) of Bonds to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, and upon providing the Trustee indemnification satisfactory to it as provided above, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and Trustee shall have the right to decline to follow such direction if the Trustee shall in good faith, and upon the advice of counsel, determine that proceedings so directed would expose the Trustee to personal liability.

Section 9.08. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owner(s) of Bonds is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owner(s) of Bonds hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or

by the Owner(s) of Bonds, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 9.09. 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 on Bonds, and shall do so upon the written request of Owner(s) of Bonds owning at least 51% in aggregate principal amount of all the Bonds then Outstanding and satisfaction of the conditions set forth in *Section 9.01(b)*. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Owner(s) of Bonds shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 9.10. Application of Money Received after Event of Default.

(a) If the principal of all Bonds shall have become due and payable after the occurrence of an Event of Default, all moneys thereafter received from the Tenant, from sale or reletting of the Project shall be deposited in the Debt Service Fund and all moneys in the Debt Service Fund shall be applied as follows:

first: To the payment of Default Administration Costs

second: To the payment of the whole amount then due and unpaid upon the Outstanding Bonds for principal and premium, if any, and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Bonds) on overdue principal and premium, if any, and on overdue installments of interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Bonds, then to the payment of such principal, premium and interest, without any preference or priority, ratably according to the aggregate amount so due; and

third: To the payment of any other amounts required to be paid under this Indenture or the Project Lease; and

fourth: To the payment of the remainder, if any, to the Tenant or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

(b) Whenever moneys are to be applied by the Issuer or the Trustee pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee in its sole discretion determines, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Trustee in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability to any Owner(s) of Bonds or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and moneys are applied in accordance with such provisions of this Indenture. Whenever the Trustee exercises such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and

shall not be required to make payment to any Owner(s) of Bonds of any unpaid Bond until the Bond certificate(s) representing Bonds owned are surrendered to the Trustee as Bond Registrar for appropriate endorsement, or for cancellation if fully paid.

(c) Whenever the principal of and premium, if any, and interest on all Bonds have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining in the Debt Service Fund shall be paid to the Tenant as provided in *Section 6.07(d)*.

ARTICLE X

THE TRUSTEE

Section 10.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform the trusts in the manner in which a corporate trustee ordinarily would perform the trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent corporate trust officer would exercise or use under the circumstances, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

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

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

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

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

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any ordinance, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture, the Site Lease or the Project Lease believed by it to be genuine and correct and to have been signed, presented or sent by the

proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is an Owner(s) of Bonds, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in substitution thereof.

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

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

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

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

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

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

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

Section 10.02. Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent. The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary costs, charges and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs, expenses and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Tenant for the payment of all fees, charges and expenses of the Trustee and any Paying Agents as provided in the Project Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment of principal of, redemption premium, if any, or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred, for Default Administration Costs and for any unpaid Additional Rent owing under the Project Lease.

Section 10.03. Notice to Owner(s) of Bonds if Default Occurs. If an Event of Default occurs, of which the Trustee is aware and of which it is required to take notice, the Trustee shall give written notice thereof to the Owner(s) of Bonds, as shown by the bond registration books required to be maintained by the Trustee and kept at the principal office of the Trustee.

Section 10.04. Intervention by the Trustee. In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Owner(s) of Bonds, the Trustee may intervene on behalf of the Owner(s) of Bonds and shall do so if requested in writing by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and if provided with indemnity satisfactory to the Trustee.

Section 10.05. Successor Trustee Upon Merger, Consolidation or Sale. Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 10.06. Resignation of Trustee. The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Tenant to take effect not sooner than 90 days after its delivery, whereupon the Issuer, with the consent of the Tenant, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified. In the event the Issuer and the Tenant do not promptly designate a successor trustee, then the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor.

Section 10.07. Removal of Trustee. As long as no Default or Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Issuer or the Tenant; provided, that such removal shall not be effective unless and until a successor trustee is appointed and qualified, and provided further than such removal shall not become effective until after 60 days from the date written notice of such proposed removal is given to the Trustee by first class mail. The Issuer or the Tenant, concurrently with giving notice to the Trustee, shall give notice by first class mail of the proposed removal of the Trustee to all Owner(s) of Bonds. Unless Owner(s) of Bonds owning at least 51% in principal

amount of Bonds then Outstanding object in writing to the proposed removal of the Trustee, such removal shall become effective from the date specified in the notices, provided that the successor trustee shall have been qualified and have accepted the duties and responsibilities of the Trustee as of such date. The Trustee may be removed at any time by the written direction of Owner(s) of Bonds owning at least 51% in aggregate principal amount of Bonds then Outstanding.

Section 10.08. Qualifications of Successor Trustee. Every successor Trustee appointed pursuant to the provisions of this Article shall be a trust company or bank in good standing, qualified to accept such trust and acceptable to the Issuer and the Tenant.

Section 10.09. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Tenant an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 10.10. 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 Project Lease, and the Tenant has failed after 30 days written notice to make such payment, the Trustee may pay such tax, assessment or governmental charge or insurance premium or rebate amount, without prejudice, however, to any rights of the Trustee or the Owner(s) of Bonds hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of, premium, if any, or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by Owner(s) of Bonds owning at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 10.11. 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) 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, the Site Lease or the Project Lease, and in particular in case of the enforcement of either a 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, 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 him or it such properties, rights, powers, trusts, duties and obligations, then 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 10.12. Annual Accounting. The Trustee shall render an annual accounting to the Tenant, to the Issuer upon request, and to any Owner(s) of Bonds requesting the same in writing and remitting reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 10.13. Performance of Duties under the Site Lease and Project Lease. The Trustee hereby accepts and agrees to perform, in such manner as is consistent with the terms of those instruments and this Indenture, all duties and obligations assigned to it under the Site Lease and Project Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 11.01. Supplemental Indentures Not Requiring Consent of Owner(s) of Bonds. The Issuer and the Trustee may from time to time, without the consent of any of the Owner(s) of Bonds, 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 Owner(s) of Bonds;

(b) To grant to or confer upon the Trustee for the benefit of the Owner(s) of Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owner(s) of Bonds or the Trustee or either of them;

(c) To more precisely identify the Project or to add additional property thereto;

(d) To subject to this Indenture additional revenues, properties or collateral; and

(e) To issue Additional Bonds as provided in *Section 2.09* hereof.

Section 11.02. Supplemental Indentures Requiring Consent of Owner(s) of Bonds.

(a) Exclusive of Supplemental Indentures described in *Section 11.01* hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owner(s) of Bonds owning not less than 66-2/3% 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 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 except as provided in subparagraph (b) of this *Section 11.02*, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the accrual of, or dates of payment of, interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, 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) Any provision of this Indenture or the Bonds may be amended with the written consent of the Owners owning 100% in aggregate principal amount then Outstanding.

Section 11.03. Tenant's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Tenant shall not become effective unless and until the Tenant shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of an amendment to the Project Lease executed by the Tenant in connection with the issuance of Additional Bonds under *Section 2.09* hereof shall be deemed to constitute consent of the Tenant to the execution of a Supplemental Indenture pursuant to *Section 2.09* hereof. 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 2.09* hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Tenant at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

ARTICLE XII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 12.01. Satisfaction and Discharge of the Indenture.

(a) When the principal of, premium, if any, and interest on all Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in *Section 12.02* hereof, and provision shall also have been made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds, then the duties of the Trustee under this Indenture shall cease. Thereupon the Trustee shall discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Debt Service Fund required to be paid to the Tenant

under *Section 6.07(d)* hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of, and interest accrued on, the Bonds. Notwithstanding anything otherwise provided herein, the provisions of this Indenture relating to compensation and indemnification of the Trustee shall survive satisfaction and discharge of the Indenture.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of, premium, if any, and interest due and payable upon all of the Bonds then Outstanding and all amounts required to be paid to the United States have been paid or such payment provided for in accordance with *Section 12.02* hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall deem this Indenture discharged.

Section 12.02. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and the applicable premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment. Bonds shall also be deemed paid if the Bond certificate(s) are surrendered to the Bank as paying agent, accompanied by a written communication from the registered Owner waiving payment and directing that they be cancelled without actual payment. At such time as a Bond shall be deemed to be paid hereunder, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities. As a condition to the Bonds being deemed paid, the Trustee shall have received an opinion of Bond Counsel to the effect that the conditions of this Section have been satisfied.

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

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

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.01. Consents and Other Instruments by Owner(s) of Bonds.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owner(s) of Bonds may be in any number of concurrent writings

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

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

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

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

Section 13.02. Limitation of Rights Under the Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be inferred from this Indenture or the Bonds is intended or shall be construed to give any person other than the parties hereto, and the Owner(s) of Bonds, any right, remedy or claim under or with respect to this Indenture, and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Tenant and the Owner(s) of Bonds as herein provided.

Section 13.03. Notices. Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, to the Notice Representative.

All notices given by certified or registered mail shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee. The Issuer, the Trustee and the Tenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent. Copies of all notices sent to the Lessor shall also be sent to Lessor's investor member at WNC Housing, L.P., 17782 Sky Park Circle, Irvine, California 92614-6404, Attn: Melanie Wenk, and any cure tendered on behalf of Lessor by a member of Lessor shall be accepted or rejected as if same had been tendered by Lessor.

Section 13.04. Suspension of Mail Service. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Trustee shall constitute a sufficient notice.

Section 13.05. 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 13.06. 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 13.07. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 13.08. Electronic Transactions. The transaction 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.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF BEL AIRE, KANSAS

[SEAL]

By: _____
Mayor

ATTEST:

City Clerk

"ISSUER"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on the _____ day of May, 2022 by Jim Benage as Mayor of the City of Bel Aire, Kansas, a municipal corporation of the State of Kansas.

[SEAL]

Notary Public

My Appointment Expires:

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

SECURITY BANK OF KANSAS CITY
Kansas City, Kansas,
as Trustee

By: _____
Name: Bonnie Mosher
Title: Vice President and Trust Officer

"TRUSTEE"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on the ____ day of _____ 2022, by Bonnie Mosher, Vice President and Trust Officer of Security Bank of Kansas City, a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF BONDS

FACE OF THE BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. NO TRANSFER, SALE, ASSIGNMENT OR HYPOTHECATION OF THIS SECURITY SHALL BE MADE. THE TRUSTEE SHALL BE CONSIDERED UNDER "STOP TRANSFER" ORDERS FOR ALL TRANSFERS OF BONDS UNLESS: (1) THERE SHALL HAVE BEEN DELIVERED TO THE ISSUER, THE TENANT AND THE TRUSTEE PRIOR TO THE TRANSFER, SALE ASSIGNMENT OR HYPOTHECATION AN OPINION OF NATIONALLY RECOGNIZED BOND OR SECURITIES COUNSEL, SATISFACTORY TO THE ISSUER, THE TENANT AND THE BANK, TO THE EFFECT THAT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND REGISTRATION UNDER ANY APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED; OR (2) THERE SHALL BE A REGISTRATION STATEMENT IN EFFECT UNDER THE SECURITIES ACT OF 1933 AND UNDER ANY APPLICABLE STATE SECURITIES LAWS REQUIRING A STATE-LEVEL REGISTRATION STATEMENT WITH RESPECT TO THE TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION, AND, IN THE CASE OF BOTH (1) AND (2), THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER. THE TRUSTEE SHALL NOT TRANSFER THIS BOND EXCEPT IN ACCORDANCE WITH THIS LEGEND AND THE CORRELATIVE PROVISIONS OF THE INDENTURE.

THIS SERIES 2022 BOND IS NOT AN OBLIGATION ON WHICH THE INTEREST IS EXCLUDABLE FROM GROSS INCOME UNDER SECTION 103 OF THE INTERNAL REVENUE CODE OF THE UNITED STATES OF AMERICA, AS AMENDED. THE OWNER OF THIS SERIES 2022 BOND SHOULD NOT REGARD THE INTEREST HEREON AS BEING EXEMPT FROM FEDERAL INCOME TAXATION.

No. R-_____

Not to exceed \$8,000,000

**UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF SEDGWICK
CITY OF BEL AIRE, KANSAS
MULTIFAMILY HOUSING REVENUE BOND
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)**

The City of Bel Aire, Kansas (the "Issuer"), hereby promises to pay, solely out of the sources hereinafter specified, Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company, the registered Owner hereof, or registered assigns (an "Owner"), the principal sum of

EIGHT MILLION DOLLARS

or such lesser principal sum as is actually advanced hereunder pursuant to the Project Lease to pay Project Costs (both hereinafter defined), plus interest on the unpaid balance hereof accruing from the date of advance until paid, in lawful money of the United States of America, at the rates and payable as follows:

a. From the Issue Date of this Bond or the subsequent date of advance to the Final Maturity Date (herein defined), interest shall be paid in arrears at the Fixed Rate (herein defined), until the Final Maturity Date.

b. One final payment in the amount of the entire unpaid principal balance hereunder (including all accrued and unpaid interest) shall be paid on the Final Maturity Date.

The "Final Maturity Date" shall be December 31, 2032.

The "Fixed Rate" shall mean 5.00% per annum, computed on the basis of 30 days per month for 360 days per year.

The "Issue Date" shall mean the date endorsed by the fiscal agent and paying agent on the Certificate of Authentication on this Bond.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Indenture.

This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated "City of Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC)," in the aggregate original principal amount not to exceed \$8,000,000 (the "Series 2022 Bonds"), issued for the purpose of providing funds to pay the costs to acquire, construct and equip a senior residence facility (the "Project"), to be leased by the Issuer to Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant"), under the terms of a Project Lease dated as of June 1, 2022, between the Issuer and the Tenant (the Project Lease, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Project Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 *et seq.* and pursuant to proceedings duly had by the governing body of the Issuer.

Payments of principal of and interest on this Bond shall be made in immediately available funds no later than 11:00 A.M., Central time, on the Payment Date, at the commercial banking office of Security Bank of Kansas City (the "Trustee") in Kansas City, Kansas or such other place as the Trustee may from time to time designate in writing, in lawful money of the United States of America. If the principal of or interest on this Bond falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding full Business Day. If payment is made by check, the check must be delivered to the Trustee at least 3 Business Days prior to the Payment Date.

The Series 2022 Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of June 1, 2022 (the Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the Issuer and the Trustee. 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 ratably and on a parity with the Series 2022 Bonds (the Series 2022 Bonds together with such Additional Bonds being herein referred to collectively as 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 Owner(s) of Bonds, and the terms upon which the Bonds are issued and secured.

The Series 2022 Bonds are subject to redemption prior to maturity, at the option of the Issuer, upon instructions from the Tenant, on and after June 22, 2022, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium.

When any Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. If less than all of the Outstanding Bonds of this series are called for redemption, Bonds shall be redeemed as directed in writing by the Tenant. Bonds of less than a full maturity shall be selected by the Trustee in such equitable manner as it may determine. All Bonds so called for redemption will cease to bear interest on the specified Redemption Date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Project Lease, and are secured by a pledge of the Project (including any Project Additions) as described in the Project Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Project Lease, all as provided in the Indenture. The Bonds and the interest thereon do not constitute a debt or general obligation of the Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds do not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Project Lease, Basic Rent is to be paid by the Tenant directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated " City of Bel Aire, Kansas Debt Service Fund (Homestead Senior Residences Bel Aire, LLC)."

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

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

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

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

IN WITNESS WHEREOF, Issuer has caused this Bond certificate to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused the Bonds to be dated as of June 22, 2022.

CITY OF BEL AIRE, KANSAS

(Facsimile Seal)

By: _____
Mayor

ATTEST:

City Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond certificate evidences ownership of the City of Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC), as described herein and in the within-mentioned Trust Indenture. The date of authentication of this Bond is _____.

Security Bank of Kansas City
Kansas City, Kansas,
Trustee

By: _____
Authorized Signature

(FORM OF ASSIGNMENT)

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

Print or Type Name and Address of Transferee

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

Dated: _____

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

Signature Guaranteed By:

[Seal of Bank]

(Name of Eligible Guarantor Institution)

By: _____
Title:_____

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

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

GILMORE & BELL, P.C.
MAY 24, 2022

SITE LEASE

BY AND BETWEEN

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC
As Lessor

AND

CITY OF BEL AIRE, KANSAS
As Issuer

DATED AS OF JUNE 1, 2022

SITE LEASE

TABLE OF CONTENTS

	Page
Parties	1
Recitals	1

ARTICLE I

Section 1.1.	Representation and Covenants of Lessor.	Error! Bookmark not defined.
Section 1.2.	Representations and Covenants by the Issuer.	Error! Bookmark not defined.

ARTICLE II

Section 2.1.	Grant of Leasehold.	Error! Bookmark not defined.
Section 2.2.	Consideration.	Error! Bookmark not defined.
Section 2.3.	Impositions.	Error! Bookmark not defined.
Section 2.4.	Contest of Impositions.	Error! Bookmark not defined.
Section 2.5.	Assignment and Sublease.	Error! Bookmark not defined.
Section 2.6.	Use of Real Property.	Error! Bookmark not defined.
Section 2.7.	Covenant Against Other Assignments.	Error! Bookmark not defined.

ARTICLE III

Section 3.1.	Improvements.	Error! Bookmark not defined.
Section 3.2.	Mechanic's Liens.	Error! Bookmark not defined.
Section 3.3.	Contest of Liens.	Error! Bookmark not defined.

ARTICLE IV

Section 4.1.	Indemnity.	Error! Bookmark not defined.
Section 4.2.	Access to Real Property.	Error! Bookmark not defined.

ARTICLE V

Section 5.1.	Default Remedies.	Error! Bookmark not defined.
Section 5.2.	Quiet Enjoyment and Non-Disturbance of Possession.	Error! Bookmark not defined.
Section 5.3.	Surrender of Possession.	Error! Bookmark not defined.
Section 5.4.	Notices.	Error! Bookmark not defined.
Section 5.5.	Rights and Remedies.	Error! Bookmark not defined.
Section 5.6.	Waiver.	Error! Bookmark not defined.

ARTICLE VI

Section 6.1.	Purpose of Site Lease.	Error! Bookmark not defined.
Section 6.2.	Limitation of Liability.	Error! Bookmark not defined.

Section 6.3. Amendments. **Error! Bookmark not defined.**

ARTICLE VII

Section 7.1. Construction and Enforcement..... **Error! Bookmark not defined.**
Section 7.2. Partial Invalidity..... **Error! Bookmark not defined.**
Section 7.3. Binding Effect. **Error! Bookmark not defined.**
Section 7.4. Section Headings..... **Error! Bookmark not defined.**
Section 7.5. Execution of Counterparts; Electronic Transactions... **Error! Bookmark not defined.**

Signatures 7

SITE LEASE

THIS SITE LEASE entered into as of June 1, 2022 between Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Lessor"), and the City of Bel Aire, Kansas a municipal corporation incorporated as a city of the second class under the laws of the State of Kansas (the "Issuer");

WITNESSETH:

WHEREAS, Lessor has requested that the Issuer issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) (the "Bonds") under and pursuant to K.S.A. 12-1740 *et seq.*, as amended (the "Act"), for the purpose of financing the acquisition, construction and equipping of a senior residence facility (the "Improvements"), which Bonds shall be issued and secured under the provisions of a certain Ordinance duly enacted by the Issuer and a certain Trust Indenture dated as of June 1, 2022 (the "Indenture") entered into between the Issuer and Security Bank of Kansas City, as Trustee (the "Trustee"); and

WHEREAS, the Improvements are to be constructed and installed on a tract of land (the "Real Property") more specifically described in *Schedule I* attached hereto, which property is owned by the Lessor; and

WHEREAS, the Project, consisting of the leasehold under this Site Lease and the Improvements to be located on the Real Property shall be leased by the Issuer to the Lessor, as Tenant, under and pursuant to a certain Lease dated as of June 1, 2022 (the "Project Lease"); and

WHEREAS, in consideration of the issuance of the Bonds by the Issuer and the execution and delivery by the Issuer of the Project Lease, the Lessor is willing to lease the Real Property to provide the Issuer a leasehold interest in the Real Property; and

WHEREAS, the Lessor will not take any action to disturb, alter, avoid or set aside the leasehold interest of the Issuer created under this Site Lease as long as the Bonds are outstanding;

THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which consideration is hereby acknowledged, the Lessor and the Issuer agree as follows:

ARTICLE I

Section 1.1. Representation and Covenants of Lessor. The Lessor makes the following representations and covenants:

(a) It is a Kansas limited liability company duly authorized and qualified to do business in the state of Kansas (the "State"), with lawful power and authority to enter into this Site Lease, acting by and through a designated signatory.

(b) It (1) shall maintain its authority to do business in the State, and (2) shall not initiate any proceedings to liquidate without providing written notice to the Issuer and Trustee.

(c) To the knowledge of the Lessor, neither the execution nor delivery of this Site Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Site Lease contravenes any provisions of its articles of

organization and operating agreement, or conflicts with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which it is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a default (without regard to any required notice or the passage of any period of time) under any of the foregoing or would result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its property or assets under the terms of any mortgage, debt, agreement, indenture or instrument, or violates any existing law, administrative regulation or court order or consent decree to which it is subject.

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

Section 1.2. Representations and Covenants by the Issuer. The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows:

(a) It is a municipal corporation duly incorporated and existing as a city of the second class under the constitution and laws of the State. Under the provisions of the Act, the Issuer has the power to enter into and perform the transactions contemplated by this Site Lease and the Project Lease and to carry out its obligations hereunder and thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against its interest in, the Real Property, except for the pledge of its leasehold interest in the Real Property under this Site Lease to the payment of the Bonds.

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

(d) It has duly authorized the execution and delivery of this Site Lease in connection with the execution and delivery of the Project Lease.

ARTICLE II

Section 2.1. Grant of Leasehold. Lessor, in consideration of the issuance of the Bonds and the contemporaneous execution and delivery of the Project Lease, hereby rents, leases and lets unto the Issuer, and the Issuer hereby rents, leases and hires from Lessor, upon and subject to the terms and conditions hereinafter set forth, the Real Property for a term commencing as of the date of this Site Lease and ending on December 31, 2032 (or such earlier date as the principal of, redemption premium, if any, and interest on all Outstanding Bonds is paid in full) (the "Site Lease Term").

Section 2.2. Consideration. The issuance of the Bonds and the contemporaneous execution and delivery of the Project Lease by the Issuer are the sole consideration to be received by the Lessor for the grant of this Site Lease. No cash rentals shall be payable hereunder.

Section 2.3. Impositions. Lessor, as Tenant under the Project Lease, shall bear, pay and discharge, before the delinquency thereof, any and all taxes and assessments, general and special, which may be lawfully levied or assessed against or in respect of the Real Property, or any part thereof, or any improvements at any time erected thereon, and all water and sewer charges, assessments (including special assessments) and other similar governmental charges whatsoever, foreseen or unforeseen, which if not paid

when due would encumber the fee simple title to the Real Property ("Impositions"). In the event any Impositions may be lawfully paid in installments, Lessor shall be required to pay only such installments thereof as become due and payable during the term of this Site Lease, as and when the same become due and payable.

Section 2.4. Contest of Impositions. Lessor, as Tenant under the Project Lease, shall have the right to contest the validity or amount of any Imposition by appropriate legal proceeding instituted at least ten days before the Imposition complained of becomes delinquent, on the condition that Lessor or its sublessee shall give Issuer written notice of its intention to do so and shall diligently prosecute any such contest, effectively stay or prevent official or judicial sale therefor, under execution or otherwise, and shall promptly pay any final judgment enforcing the Imposition so contested and thereafter secure record release or satisfaction thereof.

Section 2.5. Assignment and Sublease. Issuer covenants that it will not, without Lessor's written consent, unless required by law, ordinance or the terms of the Project Lease or the Indenture, sell, assign, sublease or otherwise part with or encumber its interest in the Real Property at any time during the Site Lease Term, except that Issuer may sublease the Real Property to the Lessor as a part of property leased by the Issuer pursuant to the Project Lease.

Section 2.6. Use of Real Property. Except as may be stated to the contrary in this Site Lease, Issuer shall have no right or authority with respect to the Real Property except to lease the Real Property pursuant to the Project Lease for use as provided therein. The parties will comply with all federal, state and local laws, regulations and requirements as to the manner of use or the condition of the Real Property, or of adjoining public ways, now or hereafter applicable to the Real Property, and Issuer shall comply with the mandatory requirements of all insurers under policies required to be carried under the provisions of the Project Lease.

Section 2.7. Covenant Against Other Assignments. Neither party to this Site Lease shall assign or in any manner transfer its interest under this Site Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements set forth herein, and, to the extent applicable, the Indenture and the Project Lease.

ARTICLE III

Section 3.1. Improvements. Issuer shall have the right, from the proceeds of the Bonds, to construct on the Real Property, or in the air space above the Real Property, such building improvements as the Issuer from time to time may deem necessary or advisable in accordance with and subject to the provisions of the Project Lease.

Section 3.2. Mechanic's Liens. Neither party to the Site Lease shall permit or suffer anything to be done whereby the Real Property, or any part thereof, may be encumbered by any mechanic's or other similar lien. If any mechanic's or other similar lien is filed against the Real Property, or any part thereof, the same shall be dealt with as provided in the Project Lease. Notice is hereby given that except to the extent payable from the proceeds of the Bonds issued concurrently with the execution and delivery of the Project Lease, the Issuer does not authorize or consent to the furnishing of any labor or materials to the Real Property and it shall not be liable for them.

Section 3.3. Contest of Liens. In the event any mechanic's or other similar lien is filed against the Real Property, or any part thereof, the Issuer or the Lessor may contest such lien in the manner and as provided in the Project Lease.

ARTICLE IV

Section 4.1. Indemnity. The Lessor shall indemnify the Issuer from any and all claims, demands, liabilities and costs, including attorney's fees, arising from damage or injury, actual or claimed, to property or persons occurring or allegedly occurring in, on or about the Project during the Site Lease Term; provided, however, that the indemnity described in this section shall be subject in all respects to the provisions of the Project Lease.

Section 4.2. Access to Real Property. The Issuer, for itself and its duly authorized representatives and agents, including the Tenant under the Project Lease and the Trustee under the Indenture, shall have the right to enter the Real Property at any reasonable time throughout the Site Lease Term for the purposes of performing any work made necessary by reason of any Event of Default under the Project Lease, and, while an Event of Default (as defined therein) is continuing under the Project Lease, for the purpose of exhibiting the Real Property and the improvements constructed thereon to prospective purchasers, lessees or mortgagees.

ARTICLE V

Section 5.1. Non-Disturbance of Leasehold Interest. Lessor and the Issuer each covenant and agree with one another, that as long as the Issuer, its sublessee, their successors or assigns, shall continue to perform all obligations provided for in this Site Lease, including the discharge of all obligations and covenants hereunder, the Issuer, its assignee or sublessee shall have a leasehold interest in the Real Property, notwithstanding the occurrence of any Event of Default under the Project Lease until this Site Lease is terminated according to its terms.

Section 5.2. Release of Leasehold Interest. Upon cancellation or termination of this Site Lease, the Issuer shall release its leasehold interest in the Real Property to Lessor as provided in the Project Lease.

Section 5.3. Notices. All notices required to be given hereunder shall be given to the notice representative designated for each of the parties in the Project Lease. To be effective, notices required or desired to be given hereunder shall be given in the manner provided in the Project Lease. Copies of all notices sent to the Lessor shall also be sent to Lessor's investor member at WNC Housing, L.P., 17782 Sky Park Circle, Irvine, California 92614-6404, Attn: Melanie Wenk, and any cure tendered on behalf of Lessor by a member of Lessor shall be accepted or rejected as if same had been tendered by Lessor.

Section 5.4. Rights and Remedies. The rights and remedies reserved by the parties hereto, their successors and assigns and those provided by law shall be construed as cumulative and continuing rights and remedies.

Section 5.5. Waiver. No waiver of any breach of any covenant or agreement contained in this Site Lease 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 the event of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any

performance without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any other default.

ARTICLE VI

Section 6.1. Purpose of Site Lease. The parties acknowledge and agree that this Site Lease is executed and delivered concurrently with the execution and delivery of the Project Lease and the other documents and agreements executed in connection therewith and as a condition precedent thereto, and that the Trustee and the owners of the Bonds shall be deemed to be third party beneficiaries.

Section 6.2. Limitation of Liability. The liability of Issuer under this Site Lease for any payments to be made to or for the account of Lessor is specifically limited, such that the Issuer shall have no liability beyond the value of the Real Property, the Project, or the rentals and receipts to be received by the Issuer under the Project Lease.

Section 6.3. Amendments. This Site Lease may be amended or modified in the manner prescribed in the Project Lease with respect to amendments thereto.

ARTICLE VII

Section 7.1. Construction and Enforcement. This Site Lease shall be construed and enforced in accordance with the laws of the State of Kansas. The provisions of this Site Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Project Lease. Words and terms used herein shall have the meanings set forth in the Project Lease if not expressly defined in this Site Lease.

Section 7.2. Partial Invalidity. If for any reason any provision hereof shall be termed to be invalid or unenforceable, such partial invalidity shall not affect the remainder of the provisions hereof.

Section 7.3. Binding Effect. The covenants, agreements and conditions herein shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

Section 7.4. Section Headings. The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Site Lease or as affecting the true meanings of the provisions hereof.

Section 7.5. Execution of Counterparts; Electronic Transactions. This Site Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. The transaction 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.

ARTICLE VIII

Section 8.1. Mortgage Insurance Protections. In the event of a casualty loss, the first lien ground lease mortgagee shall have participation rights in the adjustment and losses related to hazard

insurance proceeds. Any payment of hazard insurance proceeds shall be paid to such mortgagee or independent trustee acceptable to mortgagee. Lessor and Issuer will not be entitled to receive any hazard insurance proceeds until either the Real Property has been restored or the first lien ground lease mortgagee has been paid in full. Any obligation to rebuild is limited to the amount of available insurance proceeds and insurance proceeds will be applied in accordance with the requirements of the first lien ground lease mortgagee. Thereafter, any insurance proceeds will belong to Lessor.

Section 8.2. Mortgagee Condemnation Protections. In the event of a condemnation casualty loss, the first lien ground lease mortgagee shall have participation rights in the adjustment and losses. Any payment of condemnation proceeds shall be paid to such mortgagee or independent trustee acceptable to mortgagee. Lessor and Issuer will not be entitled to receive any condemnation proceeds until the first lien ground lease mortgagee has been paid in full. Any condemnation award will be applied in accordance with the requirements of the first lien ground lease mortgagee. Thereafter, any condemnation award will belong to Lessor. In the event of a partial taking, Issuer may rebuild and restore unless the first lien mortgagee consents to a distribution of proceeds, in which case proceeds will be applied first toward the first lien ground lease mortgage.

Section 8.3. Recording. Either this Site Lease or a memorandum thereof will be recorded in the land records.

Section 8.4. Cancellation. Any cancellation of this Site Lease will require the written consent of any ground lease mortgagee.

Section 8.5. Notices. Lessor will give any ground lease mortgagee written notice prior to exercising any remedies after default and will forward to such ground lease mortgagee all other notices sent to Issuer or Trustee excluding rent and periodic billing notices.

Section 8.6. Estoppels. Lessor will give any ground lease mortgagee a mutually acceptable estoppel certificate covering the Site Lease on request.

Section 8.7. Amendments. The Site Lease will not be materially modified or restated without the prior written consent of any ground lease mortgagee.

Section 8.8. Cure Rights. Lessor and Issuer grant any ground lease mortgage the right to receive notice of and a reasonable opportunity to cure any event of default under the Site Lease. Such cure period shall be at least equal to any cure period to which Issuer has a right. Lessor waives any default that cannot be cured by such mortgagee, including specifically non-monetary defaults and bankruptcy-related issues personal to Issuer.

Section 8.9. Foreclosure. Any ground lease mortgagee is hereby granted an unrestricted right to foreclose and assign its rights under the Site Lease.

Section 8.10. New Site Lease. If the Site Lease terminates for any reason, Lessor will enter into a new site lease with the first lien mortgagee or its nominee on the same terms and conditions as the existing Lease and with the same title priority.

Section 8.11. Ground Lease Mortgagee Liability. The personal liability of any ground lease mortgagee is hereby limited to such mortgagees interest in the Site Lease. After an assignment of ground lease mortgagee's interest, the ground lease mortgagee and its assigns are automatically release from liability under the Site Lease.

Section 8.12. Fee Mortgage. Lessor will not mortgage the fee estate without expressly subordinating the mortgage to the ground lease mortgagee.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JACKSON)

This instrument was acknowledged before me on the ____ day of _____, 2022, by Thomas A. Bishop, as President of Homestead Affordable Housing, Inc.. which is the Manager and Sole Member of Homestead Senior Housing Bel Aire LLC, which is the Managing Member of Homestead Senior Residences Bel Aire, LLC.

Notary Public

(SEAL)

My Appointment Expires:

"LESSOR"

CITY OF BEL AIRE, KANSAS

By: _____
Jim Benage, Mayor

(SEAL)

ATTEST:

Melissa Krehbiel, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by
Jim Benage, Mayor of the City of Bel Aire, Kansas.

Notary Public

(SEAL)

My Appointment Expires:

"ISSUER"

SCHEDULE I

SCHEDULE I TO THE SITE LEASE DATED AS OF JUNE 1, 2022, BETWEEN
HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC AND THE CITY OF BEL
AIRE, KANSAS

PROPERTY SUBJECT TO LEASE

(A) The following described real estate located in Sedgwick County, Kansas, to wit:

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

the real property constituting the "Real Property" as referred to in the Site Lease, subject to Permitted Encumbrances.

GILMORE & BELL, P.C.
MAY 24, 2022

CITY OF BEL AIRE, KANSAS

AS ISSUER

AND

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC

AS TENANT

PROJECT LEASE

DATED AS OF JUNE 1, 2022

\$8,000,000

MULTIFAMILY HOUSING REVENUE BONDS

SERIES 2022

(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)

PROJECT LEASE

TABLE OF CONTENTS

	<u>Page</u>
<p style="text-align: center;">ARTICLE I</p>	
Section 1.1.	Definitions..... 1
Section 1.2.	Representations and Covenants by the Tenant..... 5
Section 1.3.	Representations and Covenants by the Issuer. 6
<p style="text-align: center;">ARTICLE II</p>	
Section 2.1.	Granting of Leasehold..... 7
<p style="text-align: center;">ARTICLE III</p>	
Section 3.1.	Basic Rent. 7
Section 3.2.	Additional Rent. 7
Section 3.3.	Rent Payable Without Abatement or Setoff..... 7
Section 3.4.	Prepayment of Basic Rent..... 7
Section 3.5.	Deposit of Rent by the Trustee..... 8
Section 3.6.	Acquisition of Bonds. 8
<p style="text-align: center;">ARTICLE IV</p>	
Section 4.1.	Disposition of Original Proceeds; Project Fund..... 8
<p style="text-align: center;">ARTICLE V</p>	
Section 5.1.	Acquisition of Interest in Real Property and Improvements..... 8
Section 5.2.	Project Contracts. 9
Section 5.3.	Payment of Project Costs for Buildings and Improvements. 9
Section 5.4.	Payment of Project Costs for Machinery and Equipment. 9
Section 5.5.	Completion of Project. 10
Section 5.6.	Deficiency of Project Fund. 10
Section 5.7.	Right of Entry by the Issuer and the Trustee..... 10
Section 5.8.	Machinery and Equipment Purchased by the Tenant. 10
Section 5.9.	Project Property of the Issuer..... 10
Section 5.10.	Kansas Retailers' Sales Tax..... 10
<p style="text-align: center;">ARTICLE VI</p>	
Section 6.1.	Insurance Requirements. 11
Section 6.2.	General Insurance Provisions..... 11
Section 6.3.	Evidence of Title. 12

ARTICLE VII

Section 7.1.	Impositions.....	12
Section 7.2.	Receipted Statements.	12
Section 7.3.	Contest of Impositions.	13
Section 7.4.	Ad Valorem Taxes.	13

ARTICLE VIII

Section 8.1.	Use of Project.....	13
Section 8.2.	Environmental Provisions.	14

ARTICLE IX

Section 9.1.	Sublease by the Tenant.	15
Section 9.2.	Assignment by the Tenant.....	15
Section 9.3.	Release of the Tenant.	16
Section 9.4.	Mergers and Consolidations.....	16
Section 9.5.	Covenant Against Other Assignments.	16

ARTICLE X

Section 10.1.	Repairs and Maintenance.	16
Section 10.2.	Removal, Disposition and Substitution of Machinery or Equipment.	16

ARTICLE XI

Section 11.1.	Alteration of Project.....	17
---------------	----------------------------	----

ARTICLE XII

Section 12.1.	Additional Improvements.....	17
---------------	------------------------------	----

ARTICLE XIII

Section 13.1.	Securing of Permits and Authorizations.	18
Section 13.2.	Mechanic's Liens.....	18
Section 13.3.	Contest of Liens.	18
Section 13.4.	Utilities.....	18

ARTICLE XIV

Section 14.1.	Indemnity.	18
---------------	-----------------	----

ARTICLE XV

Section 15.1.	Access to Project.....	19
---------------	------------------------	----

ARTICLE XVI

Section 16.1.	Option to Extend Basic Term.....	19
---------------	----------------------------------	----

ARTICLE XVII

Section 17.1.	Option to Purchase Project.....	19
Section 17.2.	Quality of Title and Purchase Price.	20
Section 17.3.	Closing of Purchase.	20
Section 17.4.	Effect of Failure to Complete Purchase.	20
Section 17.5.	Application of Condemnation Awards if the Tenant Purchases Project.	21
Section 17.6.	Option to Purchase Unimproved Portions of Real Property.	21
Section 17.7.	Quality of Title - Purchase Price.....	21
Section 17.8.	Closing of Purchase.	21
Section 17.9.	Effect of Release on Lease.....	22
Section 17.10.	Effect of Failure to Complete Purchase.	22

ARTICLE XVIII

Section 18.1.	Damage and Destruction.	22
Section 18.2.	Condemnation.	22
Section 18.3.	Effect of Tenant's Defaults.....	23

ARTICLE XIX

Section 19.1.	Change of Circumstances.....	23
---------------	------------------------------	----

ARTICLE XX

Section 20.1.	Remedies on Default.....	24
Section 20.2.	Survival of Obligations.	25
Section 20.3.	No Remedy Exclusive.....	25

ARTICLE XXI

Section 21.1.	Performance of the Tenant's Obligations by the Issuer.....	26
---------------	--	----

ARTICLE XXII

Section 22.1.	Surrender of Possession.	26
---------------	-------------------------------	----

ARTICLE XXIII

Section 23.1.	Notices.	26
---------------	---------------	----

ARTICLE XXIV

Section 24.1.	Triple-Net Lease.	27
Section 24.2.	Funds Held by the Trustee After Payment of Bonds.	27

ARTICLE XXV

Section 25.1.	Rights and Remedies.....	27
Section 25.2.	Waiver of Breach.	27
Section 25.3.	The Issuer Shall Not Unreasonably Withhold Consents and Approvals.....	27

ARTICLE XXVI

Section 26.1. The Issuer May Not Release Interest without Tenant Consent. 28

Section 26.2. Quiet Enjoyment and Possession. 28

Section 26.3. Issuer's Obligations Limited..... 28

ARTICLE XXVII

Section 27.1. Investment Tax Credit; Depreciation. 28

ARTICLE XXVIII

Section 28.1. Amendments. 29

Section 28.2. Granting of Easements. 29

Section 28.3. Security Interests..... 29

Section 28.4. Construction and Enforcement..... 30

Section 28.5. Invalidity of Provisions of Project Lease. 30

Section 28.6. Covenants Binding on Successors and Assigns. 30

Section 28.7. Section Headings..... 30

Section 28.8. Execution of Counterparts; Electronic Transactions..... 30

Signatures and Acknowledgments 31

Appendix A, Form of Requisition for Payment of Project Costs A-1

Appendix B, Form of Certificate of Completion B-1

Schedule I, Description of Property S-1

PROJECT LEASE

THIS PROJECT LEASE, made and entered into as of June 1, 2022 between the City of Bel Aire, Kansas (the "Issuer"), and Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant").

WITNESSETH:

WHEREAS, the Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Project Lease by and through its governing body; and

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

(a) Lease the Real Property from the Tenant pursuant to the Site Lease and acquire the Improvements;

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

(c) Issue, for the purpose of paying Project Costs, the Bonds under and pursuant to and subject to the provisions of the Act and the Indenture, the Indenture being incorporated herein by reference and authorized by an Ordinance of the governing body of the Issuer; and

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

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

ARTICLE I

Section 1.1. Definitions.

Capitalized terms not otherwise defined in this Project Lease shall have the meanings set forth in the Indenture. In addition to the words, terms and phrases defined in the Indenture, the Site Lease and elsewhere in this Project Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth below, unless some other meaning is plainly intended:

"Additional Rent" means all fees, charges, costs and expenses of the Trustee or the Issuer (including reasonable attorneys' fees), all Impositions, all Default Administration Costs, all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Project Lease and any and all expenses (including reasonable attorneys' fees) incurred by the Issuer or the Trustee in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Project Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds and the administration or enforcement of any rights or obligations under this Project Lease, the Indenture except (a) the reasonable fees and expenses in connection with the

replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The fees, charges, costs and expenses of the Issuer shall include, but not be limited to, any and all costs incurred by the Issuer in connection with the administration or enforcement of any rights, duties, or obligations under this Project Lease, the exercise or pursuit of any remedy upon an Event of Default, the amendment of this Project Lease, the granting of consents, easements or similar actions or any other action required of or available to the Issuer under the terms of this Project Lease.

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

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

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

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

"Basic Rent Payment Date" means December 31, 2032 or such earlier date of redemption.

"Basic Term" means that term commencing as of the delivery of this Project Lease and ending on December 31, 2032, subject to prior termination as specified in this Project Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*

"Certificate of Completion" means a written certificate signed by the Authorized Tenant Representative stating that (1) the Improvements have been substantially completed in accordance with the plans and specifications prepared or approved by the Issuer or the Tenant, as the case may be; (2) the Improvements have been substantially completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the Project are located or installed upon the Real Property; and (5) if required by ordinances duly adopted by the Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Improvements. A form of Certificate of Completion is attached as *Appendix B*.

"Completion Date" means the date on which the Improvements are certified as substantially completed in accordance with *Section 5.5* of this Project Lease.

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

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

"Environmental Law" means CERCLA, SARA, and any other federal, state or local environmental statute, regulation or ordinance presently in effect or coming into effect during the Term of this Project Lease.

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

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

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

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

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant; or

(e) A default under the Site Lease on the part of the Tenant, as Lessor, which remains unremedied after any applicable grace period.

"Full Insurable Value" means full actual replacement cost less physical depreciation.

"Hazardous Substances" shall mean "hazardous substances" as defined in CERCLA.

"Impositions" means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant's interest therein, including any new lawful taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal

property, and further including all water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Issuer's interest in the Project.

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

"Net Proceeds" means the gross proceeds from the insurance (including without limitation title insurance) or condemnation award with respect to which that term is used remaining after the payment of all expenses (including without limitation attorneys' fees and any expenses of the Issuer, the Tenant, the Trustee or any other Owner) incurred in the collection of such gross proceeds.

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

(1) With respect to the Tenant:

Homestead Senior Residences Bel Aire, LLC
603 Pennsylvania
Holton KS 66436
Attn: Manager

(2) With respect to the Issuer:

City of Bel Aire, Kansas
7651 E. Central Park Ave.
Bel Aire, Kansas 67226
Attn: City Clerk

(3) With respect to the Trustee:

Security Bank of Kansas City
701 Minnesota Avenue, Suite 206
Kansas City, Kansas 66101
Attn: Corporate Trust Department

"Owner's Title Evidence" means for purposes of *Section 6.3* of this Project Lease, either (1) an owner's or lender's policy of title insurance insuring the Tenant's fee simple title in the Real Property or (2) a certificate of title from a title insurance company evidencing Tenant's fee simple title in the Real Property.

"Permanent Lender" means PNC Bank, National Association and/or the Federal Housing Loan Mortgage Corporation, their successors and/or assigns.

"Permitted Encumbrances" means all easements, liens and rights-of-way of record at the time of lease of the Real Property to the Issuer, and any mortgages, liens or other encumbrances or title exceptions referenced in the Owner's Title Evidence.

"Project Contracts" means a contract or contracts with respect to the acquisition and/or construction of the Improvements entered into by the Tenant or the Issuer.

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

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

"SARA" means the Superfund Amendments and Reauthorization Act of 1986, as now in effect and as hereafter amended.

"State" means the State of Kansas.

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

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

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

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

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

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

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

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

(g) The estimated total cost of the Improvements to be financed by the proceeds of the Bonds, plus interest on the Bonds during acquisition, construction and installation of the Improvements, and Costs of Issuance of the Bonds, will not be less than the original aggregate principal amount of the Bonds.

(h) After reasonable inquiry and investigation, the Tenant is not aware of (i) any Hazardous Substances generated from or located on the Project; (ii) any prior use of the Real Property which might reasonably involve Hazardous Substances; or (iii) any investigations, complaints or inquiries of any kind, from any source, concerning Hazardous Substances with respect to the Project or properties adjoining the Project.

(i) The Tenant will not use or permit the Project to be used by any other person or entity in any manner which would involve the generation, storage, disposal or transportation of Hazardous Substances, except in strict compliance with applicable Environmental Laws.

(j) The proceeds of the Bonds are to be used (i) to acquire, construct, install, equip and furnish the Project, and (ii) to pay certain costs related to the issuance of the Bonds.

(k) Subject to the provisions of *Section 10.2*, all Improvements and machinery and equipment comprising the Project will be located and maintained entirely and exclusively on the Real Property to and until the principal of, redemption premium, if any, and interest on the Bonds have been satisfied in full.

Section 1.3. Representations and Covenants by the Issuer.

The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows:

(a) It is a municipal corporation duly incorporated and existing as a city of the second class under the constitution and laws of the State. Under the provisions of the Act and the Ordinance, the Issuer has the power to enter into and perform the transactions contemplated by this Project Lease and the Indenture and to carry out its obligations hereunder and thereunder.

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

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

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

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

ARTICLE II

Section 2.1. Granting of Leasehold.

The Issuer by these presents hereby rents, leases and lets the Project unto the Tenant and the Tenant hereby rents, leases and hires the Project for the Term from the Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth.

ARTICLE III

Section 3.1. Basic Rent.

The Issuer reserves and the Tenant covenants and agrees to pay Basic Rent to the Trustee, as assignee of the Issuer, for the account of the Issuer, for deposit in the Debt Service Fund, on each Basic Rent Payment Date. Basic Rent shall be payable at the principal office of the Trustee on each Basic Rent Payment Date.

Section 3.2. Additional Rent.

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

Section 3.3. Rent Payable Without Abatement or Setoff.

The Tenant covenants and agrees with and for the express benefit of the Issuer and the Owner that all payments of Basic Rent and Additional Rent shall be made by the Tenant as the same become due, and that the Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, 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 Improvements shall have been acquired, started or completed, or whether the Issuer's interest in the Project or any part thereof is defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of the Tenant or any subtenant, any Change of Circumstances, any change in the tax or other laws of the United States of America, the State, or any municipal corporation of either, 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 or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Project Lease, and the Tenant hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Project Lease or which releases or purports to release the Tenant therefrom. Nothing in this Project Lease shall be construed as a waiver by the Tenant of any rights or claims the Tenant may have against the Issuer under this Project Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Project Lease that the Tenant shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Project Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owner.

Section 3.4. Prepayment of Basic Rent.

The Tenant may at any time prepay all or any part of the Basic Rent. Prepayments of Basic Rent will be applied to redemption of the Bonds (other than mandatory sinking fund redemption), including payment of redemption premium, as directed in writing by the Tenant, to the extent that Bonds are subject to optional redemption at the time of prepayment. Otherwise, prepayments of Basic Rent will be deposited in the Debt

Service Fund to be applied to purchase of Bonds as provided in the Indenture, or to optional redemption of Bonds (including redemption premium and interest) at the earliest date on which Bonds are subject to optional redemption.

Section 3.5. Deposit of Rent by the Trustee.

As assignee of the Issuer's rights hereunder, the Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Project Lease and the Indenture.

Section 3.6. Acquisition of Bonds.

If the Tenant acquires any or all of the Outstanding Bonds, it may present the certificate(s) representing such part of the Bonds to the Trustee for cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced or terminated, as the case may be, in the same manner as provided for prepayments by the Tenant of Basic Rent. In no event, however, shall the Tenant's obligation to pay Basic Rent be reduced in such a manner that the Trustee shall not have on deposit in the Debt Service Fund on the next succeeding Payment Date, funds sufficient to pay the maturing principal of, redemption premium, if any, and interest on Outstanding Bonds as and when the same shall become due and according to the terms of the Bonds; except in the case when Tenant owns and surrenders all of the Outstanding Bonds.

ARTICLE IV

Section 4.1. Disposition of Original Proceeds; Project Fund.

Except as otherwise provided below, the Original Proceeds shall be paid over to the Trustee for the account of the Issuer as the Bonds are issued and applied as set forth in *Section 5.02* of the Indenture. Notwithstanding any statement set forth in this Project Lease or in the Indenture to the contrary, in the event Tenant has completed the Project prior to the Issue Date with its own funds, then Tenant shall not be required to deposit the Original Proceeds with the Trustee. In such an event, the Tenant shall certify to the Issuer and Trustee that the Project has been completed and paid in full, whereupon the Issuer and Trustee shall deliver the Bonds to the Tenant on the Issue Date.

ARTICLE V

Section 5.1. Acquisition of Interest in Real Property and Improvements.

The Tenant shall prior to or concurrently with the issuance of the Bonds, execute and deliver the Site Lease under which the Tenant shall lease to the Issuer, subject to Permitted Encumbrances, the Real Property as described in *Schedule I*, and such of the Improvements as are then completed, installed or in progress. The Tenant shall also concurrently with delivery of the Site Lease make provisions for the discharge or subordination to the interests acquired by the Issuer of any liens or encumbrances incurred by it in connection with the construction, installation or development of the Improvements, other than Permitted Encumbrances.

Section 5.2. Project Contracts.

Prior to the delivery of this Project Lease, the Tenant may have entered into a contract or contracts with respect to the acquisition and/or construction of the Improvements. Those contracts, and any such contracts entered into by the Tenant or the Issuer after delivery of this Project Lease, are hereinafter referred to as the "Project Contracts." Prior to the delivery hereof, certain work has been or may have been performed on the Improvements pursuant to the Project Contracts or otherwise. The Tenant hereby covenants with the Issuer to perform the Project Contracts for the benefit of the Issuer as its own benefit as tenant under this Project Lease, and the Issuer hereby designates the Tenant as the Issuer's agent for the purpose of executing and performing the Project Contracts. After the execution hereof, the Tenant shall cause the Project Contracts to be fully performed by the contractor(s), subcontractor(s) and supplier(s) thereunder in accordance with the terms thereof, and the Tenant covenants to cause the Improvements to be acquired, constructed, installed and/or completed in accordance with the Project Contracts. The Tenant warrants that the construction and/or acquisition of the Improvements in accordance with the Project Contracts will result in the Project being suitable for use by the Tenant as a senior residence facility. Any and all amounts received by the Issuer, the Trustee or the Tenant from any of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the Project Fund. The Trustee may, at its option, appoint an agent to review the Project Contracts, and make periodic inspections of the Improvements during construction to determine the satisfactory progress and completion of the work. The reasonable fees and expenses of such agent shall be paid by the Tenant as Additional Rent.

Section 5.3. Payment of Project Costs for Buildings and Improvements.

The Issuer hereby agrees to pay for the acquisition or construction of the Improvements or any repairs or replacements to be made pursuant to *Article XVIII* of this Project Lease, but solely from Original Proceeds of the Bonds (or Net Proceeds, as applicable) as deposited in the Project Fund, and hereby authorizes and directs the Trustee to pay for the same, but solely from the Project Fund, from time to time, after issuance of the Bonds while the Tenant is in compliance with the requirements of *Section 6.1* hereof, upon receipt by the Trustee of a requisition certificate signed by the Authorized Tenant Representative in the form set forth as *Appendix A* hereto, which is incorporated herein by reference.

The sole obligation of the Issuer under this paragraph shall be to cause the Trustee to make such disbursements upon receipt of such certificates and releases or waivers. The Trustee may rely fully on any such certificates and shall not be required to make any investigation in connection therewith, except that the Trustee shall investigate requests for reimbursements directly to the Tenant and shall require such supporting evidence as would be required by a reasonable and prudent fiduciary.

Section 5.4. Payment of Project Costs for Machinery and Equipment.

The Issuer hereby agrees to pay for the purchase and acquisition of any machinery and equipment constituting a part of the Improvements, but solely from the Project Fund, from time to time, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form provided by *Appendix A* hereto, which is incorporated herein by reference.

The sole obligation of the Issuer under this Section shall be to cause the Trustee to make such disbursements upon receipt of the certificates and proof of mechanic's or subcontractor's lien waiver or release, if the item is to become a fixture on the Real Property. The Trustee may rely fully on any such certificate and supporting documentation and shall not be required to make any independent investigation in connection therewith. All machinery, equipment and/or personal property acquired, in whole or in part, from funds deposited in the Project Fund pursuant to this Section will be considered a part of the Project. With respect to items of machinery and equipment constituting a part of the Improvements, the Tenant shall maintain a running master list of such machinery and equipment, and within 30 days after the Completion Date, the Tenant shall prepare an accurate detailed final list of machinery and equipment constituting a part of the Improvements (but not installed as fixtures therein or thereon), which list shall be filed with the Trustee, and shall constitute a part of

this Project Lease by reference. All machinery and equipment constituting a part of the Improvements shall be appropriately identified by separate schedule or other means acceptable to the Trustee.

Section 5.5. Completion of Project.

The Tenant warrants that the Project, when completed, will be occupied and used by the Tenant for its lawful business purposes. The Tenant covenants and agrees to proceed diligently to complete or acquire the Improvements as promptly as possible. The Tenant will draw the entire authorized principal amount of the Bonds by the Completion Date. Upon completion of the Improvements, the Tenant shall cause the Authorized Tenant Representative to deliver a Certificate of Completion, in the form substantially as attached hereto as *Appendix B*, to the Trustee. In the event funds remain on hand in the Project Fund on the date the Certificate of Completion is furnished to the Trustee, such remaining funds shall be transferred by the Trustee to the Debt Service Fund on the Completion Date and shall be applied in accordance with the provisions of the Indenture.

Section 5.6. Deficiency of Project Fund.

If Bond Proceeds in the Project Fund are insufficient to pay fully all Project Costs (including reimbursements to the Tenant for Project Costs advanced by the Tenant prior to issuance of the Bonds) and to fully complete the Improvements, lien-free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as the same become due, and the Tenant shall save the Issuer and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 5.7. Right of Entry by the Issuer and the Trustee.

The duly authorized agents of the Issuer and/or the Trustee shall have the right (but shall not be required) at any reasonable time and upon reasonable notice to the Tenant prior to the completion of the Improvements to have access to the Project or any part thereof for the purpose of inspecting the acquisition, installation or construction thereof.

Section 5.8. Machinery and Equipment Purchased by the Tenant.

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

Section 5.9. Project Property of the Issuer.

All Improvements, all work and materials on Improvements as such work progresses, any Project Additions, anything under this Project Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as fully completed, repaired, rebuilt, rearranged, restored or replaced by the Tenant under the provisions of this Project Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the Issuer. Any Improvements which become a part of the real estate as fixtures shall remain separate from the Tenant's property unless and until purchased by the Tenant from the Issuer as provided in this Project Lease.

Section 5.10. Kansas Retailers' Sales Tax.

The parties have entered into this Project Lease 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 construction of the Improvements 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 Tenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers a project exemption certificate for the construction of the Improvements. The Tenant covenants that the exemption certificate will be used only in connection with the purchase of tangible personal property or services becoming a part of the Project. The Issuer shall not be responsible for any failure on the part of the State to issue such project exemption certificate.

ARTICLE VI

Section 6.1. Insurance Requirements.

Tenant agrees to maintain the following policies of insurance in full force and effect:

(a) General accident and public liability insurance covering the Tenant's operations in or upon the Project (including coverage for losses arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project) under which the Tenant shall be insured and the Issuer and the Trustee shall be additional insureds or mortgagees, as their interests in the Project appear, in an amount not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence as provided by the Kansas tort claims act or other similar future law (currently \$500,000 per occurrence); which policy shall provide that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the Issuer, the Tenant and the Trustee, such insurance to be maintained throughout the Term of this Project Lease;

(b) Statutory workers' compensation insurance;

(c) With regard to new buildings and improvements constituting a part of the Improvements, insurance insuring the Improvements while under construction against fire, lightning and all other risks covered by the broadest form extended coverage endorsement then and from time to time thereafter in use in the State to the Full Insurable Value of such Improvements. Such insurance coverage shall name the Tenant as insured and the Issuer and the Trustee as additional insureds or mortgagees and loss payees, as their respective interests appear, and all Net Proceeds received under such policy or policies by the Issuer or the Tenant shall be paid over to the Trustee and be applied as set forth in *Article XVIII* hereof; and

(d) insurance on the Improvements against loss or damage by fire, lightning and all other risks covered by the broadest form extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof, which policy shall provide that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the Issuer, the Tenant and the Trustee, such insurance to be maintained throughout the Term of this Project Lease.

Section 6.2. General Insurance Provisions.

(a) Within 30 days of renewal dates of expiring policies, certificates of the insurance provided for in this Article shall be delivered by the Tenant to the Trustee. All policies of such insurance and all renewals thereof shall name the Tenant as insured and the Issuer and the Trustee as additional insureds or mortgagees and loss payees as their respective interests may appear, shall contain a provision that such insurance may not be canceled or amended by the issuer thereof without at least 30 days' written notice to the Issuer, the Tenant and the Trustee and shall be payable to the Issuer, the Tenant and the Trustee as their respective interests appear. The Issuer and the Tenant each hereby agree to do anything necessary, be it the endorsement of checks or otherwise, to cause any payment of insurance proceeds to be made to the Trustee, as long as such payment is required by this Project Lease to be made to the Trustee. Any charges made by the Trustee for its services in connection with insurance payments shall be paid by the Tenant.

(b) Each policy of insurance hereinabove referred to shall be issued by a nationally recognized responsible insurance company authorized under the laws of the State to assume the risks covered therein, except that the Tenant may be self-insured as to any required insurance coverages under a program of self-insurance approved by the State Commissioner of Insurance or other applicable State regulatory authority.

(c) Certificates of insurance evidencing the insurance coverages herein required shall be filed with the Trustee continuously during the Term of this Project Lease.

(d) Each policy of insurance hereinabove referred to may be subject to a reasonable deductible or self-insured retention.

(e) Each policy of insurance required herein may be provided through blanket policies maintained by the Tenant.

(f) Anything in this Project Lease to the contrary notwithstanding, the Tenant shall be liable to the Issuer and the Trustee pursuant to the provisions of this Project Lease or otherwise, as to any loss or damage which may have been occasioned by the negligence of the Tenant, its agents, licensees, contractors, invitees or employees.

Section 6.3. Evidence of Title.

The Tenant shall furnish Owner's Title Evidence in the form of a policy of owner's or lender's title insurance, insuring the Tenant's fee simple title to the Real Property, as of the Issue Date, subject to Permitted Encumbrances. Such evidence of title shall contain no exceptions, other than the title insurance company's standard printed exceptions, Permitted Encumbrances, and the encumbrance created by the Site Lease and this Project Lease. If the Tenant is the sole Owner, in lieu of providing a policy of owner's or lender's title insurance as of the Issue Date, the Tenant may furnish evidence of the Tenant's fee simple title to the Real Property in the form of a copy of a policy of owner's title insurance, a copy of a loan policy of title insurance or a certificate of owner's title, evidencing the Tenant's fee simple title to the Real Property, subject to Permitted Encumbrances.

ARTICLE VII

Section 7.1. Impositions.

The Tenant shall, during the Term of this Project Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments thereof as become due and payable during the Term of this Project Lease as and when the same become due and payable.

Section 7.2. Receipted Statements.

Unless the Tenant exercises its right to contest any Impositions in accordance with *Section 7.3* hereof, the Tenant shall, within 30 days after the last day for payment without penalty or interest of an Imposition which the Tenant is required to bear, pay and discharge pursuant to the terms hereof, deliver to the Trustee a copy of the statement issued therefor duly receipted to show the payment thereof.

Section 7.3. Contest of Impositions.

The Tenant shall have the right, in its own or the Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted before the Imposition complained of becomes delinquent if, and provided, the Tenant (i) before instituting any such contest, shall give the Issuer and the Trustee written notice of its intention to do so and, if requested in writing by the Issuer or the Trustee, shall deposit with the Trustee a surety bond of a surety company acceptable to the Issuer as surety, in favor of the Issuer and the Trustee, as their interests may appear, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Impositions together with all interest and penalties to accrue thereon and court costs, (ii) diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Tenant shall indemnify and hold the Issuer whole and harmless from any costs and expenses the Issuer may incur related to any such contest.

Section 7.4. Ad Valorem Taxes.

The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds (except such property used for certain retail uses) is eligible to receive exemption from *ad valorem* taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has (a) complied with certain notice, hearing and procedural requirements established by law, and proper application has been made; and further provided that no exemption may be granted from the *ad valorem* property tax levied by a school district pursuant to the provisions of K.S.A. 72-53,113, and amendments thereto; and (b) for the uses restricted pursuant to the provisions of K.S.A. 79-201a, *Second* and *Twenty-Fourth*. The Issuer represents that such notice, hearing and procedural requirements will have been complied with at the Issue Date. Issuer covenants that, so long as any of the Bonds are Outstanding and except as otherwise allowed herein, it will not voluntarily take any action intended to cause or induce the levy or assessment of ad valorem taxes on the Improvements for an initial five (5) year period, and for an additional five (5) year period for a total of ten (10) years, if the additional five (5) year period is approved by the then current governing body of the Issuer. The Issuer will, at the Tenant's request, with information furnished by Tenant and the Trustee, make all necessary filings regarding the application for *ad valorem* tax exemption in the calendar year following the calendar year in which the Bonds were issued, subject to a renewal of the additional five (5) year period set forth herein, and take any other action as may be necessary to maintain such *ad valorem* tax exemption in full force and effect, in accordance with K.S.A. 79-201a, 79-210 *et seq.* and the requirements of the State Board of Tax Appeals. If it becomes necessary to litigate the issue of availability or applicability of the *ad valorem* tax exemption, the Issuer will cooperate fully with Tenant in pursuing such litigation, but all litigation costs and reasonable attorneys' fees must be paid by Tenant, either directly or as Additional Rent.

ARTICLE VIII

Section 8.1. Use of Project.

Subject to the provisions of this Project Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall comply in all material respects 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 Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Project Lease. The Tenant 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 Tenant to comply with the provisions of this Article.

Section 8.2. Environmental Provisions.

(a) The Tenant hereby covenants that it will not cause or permit any Hazardous Substances (as defined herein) to be placed, held, located or disposed of, on, under or at the Real Property or the Project, other than in the ordinary course of business and in compliance with all applicable Environmental Laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided to the Issuer hereunder and in the Indenture, the Tenant hereby agrees to indemnify and hold harmless the Issuer, the Trustee and the Owner from time to time from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment, costs of investigation, consultants, testing, sampling, cleanup, or defense, and claims of any and every kind paid, incurred or suffered, with respect to, or as a direct or indirect result of, the actual or alleged presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Real Property or the Project of any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under any federal, state or local Environmental Law or so-called "Superfund" or "Super lien" law, or any other applicable Environmental Law, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standard of conduct concerning, any Hazardous Substance) regardless of whether or not caused by or within the control of the Tenant.

(c) If the Tenant receives any notice of (1) the happening of any event involving the use, other than in the ordinary course of business and in compliance with all applicable Environmental Laws, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Real Property or the Project or in connection with the Tenant's operations thereon or (2) any complaint, order, citation or notice with regard to air emissions, water discharges or any other environmental, health or safety matter affecting the Tenant (an "Environmental Complaint") from any person (including, without limitation, the United States Environmental Protection Agency (the "EPA") and the Kansas Department of Health and Environment ("KDHE")) then the Tenant shall immediately notify the Issuer and the Trustee in writing. With respect to any such notice that relates to a condition or conditions on the Project site, the Tenant shall promptly initiate action to remediate the conditions cited in the notice, and shall diligently pursue such remediation at its expense to the satisfaction of the city authority.

(d) If the Tenant fails to initiate action to remediate as required in subsection (c) of this section, or otherwise fails to discharge its obligations under this *Section 8.2*, the Issuer shall have the right, but not the obligation, and without limitation of the Issuer's other rights under this Project Lease, to enter the Project or to take such actions as it may deem necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Hazardous Substance or Environmental Complaint following receipt of any notice asserting the existence on the Project of any Hazardous Substance or an Environmental Complaint pertaining to the Project or any part thereof which, if true, could result in an order, suit or other action against the Tenant and/or which, in the reasonable judgment of the Issuer, could jeopardize its interests under this Project Lease. All reasonable costs and expenses incurred by the Issuer in the exercise of any such rights shall be payable by the Tenant as Additional Rent on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points.

(e) If an Event of Default shall have occurred and is continuing, at the request of the Issuer or the Trustee, the Tenant shall periodically perform (at the Tenant's expense) an environmental audit and, if reasonably deemed necessary by the Issuer or the Trustee, an Environmental Assessment, (each of which must be reasonably satisfactory to the Issuer and the Trustee) of the Project, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Tenant with respect to the Project. The audit and/or Environmental Assessment shall be conducted by an environmental consultant satisfactory to the Issuer and the Trustee. Should the Tenant fail to perform any environmental audit or risk assessment within 30 days

of the written request of the Issuer or the Trustee, either shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Issuer or the Trustee in the exercise of such rights shall be payable by the Tenant as Additional Rent on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points.

(f) The Tenant shall not install nor permit to be installed in the Project friable asbestos or any substance containing asbestos and deemed hazardous by Environmental Law applicable to the Project and respecting such material, and with respect to any such material currently present in the Project, shall promptly either (1) remove any material which such applicable regulations deem hazardous and require to be removed or (2) otherwise comply with such applicable Environmental Law, at the Tenant's expense. If the Tenant shall fail to so remove or otherwise comply, the Issuer may declare an Event of Default and/or do whatever is necessary to eliminate the substances from the Project or otherwise comply with the applicable Environmental Law or order, and the costs thereof shall be payable by the Tenant on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points. The Tenant shall defend, indemnify, and save the Issuer, the Trustee and the Owner harmless from all costs and expenses (including consequential damages) asserted or proven against the Tenant, or incurred to comply with such regulations.

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

ARTICLE IX

Section 9.1. Sublease by the Tenant.

The Tenant may sublease the Project to a single party or entity, with the prior written consent of the Issuer. The Tenant may sublease portions of the Project for use by others in the normal course of its business without the Issuer's prior consent or approval. In the event of any such subleasing, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between the Issuer or the Trustee and any such subtenant shall relieve the Tenant of any of its duties and obligations hereunder. Any such sublease shall be subject and subordinate in all respects to the provisions of this Project Lease.

Section 9.2. Assignment by the Tenant.

The Tenant may assign, sell, or otherwise transfer its interest in this Project Lease only with the prior written consent of the Issuer. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no dealings or transactions between the Issuer or the Trustee and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section. The Tenant has the express right to mortgage its interest without Issuer consent.

Section 9.3. Release of the Tenant.

If, in connection with an assignment by the Tenant of its interest in this Project Lease, (a) the Issuer and the Owners of at least seventy-five percent (75%) in aggregate principal amount of the Outstanding Bonds (including any Additional Bonds) shall file with the Trustee their prior written consent to such assignment, and (b) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Tenant under this Project Lease with regard to the Bonds, then the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

Section 9.4. Mergers and Consolidations.

Notwithstanding the provisions of *Sections 9.2 and 9.3* above, if the Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Project Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (a) the Issuer shall file with the Trustee its prior written consent to such assignment, transfer or merger, (b) the proposed assignee, transferee or surviving entity shall expressly assume and agree to perform all of the obligations of the Tenant under this Project Lease with regard to the Bonds, and (c) the Tenant shall furnish the Trustee and the Issuer with evidence in the form of financial statements accompanied by a proforma balance sheet prepared by an independent certified public accountant of recognized standing showing that the net worth of such proposed assignee, transferee or surviving entity immediately following such assignment, transfer or merger will be at least equal to the net worth of the Tenant as shown by the most recent financial statements of the Tenant furnished to the Trustee pursuant to this Project Lease; then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment, transfer or merger.

Section 9.5. Covenant Against Other Assignments.

The Tenant will not assign or in any manner transfer its interests under this Project Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements set forth in this *Article IX*.

ARTICLE X

Section 10.1. Repairs and Maintenance.

The Tenant covenants and agrees that it will, during the Term of this Project Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair (ordinary wear and tear excepted), including but not limited to the furnishing of all parts, mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order (ordinary wear and tear excepted).

Section 10.2. Removal, Disposition and Substitution of Machinery or Equipment.

The Tenant shall have the right, provided the Tenant is not in Default, to remove and sell or otherwise dispose of any machinery or equipment which constitutes a part of the Project and which is no longer used by the Tenant or, in the opinion of the Tenant, is no longer useful to the Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise).

All machinery or equipment constituting a part of the Project and removed by the Tenant in compliance with this Section shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant without otherwise accounting to the Issuer. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage caused thereby. The Tenant's rights under this Section to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and

equipment no longer suitable to the Tenant's use for any of the reasons set forth in this Section and such right is not to be construed to permit a removal under any other circumstances and shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

ARTICLE XI

Section 11.1. Alteration of Project.

The Tenant shall have and is hereby given the right, at its sole cost and expense, to make such additions, changes and alterations in and to any part of the Project as the Tenant from time to time may deem necessary or advisable; provided, however, that the Tenant shall not make any major addition, change or alteration which will adversely affect the intended use or structural strength or value of any part of the Improvements. All additions, changes and alterations made by the Tenant pursuant to the authority of this Article shall (a) be made in a 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, equipment and/or personal property of the Tenant not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant and may be removed by the Tenant prior to or as provided in *Section 22.1* hereof.

ARTICLE XII

Section 12.1. Additional Improvements.

The Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Real Property or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as the Tenant from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Tenant pursuant to the authority of this Article shall, during the Term, remain the property of the Tenant and may be added to, altered or razed and removed by the Tenant at any time during the Term hereof. The Tenant covenants and agrees (a) to make all repairs and restorations, if any, required to be made to the Project because of the construction of, addition to, alteration or removal of, the additional buildings or improvements, (b) to keep and maintain the additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, (c) to promptly and with due diligence either raze and remove from the Real Property, in a good, workmanlike manner, or repair, replace or restore such of the additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by the Tenant pursuant to this Article which remain in place after the termination of this Project Lease for any cause other than the purchase of the Project pursuant to *Article XVII* hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer.

ARTICLE XIII

Section 13.1. Securing of Permits and Authorizations.

The Tenant shall not do or permit others under its control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, 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 this Project Lease.

Section 13.2. Mechanic's Liens.

The Tenant shall not do or suffer anything to be done whereby the Project, or any part thereof, is encumbered by any mechanic's or other similar lien. Should any mechanic's or other similar lien ever be filed against the Project, or any part thereof, the Tenant shall discharge the same of record within 30 days after the date of filing. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant or anyone claiming by, through or under the Tenant upon credit, and that no mechanic's or similar liens for any such labor, services or materials shall attach to or affect the reversionary or other estate of the Issuer in and to the Project, or any part thereof.

Section 13.3. Contest of Liens.

The Tenant, notwithstanding the above, shall have the right to contest any such mechanic's or other similar lien if within the 30-day period stated above it (a) notifies the Issuer and the Trustee in writing of its intention so to do, and if requested by the Trustee or the Issuer, deposits with the Trustee a surety bond issued by a surety company acceptable to the Issuer as surety, in favor of the Issuer, or cash, in the amount of the lien claim so contested, indemnifying and protecting the Issuer from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way connected with the asserted lien and the contest thereof, (b) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (c) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

Section 13.4. Utilities.

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

ARTICLE XIV

Section 14.1. Indemnity.

The Tenant agrees, whether or not the transactions contemplated by this Project Lease, the Site Lease, the Bonds or the Indenture are consummated, to indemnify and hold harmless the Issuer and its officers, directors, officials, employees and agents, including the Trustee as assignee of the Issuer's rights under this Project Lease, and the Owner and each of its officers, directors, employees and agents (any or all of the foregoing referred to hereafter as "Indemnified Persons"), from and against all claims, actions, suits, proceedings, expenses, judgments, damages, penalties, fines, assessments, liabilities, charges or other costs (including, without limitation, all attorneys' fees and expenses incurred in connection with enforcing this Project Lease or collecting any sums due hereunder and any claim or proceeding or any investigations undertaken hereunder) relating to, resulting from, or in connection with (a) any cause in connection with the Project, including, without limitation, the acquisition, design, construction, installation, equipping, operating,

maintenance or use thereof; (b) any act or omission of the Tenant or any of its agents, contractors, servants, employees or licensees in connection with the use or operation of the Project; (c) any cause in connection with the issuance and sale of the Bonds, (d) a misrepresentation or breach of warranty by the Tenant hereunder or under any of the documents executed by the Tenant in connection with this Project Lease, or (e) any violation by the Tenant of any of its covenants hereunder or under any of the other documents executed by the Tenant in connection with the Bonds or this Project Lease. This indemnity is effective only with respect to any loss incurred by any Indemnified Person not due to willful misconduct, gross negligence, or bad faith on part of such Indemnified Person. In case any action or proceeding shall be brought against one or more Indemnified Person and with respect to which such Indemnified Person may seek indemnity as provided herein, such Indemnified Person shall promptly notify the Tenant in writing and the Tenant shall promptly assume the defense thereof, including the employment of counsel reasonable satisfactory to such Indemnified Person or Indemnified Persons, the payment of all expenses and the right to negotiate and consent to settlement; provided, however, that the failure to notify the Tenant as provided shall not relieve Tenant from any liability or duty under this Section, so long as Tenant is given reasonable opportunity to defend such claim.

ARTICLE XV

Section 15.1. Access to Project.

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

ARTICLE XVI

Section 16.1. Option to Extend Basic Term.

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

ARTICLE XVII

Section 17.1. Option to Purchase Project.

Subject to the provisions of this Article, the Tenant shall have the right and option to purchase the Issuer's interest in the Project at any time during the Term hereof and for 120 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of the Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Release Date") shall neither be earlier than 30

days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Release Date unless all Defaults are cured upon payment of the purchase price specified in *Section 17.2*.

Section 17.2. Quality of Title and Purchase Price.

If the notice of election to purchase is given, the Issuer shall assign and release all of its interests in the Project to the Tenant on the Release Date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of the Site Lease to the Issuer of the Real Property, or to which title became subject with the Issuer's and Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Project Lease, (c) taxes and assessments, general and special, if any, and (d) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project, for a price determined as follows (which the Tenant agrees to pay in cash at the time of delivery of the Issuer's instruments of release of the Project to the Tenant as hereinafter provided):

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

(2) \$100.00.

In the event the Tenant owns all of the Outstanding Bonds, the Tenant may surrender the Bonds to the Trustee for cancelation in lieu of paying the full amount set forth in this Section.

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

Section 17.3. Closing of Purchase.

On the Release Date, the Issuer shall deliver to the Tenant its release of leases and/or other appropriate instruments of assignment or release, properly executed and releasing the Project to the Tenant free and clear of all liens and encumbrances except as set forth in the preceding section above, and the Tenant shall pay the full purchase price for the Project as follows: (a) the amount specified in clause (1) of *Section 17.2* shall be paid to the Trustee for deposit in the Debt Service Fund to be used to pay or redeem Bonds and the interest thereon as provided in the Indenture, and (b) the amount specified in clause (2) of *Section 17.2* shall be paid to the Issuer; provided, however, that nothing herein shall require the Issuer to deliver its appropriate instruments of assignment or release to the Tenant until after all duties and obligations of the Tenant under this Project Lease to the date of such delivery have been fully performed and satisfied or adequate provision made for such performance and satisfaction. Upon the recording of the Issuer's instruments of assignment or release, and payment of the purchase price by the Tenant and legal defeasance or cancellation of the Bonds, this Project Lease will terminate, subject to the provisions of *Section 20.2* hereof.

Section 17.4. Effect of Failure to Complete Purchase.

If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not effected on the Release Date, this Project Lease shall be and remain in full force and effect according to its terms as if no notice of election under *Section 17.1* had been given. The Issuer and Tenant agree to use all commercially reasonable efforts to effect the assignment and release as soon as possible.

Section 17.5. Application of Condemnation Awards if the Tenant Purchases Project.

The right of the Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project. If the Tenant shall exercise its option and pay the purchase price as provided in this Article, all of the condemnation awards received by the Issuer after the payment of the purchase price, less all attorneys' fees and other expenses and costs incurred by the Issuer in connection with such condemnation, shall belong and be paid to the Tenant.

Section 17.6. Option to Purchase Unimproved Portions of Real Property.

The Tenant shall have the option to purchase at any time and from time to time during the Term any vacant part or vacant parts of the unimproved Real Property constituting a part of the Project; provided, however, that the Tenant shall furnish the Issuer and the Trustee with a certificate of the Authorized Tenant Representative, dated not more than thirty (30) days prior to the date of the purchase and stating that, in the opinion of the Authorized Tenant Representative, (a) the portion of the Real Property with respect to which the option is exercised is not needed for the operation of the Project, (b) the purchase will not impair the usefulness or operating efficiency or materially impair the value of the Project and will not destroy or materially impair the means of ingress thereto and egress therefrom, and (c) the purchase will not materially adversely affect compliance of the remaining Real Property and any Improvements with applicable zoning laws or regulations. The Tenant shall exercise this option by giving the Issuer and the Trustee written notice of the Tenant's election to exercise its option and specifying (i) the legal description of the portion of Real Property to be released, and (ii) a certificate signed by the chief executive or chief financial officer of the Tenant stating that no event has occurred and is continuing which, with notice or lapse of time or both, would constitute an Event of Default. The Tenant may not exercise this option if there has occurred and is continuing any event which, with notice or lapse of time or both, would constitute an Event of Default at the time the notice is given and may not purchase the Real Property unless all defaults are cured. The option includes the right to purchase a perpetual easement for right-of-way to and from the public roadway and the right to purchase such land as is necessary to assure that there will always be access between the portion of the Real Property purchased pursuant to these *Sections 17.6 through 17.10* and the public roadway.

Section 17.7. Quality of Title - Purchase Price.

If the notice of election to purchase is given as provided in *Section 17.6*, the Issuer shall release its interest in the real property described in the Tenant's notice to the Tenant on the specified date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of the Site Lease to the Issuer of the Real Property, or to which title became subject with the Issuer's and Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Project Lease, (c) taxes and assessments, general and special, if any, and (d) the interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the real property described in the Tenant's notice.

Section 17.8. Closing of Purchase.

The Issuer shall deliver to the Tenant its release of leases and other appropriate instruments of assignment or release, properly executed and releasing such real property to the Tenant free and clear of all liens and encumbrances except as stated above, and the Tenant shall pay the Trustee the purchase price for such real property, and the Trustee will deposit the purchase price in the Debt Service Fund and use the proceeds to redeem Bonds on any date the Bonds are subject to optional redemption, as provided in the Indenture. Nothing herein shall require the Issuer to deliver its release of leases to the Tenant until after all duties and obligations of the Tenant under this Project Lease to the date of such delivery have been fully performed and satisfied.

Section 17.9. Effect of Release on Lease.

The exercise by the Tenant of the option granted under these *Sections 17.6 to 17.10* and the purchase and release of a portion of the Real Property constituting a part of the Project pursuant hereto shall in no way whatsoever affect this Project Lease, and all the terms and provisions shall remain in full force and effect, including, without limitation, the Tenant's obligations to pay all Basic Rent and Additional Rent.

Section 17.10. Effect of Failure to Complete Purchase.

If, for any reason, the purchase by the Tenant of the portion of the real property described in the notice is not effected on the specified date, this Project Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given.

ARTICLE XVIII**Section 18.1. Damage and Destruction.**

(a) If, during the Term, any Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer and the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. In such case, any Net Proceeds of property and/or casualty insurance required by this Project Lease and received with respect to any such damage or loss to the Improvements shall be paid to the Trustee and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Fund after such rebuilding, repairing, restoring or replacing shall be paid to the Tenant.

(c) If the Tenant shall reasonably determine that rebuilding, repairing, restoring or replacing the Improvements is not practicable and desirable, any Net Proceeds of property and/or casualty insurance required by this Project Lease and received with respect to any such damage or loss to the Project shall be paid into the Debt Service Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any period in which the Improvements are damaged or destroyed, or are being repaired, rebuilt, restored or replaced nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement or diminution of the Basic Rent or Additional Rent payable by the Tenant under this Project Lease nor of any other obligations of the Tenant under this Project Lease except as expressly provided in this Section.

Section 18.2. Condemnation.

(a) If, during the Term, title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain (other than the Issuer), the Tenant shall, within 30 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer and the Trustee in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire substitute land or construct substitute Improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall proceed with and complete with reasonable dispatch the acquisition or construction of such substitute Real Property or Improvements. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings shall be paid to the Trustee for the account of the Tenant and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Fund after such acquisition or construction shall be paid to Tenant.

(c) If the Tenant shall reasonably determine that it is not practicable and desirable to acquire or construct substitute Improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Debt Service Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection.

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement or any abatement or diminution of the Basic Rent or Additional Rent nor of any other obligations hereunder payable by the Tenant under this Project Lease.

(e) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof so long as the Issuer is not the condemning authority. In no event will the Issuer voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the written consent of the Tenant and the Trustee.

Section 18.3. Effect of Tenant's Defaults.

Anything in this Article to the contrary notwithstanding, the Issuer and the Trustee shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event of Default has occurred and is continuing, or the Issuer or the Trustee has given notice to the Tenant of any Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein, the Trustee shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Project Lease is terminated or the Issuer or the Trustee otherwise re-enters and takes possession of the Project without terminating this Project Lease, the Trustee shall pay all the Net Proceeds held by it into the Debt Service Fund and all rights of the Tenant in and to such Net Proceeds shall cease.

ARTICLE XIX

Section 19.1. Change of Circumstances.

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

ARTICLE XX

Section 20.1. Remedies on Default.

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

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

(b) The Trustee, acting on behalf of the Issuer, may give the Tenant written notice of intention to terminate this Project Lease on a date not earlier than 30 days after such notice is given and, if all Events of Default have not then been cured on the date specified, the Tenant's rights to possession of the Project shall cease, and this Project Lease shall terminate. The Trustee, acting on behalf of the Issuer, may re-enter and take possession of the Project and pursue all its available remedies, including sale of Issuer's interest in the Project and judgment against the Tenant for all Basic Rent and Additional Rent then owing, including costs and attorneys' fees.

(c) Without terminating this Project Lease, the Trustee, acting on behalf of the Issuer, may conduct inspections or an Environmental Assessment of the Project. The Issuer or the Trustee, acting on behalf of the Issuer, may refuse to re-enter or take possession of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

(d) Without terminating the Term, the Trustee, acting on behalf of the Issuer, may relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project shall be construed as an election to terminate this Project Lease, nor relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under this Project Lease, all of which shall survive such re-entry or taking of possession. The Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Project Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any, of reletting the Project.

(e) Having elected to reenter or take possession of the Project pursuant to subsection 20.1(c), the Trustee, acting on behalf of the Issuer, may (subject, however, to any restrictions against termination of this Project Lease in the Indenture), by notice to the Tenant given at any time thereafter while the Tenant is in Default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Project Lease, elect to terminate this Project Lease in accordance with subsection 20.1(b) and thereafter proceed to exercise any remedies lawfully available.

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

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

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

Notwithstanding the foregoing, Permanent Lender is granted the right to receive notice of and a reasonable opportunity to cure any event of default under the Lease. Such cure period shall be at least equal to any cure period to which Tenant has a right. Issuer waives any default that cannot be cured by Permanent Lender, including specifically non-monetary defaults and bankruptcy-related issues personal to Issuer.

Section 20.2. Survival of Obligations.

The Tenant covenants and agrees with the Issuer, the Trustee and the Owner that, until all Bonds and the interest thereon and redemption premium, if any, are paid in full or provision is made for the payment thereof or cancellation in accordance with the Indenture, its obligations under this Project Lease shall survive the cancellation and termination of this Project Lease for any cause and/or sale of the Project, and the Tenant shall be obligated to pay Basic Rent and Additional Rent (reduced by any net income the Issuer or the Trustee may receive from the Project after such termination) and perform all other obligations provided for in this Project Lease, all at the time or times provided in this Project Lease. Notwithstanding any provision of this Project Lease or the Indenture, the Tenant's obligations under *Sections 8.2 and 14.1* hereof shall survive any termination, release or assignment of this Project Lease, the Indenture and payment or provision for payment of the Bonds.

Section 20.3. No Remedy Exclusive.

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

Section 20.4. Permanent Lender Protections.

- (a) Issuer or Trustee must give Permanent Lender written notice prior to exercising any remedies after default and will forward to Permanent Lender all other notices sent to Tenant excluding rent and periodic billing notices.
- (b) Issuer will deliver to Permanent Lender a mutually agreeable estoppel certificate covering the Project Lease on request.
- (c) Permanent Lender shall have an unrestricted right to foreclose and assign its rights under the Lease.
- (d) If the Project Lease terminates for any reason, Issuer will enter into a new lease with Permanent Lender or its nominee on the same terms and conditions as the existing Project Lease and with the same title priority.

- (e) Permanent Lender's liability under the Project Lease is limited to the value of its interest in the Project Lease. The Permanent Lender and its assigns are automatically released from liability to Issuer after an assignment of their interest.
- (f) Issuer will not mortgage its leasehold estate without the express permission of Permanent Lender. Any such mortgage will be subordinate to the Project Lease and any subleases, including any new lease entered into with Permanent Lender as provided for herein.

ARTICLE XXI

Section 21.1. Performance of the Tenant's Obligations by the Issuer.

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

ARTICLE XXII

Section 22.1. Surrender of Possession.

Upon accrual of the Issuer's right of reentry as the result of the Tenant's Default hereunder or upon the cancellation or termination of this Project Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender possession of the Project to the Trustee, as assignee of the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, that the Tenant shall have the right, prior to or within 30 Business Days after the termination of this Project Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Tenant owns under the provisions of this Project Lease and are not a part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Tenant. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 30 Business Days after such termination of this Project Lease shall become the separate and absolute property of the Issuer. Any cancellation is subject to the written consent of the Permanent Lender.

ARTICLE XXIII

Section 23.1. Notices.

All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by registered mail to the Notice Address. All notices given by registered mail shall be deemed duly delivered three days after they are mailed. When mailed notices are given, the party giving notice will use reasonable diligence to contact the party being notified by telephone, electronic mail or facsimile on or before the date such notice is mailed. Copies of all notices sent to the Tenant shall also be sent to Tenant's investor member at WNC Housing, L.P., 17782 Sky Park Circle, Irvine, California 92614-

6404, Attn: Melanie Wenk, and any cure tendered on behalf of Tenant by a member of Tenant shall be accepted or rejected as if same had been tendered by Tenant.

ARTICLE XXIV

Section 24.1. Triple-Net Lease.

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

Section 24.2. Funds Held by the Trustee After Payment of Bonds.

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

ARTICLE XXV

Section 25.1. Rights and Remedies.

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

Section 25.2. Waiver of Breach.

No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such Default which was in existence at the time such payment or payments or performance were accepted by it.

Section 25.3. The Issuer Shall Not Unreasonably Withhold Consents and Approvals.

Wherever in this Project Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably or arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

ARTICLE XXVI

Section 26.1. The Issuer May Not Release Interest without Tenant Consent.

The Issuer covenants that unless an Event of Default under this Project Lease has occurred and is continuing, and the remaining Term of this Project Lease has been terminated, it will not, without the Tenant's written consent, unless required by law, assign, release or encumber its leasehold interest in the Project at any time during the Term of this Project Lease.

Section 26.2. Quiet Enjoyment and Possession.

The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

Section 26.3. Issuer's Obligations Limited.

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

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

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

ARTICLE XXVII

Section 27.1. Investment Tax Credit; Depreciation.

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

ARTICLE XXVIII

Section 28.1. Amendments.

This Project Lease may be amended, changed or modified in writing in the following manner:

(a) With respect to an amendment, change or modification which reduces the Basic Rent or Additional Rent, or any amendment which reduces the percentage of Owners whose consent is required for any such amendment, change or modification, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by Owners of at least 90% of the aggregate principal amount of the Bonds then Outstanding;

(b) With respect to any other amendment, change or modification which will materially adversely affect the security or rights of the Owners, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by Owners of at least 66-2/3% of the aggregate principal amount of the Bonds then Outstanding; and

(c) With respect to all other amendments, changes, or modifications, by an agreement in writing executed by the Issuer and the Tenant.

At least 30 days prior to the execution of any agreement pursuant to (c) above, the Issuer and the Tenant shall furnish the Trustee and the Owner with a copy of the amendment, change or modification proposed to be made. Notwithstanding the foregoing, the Project Lease will not be materially modified or restated without the prior written consent of Permanent Lender.

Section 28.2. Granting of Easements.

If no Event of Default under this Project Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of the Issuer or the Owner, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer of: (1) a copy of the instrument of grant or release or of the agreement or other arrangement, (2) a written application signed by the Authorized Tenant Representative requesting such instrument, and (3) a certificate executed by the Tenant stating (A) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (B) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Owner. Any consideration received by the Tenant for the grant or release must be paid to the Trustee to be deposited in the Debt Service Fund and used to redeem Bonds at the earliest practicable date, at their principal amount, plus accrued interest, without premium. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the Owner and shall not be affected by any termination of this Project Lease or default on the part of the Tenant hereunder. If no Event of Default shall have happened and be continuing, any payments or other consideration received by the Tenant for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Tenant, but, in the event of the termination of this Project Lease because of an Event of Default, all rights then existing of the Tenant with respect to or under such grant shall inure to the benefit of and be exercisable by the Issuer.

Section 28.3. Security Interests.

(a) The Issuer and the Tenant agree to execute and deliver any instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security

interest of the Issuer in and to the Project. The Tenant hereby authorizes the Issuer to file or cause to be filed all such instruments required to be so filed and the Trustee to continue or cause to be continued the filings or liens of such instruments for so long as the Bonds shall be Outstanding.

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

Section 28.4. Construction and Enforcement.

This Project Lease shall be construed and enforced in accordance with the laws of the State. The provisions of this Project Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. Wherever in this Project Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

Section 28.5. Invalidity of Provisions of Project Lease.

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

Section 28.6. Covenants Binding on Successors and Assigns.

The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 28.7. Section Headings.

The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Project Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

Section 28.8. Execution of Counterparts; Electronic Transactions.

This Project Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument. The transaction 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.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF BEL AIRE, KANSAS

By: _____
Jim Benage
Mayor

(SEAL)

ATTEST:

Melissa Krehbiel, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Jim Benage, Mayor of the City of Bel Aire, Kansas.

Notary Public

Typed Name of Notary Public

(SEAL)

My Appointment Expires:

IN WITNESS WHEREOF, the Tenant has caused this Project Lease to be signed by an authorized officer, as of the date first above written.

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President
Date: _____

"TENANT"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JACKSON)

This instrument was acknowledged before me on the ____ day of _____, 2022, by Thomas A. Bishop, as President of Homestead Affordable Housing, Inc., which is the Manager and Sole Member of Homestead Senior Housing Bel Aire LLC, which is the Managing Member of Homestead Senior Residences Bel Aire, LLC.

[SEAL]

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF REQUISITION FOR PAYMENT OF PROJECT COSTS

CITY OF BEL AIRE, KANSAS
Project Fund
(Homestead Senior Residences Bel Aire, LLC)
Payment Order No. _____

Security Bank of Kansas City
Kansas City, Kansas
Attn: Corporate Trust Department

I hereby certify that the amounts stated in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project. I further certify that the fair value of such work or materials, machinery and equipment, is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

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

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Project Lease dated as of June 1, 2022 by and between the City of Bel Aire, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

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

I acknowledge that the Tenant, as Purchaser of the Bonds, will be receiving such Bonds in compensation for the expenditures set forth in the Payment Schedules to acquire, construct and equip the Project and that the Bond will constitute full payment for these costs.

DATED _____, 20__.

Authorized Tenant Representative

EXHIBIT A - Payment Order No. _____

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

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

PAYMENT SCHEDULE

Payee Name

Purpose or Nature of Payment

\$

Initials

EXHIBIT B - Payment Order No. _____

**PAYMENT SCHEDULE
FOR MACHINERY AND EQUIPMENT**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below. I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete. I further certify that the items described are free and clear of any liens or security interests. I have attached to this schedule a copy of the purchase order or seller's invoice for each item.

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Description of Equipment</u>	<u>Amount</u>
	(include name of seller, manufacturer, descriptive name, capacity, serial number of model number, if available)	

Initials

APPENDIX B

FORM OF CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for Homestead Senior Residences Bel Aire, LLC (the "Tenant"), as tenant under a certain Project Lease dated as of June 1, 2022 (the "Project Lease") between the City of Bel Aire, Kansas (the "Issuer") and the Tenant, and as beneficiary of the Issuer's Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) issued pursuant to a certain Indenture dated as of June 1, 2022 (the "Indenture"), hereby certifies as follows. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and Project Lease.

1. The Improvements have been substantially completed in accordance with the plans and specifications prepared at the Tenant's direction.
2. Such Improvements have been substantially completed in a good and workmanlike manner.
3. There are no mechanic's, materialmen's liens or other statutory liens on file encumbering title to the Real Property; all bills for labor and materials furnished for the Improvements which could form the basis of a mechanic's, materialmen's or other statutory lien against the Real Property have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All Improvements are located or installed upon the Real Property.
5. All material provisions of applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project.
6. All moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Debt Service Fund being held by the Trustee under the Indenture as required by *Section 5.04* of the Indenture, to be applied as provided therein.

IN WITNESS WHEREOF, the undersigned Authorized Tenant Representative has signed this Certificate, and states, under penalty of perjury, that the statements of fact made in this Certificate are true and correct.

STATE OF [])
) SS:
COUNTY OF [])

Subscribed and sworn to or affirmed before me, a notary public, this ____ day of _____, 20__.

[SEAL]

Notary Public

My Appointment Expires: _____

SCHEDULE I

SCHEDULE I TO THE PROJECT LEASE, DATED AS OF JUNE 1, 2022, BY AND BETWEEN CITY OF BEL AIRE, KANSAS AND HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC

PROPERTY SUBJECT TO PROJECT LEASE

(A) A leasehold interest in the following described real estate located in Sedgwick County, Kansas:

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

the real property constituting the “Real Property” as referred to in the Project Lease, subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Real Property and financed or refinanced with proceeds of the Bonds.

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the

provisions of *Sections 10.3 and 10.4* of the Project Lease, constitute the “Project” as referred to in both the Project Lease and the Indenture.

GILMORE & BELL, P.C.
MAY 19, 2022

**HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC
AS TENANT AND PURCHASER**

AND

**CITY OF BEL AIRE, KANSAS
AS ISSUER**

BOND PURCHASE AGREEMENT

**\$8,000,000
MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)**

BOND PURCHASE AGREEMENT

\$8,000,000
CITY OF BEL AIRE, KANSAS
MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)
Dated: JUNE 1, 2022

THIS AGREEMENT entered into as of June 1, 2022 (the "Sale Date"), between Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant", the City of Bel Aire, Kansas (the "Issuer") and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas (the "Purchaser"), collectively referred to herein as the "Parties." All capitalized terms not specifically defined herein shall have the same meaning as defined in the hereinafter referenced Indenture and Project Lease, unless some other meaning is plainly indicated.

SECTION 1. RECITALS.

(a) The Issuer proposes to issue and sell the Bonds identified above (the "Bonds") to provide funds to acquire, construct and equip a senior residence facility (the "Project") located within the corporate limits of the Issuer, to be leased by the Issuer to the Tenant pursuant to a Project Lease dated as of June 1, 2022 (the "Project Lease").

(b) Pursuant to the constitution and laws of the State of Kansas, including K.S.A. 12-1740 *et seq.* (the "Act"), the Bonds are limited obligations of the Issuer payable solely from the Trust Estate under the Indenture (hereinafter defined), including payments derived by the Issuer from the Project Lease. The Bonds will be dated June 22, 2022, will contain such other terms and provisions as are set forth in an ordinance duly passed by the governing body of the Issuer on May 17, 2022 (the "Ordinance"), and other proceedings and determinations related thereto as authorized and governed by the provisions of a Trust Indenture (the "Indenture") dated June 1, 2022 between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as trustee (the "Trustee").

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

(d) The proceeds of the sale of the Bonds are to be applied:

- (i) to provide for accrued interest through the date of Closing;
- (ii) to provide funds to pay Project Costs (as defined in the Indenture); and
- (iii) to pay expenses related to Bond issuance;

all as set forth in the Project Lease, Ordinance and Indenture.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS.

(a) On the basis of the representations, warranties and covenants contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set

forth, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds not later than 12:00 Noon, applicable Central time on June 22, 2022, or such other place, time or date as shall be mutually agreed upon by the Issuer and the Purchaser, at the purchase price set forth on *Exhibit A* attached hereto (the “Purchase Price”). The date of such delivery and payment is herein called the “Issue Date,” the hour and date of such delivery and payment is herein called the “Closing Time” and the transactions to be accomplished for delivery of the Bonds on the Issue Date shall be herein called the “Closing.” The Bonds shall be issued under and secured as provided in the Indenture and the Bonds shall mature December 31, 2032 and bear interest at the rate set forth in the Bonds. The Bonds shall contain such other provisions as are described in the Indenture.

(b) The Parties acknowledge and agree that: (1) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction between the Issuer and the Purchaser; and (2) in connection with such transaction, the Purchaser is acting solely as a principal and not as an agent or a fiduciary of any of the Issuer or the Tenant.

(c) The Bonds are purchased by Purchaser under the following conditions: (i) the Bonds are not being registered or otherwise qualified for sale under the “Blue Sky” laws; (ii) Purchaser will hold the Bonds as one single debt instrument, (iii) no CUSIP numbers will be obtained for the Bonds, (iv) no official statement or other similar offering document has been prepared in connection with the private placement of the Bonds, and (v) the Bonds will not close through the DTC or any similar repository and will not be in book entry form.

(d) The delivery of the Bonds shall be made in definitive form, as fully registered bonds (in such denominations as the Purchaser shall specify in writing at least 48 hours prior to the Closing Time duly executed and authenticated; provided, however, that the Bonds may be delivered in temporary form. The Bonds shall be available at least 24 hours prior to the Closing Time.

SECTION 3. REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE PURCHASER

By the execution hereof the Purchaser hereby represents, warrants and agrees with the Issuer and the Tenant that as of the date hereof and at the Closing Time:

(a) Purchaser has taken all necessary corporate action and is authorized to purchase the Bonds and to execute and perform this Bond Purchase Agreement.

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

(c) Purchaser is purchasing the Bonds as an investment for its own account and not with a view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not

amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended. Purchaser acknowledges that (1) the Bonds will not be registered under the Securities Act of 1933, as amended or any applicable state securities law, (2) the Bonds may not be transferred unless, in the opinion of counsel acceptable to the Issuer and the Trustee, such transfer will not cause a violation of the Securities Act of 1933, as amended, or any applicable state securities law and that (3) language consistent with the foregoing restrictions will appear in the registration and transfer provisions of the Indenture.

SECTION 4. ISSUER'S REPRESENTATIONS.

The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows, all of which will continue in effect subsequent to the Closing:

(a) The Issuer is a municipal corporation incorporated as a city of the second class under the laws of the State of Kansas.

(b) The governing body of the Issuer did enact the Ordinance; it has been signed by a duly authorized official of the Issuer, it has been published once in the official city newspaper as required by law, and it is presently in full force and effect and has not been amended or modified.

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

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

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

(f) There is not now pending or, to the knowledge of the officials of the Issuer, threatened any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning (i) the validity of the Bonds, (ii) the proceedings or authority under which they are issued, (iii) the existence of the Issuer, (iv) the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or (v) the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds.

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

SECTION 5. REPRESENTATIONS OF THE TENANT.

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

(a) The Tenant is a duly formed Kansas limited liability company, duly authorized to do business under the laws of the State of Kansas.

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

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

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

SECTION 6. REPRESENTATIONS TO SURVIVE CLOSING.

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

SECTION 7. CONDITIONS OF CLOSING.

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

(a) The representations of the Issuer and the Tenant hereunder must be true on and as of the Issue Date and must be confirmed by certificates dated as of the Closing;

(b) Neither the Issuer nor the Tenant has defaulted in the performance of any of their respective covenants hereunder;

(c) The Purchaser must receive at the Closing:

- (i) an opinion of Bond Counsel, dated as of the Closing, in form and substance satisfactory to the Purchaser and its counsel.
- (ii) an opinion of counsel for the Tenant, dated as of the Closing, in form and substance satisfactory to Bond Counsel and to the Purchaser and its counsel confirming the Tenant's representations as set forth in paragraphs (a) through (d) inclusive of *Section 5* of this Bond Purchase Agreement.
- (iii) an opinion of counsel for the Issuer, dated as of the Closing, in form and substance satisfactory to Bond Counsel and to the Purchaser and its counsel, confirming the Issuer's representations set forth in paragraphs (a) through (g) inclusive of *Section 4* of this Bond Purchase Agreement.
- (iv) a certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser and its counsel, of an authorized official of the Issuer dated the date of the Closing to the effect that (A) each of the representations of the Issuer set forth in *Section 4* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Issuer set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with; and (B) no litigation is pending, or to such official's knowledge, threatened, to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, the proceedings or authority under which they are issued, the existence of the Issuer, the authority of the Issuer to enact the Ordinance or enter into the Indenture, the Project Lease or the Bond Purchase Agreement, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds, and (C) that none of the proceedings authorizing issuance of the Bonds or execution and delivery of the bond documents has been repealed, revoked or rescinded.
- (v) a certificate or certificates, satisfactory in form and substance to Bond Counsel and to the Purchaser and its counsel, of a member of the Tenant, dated the date of Closing to the effect that each of the representations of the Tenant set forth in *Section 5* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Tenant set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with as of such time.
- (vi) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Indenture and Project Lease, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

(d) At Closing, there shall not have been any adverse change in the business, property or financial condition of the Tenant from that furnished to the Purchaser which, in the judgment of the Purchaser, is material and makes it inadvisable to proceed with the sale of the Bonds; and the Purchaser

shall have received a certificate from the Tenant that no material adverse change has occurred or, if such a change has occurred, full information with respect thereto.

SECTION 8. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel the obligation hereunder to purchase the Bonds (such cancellation shall not constitute a default for purposes of *Section 1* hereof) by notifying the Issuer, the Tenant in writing or by facsimile of its election to make such cancellation prior to the Closing Time, if at any time after the execution of this Bond Purchase Agreement and prior to the Closing Time, the market price or marketability of the Bonds, or the ability of the Purchaser to enforce contracts for the sale of the Bonds, shall be materially adversely affected by any of the following events:

(a) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the Legislature of the State or by any other governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State.

(b) A stop order, ruling, regulation or official statement by, or on behalf of, the SEC or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby, is in violation or would be in violation of any provision of the 1933 Act, the 1934 Act or the Trust Indenture Act of 1939, as amended.

(c) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act.

(d) A material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred; or additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

(e) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser.

(f) Any general banking moratorium shall have been established by federal, New York or Kansas authorities.

(g) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state.

(h) Any proceeding shall be pending or threatened by the SEC against the Issuer.

(i) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred.

(j) A default by or a moratorium initiated by the United States in respect to payment of any direct obligation of, or obligation the principal of and interest on which is fully and unconditionally guaranteed as to full and timely payment by, the United States of America.

SECTION 9. PAYMENT OF EXPENSES

If the Bonds are sold by the Issuer to the Purchaser, except as hereinafter set forth, all expenses and costs for the authorization, preparation, issuance, delivery and sale of the Bonds shall be paid by the Tenant out of the proceeds of the Bonds or other Tenant funds. Such expenses and costs shall include, but not be limited to: (1) the fees and disbursements of Bond Counsel; (2) the fees and disbursements of the Issuer's legal counsel; (3) fees and disbursements of the Tenant's legal counsel; (4) costs associated with obtaining municipal bond insurance or municipal bond ratings relating to the Bonds, if any; (5) the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Bonds, this Bond Purchase Agreement and all other agreements and documents contemplated hereby; (6) fees of the Trustee; and (7) all costs and expenses of the Issuer relating to the issuance of the Bonds, including the Origination Fee. The Purchaser shall be responsible for payment of the costs of qualifying the Bonds for sale in the various states chosen by the Purchaser, all advertising expenses in connection with the offering of the Bonds, the fees and disbursements of the Purchaser's legal counsel and all other expenses incurred by the Purchaser in connection with the offering, sale and distribution of the Bonds.

SECTION 10. NOTICES AND OTHER ACTIONS.

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

The Issuer:	City of Bel Aire, Kansas 7651 E. Central Park Ave. Bel Aire, Kansas 67226
The Tenant and Purchaser:	Homestead Senior Residences Bel Aire, LLC 603 Pennsylvania Holton KS 66436

Copies of all notices sent to the Lessor shall also be sent to Lessor's investor member at WNC Housing, L.P., 17782 Sky Park Circle, Irvine, California 92614-6404, Attn: Melanie Wenk, and any cure tendered on behalf of Lessor by a member of Lessor shall be accepted or rejected as if same had been tendered by Lessor.

SECTION 11. MISCELLANEOUS

(a) This Bond Purchase Agreement shall be binding upon the Parties and their respective successors. This Bond Purchase Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that the representations, warranties, indemnities and agreements of the Issuer and the Tenant contained in this Bond Purchase Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control the Purchaser (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act). Nothing in this Bond Purchase Agreement is intended or shall be construed to give any person, other than the persons referred to in this Paragraph, any legal or equitable right, remedy or claim under or in respect of this Bond Purchase Agreement or any provision contained

herein. All of the representations, warranties and agreements of the Issuer contained herein shall remain in full force and effect, regardless of: (1) any investigation made by or on behalf of the Purchaser, (2) delivery of and payment for the Bonds; or (3) any termination of this Bond Purchase Agreement.

(b) For purposes of this Bond Purchase Agreement, “business day” means any day on which the New York Stock Exchange is open for trading.

(c) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(d) This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

(e) This Bond Purchase Agreement may not be assigned by either party without the express written consent of the other party.

SECTION 12. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the Issuer.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement and returning it to the undersigned.

Tenant and Purchaser:

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President
Date: _____

Accepted and agreed to as of
the date first above written.

CITY OF BEL AIRE, KANSAS

By: _____
Mayor

Date: _____

ATTEST:

(Seal)

By: _____
City Clerk

GILMORE& BELL, P.C.
05/18/2022

ORIGINATION FEE AGREEMENT

THIS ORIGINATION FEE AGREEMENT (the “**Fee Agreement**”) is made and entered into as of June 1, 2022, by and between Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the “**Company**”); and the City of Bel Aire, Kansas, a municipal corporation, (the “**City**”).

WHEREAS, the City is empowered to issue industrial revenue bonds pursuant to K.S.A. 12-1740, *et seq.* and to grant property tax exemptions under K.S.A. 79-201a *Second*, subject to satisfaction of the applicable conditions precedent under State law and City policies; and,

WHEREAS, the Company desires to build a senior residential facility within the City of Bel Aire; and,

WHEREAS, the Company has acquired land (the “**Real Property**”) for the primary purpose of conducting the Company’s business within the City; and,

WHEREAS, the Company has requested the City issue taxable industrial revenue bonds in a principal amount not to exceed \$8,000,000 (the “**Bonds**”) and grant a property tax abatement on the buildings, improvements, equipment, fixtures and personal property financed with the proceeds of the Bonds (the “**Project**”); and,

WHEREAS, in connection with the issuance of the Bonds, the Company has offered to pay the City an origination fee, subject to the conditions in this Fee Agreement; and

WHEREAS, the City desires to issue the Bonds and grant a property tax abatement, subject to the conditions in this Fee Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained in this Fee Agreement, the parties agree as follows:

1. The City agrees to consider, in good faith, the Company’s request for the City to issue its taxable industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.*, in an amount not to exceed \$8,000,000 (the “**Bonds**”) for the purpose of making the proceeds thereof available for the benefit of the Company to pay the costs of the acquisition of the Real Property and the costs of constructing and equipping the Project. The City further agrees to consider, in good faith, as a part of the issuance of the Bonds, the request of the Company for the exemption of *ad valorem* property taxes on the Project for a period of 10 years commencing with the calendar year following the year in which the Bonds are issued. The Company also will qualify for a Sales Tax Exemption Certificate for all Bond-financed personal property acquired for the Project. No exemption shall apply for any Real Property located within a tax increment financing (TIF) district. Any such exemption shall further be subject to both applicable law, the policies of the City, and the provisions of Section 2, hereinafter.

2. In the event the City grants the exemption set forth in Section 1, above, the City agrees to take all actions reasonably necessary, and the Company shall cooperate, to procure the approval by the Kansas Board of Tax Appeals (“**BOTA**”) of such exemptions. The parties acknowledge that said exemptions are subject to the submission of an appropriate application to, and the approval of such

application by, BOTA. The Company acknowledges that, although the City will execute such application and pursue with the Company such approval, the City makes no assurance that such approval will be given. The Company with the City will pursue such application to obtain an order from BOTA approving such application and granting such exemption. If the Company determines that it is necessary to appeal the order of BOTA to secure such exemption, the City shall cooperate with the Company, at the request and expense of the Company, in pursuance of such appeal. The continuation of such tax abatement (the "Abatement"), on an annual basis, shall be subject to the rules and procedures of BOTA and further subject to the Company's compliance with this Fee Agreement and with all applicable rules, regulations, statutes and ordinances.

3. On or before the date of closing on the issuance of the Bonds, the Company will pay an origination fee to the City in an amount equal to 1.00% of the aggregate principal amount of the Bonds (\$80,000). The City shall use the origination fee solely for local economic development activities, pursuant to K.S.A. 12-1742.

4. The City agrees that it shall make no requirement in the Bond documents for any additional or other origination fees than that set forth above (the foregoing not including, however, the costs of issuance or other fees, costs or expenses which are customarily the responsibility of the beneficiary of industrial revenue bond financing).

5. This Fee Agreement is contingent upon the successful and satisfactory completion of the negotiations of the terms of the Bond issue. In the event such negotiations are not successfully completed or the Bonds are not issued for any reason, then the parties shall be released from the provisions of this Fee Agreement.

6. All notices or communications herein required or which either party desires to give to the other shall be in writing and shall be sent by: certified or registered, return receipt requested, postage prepaid, mail; personal delivery; recognized commercial courier which maintains evidence of delivery; or confirmed electronic or facsimile transmission, and shall be deemed sufficiently given if mailed, delivered or transmitted to the respective party at the address noted for said party, as set forth hereinafter. Regardless of the actual time of receipt, all notices or communications sufficiently given are deemed given 3 days after the postmarked date if given through the mail, and on the day received if given by personal delivery, commercial courier, electronic transmission or facsimile transmission. The addresses are, as follows:

The Company: Homestead Senior Residences Bel Aire, LLC
603 Pennsylvania
Holton, Kansas 66436
Attn: Tom Bishop
Fax: 785-364-0114
Email: tom@homesteadks.org

The City: City of Bel Aire, Kansas
7651 East Central Park Avenue
Bel Aire, KS 67226
Attn: City Clerk
Email: mkrehbiel@belaireks.gov

7. This Fee Agreement may be modified, amended or supplemented only by a writing of equal dignity. The parties' legal counsel may, on behalf of their respective clients, execute any writing as aforesaid and such writing shall be deemed authorized and of the same force and effect as if executed by the respective party and may be relied upon by the other party.

8. No party shall delegate or assign this Fee Agreement or any rights or duties hereunder (including by the merger or consolidation of a party with any third person) without the prior, written consent of the other. This Fee Agreement shall be binding upon and shall inure to the benefit of the City and the Company and the respective successors and permitted assigns of each upon execution hereof by the City and the Company. This Fee Agreement creates no rights as a third party beneficiary or otherwise in any person not a party.

9. This Fee Agreement may be executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

10. This Fee Agreement is entered into in the State of Kansas and shall be interpreted under the laws of that state.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Fee Agreement as of the date set forth above.

CITY OF BEL AIRE, KANSAS

ATTEST:

Jim Benage, Mayor

Melissa Krehbiel, City Clerk

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President

GILMORE & BELL, P.C.
MAY 24, 2022

TRANSCRIPT OF PROCEEDINGS

AUTHORIZING THE ISSUANCE

OF

NOT TO EXCEED \$8,000,000

CITY OF BEL AIRE, KANSAS

**MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022**

(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)

Dated June 22, 2022

NOT TO EXCEED \$8,000,000
CITY OF BEL AIRE, KANSAS
MULTIFAMILY HOUSING REVENUE BONDS
SERIES 2022
(HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC)

Closing: June 22, 2022

The documents described in the Closing List are to be delivered and taken as a condition precedent to the issuance and delivery of the above-described Bonds by the City of Bel Aire, Kansas. Such delivery of documents shall be deemed to have taken place simultaneously at the closing, and no delivery of documents, payments of moneys or other actions with respect to this transaction will be considered completed until all such deliveries, payments or other actions have been made or taken.

Closing is scheduled on June 22, 2022, through the office of Gilmore & Bell, P.C., in Wichita, Kansas. The items set forth on the Closing List will be examined, assembled and incorporated in the transcripts evidencing the authorization and issuance of the Bonds. Bond transcripts will be prepared and distributed to the following:

- 1. City of Bel Aire, Kansas ("Issuer")
- 2. Homestead Senior Residences Bel Aire, LLC ("Tenant" and "Purchaser")
- 3. Security Bank of Kansas City ("Trustee")
- 4. Gilmore & Bell, P.C. ("Bond Counsel")
- 5. Jacqueline Kelly ("Issuer's Counsel")
- 6. Morris Laing ("Tenant's Counsel")

Of the parties listed above, the Issuer will receive an original, paper copy of the transcript. All parties will receive copies of the transcript of proceedings in electronic PDF format unless a CD-ROM is requested before closing.

* * *

CLOSING LIST

Document Number

BASIC BOND DOCUMENTS:

1. Trust Indenture
2. Site Lease
3. Project Lease
4. Bond Purchase Agreement
5. Origination Fee Agreement

ADDITIONAL ISSUER DOCUMENTS:

6. Excerpts of Minutes
 - a. Relating to Public Hearing and Resolution of Intent
 - b. Relating to Final Passage of Bond Ordinance No. 689
7. Resolution of Intent
8. Affidavit of Mailing and Publication regarding Notice of Public Hearing
 - a. Publisher's Affidavit of Publication
9. Bond Ordinance
10. Affidavit of Publication of Summary of Bond Ordinance
11. Specimen Series 2022 Bond
 - a. Certificate of Bond Printer
12. Certificates of Manual Signature
 - a. Mayor
 - b. City Clerk
13. Issuer's Closing Certificate
 - a. Analysis of Costs and Benefits
14. Kansas Board of Tax Appeals Proceedings
 - a. Information Statement
 - b. Letter of Complete and Timely Filing
 - c. Certificate of Issuance

15. Notice of Site Lease and Project Lease

16. Assignment of Site Lease and Project Lease

DOCUMENTS RELATING TO AND DELIVERED BY THE TENANT:

17. Tenant's Closing Certificate with Exhibits

- a. Articles of Organization
- b. Operating Agreement
- c. Authorizing Resolution
- d. Expected Use of Bond Proceeds
- e. Certificate of Good Standing for Tenant from Kansas Secretary of State

18. Evidence of Title

MISCELLANEOUS DOCUMENTS:

19. Trustee's Receipt and Closing Certificate

20. Purchaser's Receipt and Closing Certificate

21. Closing Memorandum

LEGAL OPINIONS:

22. Bond Counsel Opinion

23. Opinion of Counsel for the Issuer

24. Opinion of Counsel for the Tenant

* * *

ISSUER'S CLOSING CERTIFICATE

Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)

We, the undersigned, hereby certify that we are the duly elected or appointed, qualified or acting Mayor and City Clerk of the City of Bel Aire, Kansas (the "Issuer") and, as such officers, we are familiar with the official books and records of the Issuer and, in connection with the issuance by the Issuer of the above-described bonds (the "Bonds"), hereby certify as of June 22, 2022, as follows:

1. ORGANIZATION AND AUTHORITY

1.1 **Due Organization.** The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.

1.2 **Meetings.** The meetings of the City Council at which action was taken as shown in the Transcript (as hereinafter defined) were either regular meetings or duly adjourned regular meetings or special meetings duly called and, to the best of our knowledge and belief, held in accordance with the law and the rules of the Issuer.

1.3 **Incumbency of Officials.** The following named persons were and are the duly elected or appointed, qualified and acting officials of the Issuer during the proceedings relating to the authorization and issuance of the Bonds:

<u>Name</u>	<u>Title</u>	<u>Term of Office</u>
Jim Benage	Mayor	12/2019 to 12/2023
Jeff Elshoff	Councilmember	01/2018 to 12/2021
Justin Smith	Councilmember	01/2018 to 12/2025
Joel Schroeder	Councilmember	12/2019 to 03/2022
Diane Wynn	Councilmember	12/2019 to 05/2022
John Welch	Councilmember	03/2020 to 12/2025
Greg Davied	Councilmember	12/2021 to 12/2025
Emily Hamburg	Councilmember	05/2022 to 12/2023
Melissa Krehbiel	City Clerk	N/A

1.4 **Official Newspaper.** *The Ark Valley News* is the Issuer's official newspaper and was the official newspaper on the date of publication of (1) the Ordinance, (2) the Notices required pursuant to K.S.A. 12-1740 *et seq.* (the "Act"); and (3) a Notice of Public Hearing as required by law relating to the issuance of the Bonds and granting of a property tax exemption.

2. ISSUER DOCUMENTS

2.1 **Transcript of Proceedings.** The transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds to be furnished to Homestead Senior Residences Bel Aire, LLC, the original purchaser of the Bonds (the "Purchaser"), and the other parties to the transactions entered into by the Issuer in connection with issuance of the Bonds, is to the best of our knowledge, information and belief

full, true and complete; none of such proceedings has been modified, amended or repealed; and such facts as are stated in the transcript still exist.

2.2. Execution of Bonds and Bond Documents. We have duly signed and executed, manually or by facsimile, the Bonds in an aggregate principal amount not to exceed \$8,000,000, consisting of a fully registered bond certificate in an aggregate principal amount of all Bonds presently outstanding, and the following described documents (collectively, the "Issuer Documents") authorized by Ordinance No. 689 (the "Ordinance"):

(i) a Trust Indenture dated as of June 1, 2022 (the "Indenture"), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Bonds;

(ii) a Site Lease dated as of June 1, 2022 (the "Site Lease"), leasing the Real Property to the Issuer in consideration of the issuance of the Bonds;

(iii) a Project Lease dated as of June 1, 2022 (the "Project Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments; and

(iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2022 Bonds by the Issuer to Homestead Senior Residences Bel Aire, LLC, Holton, Kansas (the "Purchaser").

On the date when the Bonds and the Issuer Documents were executed by us, we were and, at the date hereof, we are the officials indicated by our signatures on the Bonds and the Issuer Documents, and by our signatures on this certificate, respectively. The signatures of us and each of us, as such officials, respectively, on the Bonds and the Issuer Documents, are our true and genuine signatures, and the seal applied to or imprinted on the Bonds and the Bond Documents at the time of their execution was and is the official seal of the Issuer and was thereto applied to or imprinted by the authority and direction of the governing body of the Issuer, and is the seal applied to this certificate.

We hereby ratify, confirm and adopt the facsimile signatures on the Bonds as a proper execution of the Bonds. Each signature has been duly filed in the office of the Secretary of State of Kansas pursuant to K.S.A. 75-4001 to 75-4007.

2.3. Enforceability of Documents. To the best of our knowledge and belief, the Issuer has, by all necessary action, duly authorized the execution, issuance and delivery of the Bonds and the Issuer Documents and all such other agreements and documents as may be required to be executed and delivered by the Issuer in order to carry out, give effect to and consummate the transactions contemplated by the Issuer Documents and the Ordinance. To the best of our knowledge and belief, the Bonds and the Issuer Documents, as executed and delivered, constitute legal, valid and binding obligations of the Issuer in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties, and except as rights to indemnity, if any, may be limited by principles of public policy).

2.4. Representations and Warranties. To the best of our knowledge and belief, each of the representations and warranties of the Issuer in the Issuer Documents is true and accurate as if made on and as of this date and that all agreements to be complied with and obligations to be performed by the

Issuer under the Ordinance and the Issuer Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. **No Event of Default.** To the best of our knowledge and belief, at the date hereof, no Event of Default of the Issuer specified in the Issuer Documents, and no event which, with the giving of notice or lapse of time or both, would become such an Event of Default of the Issuer thereunder, has occurred.

3. **LEGAL MATTERS; PROJECT**

3.1. **Location of Project.** The property to be acquired and constructed out of the proceeds of the Bonds is located within the corporate limits of the Issuer.

3.2. **No Litigation.** There is not now pending or, to the knowledge of the undersigned officials of the Issuer, threatened, any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, or the proceedings or authority under which they are to be issued, or the existence of the Issuer, or the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for payment of the Bonds.

3.3 **Required Governmental Approvals.** The Issuer has received all approvals of State and other appropriate governmental officials required by the Act.

3.4 **Compliance with Statutes Governing Property Tax Exemptions.** Written notices complying with the provisions of K.S.A. 12-1749c and K.S.A. Supp. 12-1749d (relating to ad valorem property tax exemptions) were given in a timely manner to the Board of County Commissioners of Sedgwick County, Kansas and to each unified school district in which the Project is located. Prior to the granting of the property tax exemption, an analysis of the costs and benefits of such exemption was prepared for the Issuer's governing body, which included the effect of the exemption on state revenues, and a public hearing on the granting of the exemption was held by the governing body of the Issuer. A copy of the Analysis of Costs and Benefits is attached to this Certificate as ***Exhibit A***. Notice of the public hearing was published once at least seven days prior to the hearing in the official newspaper of the Issuer, and indicated the purpose, time and place of the hearing.

4. **MISCELLANEOUS**

4.1. **Request to Authenticate and Deliver Bonds.** Pursuant to the Indenture, the Trustee is hereby authorized to execute the Certificate of Authentication on the Bonds and to deliver the Bonds to the Purchaser upon payment of the purchase price for the Bonds and compliance with the other terms and provisions of the Indenture.

4.2. **Deposit of Bond Proceeds.** The Trustee, in accordance with the requirements of the Indenture, is hereby directed to deposit the proceeds of the Bonds into the funds and accounts established under and in accordance with the provisions of the Indenture; subject, however, to the provisions of *Section 4.1* of the Project Lease.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, we have signed this Certificate and applied the official seal of the Issuer for delivery concurrently with the issuance and delivery of the Bonds on the date stated above.

CITY OF BEL AIRE, KANSAS

[SEAL]

Jim Benage,
Mayor

ATTEST:

Melissa Krehbiel, City Clerk

EXHIBIT A
ANALYSIS OF COSTS AND BENEFITS

When Recorded Return to:
Sarah Steele, Esq.
Gilmore & Bell, P.C.
100 N. Main, Suite 800
Wichita, Kansas 67202

NOTICE OF SITE LEASE AND PROJECT LEASE

Notice is hereby given as of June 22, 2022, that Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant"), has leased real property located in Sedgwick County, Kansas, described in ***Schedule I*** attached hereto (the "Project") to the City of Bel Aire, Kansas, an incorporated city of the second class duly organized and existing under the laws of the State of Kansas (the "Issuer"), by Site Lease dated as of June 1, 2022 (the "Site Lease").

Notice is hereby further given as of June 22, 2022, that the Issuer has leased to the Tenant, the Real Property and all improvements located thereon (the "Project") by Project Lease dated as of June 1, 2022 (the "Project Lease").

The Site Lease and Project Lease expire on December 31, 2032, provide for an extension of the term, and for early termination in the event of the happening of certain contingencies. The Project Lease provides an option to purchase the Project for prices and on terms set forth therein, and contains various other covenants, terms and conditions. A copy of the Site Lease and Project Lease are on file in the office of the clerk of the Issuer.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, this Notice of Site Lease and Project Lease is executed by authority of the Governing Body of the City of Bel Aire, Kansas as of the day and year first above written.

CITY OF BEL AIRE, KANSAS

Jim Benage, Mayor

[SEAL]

Melissa Krehbiel, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on _____, 2022 by Jim Benage as Mayor and by Melissa Krehbiel as City Clerk of the City of Bel Aire, Kansas, a municipal corporation.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

SCHEDULE I

PROPERTY SUBJECT TO PROJECT LEASE

(A) A leasehold interest in the following described real estate located in Sedgwick County, Kansas:

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

the real property constituting the "Real Property" as referred to in the Project Lease, subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Real Property and financed or refinanced with proceeds of the Bonds.

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of *Sections 10.3* and *10.4* of the Project Lease, constitute the "Project" as referred to in both the Project Lease and the Indenture.

When Recorded Return to:
 Sarah Steele, Esq.
 Gilmore & Bell, P.C.
 100 N. Main, Suite 800
 Wichita, Kansas 67202

ASSIGNMENT OF SITE LEASE AND PROJECT LEASE

WHEREAS, the City of Bel Aire, Kansas, an incorporated city of the second class, duly organized and existing under the laws of the State of Kansas (the "Issuer"), has entered into a Site Lease dated as of June 1, 2022 (the "Site Lease") with Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company, (the "Tenant"), of real property described in *Schedule I* attached hereto (the "Real Property"); and

WHEREAS, the Issuer has further entered into a lease to the Tenant of the Real Property and all improvements located thereon (the "Project") by Project Lease dated as of June 1, 2022 (the "Project Lease"); and

WHEREAS, the Site Lease and Project Lease are for terms beginning as of June 22, 2022, and expiring December 31, 2032; and

WHEREAS, the Issuer has issued its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) (the "Bonds"), payable from the revenue to be received by the Issuer under the Project Lease, and the Project and the revenue from it have been pledged by the Issuer to payment of the Bonds; and

WHEREAS, Security Bank of Kansas City, Kansas City, Kansas, has been designated as trustee (the "Trustee") pursuant to the terms of a Trust Indenture dated as of June 1, 2022 (the "Indenture"), between the Issuer and the Trustee, and under the Indenture the Trustee is authorized, empowered and directed to perform the duties of the Issuer as lessor under the Site Lease and the Project Lease, including collection of rentals for disbursement to the owners of the Bonds as provided in the Indenture, and to perform, insofar as it legally can, all acts otherwise required of the Issuer under the Site Lease and the Project Lease;

NOW, THEREFORE, in consideration of the acceptance by the Trustee of all of the duties of the Issuer under the Site Lease and the Project Lease, the Issuer, by authority of its governing body, does as of June 22, 2022 assign to the Trustee all of its right, title and interest in the Site Lease and the Project Lease for the purposes of (i) exercising the rights of the Issuer under the Site Lease and the Project Lease to the extent that such rights may be lawfully assigned by the Issuer and excepting only such rights which, in the context in which they appear in the Site Lease and the Project Lease, are capable of being exercised or performed only by the Issuer and (ii) performing and carrying out to the extent directed to do so in the Indenture the duties and obligations of the Issuer thereunder, to such extent, and subject to such exception.

This instrument and the rights and obligations created hereby are for the benefit of the owners from time to time of the Bonds. This instrument shall be null and void upon full payment of the Bonds and the expiration of the duties of the Trustee under the Indenture.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, the City of Bel Aire, Kansas, has set its hand by its Mayor and attested by the City Clerk and has caused the corporate seal of the Issuer to be affixed hereto as of the day and year first above written.

CITY OF BEL AIRE, KANSAS

Jim Benage, Mayor

[SEAL]

Melissa Krehbiel, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on _____, 2022 by Jim Benage as Mayor and by Melissa Krehbiel as City Clerk of the City of Bel Aire, Kansas, a municipal corporation.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

601000.20156\CLOSING DOCUMENTS

(Issuer's Signature Page to Assignment of Site Lease and Project Lease)

ACKNOWLEDGMENT AND ACCEPTANCE

I, the undersigned, a duly authorized, qualified and acting trust officer of Security Bank of Kansas City, hereby acknowledge and accept, on behalf of the assignee, the above and foregoing Assignment of Site Lease and the Project Lease by the City of Bel Aire, Kansas (the “Issuer”) of all of its rights and interest in and to the Site Lease and the Project Lease between the Issuer, and Homestead Senior Residences Bel Aire, LLC, as Tenant.

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

By: _____
Name: Bonnie Mosher
Title: Vice President & Trust Officer

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on the ____ day of _____ 2022, by Bonnie Mosher, Vice President & Trust Officer of Security Bank of Kansas City, a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL] _____
Notary Public

My Appointment Expires:

SCHEDULE I

PROPERTY SUBJECT TO PROJECT LEASE

(A) A leasehold interest in the following described real estate located in Sedgwick County, Kansas:

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

the real property constituting the "Real Property" as referred to in the Project Lease, subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Real Property and financed or refinanced with proceeds of the Bonds.

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of *Sections 10.3 and 10.4* of the Project Lease, constitute the "Project" as referred to in both

the Project Lease and the Indenture.

**BEFORE THE BOARD OF TAX APPEALS
OF THE STATE OF KANSAS**

CERTIFICATE OF ISSUANCE OF INDUSTRIAL REVENUE BONDS

Pursuant to the provisions of K.S.A. 12-1744c, as amended, this is to certify that:

The City of Bel Aire, Kansas issued its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) dated June 22, 2022 in the principal amount of \$_____, on the _____ day of _____, ____.

City of Bel Aire, Kansas

By: _____
Authorized Officer

BOTA Filing No.: _____

VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

Sarah Steele, of Gilmore & Bell, P.C., Wichita, Kansas, of lawful age, being first duly sworn upon oath, deposes and states:

That the law firm of Gilmore & Bell, P.C., served as Bond Counsel for the above-mentioned issue of Multifamily Housing Revenue Bonds; that she has read the foregoing Certificate of Issuance and knows of her own personal knowledge that the statements set forth therein are true and correct.

By: _____
Sarah Steele

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2022.

[SEAL]

Notary Public

My Appointment Expires: _____

TRUSTEE'S RECEIPT AND CLOSING CERTIFICATE

Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)

The undersigned, a duly authorized trust officer of Security Bank of Kansas City, Kansas City, Kansas (the "Trustee"), the trustee designated in a Trust Indenture dated as of June 1, 2022 (the "Indenture") between the City of Bel Aire, Kansas (the "Issuer") and the Trustee, which authorizes and secures the Issuer's Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) (the "Bonds"), hereby certifies on behalf of the Trustee:

- (1) The Trustee hereby ratifies and confirms its acceptance of the duties specified for it in the Indenture, the Site Lease and the Project Lease (the "Bond Documents") executed and delivered in connection with the issuance of the Bonds. Each of the Bond Documents to which the Trustee is a party have been duly executed and delivered on behalf of the Trustee by duly authorized officers of the Trustee and constitute valid and binding obligations of the Trustee, enforceable in accordance with their terms.
- (2) The Trustee is a banking association or corporation duly organized under the banking laws of the United States of America or one of the states thereof, and has full power and authority to act as trustee, paying agent and bond registrar as provided in the Indenture and to discharge the duties imposed upon it by the Bond Documents.
- (3) Pursuant to and in accordance with the provisions of the Indenture and the written request and authorization of the Issuer, prior to the delivery of the Bonds, the Certificate of Authentication on the Bonds was signed on behalf of the Trustee by a duly authorized officer or signatory of the Trustee, who was at the time of the authentication of the Bonds and is at the date hereof a duly elected or appointed, qualified and acting officer or signatory of the Trustee, authorized to perform the acts described herein.
- (4) The Trustee has delivered certificates representing the entire principal amount of the Bonds presently being issued pursuant to the Indenture to or for the account of Homestead Senior Residences Bel Aire, LLC, Holton, Kansas, the Original Purchaser, as of the delivery of this certificate.
- (5) The Bank acknowledges receipt on behalf of the Issuer of Payment Orders equal to the purchase price of the Bonds initially issued and conformed copies of the Bond Documents and bond certificates representing the entire principal amount of Bonds issued.
- (6) The Trustee acknowledges receipt of each of the documents specified in the Indenture which are required to be filed with the Trustee prior to or simultaneously with the delivery of the Bonds.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, the Trustee has caused this certificate to be executed by a duly authorized trust officer this _____ day of _____, 2022.

SECURITY BANK OF KANSAS CITY

Kansas City, Kansas

as Trustee

By: _____

Name: Bonnie Mosher

Title: Vice President & Trust Officer

TENANT'S CLOSING CERTIFICATE

**Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)**

I, the undersigned, hereby certify that I am the duly elected, qualified and acting Manager of Homestead Senior Residences Bel Aire, LLC, a Kansas limited liability company (the "Tenant"), and as such I am familiar with the books and records of the Tenant and have all authority necessary to execute this Certificate on behalf of the Tenant.

In connection with the issuance of a principal amount not to exceed \$8,000,000 of Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) (the "Bonds"), by the City of Bel Aire, Kansas (the "Issuer"), I hereby further certify for and on behalf of the Tenant as follows:

1. ORGANIZATION AND AUTHORITY

1.1. Due Organization. The Tenant is a limited liability company, organized and in good standing under the laws of the State of Kansas.

1.2. Articles of Organization and Operating Agreement. The copy of the Articles of Organization of the Tenant attached hereto as *Exhibit A* is a true, complete and correct copy of the Articles of Organization, as amended to date, as certified by the Secretary of the State of Kansas, and the Articles of Organization have not been further amended and are in full force and effect as of the date hereof. The copy of the Operating Agreement of the Tenant attached hereto as *Exhibit B* is a true, complete and correct copy of the Operating Agreement, as amended to date, and the Operating Agreement has not been further amended and is in full force and effect as of the date hereof.

1.3. Incumbency of Officer. The person signing this certificate on the date hereof is a duly appointed, qualified and acting officer of the Tenant, is duly authorized to execute this certificate and the signature at the end of this certificate is his true and genuine signature.

2. PROCEEDINGS AND LEGAL DOCUMENTS

2.1. Proceedings. A true and correct copy of the resolution lawfully adopted by the Members of the Tenant in accordance with the laws of the Tenant's state of organization and its governing documents, attached hereto as *Exhibit C* (the "Resolution"), has been furnished to the Issuer to be included in the transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds; such proceedings of the Tenant have not been modified, amended or repealed and are in full force and effect as of the date hereof.

2.2. Execution of Documents. The following described documents (the "Tenant Documents") have been executed and delivered for and on behalf of the Tenant by its duly authorized Member pursuant to and in full compliance with the Resolution; the copies of the Tenant Documents to be included in the Transcript are true, complete and correct copies or counterparts as executed and delivered by the Tenant and are in substantially the same form and text as the copies of such documents which were presented before the Members of the Tenant and approved by the Resolution; the Tenant Documents have not been amended or

modified except with the approval of an authorized officer of the Tenant and the other parties thereto, and are in full force and effect as of the date hereof:

- (a) Site Lease dated as of June 1, 2022 (the "Site Lease"), between the Tenant, as lessor and the Issuer, as lessee.
- (b) Project Lease dated as of June 1, 2022 (the "Project Lease"), between the Issuer and the Tenant.
- (c) Bond Purchase Agreement dated as of June 1, 2022 (the "Bond Purchase Agreement"), among the Issuer, the Tenant and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas.

2.3. Authorization of Documents. The Tenant has duly authorized, by all necessary action, the execution, delivery and due performance of the Tenant Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Tenant in order to carry out, give effect to and consummate the transactions contemplated by the Tenant Documents. The Tenant Documents, as executed and delivered, constitute legal, valid and binding obligations of the Tenant enforceable in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties).

2.4. Representations in the Tenant Documents. Each of the representations of the Tenant set forth in the Tenant Documents is true, accurate and correct in all material respects as of the date hereof, as if made on the date hereof, and all covenants and conditions to be complied with and obligations to be performed by the Tenant under the Tenant Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. No Event of Default. At the date of this Certificate, no Event of Default under the Tenant Documents has occurred and is continuing and no event has occurred and is continuing which, with the lapse of time or the giving of notice, would constitute an Event of Default under the Tenant Documents.

2.6. Designation of Authorized Tenant Representative. The Tenant hereby designates the Thomas A. Bishop as the Authorized Tenant Representative for purposes of the Indenture, the Site Lease and the Project Lease.

3. DESCRIPTION OF THE PROJECT AND USE OF BOND PROCEEDS

3.1. Location and Description of Project. The proceeds of the Bonds are being used to finance the costs of the Project (as defined in the Project Lease). The Project consists of the acquisition, construction and equipping of a senior residence facility. The Project is located within the corporate limits of the Issuer.

3.2. Sources and Uses of Funds. The estimated sources of funds, including the proceeds of the Bonds and other available funds of the Tenant, and the expected application thereof, are as set forth on *Exhibit D* hereto.

4. LEGAL MATTERS

4.1. No Litigation. There is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Tenant, its officers or property,

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

4.2. **Title to the Project.** To the best of my knowledge, based on a title insurance commitment, there is at present no defect in the title to the land on which the Project will be constructed, or any other property described in the Indenture, the Site Lease or the Project Lease, other than Permitted Encumbrances, if any (as defined in the Project Lease), which may materially interfere with or impair the operation of, or materially adversely affect the value of, the Project or prevent or limit the carrying out of the purposes for which the same is being used by the Tenant.

4.3. **Approvals.** All currently necessary approvals, whether legal or administrative, have been obtained from any applicable federal, state or local entity or agency required in connection with the operation of the Project by Tenant, as defined in the Project Lease.

4.4. **Compliance with Existing Covenants.** The Tenant is not in material default under nor violating in any material respect (i) any material provision of its Articles of Organization or Operating Agreement or (ii) any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it is bound, or to which it or any of its assets is subject. Neither the execution and delivery of the Tenant Documents nor compliance with the terms, conditions and provisions thereof will conflict with or constitute a material default under, any of the foregoing.

4.5. **Legal Counsel.** For the purpose of rendering this Certificate, I have been counseled by the Tenant's legal counsel as to the purpose of the foregoing certifications and the meanings of the matters set forth in the foregoing certifications. I understand that the factual information and representations contained in this Certificate will be relied upon by the Issuer in the issuance of the Bonds.

5. ENVIRONMENTAL MATTERS.

5.1. **Permits.** All required federal, state and local permits concerning or related to environmental protection and regulation concerning the Tenant's operations have been secured and are current. Upon occupancy of the Project, Tenant will obtain any required permits for its operations to be conducted on and in the Project.

5.2. **Compliance with Applicable Permits, Laws and Regulations.** Tenant is and has been in full compliance with any such environmental permits, and any other requirements under all applicable Environmental Laws (as defined in the Project Lease).

5.3. **No Pending Actions.** There are no pending actions against Tenant under any Environmental Law, and Tenant has not received notice in any form of such an action, or of a possible action.

5.4. **Releases of Hazardous Substances.** Tenant has exercised diligence to determine whether there have been any past or current releases of hazardous substances on, over, under, at, from, into or onto

the Project; it has not been able to discover any such releases, and has concluded that there are none. The terms "release" and "hazardous substance" are as understood under CERCLA and other applicable Environmental Laws.

5.5. Present Conditions. Tenant is not aware of any environmental condition, situation or incident on, at or concerning the Project which could give rise to an action against Tenant or to liability against Tenant under any Environmental Law or any common law theory of liability.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, I have signed this certificate on behalf of Homestead Senior Residences Bel Aire, LLC for delivery concurrently with the issuance of the Bonds.

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President

EXHIBIT A

ARTICLES OF ORGANIZATION

EXHIBIT B

OPERATING AGREEMENT

EXHIBIT C

RESOLUTION

EXHIBIT D

SOURCES AND USES OF FUNDS

Sources of Funds:	
Principal Amount of the Bonds	\$8,000,000
Total	\$8,000,000

Uses of Funds:	
Project Fund	
Acquisition of Land	\$300,000
Construction	7,210,000
Furnishings and Equipment	45,000
Miscellaneous Contingency	445,000
Total	\$8,000,000

EXHIBIT E

CERTIFICATE OF GOOD STANDING

[FORM OF OPINION FOR TENANT'S COUNSEL]

(Counsel's Letterhead)

June 22, 2022

City of Bel Aire, Kansas
Bel Aire, Kansas

Homestead Senior Residences Bel Aire, LLC
Holton, Kansas

Security Bank of Kansas City
Kansas City, Kansas

Gilmore & Bell, P.C.
Wichita, Kansas

Re: Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds, Series 2022
(Homestead Senior Residences Bel Aire, LLC)
(the "Bonds")

Ladies and Gentlemen:

We have acted as counsel for Homestead Senior Residences Bel Aire, LLC (the "Tenant") in connection with the issuance of the Bonds, and in that connection we have examined the originals or copies certified or otherwise identified to our satisfaction of:

(a) Articles of Organization of the Tenant and Operating Agreement of the Tenant, all as amended to date;

(b) a certificate of recent date of the Secretary of the State of Kansas relating to the legal existence and good standing of the Tenant in Kansas;

(c) executed copies of the following documents (collectively, the "Tenant Documents"):

(i) a Trust Indenture dated as of June 1, 2022 (the "Indenture") between the City of Bel Aire, Kansas (the "Issuer") and Security Bank of Kansas City, Kansas City, Kansas, as bond trustee (the "Trustee");

(ii) a Site Lease dated as of June 1, 2022 between the Tenant, as lessor, and the Issuer, as lessee;

(iii) a Project Lease dated as of June 1, 2022 (the "Project Lease") between the Issuer, as lessor, and Tenant, as lessee;

(iv) a Bond Purchase Agreement dated as of June 1, 2022 (the "Bond Purchase Agreement") between the Issuer, the Tenant;

(d) the proceedings of the members of the Tenant, authorizing, among other things, the execution and delivery by the Tenant of the Tenant Documents;

(e) such other documents, instruments, certificates and records as we have considered necessary for purposes of this opinion.

For purposes of this opinion we have assumed that each of the other parties to the Tenant Documents have all requisite power and authority and have taken all necessary action to execute and deliver the instruments to which it is a party and to effect the transactions contemplated thereby.

Based on the foregoing, we are of the opinion that:

1. The Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Kansas, with powers adequate for carrying on the business now conducted by it.

2. The Tenant has full power and authority to execute and deliver the Tenant Documents and to perform its obligations thereunder; the Tenant Documents have been duly authorized, executed and delivered by the Tenant, and, subject to the qualification stated in the last paragraph of this opinion, each is a valid, legally binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

3. The execution and delivery of the Tenant Documents, and the performance by the Tenant of its obligations thereunder, do not and will not constitute a material default under, or conflict with or violate any material provisions of, the Tenant's Articles of Organization or Operating Agreement, both as amended to date, or applicable law, and do not and will not materially conflict with or violate or result in a material adverse effect on the Tenant under any indenture, mortgage, deed of trust, contract, agreement or other instrument to which it is a party, or any administrative regulation or court decree.

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

Our opinion that the Tenant Documents are enforceable in accordance with their terms is qualified to the extent that enforcement of the rights and remedies created by them is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of creditors and secured parties, and that the availability of the remedy of specific enforcement or of injunctive relief is subject to the discretion of the court before which any proceedings therefor may be brought.

This opinion is delivered to you by us as counsel for the Tenant and is solely for your use and reliance in connection with the issuance and sale of the Bonds and may not be used or relied upon by any other person for any purpose without our prior written consent.

Very truly yours,

MEMBER RESOLUTION

BE IT RESOLVED BY THOMAS A. BISHOP, PRESIDENT OF HOMESTEAD AFFORDABLE HOUSING, INC., WHICH IS MANAGER AND SOLE MEMBER OF HOMESTEAD SENIOR HOUSING BEL AIRE LLC, WHICH IS THE MANAGING MEMBER OF HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC, A KANSAS LIMITED LIABILITY COMPANY, that the City of Bel Aire, Kansas (the "Issuer") shall issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) in the aggregate principal amount not to exceed \$8,000,000 (the "Bonds") for the purpose of paying the costs to acquire, construct and equip a senior residence facility (the "Project"); and further

BE IT RESOLVED that the Bonds shall be issued pursuant to a Trust Indenture between the Issuer and Security Bank of Kansas City (the "Trustee"); and further

BE IT RESOLVED, that this company shall execute, enter into and perform a certain Site Lease (the "Site Lease"), between the Issuer, as lessee, and this company, as lessor, whereby upon the terms specified therein, this company shall lease to the Issuer the real property upon which the Project shall be constructed and installed; and further

BE IT RESOLVED that this company shall execute, enter into and perform a certain Project Lease (the "Project Lease") between the Issuer, as lessor, and this company, as lessee, whereby upon the terms specified therein, this company shall lease the Project from the Issuer; and further,

BE IT RESOLVED, that this company shall execute, enter into and perform a certain Bond Purchase Agreement (the "Bond Purchase Agreement") between this company, the Issuer and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas, as Underwriter, relating to the sale and purchase of the Bonds; and further

BE IT RESOLVED, that the Managing Member of this company be and is hereby authorized and directed to execute and deliver the Site Lease, Project Lease, Bond Purchase Agreement (the "Transaction Documents") for and on behalf and as the act and deed of this company; and further

BE IT RESOLVED, that the Managing Member of this company be and is hereby authorized and directed to execute and deliver such certificates, documents or other instruments of conveyance, notices and other papers as may be reasonably necessary in connection with the Transaction Documents and with the issuance by the Issuer of the Bonds; and further

BE IT RESOLVED, that the Managing Member of this company and all of the employees and agents of the company, be and they are hereby authorized and directed to perform all such other acts and do such other things as may be reasonably required in connection with the Transaction Documents, and the issuance of the Bonds, for and on behalf and as the act and deed of this company.

[Remainder of Page Intentionally Left Blank]

CERTIFICATE

I, the undersigned President of Homestead Affordable Housing, Inc., which is the Manager and Sole Member of Homestead Senior Housing Bel Aire LLC, which is the Managing Member of Homestead Senior Residences Bel Aire, LLC, hereby certify that the foregoing Resolutions are hereby lawfully adopted by Homestead Senior Residences Bel Aire, LLC and the same are presently in full force and effect as of the _____ day of _____, 2022.

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President

[FORM OF OPINION FOR COUNSEL TO ISSUER]

June 22, 2022

Gilmore & Bell, P.C.
Wichita, Kansas

Homestead Senior Residences Bel Aire, LLC
Holton, Kansas

Governing Body
City of Bel Aire, Kansas

Re: Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)
(the "Bonds")

Ladies and Gentlemen:

I am City Attorney for the City of Bel Aire, Kansas (the "Issuer"), and acting as its counsel, I have advised the Issuer in connection with its Ordinance No. 689 (the "Ordinance"); a Site Lease dated as of June 1, 2022, between the Issuer and Homestead Senior Residences Bel Aire, LLC (the "Tenant"); a Project Lease dated as of June 1, 2022, between the Issuer and the Tenant; a Trust Indenture dated as of June 1, 2022 between the Issuer, and Security Bank of Kansas City, Kansas City, Kansas, as Trustee; a Bond Purchase Agreement among the Issuer, the Tenant and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas, as Original Purchaser, and an Assignment of Site Lease and Project Lease (collectively, the "Bond Documents") and certain other certificates and proceedings relating to the issuance by the Issuer of the Bonds and the execution and delivery by officials of the Issuer of the Bond Documents.

Acting as such City Attorney, I have become acquainted with the affairs of the Issuer pertaining to the Bonds, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary in order to give the opinions expressed herein.

You are advised that, in my opinion:

1. The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.
2. The Issuer, acting through a majority of its governing body, did pass the Ordinance on May 17, 2022; it has been signed and published as required by law, and is now in full force and effect.

3. The Issuer has full power and authority to issue the Bonds and to execute and deliver the Bond Documents and all other documents reasonably necessary in connection with the transactions contemplated thereby, and the Bonds and the Bond Documents have been executed and delivered by the Issuer in the manner authorized by law and the Ordinance, enforceable in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principal of equity or the exercise of judicial discretion.

4. To my actual knowledge, after reasonable investigation, the enactment of the Ordinance, and the execution, delivery and performance of the Bond Documents do not and will not conflict with or constitute on the part of the Issuer a breach or default under (i) any ordinance, agreement, indenture or instrument to which the Issuer is a party, or by which it or any of its property may be bound, or (ii) any regulation, decree or order of any court, agency or governmental body having jurisdiction over the Issuer or any of its property.

5. To my actual knowledge, after reasonable investigation, there is no litigation, proceeding or investigation pending in any court or before any administrative agency or body, or to the knowledge of the officials of the Issuer, threatened, (i) to restrain or enjoin the issuance or delivery of the Bonds, or the execution, delivery or performance by the Issuer of its obligations under the Bond Documents; (ii) in any way contesting or affecting the validity or enforceability of the Ordinance, the Bonds or the Bond Documents; (iii) contesting the powers of the Issuer to issue the Bonds or enter into the Bond Documents; (iv) challenging the acquisition, equipping or operation of the Project (as defined in the Bond Documents); or (v) affecting in any manner the organization of the Issuer or its status as an incorporated city of the State of Kansas.

No authority or proceeding for the issuance of the Bonds or the execution and delivery of the Bond Documents has been repealed, revoked or rescinded.

I have not been engaged nor have I undertaken to review the accuracy completeness or sufficiency of any offering material relating to the Bonds, except as to the information contained therein regarding the Issuer, and I otherwise express no opinion relating thereto.

No opinion is expressed regarding the includability in gross income for Federal income tax purposes, or the exemption from taxation under the laws of the State of Kansas, present or future, of the interest on the Bonds.

Very truly yours,

BOND PREPARATION CERTIFICATE

This will certify that the undersigned has caused to be prepared and delivered one (1) original Bond certificate in the aggregate principal amount not to exceed \$8,000,000 for the City of Bel Aire, Kansas Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC); and one (1) sample Bond.

GILMORE & BELL, P.C.

By: _____

PURCHASER'S CERTIFICATE AND RECEIPT**Not to Exceed \$8,000,000****Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)**

Homestead Senior Residences Bel Aire, LLC (the "Purchaser"), hereby certifies that the Purchaser received from Security Bank of Kansas City, Kansas City, Kansas, as Trustee, on behalf of the City of Bel Aire, Kansas (the "Issuer") a certificate representing the Issuer's Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC), in an aggregate principal amount not to exceed \$8,000,000, dated as of June 22, 2022. Issued by the Issuer and received by the Purchaser was one (1) Bond certificate in fully registered form, numbered R-1, initially registered as requested by the Purchaser. The Bonds will not be re-offered to the public.

The Bond certificate has been signed by the facsimile signature of the Mayor of the Issuer, attested by the facsimile signature of the City Clerk with the corporate seal of the Issuer affixed thereon, and has been authenticated by an authorized officer of the Trustee.

DATED _____, 2022.

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability companyBy: Homestead Senior Housing Bel Aire LLC
Its: Managing MemberBy: Homestead Affordable Housing, Inc.
Its: Manager and Sole MemberBy: _____
Name: Thomas A. Bishop
Title: President

June 22, 2022

Governing Body
City of Bel Aire, Kansas

Homestead Senior Residences Bel Aire, LLC
Holton, Kansas

Security Bank of Kansas City
Kansas City, Kansas

Re: Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)

Ladies and Gentlemen:

We have acted as Bond Counsel to the City of Bel Aire, Kansas (the "Issuer") in connection with the issuance of the above-captioned bonds (the "Bonds"). In this capacity, we have examined the law and the certified proceedings, certifications and other documents that we deem necessary to render this opinion.

The Bonds have been issued under K.S.A. 12-1740 *et seq.*, as amended (the "Act"), and a Trust Indenture (the "Indenture") dated as of June 1, 2022 between the Issuer and Security Bank of Kansas City, Kansas City, Kansas, as trustee (the "Trustee"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

Regarding questions of fact material to our opinion, we have relied on representations of the Issuer and Homestead Senior Residences Bel Aire, LLC (the "Tenant") contained in the Site Lease and the Project Lease and certified proceedings and other certifications of the Issuer, the Tenant and others furnished to us, without undertaking to verify them by independent investigation.

We have also relied on the legal opinion of Morris Laing Law Firm, counsel to the Tenant, dated the date of this opinion, regarding certain matters, including (a) the status and due organization of the Tenant, (b) the power of the Tenant to enter into and perform its obligations under the Site Lease and the Project Lease, and (c) the due authorization, execution and delivery of the Site Lease and the Project Lease by the Tenant and the binding effect and enforceability of those documents against the Tenant.

Based on and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is an incorporated city of the second class duly organized and existing under the laws of the State of Kansas (the "State"), with lawful power and authority to issue the Bonds and to enter into and perform its obligations under the Indenture, the Site Lease and the Project Lease.

2. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and legally binding special, limited obligations of the Issuer in the amount advanced as of the date hereof, and will be such special, limited obligations of the Issuer in the additional principal amounts advanced pursuant to the Site Lease and the Project Lease and the Bond Agreement up to a maximum principal amount of \$8,000,000.

3. The Bonds are payable solely from the Trust Estate under the Indenture. The Bonds do not constitute an indebtedness of the State or of any political subdivision of the State within the meaning of any constitutional or statutory provision or limitation and do not constitute a pledge of the full faith and credit of the State or of any political subdivision of the State. The issuance of the Bonds will not, directly, indirectly or contingently, obligate the State or any political subdivision of the State to levy any form of taxation or to make any appropriation for the payment of the Bonds.

4. The Indenture, the Site Lease and the Project Lease have been duly authorized, executed and delivered by the Issuer and are valid and legally binding agreements of the Issuer enforceable against the Issuer.

5. The interest on the Bonds is *not* excluded from gross income for federal income tax purposes under Section 103(a) of the Code. We express no other opinion as to any other federal tax law consequences pertaining to the Bonds.

6. The interest on the Bonds is exempt from income taxation by the State.

We express no opinion regarding (a) the accuracy, completeness or sufficiency of any offering material related to the Bonds, (b) the perfection or priority of the lien on the Trust Estate pledged under the Indenture, or (c) federal or state tax consequences arising with respect to the Bonds, other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture, the Site Lease and the Project Lease may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

SOS:as

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

Industrial Revenue Bond Informational Statement
(K.S.A. 12-1744a)

APPLICANT:

City of Bel Aire, Kansas
City or County issuing I.R.B.s

Sedgwick
County in which City is located

Please answer all questions. If a question is not applicable, please indicate (N/A).

1. Proposed lessee name and address
for whom bonds issued:
- Homestead Senior Residences Bel Aire, LLC
603 Pennsylvania
Holton, Kansas 66436

Guarantor for Bonds, if any:

N/A

Paying (Fiscal) Agent:

Security Bank of Kansas City
Kansas City, Kansas

Attorney(s) who issued opinion:

Bond Counsel:

Gilmore & Bell, P.C.
Wichita, Kansas

Tenant Counsel:

Law Offices of Morris Laing
Wichita, Kansas

Issuer's Attorney:

Jacqueline Kelly, Esq.
Bel Aire, Kansas

Underwriter's Counsel

N/A

(For State of Kansas use only)

IRB Statement No. _____-IRB

Fee: _____ Amt Rec. _____

Rec. Date: _____ Ck # _____

2. Will an exemption of the property be requested? Yes X No

If exemption will be sought:

- a. Provide the legal description of the property. (If legal description is lengthy, attach additional pages.) **See Exhibit A attached**
- b. Provide the appraised valuation (not assessed) as listed by the county appraiser of property to be acquired, purchased, etc. as of next preceding January 1.

Land: \$5,410

Improvements: \$0

Equipment and
Machinery \$0

3. Estimated TOTAL cost of the property:

Land: \$300,000

Improvements: \$7,210,000

Equipment and
Machinery \$45,000

4. If facility financed is an addition or improvement to existing facility already financed by prior IRB issuance, supply following:

Date prior I.R.B.s issued: N/A

If existing facility exempted,
period of exemption: N/A

Board of Tax Appeals #: N/A

5. IRB principal amount to be issued: Not to exceed \$8,000,000

6. Please provide the following:

- a. Itemized list of any payments in lieu of taxes. N/A
- b. The amount of any service fee or charges with detailed description of services to be rendered by Issuer for same. **See Exhibit B attached**
- c. Detailed description of ultimate use of bond proceeds (e.g. acquisition of real estate, remodeling of physical plant) with the amount of IRB proceeds to be used for each purpose. **See Exhibit C attached**

7. What is the proposed date of issuance of these I.R.B.s? (Must be a least 7 days after receipt of preliminary filing with the Board of Tax Appeals.) June 22, 2022

VERIFICATION

I, Melissa Krehbiel, City Clerk, do solemnly swear or affirm that the information set forth herein is true and correct, to the best of my knowledge and belief. So help me God.

Signature of Applicant

Melissa Krehbiel

Printed Name and Title

State of Kansas)
) ss
County of Sedgwick)

This instrument was acknowledged before me on June _____, 2022 by Melissa Krehbiel, City Clerk.

Seal

Signature of Notary Public

My appointment expires:

Send this statement along with the filing fee of \$500.00 to:

Kansas Board of Tax Appeals
Eisenhower State Office Building
700 SW Harrison, 10th Floor, Suite 1022
Topeka, KS 66603

EXHIBIT A**LEGAL DESCRIPTION**

A portion of Lot 1, Block A, Homestead Senior Landing, Bel Aire, Sedgwick County, Kansas described as beginning at the northeast corner of said Lot 1; thence S00°00'00"E coincident with the east line of said Lot 1, 366.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 110.40 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 146.50 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 28.20 feet; thence S00°00'00"E parallel with the east line of said Lot 1, 35.85 feet; thence S90°00'00"W perpendicular to the east line of said Lot 1, 172.39 feet to a point in a non-tangent curve to right; thence southwesterly, westerly and northwesterly an arc length of 92.58 feet, a radius of 62.50 feet, a chord length of 84.34 feet and a chord bearing of S90°00'00"W to a point on a non-tangent line; thence S90°00'00"W perpendicular to the east line of said Lot 1, 19.15 feet to the Point of Curvature (PC) of a curve to the left; thence southwesterly an arc length of 56.51 feet, a radius of 51.50 feet, a chord length of 53.72 feet and a chord bearing of S58°33'54"W to the Point of Reverse Curvature (PRC) of a curve to the right; thence southwesterly, westerly and northwesterly an arc length of 81.27 feet, a radius of 49.50 feet, a chord length of 72.44 feet and a chord bearing of S74°09'43"W to the PRC of a curve to the left; thence northwesterly an arc length of 19.33 feet, a radius of 35.50 feet, a chord length of 19.09 feet and a chord bearing of N74°24'11"W to the PC of said curve; thence S90°00'00"W perpendicular to the west line of said Lot 1, 51.60 feet; thence N00°00'00"W coincident with the west line of said Lot 1, 222.28 feet to a deflection point in the west line of said Lot 1; thence N08°31'50"E coincident with the west line of said Lot 1, 101.12 feet to a deflection point in the west line of said Lot 1; thence N00°00'00"E coincident with the west line of said Lot 1, 123.66 feet; thence N90°00'00"E, 326.00 feet; thence N68°20'10"E, 26.74 feet; thence N00°24'51"W, 134.00 feet to a deflection point in the north line of said Lot 1; thence N89°35'09"E coincident with the north line of said Lot 1, 235.13 feet to the point of beginning.

Subject property contains 260,059.3 square feet, or 5.97± Acres.

EXHIBIT B
ORINATION FEE AGREEMENT

EXHIBIT C

USE OF BOND PROCEEDS

Sources of Funds:	
Principal Amount of the Bonds	\$8,000,000
Total	\$8,000,000
Uses of Funds:	
Project Fund	
Acquisition of Land	\$300,000
Construction	6,940,000
Furnishings and Equipment	45,000
Miscellaneous Contingency	715,000
Total	\$8,000,000



316-267-2091 MAIN
316-262-6523 FAX
GILMOREBELL.COM

GILMORE & BELL PC
ONE MAIN PLACE - 100 NORTH MAIN, SUITE 800
WICHITA, KANSAS 67202-1311

KANSAS CITY
ST. LOUIS
OMAHA | LINCOLN

June 19, 2022

To: The Attached Distribution List

Re: City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)
Dated June 22, 2022 (the "Bonds")

CLOSING MEMORANDUM

The pre-closing for the Bonds is scheduled for 3:00 p.m., on June 21, 2022 at the offices of Gilmore & Bell, P.C. ("Bond Counsel"). At the pre-closing documents will be assembled with original signature pages attached and all documents on the Closing List will be assembled. The parties will have the opportunity to complete their review of the documents at that time. Such documents will be held in escrow by Gilmore & Bell, P.C. ("Bond Counsel") pending the closing. At the conclusion of the pre-closing, all conditions to issuance of the Bonds will have been met, and the Bonds will have been delivered to the bond registrar for authentication at closing and safekeeping pending final advance of all bond proceeds.

The closing is scheduled for approximately 10:00 a.m. on June 22, 2022 (the "Closing Time"). The closing will occur via conference telephone call initiated by Bond Counsel.

Homestead Senior Residences Bel Aire, LLC (the "Tenant") shall deliver to the Trustee its Requisition for Payment of Project Costs No. 1 (the "Payment Order") in the form set forth on *Exhibit A* hereto, together with supporting invoices. Additional advances will be documented by the Tenant with Payment Orders submitted to the Trustee for Project Costs paid for by the Tenant.

Upon confirmation of receipt by the Trustee of the initial Payment Order, Bond Counsel will (a) provide a signed approving legal opinion and (b) notify the Trustee that the Bonds may be delivered. The Trustee will establish the Funds and Accounts set forth in the Indenture.

Post-closing, Bond Counsel will transmit the Notice of Lease and Assignment of Lease to the Sedgwick County Register of Deeds for recording. Bond Counsel will also file the Certificate of Issuance with the Kansas Board of Tax Appeals. Tenant will request issuance of the title policy to be included in the transcripts of documents and proceedings.

Transcripts of the documents and proceedings will be provided by Bond Counsel as follows:

1. City of Bel Aire, Kansas ("Issuer")
2. Homestead Senior Residences Bel Aire, LLC ("Company" and "Purchaser")

3. Security Bank of Kansas City (the "Trustee")
5. Gilmore & Bell, P.C. ("Bond Counsel")
6. Jacqueline Kelly ("City Attorney")
7. Morris Laing ("Company's Counsel")

Of the parties listed above, the Issuer will receive a paper copy of the transcript. All others will receive a copy in electronic PDF unless a CD-ROM is requested before closing.

If anyone has any questions or corrections regarding this matter, please advise the undersigned immediately.

Very truly yours,

SOS/as

June 22, 2022

Gilmore & Bell, P.C.
Wichita, Kansas

Homestead Senior Residences Bel Aire, LLC
Holton, Kansas

Governing Body
City of Bel Aire, Kansas

Re: Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds
Series 2022
(Homestead Senior Residences Bel Aire, LLC)
(the "Bonds")

Ladies and Gentlemen:

I am City Attorney for the City of Bel Aire, Kansas (the "Issuer"), and acting as its counsel, I have advised the Issuer in connection with its Ordinance No. 689 (the "Ordinance"); a Site Lease dated as of June 1, 2022, between the Issuer and Homestead Senior Residences Bel Aire, LLC (the "Tenant"); a Project Lease dated as of June 1, 2022, between the Issuer and the Tenant; a Trust Indenture dated as of June 1, 2022 between the Issuer, and Security Bank of Kansas City, Kansas City, Kansas, as Trustee; a Bond Purchase Agreement among the Issuer, the Tenant and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas, as Original Purchaser, and an Assignment of Site Lease and Project Lease (collectively, the "Bond Documents") and certain other certificates and proceedings relating to the issuance by the Issuer of the Bonds and the execution and delivery by officials of the Issuer of the Bond Documents.

Acting as such City Attorney, I have become acquainted with the affairs of the Issuer pertaining to the Bonds, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary in order to give the opinions expressed herein.

You are advised that, in my opinion:

1. The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.
2. The Issuer, acting through a majority of its governing body, did pass the Ordinance on May 17, 2022; it has been signed and published as required by law, and is now in full force and effect.

3. The Issuer has full power and authority to issue the Bonds and to execute and deliver the Bond Documents and all other documents reasonably necessary in connection with the transactions contemplated thereby, and the Bonds and the Bond Documents have been executed and delivered by the Issuer in the manner authorized by law and the Ordinance, enforceable in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principal of equity or the exercise of judicial discretion.

4. To my actual knowledge, after reasonable investigation, the enactment of the Ordinance, and the execution, delivery and performance of the Bond Documents do not and will not conflict with or constitute on the part of the Issuer a breach or default under (i) any ordinance, agreement, indenture or instrument to which the Issuer is a party, or by which it or any of its property may be bound, or (ii) any regulation, decree or order of any court, agency or governmental body having jurisdiction over the Issuer or any of its property.

5. To my actual knowledge, after reasonable investigation, there is no litigation, proceeding or investigation pending in any court or before any administrative agency or body, or to the knowledge of the officials of the Issuer, threatened, (i) to restrain or enjoin the issuance or delivery of the Bonds, or the execution, delivery or performance by the Issuer of its obligations under the Bond Documents; (ii) in any way contesting or affecting the validity or enforceability of the Ordinance, the Bonds or the Bond Documents; (iii) contesting the powers of the Issuer to issue the Bonds or enter into the Bond Documents; (iv) challenging the acquisition, equipping or operation of the Project (as defined in the Bond Documents); or (v) affecting in any manner the organization of the Issuer or its status as an incorporated city of the State of Kansas.

No authority or proceeding for the issuance of the Bonds or the execution and delivery of the Bond Documents has been repealed, revoked or rescinded.

I have not been engaged nor have I undertaken to review the accuracy completeness or sufficiency of any offering material relating to the Bonds, except as to the information contained therein regarding the Issuer, and I otherwise express no opinion relating thereto.

No opinion is expressed regarding the includability in gross income for Federal income tax purposes, or the exemption from taxation under the laws of the State of Kansas, present or future, of the interest on the Bonds.

Very truly yours,

MEMBER RESOLUTION

BE IT RESOLVED BY THOMAS A. BISHOP, PRESIDENT OF HOMESTEAD AFFORDABLE HOUSING, INC., WHICH IS MANAGER AND SOLE MEMBER OF HOMESTEAD SENIOR HOUSING BEL AIRE LLC, WHICH IS THE MANAGING MEMBER OF HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC, A KANSAS LIMITED LIABILITY COMPANY, that the City of Bel Aire, Kansas (the "Issuer") shall issue its Multifamily Housing Revenue Bonds, Series 2022 (Homestead Senior Residences Bel Aire, LLC) in the aggregate principal amount not to exceed \$8,000,000 (the "Bonds") for the purpose of paying the costs to acquire, construct and equip a senior residence facility (the "Project"); and further

BE IT RESOLVED that the Bonds shall be issued pursuant to a Trust Indenture between the Issuer and Security Bank of Kansas City (the "Trustee"); and further

BE IT RESOLVED, that this company shall execute, enter into and perform a certain Site Lease (the "Site Lease"), between the Issuer, as lessee, and this company, as lessor, whereby upon the terms specified therein, this company shall lease to the Issuer the real property upon which the Project shall be constructed and installed; and further

BE IT RESOLVED that this company shall execute, enter into and perform a certain Project Lease (the "Project Lease") between the Issuer, as lessor, and this company, as lessee, whereby upon the terms specified therein, this company shall lease the Project from the Issuer; and further,

BE IT RESOLVED, that this company shall execute, enter into and perform a certain Bond Purchase Agreement (the "Bond Purchase Agreement") between this company, the Issuer and Homestead Senior Residences Bel Aire, LLC, Holton, Kansas, as Underwriter, relating to the sale and purchase of the Bonds; and further

BE IT RESOLVED, that the Managing Member of this company be and is hereby authorized and directed to execute and deliver the Site Lease, Project Lease, Bond Purchase Agreement (the "Transaction Documents") for and on behalf and as the act and deed of this company; and further

BE IT RESOLVED, that the Managing Member of this company be and is hereby authorized and directed to execute and deliver such certificates, documents or other instruments of conveyance, notices and other papers as may be reasonably necessary in connection with the Transaction Documents and with the issuance by the Issuer of the Bonds; and further

BE IT RESOLVED, that the Managing Member of this company and all of the employees and agents of the company, be and they are hereby authorized and directed to perform all such other acts and do such other things as may be reasonably required in connection with the Transaction Documents, and the issuance of the Bonds, for and on behalf and as the act and deed of this company.

[Remainder of Page Intentionally Left Blank]

CERTIFICATE

I, the undersigned President of Homestead Affordable Housing, Inc., which is the Manager and Sole Member of Homestead Senior Housing Bel Aire LLC, which is the Managing Member of Homestead Senior Residences Bel Aire, LLC, hereby certify that the foregoing Resolutions are hereby lawfully adopted by Homestead Senior Residences Bel Aire, LLC and the same are presently in full force and effect as of the _____ day of _____, 2022.

HOMESTEAD SENIOR RESIDENCES BEL AIRE, LLC,
a Kansas limited liability company

By: Homestead Senior Housing Bel Aire LLC
Its: Managing Member

By: Homestead Affordable Housing, Inc.
Its: Manager and Sole Member

By: _____
Name: Thomas A. Bishop
Title: President

June 22, 2022

City of Bel Aire, Kansas
Bel Aire, Kansas

Homestead Senior Residences Bel Aire, LLC
Holton, Kansas

Security Bank of Kansas City
Kansas City, Kansas

Gilmore & Bell, P.C.
Wichita, Kansas

Re: Not to Exceed \$8,000,000
City of Bel Aire, Kansas
Multifamily Housing Revenue Bonds, Series 2022
(Homestead Senior Residences Bel Aire, LLC)
(the "Bonds")

Ladies and Gentlemen:

We have acted as counsel for Homestead Senior Residences Bel Aire, LLC (the "Tenant") in connection with the issuance of the Bonds, and in that connection we have examined the originals or copies certified or otherwise identified to our satisfaction of:

(a) Articles of Organization of the Tenant and Operating Agreement of the Tenant, all as amended to date;

(b) a certificate of recent date of the Secretary of the State of Kansas relating to the legal existence and good standing of the Tenant in Kansas;

(c) executed copies of the following documents (collectively, the "Tenant Documents"):

(i) a Trust Indenture dated as of June 1, 2022 (the "Indenture") between the City of Bel Aire, Kansas (the "Issuer") and Security Bank of Kansas City, Kansas City, Kansas, as bond trustee (the "Trustee");

(ii) a Site Lease dated as of June 1, 2022 between the Tenant, as lessor, and the Issuer, as lessee;

(iii) a Project Lease dated as of June 1, 2022 (the "Project Lease") between the Issuer, as lessor, and Tenant, as lessee;

(iv) a Bond Purchase Agreement dated as of June 1, 2022 (the "Bond Purchase Agreement") between the Issuer, the Tenant;

(d) the proceedings of the members of the Tenant, authorizing, among other things, the execution and delivery by the Tenant of the Tenant Documents;

(e) such other documents, instruments, certificates and records as we have considered necessary for purposes of this opinion.

For purposes of this opinion we have assumed that each of the other parties to the Tenant Documents have all requisite power and authority and have taken all necessary action to execute and deliver the instruments to which it is a party and to effect the transactions contemplated thereby.

Based on the foregoing, we are of the opinion that:

1. The Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Kansas, with powers adequate for carrying on the business now conducted by it.

2. The Tenant has full power and authority to execute and deliver the Tenant Documents and to perform its obligations thereunder; the Tenant Documents have been duly authorized, executed and delivered by the Tenant, and, subject to the qualification stated in the last paragraph of this opinion, each is a valid, legally binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

3. The execution and delivery of the Tenant Documents, and the performance by the Tenant of its obligations thereunder, do not and will not constitute a material default under, or conflict with or violate any material provisions of, the Tenant's Articles of Organization or Operating Agreement, both as amended to date, or applicable law, and do not and will not materially conflict with or violate or result in a material adverse effect on the Tenant under any indenture, mortgage, deed of trust, contract, agreement or other instrument to which it is a party, or any administrative regulation or court decree.

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

Our opinion that the Tenant Documents are enforceable in accordance with their terms is qualified to the extent that enforcement of the rights and remedies created by them is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of creditors and

secured parties, and that the availability of the remedy of specific enforcement or of injunctive relief is subject to the discretion of the court before which any proceedings therefor may be brought.

This opinion is delivered to you by us as counsel for the Tenant and is solely for your use and reliance in connection with the issuance and sale of the Bonds and may not be used or relied upon by any other person for any purpose without our prior written consent.

Very truly yours,



City of Bel Aire, Kansas

City Of Bel Aire, Ks.
Ty Lasher, City Manager

May 13, 2022

Dear Ty,

Waste Connections appreciates the opportunity to service the trash hauling needs for the City of Bel Aire. We value our business relationship and look forward to continuing our partnership for many years to come.

Waste Connections would like to request a two percent (2%) increase effective June 1, 2022. In the past six (6) years Waste Connections has only received a total of two-point five percent (2.5%) price increase. In 2018 and in 2019 we were denied an increase, two years ago due to COVID-19 pandemic we didn't request an increase. In 2021 we were allowed a one percent (1%) increase.

In the past 12 months we and all other businesses has seen the majority of operating expenses increase significantly.

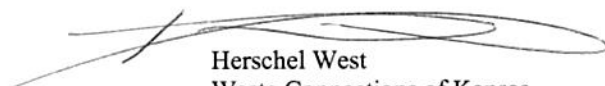
Please consider our request of a two percent (2%) effective June 1, 2022.

The rates with the two percent (2%) will be the following:

	<u>June 2021 Rates</u>	<u>June 2022 Rates</u>
1-95-gallon residential cart	\$9.48 per month	\$9.67 per month
2-95-gallon residential carts	\$14.60 per month	\$14.90 per month
1-65-gallon residential cart	\$8.45 per month	\$8.62 per month
1-95-gallon recycle cart	\$3.33 per month	\$3.40 per month

Once again, we would like to thank you for your community's support. Please feel free to call me if you have any questions or concerns.

Sincerely,


Herschel West
Waste Connections of Kansas
Municipal Marketing Manager
Office: 316-838-4973 / Cell: 316-253-8023

AGREEMENT FOR SOLID WASTE COLLECTION AND SINGLE STREAM RECYCLE SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 3rd day of May, 2016, by and between The City of Bel Aire, Kansas, a municipality organized and existing under and by virtue of the laws of the State of Kansas ("City"), and Waste Connections of Kansas, Inc. ("Hauler").

WHEREAS, City issued an Request for Proposal for Solid Waste and Recycle Services (RFP) which is attached hereto and incorporated herein as Attachment A, and one clarification letter which is attached hereto and incorporated herein as Attachment B;

WHEREAS, Hauler submitted a proposal in response to City's RFP which is attached hereto and incorporated herein as Attachment C;

WHEREAS, City accepted Hauler's proposal March 17, 2016, and authorized negotiation for a ten year agreement.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, and within Attachments A, B, and C the parties hereto agree as follows:

1. OBLIGATIONS AND STANDARDS OF HAULER.

A. Hauler will provide solid waste collection once per week to all commercial and residential properties which have contracted with the City for solid waste collection service. As of March 1, 2016, the City billed 2, 294 accounts per month for solid waste collection service. Hauler will notify City of any additional costs, such as extra bag fees, to include within any customer's bill. Hauler will collect fees for bulky items from customer at time of service.

B. Hauler will provide single stream curbside recycling every other week for all single-family and duplex households in the City. As of March 1, 2016, the City billed 2,459 accounts per month for single stream curbside recycling service.

C. Hauler will provide the following associated services to the City:

- (1) Trash carts and portable restroom services for Bel Aire Recreation Center. Hauler will pay disposal costs.
- (2) Trash and recycle carts for Bel Aire Public Works Facility. Hauler will pay disposal costs.
- (3) A twenty (20) yard roll-off dumpster at Bel Aire Public Works Facility. City will pay costs associated with disposal of roll-off dumpster.
- (4) Trash carts and recycle carts for Bel Aire Swimming Pool from May 15th to August 15th of each year. Hauler will pay disposal costs.
- (5) Portable restroom at Bel Aire Park. Hauler will pay disposal costs.
- (6) Trucks and drivers to support semi-annual bulk curbside collection of non-hazardous materials. Hauler will pay disposal costs.

- (7) Equipment to shred personal documents at an annual City shredding event.
Hauler will pay disposal costs.
- (8) Trash carts and portable restrooms for City's Spring Festival and Fall Festival.
Hauler will pay disposal costs.

- D. City and its residents shall not deposit in Hauler's equipment or place for collection by hauler any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infection, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulation ("Excluded Waste"). Notwithstanding any other term contained herein, the Hauler reasonably believes to be, Excluded Waste. Title to and liability for any Excluded Waste shall remain with resident/generator of such Excluded Waste, even if the Hauler inadvertently collects and disposes of such Excluded Waste. If the Hauler finds what reasonably appears to be discarded Exclude Waste, the Hauler shall notify the resident/business/generator, if such can be determined, that the Hauler may not lawfully collect such Excluded Waste and leave a tag specifying the nearest location available for appropriate disposal.
- E. Scope of Services shall be in conformance with the provisions of the RFP, Attachment 1, in its entirety, and specifically with § 4.1.2 of the RFP, as well as those additional standards set forth within Hauler's Proposal, Attachment 3, associated with customer service and communications standards.

2. OBLIGATIONS AND STANDARDS OF CITY.

- A. City shall notify all City residents that the exclusive provider of residential curbside single stream recycling
- B. City shall notify all City residents the preferred, although not exclusive, solid waste collection and disposal services provider is Waste Connections of Kansas, Inc.
- C. City shall offer all new residents to the City the opportunity to select Waste Connections of Kansas, Inc. as their solid waste collection provider at the same time that such new residents obtain other City utility services, including recycling service.
- D. City shall provide billing and collection services in association with recycling collection service, and solid waste collection service provided by Hauler for properties located within City.
- E. City shall remit payments to Hauler monthly.
- F. City warrants that City's pavement, curbing or other driving surface or any right of way reasonably necessary for Hauler to provide the services described herein are sufficient to bear the weight to all of Hauler's equipment and vehicles reasonably required to perform such services. Hauler will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and City agrees to assume all liability for any such damage, which results from the weight of Hauler's vehicles providing service within City.
- G. Hauler shall not be liable for delays in its performance hereunder due to uncontrollable circumstances to the extent such occurrence is beyond the reasonable control of Hauler and Hauler makes prompt, diligent and continuous efforts to resume performance. For purposes of this section, "uncontrollable circumstances" shall mean: the landfill to

which solid waste is being hauled is closed for two consecutive working days; riots; war or emergency declared by the President, Congress or the Governor of Kansas, and affecting City or Hauler; sabotage; acts of terrorism; civil disturbance; insurrection; explosion; natural disasters and severe weather such as tornados, significant rain and snow storms, floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other similar or dissimilar events which are beyond the reasonable control of Hauler.

3. SERVICE RATES.

Recycle: \$ 3.25/month/customer: One (1) 95 gallon bi-weekly curbside recycling service

Weekly Curbside Trash Service:

\$ 9.25/month/customer: One (1) 95 gallon trash cart weekly curbside trash service. Up to three additional bags per/month at no charge.

\$ 14.25/month/ customer: Two (2) 95 gallon trash cart weekly curbside trash service. Up to three additional bags per/month at no charge.

\$ 8.25/month/customer: One (1) 65 gallon weekly curbside trash service. Any additional bags will be \$1.00/bag.

Additional Services:

- Rollout service for disabled customers will be provided at no charge. All other customers may purchase rollout service at a charge equal to half the service rate.
- Bulky Items may be disposed at \$15.00/item. Requires directly contacting Waste Connections.

4. RATE INCREASES. Hauler may submit a request to City to raise rates up to 2% annually as set forth in Paragraph 3 above in accordance with increased costs documented Hauler. City has thirty (30) days to approve, disapprove, or negotiate with Hauler concerning such request.

5. TERM. The term of this Agreement shall be from June 1, 2016 to May 31, 2017. This Agreement will automatically annually renew through May, 2026, unless either party shall terminate in conformance with the termination procedures set forth within Attachment A.

6. DOCUMENTATION. This Agreement shall not become valid until the following documents are on file with the City Clerk of City of Bel Aire:

- A. A detailed list of all vehicles to be used in weekly solid waste and recyclable curbside collection within the City of Bel Aire;
- B. Certificates of inspection and licensing of all packer trucks by Sedgwick County, Kansas;
- C. Certificates of the insurance coverage mandated in this Request for Proposals; and

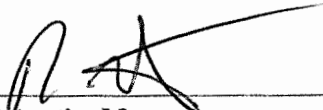
D. A detailed route plan, as approved by the City Manager, for weekly solid waste and recyclable curbside collection within the City of Bel Aire.

7. TRANSFER OR MODIFICATION. This Agreement and the Attachments identified within sets forth the entire Agreement between the parties and supersedes any written or oral understanding, promise, or agreement directly or indirectly related to, which is not referred to and incorporated herein. Neither this agreement nor any rights or obligations hereunder shall be assigned, subcontracted, or otherwise transferred by either party without the prior written consent of the other. Any modifications to this agreement must be in writing and signed by both parties.
8. AUTHORITY. Each person executing this Agreement represents and warrants that he is duly authorized to do so on behalf of an entity that is a party hereto, and that this Agreement shall be binding upon the parties, their respective heirs, legal representatives, and assigns.

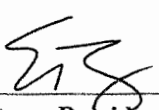
IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CITY OF BEL AIRE, KANSAS

WASTE CONNECTIONS OF KANSAS, INC.



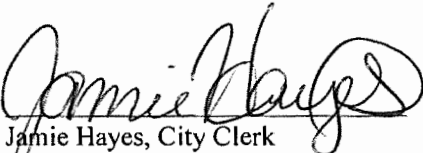
David Austin, Mayor



Signature, President DM

ATTEST:

SEAL



Jamie Hayes, City Clerk

Attachment A
Request for Proposal



**CITY OF BEL AIRE, KANSAS
REQUEST FOR PROPOSAL
SOLID WASTE AND SINGLE STREAM RECYCLE SERVICES**

Date Available: February 10, 2016
Closing Date: March 2, 2016, 5:00 PM
Procurement Officer: Ty Lasher, City Manager
City of Bel Aire
7651 E. Central Park Ave.
Bel Aire, KS 67226
Phone: (316) 744-2451
Fax: (316) 744-3739

E-Mail Address: tlasher@belaireks.gov

Item: Solid Waste and Single Stream Recycling Services

City: Bel Aire, Kansas

Location: 7651 E. Central Park Ave., Bel Aire, KS 67226

Scope: The City of Bel Aire is requesting proposals from experienced qualified applicants to provide solid waste and single stream recyclable curbside collection once per week for its roughly 2,500 single-family and duplex households in the City. The successful applicant will be awarded a 5 year contract to exclusively provide solid waste and recyclable curbside collection once per week for all single-family and duplex households within the City of Bel Aire, Kansas.

This Request for Proposals ("RFP") is a formal invitation to bidders to submit bids in accordance with the specifications, and bid format instructions described herein.

READ THIS RFP CAREFULLY

Failure to abide by all conditions and requirements of this RFP may result in the rejection of a bid.

REQUEST FOR PROPOSAL

TABLE OF CONTENTS	PAGE
I. Signature Sheet	3
II. Section I – Conditions to Bidding	4
III. Section II – Proposal Instructions	7
IV. Section III – General Provisions	10
V. Section IV –Specifications	15

SIGNATURE SHEET

Section XII, Item F.

Item: Services for the City of Bel Aire, Kansas

Closing Date: March 2, 2016, 5:00 PM

I/We hereby submit a proposal to furnish the services set forth within this Request for Proposal to Provide Services during the contract period in accordance with the specifications. I, the undersigned, hereby certify that I (we) do not have any real or substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest, or the appearance thereof, is defined as any circumstance which would lead a reasonable person to believe a compromise of an open competitive bid process has occurred.

Addenda: The undersigned acknowledges receipt of the following addenda:

#1() #2() #3() None ()

Legal Name of Person, Firm or Corporation WASTE CONNECTIONS OF KANSAS, INC.

Toll Free Telephone 800-388-5902 Local 316-838-4973 Fax ³¹⁶⁻838-1854

E-Mail herschelw@wasteconnections.com

Mailing Address 2745 N. OTTAWA

City & State WICHITA, KS. Zip Code 67219

FEIN Number 860990704

Signature [Signature] Date 3/2/16

Typed Name of Signature Herschel West Title District Sales Manager

If awarded a contract and the primary contact will be other than above, indicate name, mailing address and telephone number below of the alternative primary contact.

Name Herschel West

Address 2745 N. OTTAWA

City & State WICHITA, KS. Zip Code 67219

Toll Free Telephone 800-388-5902 Local 316-838-4973 Fax 316-838-1856

E-Mail herschelw@wasteconnections.com

Website www.wasteconnectionswichita.com

SECTION I

CONDITIONS TO BIDDING

1.1 **Inquiries:** All inquiries, written or verbal, shall be directed to the City of Bel Aire, Kansas:

Ty Lasher, City Manager
City of Bel Aire
7651 E. Central Park Ave.
Bel Aire, KS 67226

Phone: (316) 744-2451
Fax: (316) 744-3739

E-Mail Address: tlasher@belaireks.gov

Communication regarding this Request for Proposals ("RFP") is prohibited between the bidders, their employees, representatives, or agents, and any City employee, representative, or agent, other than as stated herein, including.

Negotiations
Contract Signing
As otherwise specified in this RFP.

Violations of this provision by a bidder or City personnel may result in the rejection of the proposal.

1.2 **Negotiated Procurement:** Final evaluation and award is made by the City.

1.3 **Questions to Bidders:** Any, all, or no bidders may be required to explain their understanding and approach to the project and/or respond to questions from the City concerning the proposal; or, the City may award to the low bidder without conducting negotiations. The City reserves the right to request additional or clarifying information from bidders as needed. If information is requested, the City is not required to request the information of all bidders.

Bidders selected to participate in negotiations may be given an opportunity to submit a best and final offer to the City. Prior to a specified cut-off time for best and final offers, bidders may submit revisions to their technical and cost proposals. Meetings with representatives of the City are generally not subject to the Open Meetings Act. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut-off time will be considered part of the best and final offer.

No additional revisions to any bid shall be made after the specified cut-off time unless requested by the City.

1.4 **Pre-proposal Conference:** None

1.5 Cost of Preparing Proposal: The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, and other costs associated with this RFP. All Responses will become the property of the City and will be a matter of public record subsequent to signing of the contract or rejection of all bids.

1.6 Criteria for Evaluating Bid Proposals: The City shall make an Award in the best interest of the City.

General: The bidder should develop a proposal through a process that considers the mission and involvement of the City. All proposals submitted in response to this RFP will be evaluated by the City using the following criteria and factors (listed in no particular order of importance):

1.6.1 TIMING OF DELIVERY. Services are requested to begin in calendar year 2016.

1.6.2 TECHNICAL RESPONSE. This includes the extent to which the bidder effectively demonstrates an understanding of the needs of the City as described in this RFP, and offers appropriate solutions to meet those needs. The quality of the technical Response is measured by the extent to which the specifications are adequately addressed within the bidder's proposal, and the extent to which the bidder may suggest recommendations for improvements.

1.6.3 RESPONSE Format and Completeness. Adequacy and completeness of the proposal is required and carries an important weighting in the evaluation of all proposals. The proposal is to be complete, clear, and understandable. Pages are to be consecutively numbered.

1.6.4 Financial Ability. The bidder's demonstrated financial ability to implement, manage and maintain the proposed offering.

1.6.5 Experience and Qualifications. The bidder's general experience and qualifications, and the City's assessment of bidder's ability to perform the work in a timely and professional manner. The experience and professionalism of security services is also a consideration.

1.7 Acceptance or Rejection: The City reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.

1.8 Agreement: The successful bidder will be required to enter into a formal contract that is acceptable to the City, which will incorporate all of the terms of this RFP. The bidder's Response to this RFP shall be included as a legal part of the agreement. In the absence of any language to the contrary, this RFP will be the determining document in questions of compliance with the specifications for the scope of these services.

1.9 Contract Formation: No contract shall be considered to have been entered into by the City before a written contract has been signed by the successful bidder and the City.

1.10 Open Records Act (K.S.A. 45-205 et seq.): All proposals become the property of the City. All information contained in proposals will become open for public review once a

contract is signed or all proposals are rejected, unless Bidder provides written application of legal exception.

- 1.11 **Federal, State and Local Taxes-Governmental Entity:** Unless otherwise specified, the proposal price shall [not] include applicable federal, state and local taxes. The successful bidder shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this RFP.
- 1.12 **Debarment of Contractors:** Any bidder who defaults on delivery as defined in this RFP may be barred after reasonable notice to the person who signed the bid proposal, or contract, and after reasonable opportunity for that person to be heard. The Mayor, after consultation with the attorney of record for the City, may suspend a person/company for cause from consideration for award of this or future contracts if the City determines that civil or criminal grounds support such action. The suspension shall not be for a period exceeding three years unless a criminal indictment, information or complaint has been issued for an offense which would be a cause for debarment, in which case the suspension shall, at the request of the attorney, remain in effect until after the trial of the suspended person.
- 1.13 **Insurance:** The City shall not be required to purchase any insurance against loss or damage to any personal property used to carry out this service nor shall the City establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act, the bidder shall bear the risk of any loss or damage to any personal property used to carry out this service. The service provider shall maintain liability insurance in association with the provision of the services of this Agreement throughout the term of the Agreement.

SECTION II
PROPOSALS INSTRUCTIONS

2.1 **Preparation of Proposals.** The City has the right to rely on any price quotes provided by bidders. The bidder shall be responsible for any mathematical error in price quotes. The City reserves the right to reject proposals, which contain errors.

Proposals shall be submitted in sealed envelopes and the outside envelopes shall be clearly identified with this RFP and the bid closing date. The City is relieved of any responsibility if the bidder fails to comply with this requirement.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other bidder, competitor, or City employee.

Proposals shall contain a concise description of bidder's capabilities to satisfy the requirements of this RFP for Proposal with emphasis on completeness and clarity of content, include appropriate equipment, employees, and skills. Repetition of terms and conditions of the RFP for Proposal without additional clarification shall not be considered responsive.

2.2 **Deadline for Submission of Proposals:**
Bidder's proposal shall consist of: One original and one (1) copy of the Proposal, including any supporting literature or other supporting documents;

Bidder's proposal, sealed securely in an envelope or other container, shall be received promptly by 5:00 p.m., on Wednesday, March 2, 2016, addressed as follows:

**City of Bel Aire, Kansas
Solid Waste Proposal
Attn: Jamie Hayes, City Clerk
7651 E. Central Park Ave.
Bel Aire, Kansas 67226**

Faxed or telephoned proposals are not acceptable unless otherwise specified by the City. Proposals received prior to the closing date shall be kept secured and sealed until closing. The City shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Bids that are received after the bid deadline time and date shall be disqualified from consideration. Accordingly, bidders who are mailing their proposals should allow for normal mail delivery time to ensure timely receipt by the City.

2.3 **Signature of Proposals:** Each proposal shall give the complete mailing address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. Each proposal shall include the bidder's social security number or Federal Employer's Identification Number. A Signature Sheet has been provided as part of this RFP. It should be completed and returned as part of the Proposal.

- 2.4 **Acknowledgment of Addenda:** The City reserves the right to amend this RFP the due date of Responses. If it becomes necessary to revise any part of this RFP, an Addendum shall be provided to all potential bidders who have requested a copy of this RFP. All bidders shall include acknowledgment of all Addenda as part of their proposal. Failure to acknowledge Addenda may be grounds for disqualification of the proposal.
- 2.5 **Modification of Proposals:** A bidder may modify a proposal in writing by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.
- 2.6 **Withdrawal of Proposals:** A proposal may be withdrawn on written request from the bidder to the City's contact person prior to the closing date.
- 2.7 **Proposal Disclosures:** At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released.

Proposal results will not be given to individuals over the telephone. Results may be obtained after contract finalization by obtaining a proposal tabulation from the City. Bid results can be obtained by sending (do not include with bid): A self-addressed, stamped envelope;

Send to:
City of Bel Aire, Kansas
Attn: Jamie Hayes - Bid Results/Copies
7651 E. Central Park Ave.
Bel Aire, Kansas 67226

Copies of individual proposals may be obtained under the Kansas Open Records Act by contacting the City Clerk of the City of Bel Aire, Kansas to request an estimate of the cost to reproduce and post the documents and remitting that amount with a written request to the above address, or a bidder may make an appointment by with the City Clerk to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

- 2.8 **Notice of Award:** An award is made on execution of the written contract by all parties. Only the City is authorized to issue news releases relating to this RFP, its evaluation, award and/or performance of the contract.
- 2.9 **Additional Proposals:** Bidders may submit more than one proposal; however, each proposal shall be in accordance with the entire provisions of this RFP. Bidders should submit complete specifications, descriptive materials and indicate any deviation from the specifications of this proposal.

A clear, well-organized and complete proposal will facilitate the review and selection process. Please follow the proposal format described, as failure to do so may result in disqualification.

A completed proposal submission package from respondents consists of the following elements:

-Preparation of a narrative section for the proposal, as described in Section IV below.

- 2.10 **Proposal Format:** Only the signature sheet is included. No paperwork or form is by the City for the proposal. Instead, bidders are asked to prepare their proposals in a format that they believe best conveys the details of their plan to provide comprehensive solid waste and recycling services to the City of Bel Aire, Kansas.

As a general guideline in preparing the narrative, bidders should also be careful to thoroughly identify themselves, both individually and/or corporately. At minimum, all bidders shall provide the following identifying information in the narrative portion of their proposals:

- **Bidder Identification** - Name, address, phone number, and authorized signature of bidder.
- **Corporate identification** - If applicable, bidder's corporate or other business information, date established, structure (trust, partnership, corporation, non-profit, etc.), and federal tax identification number.
- **Bid should fully describe the work and materials being proposed, including costs, prices, and warranties**
- **Copy of a sample contract**

2.11 **Other proposal completion instructions:**

The bidder should submit a transmittal letter as part of the narrative proposal which affirmatively states that the bidder has read this entire RFP and agrees to comply with all of the provisions contained within this RFP.

A description of the bidder's qualifications and experience providing the requested or similar services should be included part of the narrative proposal. The bidder must be an established firm recognized for its capacity to perform. The bidder must be capable of meeting the deadlines specified in the RFP.

Beyond these general guidelines, bidders are invited to submit additional information in the narrative section that they may consider important in fully explaining their proposal and the advantages for its selection.

Narrative section should be typed with double line spacing and using a font of size 11 or larger. This section should be published on 8 ½ X 11 plain paper stock printed on one side only.

Proposal should not be stapled or fastened in any permanent manner. Temporary removable clips may be used to keep the proposal assembled.

**SECTION III
GENERAL PROVISIONS**

3.1 **Termination for Cause:** The City of Bel Aire, Kansas reserves the right to terminate any contract, or any part of a contract, awarded in Response to this RFP for cause under any one of the following circumstances:

3.1.1 Contractor fails to make delivery of goods or services as specified in the contract;
or

3.1.2 Contractor fails to perform any of the provisions of the contract.

3.2 **Termination for Convenience:** The City of Bel Aire, Kansas reserves the right to terminate performance of work under any contract awarded in Response to this RFP in whole or in part whenever, for any reason, the City shall determine that the termination is in the best interest of and/or for the convenience of the City. In the event that the City elects to terminate such a contract in the best interest of and/or for the convenience of the City, it shall provide the Bidder/Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice.

3.3 **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given to the City shall be **IN WRITING** and addressed as follows, unless otherwise required by law:

**Ty Lasher, City Manager
City of Bel Aire
7651 E. Central Park Ave.
Bel Aire, KS 67226**

3.4 **Rights and Remedies:** The City shall be obligated under any contract awarded in Response to this RFP only for those services rendered and the work and materials delivered and accepted prior to the date of termination, subject to any offset by the City for actual damages.

If it is determined, after notice of termination for cause, that Bidder/Contractor's failure was due to causes beyond the control of or negligence of the Bidder/Contractor, the termination shall be a termination for convenience.

The rights and remedies of the City provided for in this RFP shall not be exclusive and are in addition to any other rights and remedies provided by law.

3.5 **Force Majeure:** The Bidder/Contractor shall not be held liable if the failure to perform under any contract awarded in Response to this RFP arises out of causes beyond the control of the Bidder/Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Bidder/Contractor's employees, and freight embargoes, etc.

3.6 **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by the Alliance shall not constitute a waiver.

- 3.7 **Independent Contractor:** Both parties, in the performance under any contract awarded in Response to this RFP, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of the Bidder/ Contractor shall not be construed to be the employees or agents of the City for any purpose whatsoever. The Bidder/Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.
- 3.8 **Staff Qualifications:** The Bidder/ Contractor shall warrant that all persons assigned by it to perform work under any contract awarded in Response to this RFP shall be fully qualified to perform the work required. Failure of the Contractor to provide qualified staffing at the level required by the proposal specifications may result in contract termination and/or damages.
- 3.9 **Conflict of Interest:** No Bidder/Contractor shall knowingly employ, during the period of any contract awarded in Response to this RFP, any personnel who are also an official with or in the employ of the City.
- 3.10 **Confidentiality:** If the Bidder/Contractor needs access to private or confidential data maintained by the City in order carry out its responsibilities under any contract awarded in Response to this RFP, the Bidder/Contractor may be required to execute a Confidentiality Agreement as part of that contract.
- 3.11 **Nondiscrimination and Workplace Safety:** In carry out its responsibilities under any contract awarded in Response to this RFP, the Bidder/Contractor shall abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Bidder/Contractor agrees to comply with the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry, and shall comply with all other provisions of K.S.A. 44-1030 in its performance of this agreement. Any violations of applicable laws, rules and regulations may result in a contract termination.
- 3.12 **Environmental Protection:** In carry out its responsibilities under any contract awarded in Response to this RFP, the Bidder/Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. The Bidder/Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rule or regulations may result in termination of this contract.
- 3.13 **Hold Harmless:** In carry out its responsibilities under any contract awarded in Response to this RFP, the Bidder/Contractor shall indemnify the City against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of contractual work, caused by the Bidder/Contractor.

The City shall not be precluded from receiving the benefits of any insurance the Bidder/Contractor may carry which provides for indemnification for any loss or damage to property in the Bidder/Contractor's custody and control, where such loss or destruction is

to City property. The Bidder/Contractor shall do nothing to prejudice the City's recover against third parties for any loss, destruction or damage to City property.

- 3.14 **Cash Basis and Budget Laws:** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws, or if mill levy funds generated are less than anticipated.
- 3.15 **Prohibition of Gratuities:** Neither a Bidder nor any person, firm or corporation employed by a bidder in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any City employee at any time.
- 3.16 **Federal, State and Local Taxes:** The City makes no representation as to the exemption from liability of any tax imposed by any governmental entity.
- 3.17 **Governing Law:** This RFP and any contract awarded in Response to this RFP shall be governed by the laws of the State of Kansas and shall be deemed executed at Bel Aire, Sedgwick County, Kansas. By accepting public funding from City, or funding administered by City, Contractor agrees to be subject to the Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.*, and to the Kansas Open Records Act, K.S.A. 45-215 *et seq.* in regard to the provision of these services. This agreement shall be interpreted in conformance with the laws of the State of Kansas.
- 3.18 **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder or under any contract awarded in Response to this RFP in the State of Kansas, District Court of Sedgwick County.
- 3.19 **Criminal Or Civil Offense Of An Individual Or Entity That Controls A Company Or Organization Or Will Perform Work Under This Contract:** Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty must be disclosed. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
- 3.20 **Competition:** The purpose of this RFP is to seek free and open competition. The bidder shall advise the City when any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by the City no later than seven (7) business days prior to the bid closing date.

The City reserves the right to waive minor deviations in the specifications, which hinder the intent of this RFP.

- 3.21 **Injunctions:** Should the City be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the City, bidder shall not be entitled to make or assert claim for damage by reason of said delay.
- 3.22 **Acceptance:** No contract provision or use of items by the City shall constitute acceptance or relieve the bidder of liability in respect to any expressed or implied warranties.
- 3.23 **Disclosure of Proposal Content:** The laws of the State of Kansas require public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. No proposals shall be disclosed until after a Contract Award has been issued.

Trade secrets or proprietary information legally recognized as such and protected by law may be withheld if they are clearly labeled "Proprietary" in the margin of each individual page where they appear in the proposal Response package. Pricing information is normally not considered proprietary. The Bidder's entire proposal Response package shall not be considered proprietary.

- 3.24 **Submission of the Bid:** Submission of the bid will be considered presumptive evidence that the bidder is conversant with local facilities and difficulties, the requirements of the documents and of pertinent State and/or local codes, state of labor and material markets, and has made due allowances in the proposal for all contingencies.
- 3.25 **Insurance:** At all times during this Contract, Contractor shall provide and maintain comprehensive general liability insurance coverage that is acceptable to the City for the term of the contract in the amount of \$1,000,000 and carry Worker's Compensation. The Successful Bidder will be required to present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the City. The Contractor must list the City as an additional insured on all policies and must be able to provide the City with Insurance Certificates; any Notices of Cancellation on or before the Effective Date and thereafter during the Contract Term, Contractor shall provide the City with current certificates of insurance, executed by a duly authorized representative of each insurer, as evidence of all insurance policies required. Contractor shall be solely responsible for any injuries related to the services performed through this agreement.
- 3.26 **Implied Requirements:** All products and services not specifically mentioned in this solicitation, but which are necessary to provide the functional capabilities described by the specifications, shall be included.
- 3.27 **Industry Standards:** If not otherwise provided, materials or work called for in this RFP shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations, which shall apply.
- 3.28 **Prices:** Prices shall remain firm for the entire contract period. Prices quoted shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the City. Failure to provide available price reductions may result in contract termination.

- 3.29 **Payments:** Payments shall not be made for costs or items not listed in the bidder's bid.
- 3.30 **Certification of Specifications Compliance:** By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in this RFP.
- 3.31 **Award:** Awards will be made by the City based upon the best interest of the City. The successful bidder will be notified in writing by the City. Neither the bidder nor the City is obligated in any way until a Contract has been approved and signed by all parties.
- 3.32 **References:** References may accompany any bid proposal from other persons or entities who have utilized the services that the bidder has included within the bid, and who are qualified to respond to inquiries from City personnel concerning such services.

SECTION IV
SPECIFICATIONS FOR PROJECT

4.1 DESCRIPTION OF PROJECT

This Request for Proposal requires that the successful bidder provide solid waste once per week and single stream curbside recycling every other week for all single-family and duplex households in the City of Bel Aire. It will be possible for a contractor to partner or subcontract with another firm to provide the services required pursuant to this request for proposal. If this is done, the name of the proposed partner or subcontracting firm must be clearly identified in the proposal. No partnership or subcontracting will be permitted without the express prior written consent of the City. The applicant receiving the contract award will be responsible for any work of such partner or subcontractor.

4.1.1 DEFINITION OF SOLID WASTE

Solid waste shall include putrescible waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods and nonputrescible materials such as paper, tin cans, bottles, glass, ashes, lawn waste and tree waste but not hazardous materials.

4.1.2 SCOPE OF SERVICES

The scope of services includes, but is not limited to, the following:

- A. Upon commencing service pursuant to this Request for Proposal, provide each single-family and duplex household in the City of Bel Aire with a new 95 gallon or 65 gallon sealable watertight wheeled container appropriate for solid waste curbside collection at no additional cost under the contract. Customer may choose between which size of container they prefer and may change the size at no additional cost. Thereafter, during the term of engagement, maintain said containers in a sealable watertight and properly functioning condition and provide each new single-family and duplex household that moves into the City of Bel Aire with a new 95 gallon or 65 gallon sealable watertight wheeled container appropriate for solid waste curbside collection at no additional cost under the contract. Additional containers shall be made available to customers for an additional monthly charge.
- B. During the term of engagement, provide each single-family and duplex household in the City of Bel Aire with a new 95 gallon sealable watertight wheeled container appropriate for single stream recycling curbside collection at no additional cost under the contract. Thereafter, during the term of engagement, maintain said containers in a sealable watertight and properly functioning condition and provide each new single-family and duplex household that moves into the City of Bel Aire with a new 95 gallon sealable watertight wheeled container appropriate for recycling curbside side collection at no additional cost under the contract. Additional containers shall be made available to customers for an additional fee.

- C. Collect and transport all solid waste in watertight packer trucks which have been inspected and licensed by Sedgwick County, Kansas.
- D. Once a week during the term of engagement, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, provide solid waste curbside collection for all single-family and duplex households in the City of Bel Aire. Specify the number of additional bags next to cart at no charge.
- E. Every other week during the term of engagement, on the same day that solid waste pickup is provided, between the hours of 6:00 a.m. and 5:00 p.m., provide recyclable curbside collection for all single-family and duplex households in the City of Bel Aire. Materials to be recycled include newspapers, glass (all colors), aluminum, tin, steel, aerosol, plastics (all #'s), cardboard, food boxes, paper bags, magazines, books, office paper and file folders.
- F. Once a week during the term of engagement, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, provide six (6) solid waste containers and five (5) recyclable containers for collection at the Bel Aire City Hall / Police Station / Senior Center at no additional cost under the contract.
- G. Once a week during the term of engagement, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, provide six (6) solid waste containers year round, ten (10) solid waste containers from March 1 thru October 31, and three (3) recyclable containers year round for collection at the Bel Aire Recreation Center at no additional cost under the contract.
- H. Provide one (1) portable restroom and one (1) portable handicap restroom at the Bel Aire Recreation Complex with service from April 1 thru October 31 at no additional cost under the contract.
- I. Once a week during the term of engagement, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, provide one (1) solid waste container, one (1) recyclable container, and one (1) 20 cubic yard roll off for collection at the Bel Aire Public Works Facility at no additional cost under this contract.
- J. Provide one (1) portable handicap restroom at Bel Aire Park with service from March 15 thru November 15 at no additional cost under the contract.
- K. Once a week during the term of engagement, between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday, provide four (4) solid waste containers and two (2) recyclable containers for collection at the Bel Aire Pool from May 1 thru August 31 at no additional cost under the contract.
- L. Twice a year, in May and October, provide bulk curbside collection, throughout the City of Bel Aire, of nonhazardous household materials at no additional cost under the contract.
- M. Provide once per year a shredding event at no additional charge to the City of Bel Aire.

- N. Provide four (6) six solid waste containers and one (1) portable restroom with service for the Bel Aire Spring Festival and Bel Aire Fall Festival. Dates to be determined by the City of Bel Aire.
- O. Record the number of single-family and duplex households in the City of Bel Aire serviced during each month of the term of engagement. This record shall be used for billing and payment purposes pursuant to this Request for Proposal.
- P. Provide the City with current maps with schedules of collection and disposal routes.
- Q. Offer some type of recycling program for residents satisfactory to the City.
- R. Identify holidays that the company will observe and inform both the City and customers of changes in collection schedule resulting in the holiday observance.
- S. Provide rollout service for disabled customers at no charge. For all other customers, this service will be provided at a charge equal to half the basic service rate.
- T. Maintain a business office and telephone service from 8:00 a.m. until 5:00 p.m., Monday through Friday to handle all complaints and other matters concerning the collection business.
- U. Maintain and make available books and records concerning the provision of services and charging for services, pursuant to this request for proposal, for inspection and copying by any authorized officer on behalf of the City of Bel Aire, Kansas.
- V. Maintain liability insurance on all moving equipment to be used within the City of Bel Aire, Kansas with minimum limits of coverage as follows:
 - Bodily injury, each person, \$500,000;
 - Bodily injury, each accident, \$1,000,000; and
 - Public liability and property damage, \$500,000.

4.1.3 PROPOSAL REQUIREMENTS

The purpose of this Request for Proposals is to demonstrate the qualifications, competency, and capacity of applicants to provide solid waste and recyclable curbside collection once per week for all single-family and duplex households in the City of Bel Aire. Costs may not be the only factor in the selection of a contractor.

The proposal should state the name, location and size of the firm which will provide the services under this proposal and the number and type of equipment that is going to be used to provide the services. The name, location, size and qualifications should also be provided for any partner or subcontractor.

4.1.4 COST/PAYMENT METHODS

The payment method to the applicant will be a fixed monthly fee per single-family and duplex household in the City of Bel Aire serviced by the applicant.

Each applicant shall bid the fixed monthly fee per single family and duplex household based upon the applicant billing the individual households, and, in the alternative, also bid the fixed monthly fee per single-family and duplex household based upon the applicant providing the City of Bel Aire with only the number of single-family and duplex households served during the month and the City of Bel Aire billing the individual households.

4.1.5 POST AWARD CONDITIONS

Before a contract is executed, the successful applicant must:

- A. Submit to the City of Bel Aire a detailed list of all vehicles to be used in weekly solid waste and recyclable curbside collection within the City of Bel Aire;
- B. Submit to the City of Bel Aire certificates of inspection and licensing of all packer trucks by Sedgwick County, Kansas;
- C. Submit to the City of Bel Aire certificates of the insurance coverage mandated in this Request for Proposals; and
- D. Negotiate with the City of Bel Aire a detailed route plan for weekly solid waste and recyclable curbside collection within the City of Bel Aire.

4.2 SCOPE OF OPTIONAL SERVICES (IF ANY)

Attachment B
Letter of Clarification



March 3, 2016

Herschel West
Waste Connections
2745 N. Ohio
Wichita, KS 67219

Dear Herschel:

Thank you for submitting a response to the City of Bel Aire's Request for Proposal (RFP) to provide solid waste and single stream recycle services.

In accordance with Section 1.7 of the RFP which states "the City reserves the right to...clarify any ambiguities in proposals" we would like to provide clarification on the "Scope" listed on page one of the RFP which indicates "the successful applicant will be awarded a 5 year contract to exclusively provide solid waste and recyclable curbside collection...within the City of Bel Aire."

To clarify, the word "exclusively" means that the applicant would be the exclusive vendor to contract with the City for solid waste (refuse) and single stream recycling services, however citizens would still have the option to utilize another provider for solid waste services if they so choose. The City of Bel Aire would like to ensure applicants are aware they will be the exclusive provider of residential curbside single stream recycling and the preferred refuse collection and disposal services to the City, but not the exclusive provider of residential refuse collection to every resident in the City (verbiage similar to the agreements Waste Connections currently has with Andover and Park City). The City currently has 2,459 accounts billed for recycling on a monthly basis and 2,294 accounts billed for refuse collection on a monthly basis.

In accordance with Section 1.7 of the RFP which states "the City reserves the right to...clarify any ambiguities in proposals" we would like to ask for clarification on the following three items under Section IV, Specifications for Project, Subsection 4.1.2 Scope of Services:

- B. Please provide the amount of the additional fee that will be charged for an additional 95-gallon recycling cart.

- I. The 20 cubic yard roll off container for collection was to be at no additional cost, however the proposal indicates "the City will be responsible for disposal cost." Please clarify.
- P. Please indicate if you will provide the City with current maps with schedules of collection and disposal routes.

In accordance with Section 1.7 of the RFP which states "the City reserves the right to...clarify any ambiguities in proposals" we would like to ask for clarification on the following item under Section IV, Specifications for Project, Subsection 4.1.4 Cost/Payment Methods:

Please provide a breakdown of the fixed monthly fees that were included in your proposal. Specifically, we are looking to identify the cost of recycling service separately from the cost of refuse service because residents are able to select an alternative refuse provider.

If you could please provide a response to these questions in writing no later than 9am on Monday, March 7th, it will allow us to provide adequate information to our governing body to facilitate their decision making process.

Please feel free to contact me if you have questions and thank you again for your interest in continuing your partnership with the City of Bel Aire.

Sincerely,



Ty Lasher
City Manager
City of Bel Aire
7651 E. Central Park Ave.
Bel Aire, KS 67226
316-744-2451 ext. 217
tlasher@belaireks.gov

Attachment C
Bid Proposal

SIGNATURE SHEET

Section XII, Item F.

Item: Services for the City of Bel Aire, Kansas

Closing Date: March 2, 2016, 5:00 PM

I/We hereby submit a proposal to furnish the services set forth within this Request for Proposal to Provide Services during the contract period in accordance with the specifications. I, the undersigned, hereby certify that I (we) do not have any real or substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest, or the appearance thereof, is defined as any circumstance which would lead a reasonable person to believe a compromise of an open competitive bid process has occurred.

Addenda: The undersigned acknowledges receipt of the following addenda:

#1() #2() #3() None ()

Legal Name of Person, Firm or Corporation WASTE CONNECTIONS OF KANSAS, INC.

Toll Free Telephone 800-388-5902 Local 316-838-4973 Fax 316-838-1856

E-Mail herschelw@wasteconnections.com

Mailing Address 2745 N. OTTAWA

City & State WICHITA, KS. Zip Code 67219

FEIN Number 860990704

Signature [Signature] Date 3/2/16

Typed Name of Signature Herschel West Title District Sales Manager

If awarded a contract and the primary contact will be other than above, indicate name, mailing address and telephone number below of the alternative primary contact.

Name HERSCHEL WEST

Address 2745 N. OTTAWA

City & State WICHITA, KS. Zip Code 67219

Toll Free Telephone 800-388-5902 Local 316-838-4973 Fax 316-838-1856

E-Mail herschelw@wasteconnections.com

Website www.wasteconnectionswichita.com



WASTE CONNECTIONS INC.
Connect with the Future®

City of Bel Aire,
Kansas

Original
Proposal for:

Residential Solid Waste and Single Stream Recyclables

March 2nd, 2016
Submitted by:

WASTE CONNECTIONS OF KANSAS, INC.

Wichita District

2745 N. Ohio St
Wichita, Ks. 67219
316-838-4920
316-838-5323

Herschel West
Municipal Marketing Manager
Waste Connections of Kansas, Inc.
316-838-4973
Cell-316-253-8023
Herschelw@wasteconnections.com



Proposal is being submitted by:

Waste Connections of Kansas Inc. (WCI) FEIN# 860990704

2745 N. Ohio Wichita, Ks. 67219 (316) 838-4920 or (800) 388-5902

Thank you for allowing Waste Connections of Kansas, Inc. (WCI) the opportunity to propose solid waste collection service for the City of Bel Aire, Kansas. We at Waste Connections are confident that your community would benefit from our experience and commitment to provide quality service to our customers.

Waste Connections of Kansas Inc. has 375 full time employees with multiple locations throughout the state of Kansas. Waste Connections of Kansas Inc. will service this proposal with trucks from existing Fleet of 130 vehicles located in Wichita, Kansas. For trash collection we will use 20-25 cubic yard watertight rear-loader or side-loader trucks. All trucks are of modern vintage, and are in good working condition to service the City of Bel Aire in a timely & professional matter. WCI will also use watertight 95 or 65 – gallon carts for trash and 95 gallon carts for recycling. Wichita Hauling has been in the business of hauling Solid Waste for 50 years. Waste Connections is currently servicing 72 municipalities in Kansas & Oklahoma. A few of the Municipalities are Hutchinson, Derby, Park City, Kingman and Eureka, Ks. Waste Connections of Kansas Inc. is a wholly owned subsidiary of Waste Connections Inc. a Publicly traded company on the New York Stock Exchange.

Executive Summary

In selecting Waste Connections, you are assured of receiving the following important benefits with our service. WCI believes that we can meet all goals that the City of Bel Aire is looking for their Solid Waste Collections & Transportation:

Currently Waste Connections of Kansas, Inc. is servicing over 72 Municipalities in Kansas and Oklahoma for over 20 years, and are currently servicing over 60,000 residents on a subscription basis in the Wichita area. With this experience, Waste Connections is very confident that we can continue to provide the same great service we have been providing for the past 6 years, and will not have any problems servicing the 2500 residents of the City of Bel Aire.

Corporate Overview & History

Waste Connections is an integrated solid waste services company that provides solid waste collection, transfer, disposal and recycling services in mostly secondary markets in the Western and Southern U.S. The Company serves more than two (2) million residents, commercial and industrial customers from a network of operations in 38 states.

Our services focus on Cities and Towns where we can provide either non-integrated or integrated solid waste services under exclusive arrangements. The ability to form long-term relationships with our Municipalities provide more stability for long term Landfill Security for each City and Town we serve, and a more long term stable rate structure. We are a leading provider of solid waste services in most of our markets, and approximately 50% of our revenues are derived from market areas where we have franchise or exclusive rights to provide our waste services.

We strive to provide services excellence for those communities that place their trust in our company and are always dedicated to putting our customers first. We look to technology and growth to help our customers, employees and shareholders "Connect with the Future". As a public company we have the resources to meet every customer's needs in a cost effective and environmentally compatible manner. We understand the markets, the philosophy and the unique needs of the customer we serve whether they are industry, commercial accounts, municipal jurisdictions or individual subscribers.

Background

The Company was founded in 1997 by a dedicated group of industry professionals with over 50 years of industry experience through the purchase of five operations in Washington and Idaho from Browning-Ferris Industries. The company rapidly expanded into California market in early 1998 and now has operations throughout 38 states serving two (2) million customers located primarily in the Western and Southern United States. Waste Connections went public in May of 1998 and is traded on the NYSE exchange under the symbol WCN. The Wichita Hauling Company has been servicing our customers for over 50 years. The last 19 years we have been operating under Waste Connections of Kansas, Inc.

Growth

Waste Connections has grown through a combination of both organic growth in our existing markets and acquisitions of selected companies in high growth markets. Operations are typically enhanced through the introduction of modernized fleets, technology, management support and the capital that comes from being part of a public traded company. We look to grow rapidly within your community through expanding the range of services we offer and by helping our local managers to continue the success they have built locally. As we grow, whether by adding services for your City or through your City's internal growth and annexation, we seek to constantly upgrade our level of customer service.

Customers

Our Customers range from individual resident subscribers to county and city contacts and include industrial and commercial accounts, contracts with homeowners associations, apartment owners and mobile home operators. We have a market-based strategy for servicing our customers to provide the most cost effective solution depending on local regulations and solid waste management practices. We can best serve our customers and provide the most cost-effective solution through having in integrated company with collection, transfer and disposal.

Safety and the Environment

We are committed to improve the environment for the future of the communities we live in and serve. We believe that our services play an integral part of improving the environment and we are always mindful of having the most cost-effective waste management for our customers. In addition we are committed to the safety of our workers and have programs in place to continually upgrade our risk management and environmental policies.

Waste Connections of Kansas, Inc Staff Qualifications / Resume Brief of Key Personnel

Waste Connections of Kansas key employees have assembled a management team that has gained extensive and proven hands on experience managing every aspect of Solid Waste Collection, Transportation and Disposal Service Operations. All key operations managers hold a CDL license in the event of an emergency. These employees will play in instrumental role in the start up and management of the City of Bel Aire Contract. A listing of WCI key managerial team is as follows.

Eric Bergin – District Manager / Fifteen years in the solid waste industry working for various waste collection companies throughout the United States. Overseeing all Department Managers, 130 Commercial and Residential drivers.

Jeff Hays – Operations Manager / Twenty one years in the solid waste industry working for BFI, Allied Waste and Waste Connections of Kansas, Inc. Overseeing 130 Commercial & Residential drivers.

Herschel West – District Sales Manager / Fourteen years in the solid waste industry working for Waste Connections of Kansas Inc. Overseeing over 7000 commercial customers, 4 Sales Representative and 72 Municipalities in Kansas & Oklahoma.

Mark Perez – Division Controller / Fourteen years in the solid waste industry working for Waste Connections of Kansas Inc. Overseeing 2 hauling companies, 2 landfills, Wichita Recycling Center & Transfer Station. Graduated Wichita State University –Undergrad & Baker University / MBA. Twenty one years of financial experience.

Brain DeBaun – Commercial Supervisor / Twenty one years in the solid waste industry working for BFI, Allied Waste and Waste Connections of Kansas, Inc. Overseeing 110 Commercial & Residential drivers.

Karl Brown – Residential Manager / Twenty years in the solid waste industry working for BFI, Allied Waste and Waste Connections of Kansas, Inc. Overseeing 33 Residential drivers

Eric Zerger – Residential Manager / Twelve years in the solid waste industry working for BFI, Allied Waste and Waste Connections of Kansas, Inc. Overseeing 33 Residential drivers

Tiffanie Bauder – Residential Customer Service Manager / Twenty years in the solid waste industry working for SS Express and Waste Connections of Kansas Inc. Overseeing 10 Customer Service Representatives, and over 60,000 residential customers. Graduated Wichita State University.

Valerie Smith – Billing Administrator / Fourteen years in the solid waste industry. Responsible for commercial collections and A/R. Overseeing 3 Commercial Customer Service Representatives. Graduated Wichita State University

Laura Vickers – Residential Dispatch / Twenty four years in the solid waste industry. Started in Residential Customer Service for 3 years. Payroll for 4 years, and Residential Dispatch for 15 years. Overseeing 45 routes for trash & recycling.

WCI will provide the City of Bel Aire with a list of Waste Connections staff. We will give you office numbers, cell phone numbers, email addresses and even home numbers to reach us 24 hours of any day. Seven days a week.

Waste Connections of Kansas, Inc currently employs 375 employees. One of the key factors that set Waste Connections of Kansas, Inc. apart from competitors is the skill of our drivers. We know that our driver is the member of our team who is most frequently in contact with residents. As a result, our drivers are seasoned and continually trained to safely operate all equipment and work with all people they encounter in a professional manner. Drivers are rewarded with Safety bonuses and for practicing “**The Waste Connections Operation Values**”. Every driver and Operations manager is CDL certified and subject to random drug and alcohol testing. We hold weekly Safety and Service meetings. Continuing education and training is required of Drivers as well as all other employees. All drivers will be in uniform and all equipment will have neat and tidy appearance. (See Waste Connections Operating Values / Page #10)

Understanding of Local Conditions

Up-to-date knowledge of Federal, State and local laws that could affect the way the City of Bel Aire views its waste needs.

WCI’s commitment to our environment by transporting and disposing of the material collected in accordance with Federal, State and local government’s laws.

Ongoing knowledge of the waste industry’s changing laws and technologies.

Customer Service and Communications Program Commitments

1. If the City of Bel Aire has complaints or other issues the City can call our Residential Customer Service number between the hours of 8:00 am – 5:00 pm., or go online to our website at wasteconnectionswichita.com
2. Our driver will also stop by the City Hall Office at the end of his route each week to receive any complaints or request the City may have received directly. Depending on the nature of the service request, the driver will resolve before leaving the city, or after review with supervisor, resolve with 24 hours. Uniformed drivers for easy recognition of WCI employees. Clean and well-maintained equipment for a professional appearance, easy company identification, and reliable service.
3. Dedicated Municipal Email Address: Kansasmuni@wcnx.org
This email goes to Tiffanie Bauder (Residential Customer Service Manager) and Lead Customer Service Representative if you have any questions or service issues for Customer Service.

Nondiscrimination and Affirmative Action

Waste Connections currently has in force a policy regarding non-discrimination in hiring and promotion of employees without regard to their race, religion, handicaps, sex, color or national origin.

Waste Connections of Kansas is an Equal Opportunity Employer and maintains an Affirmative Action Plan in accordance with Executive Order 11246. This plan includes Affirmative Action for Woman, Minorities, Covered Veterans and Persons with Disabilities. No deficiencies or problem areas have been identified in the most recent plan (January 1, 2008 to December 31, 2008.) Waste Connections of Kansas is committed to compliance with all applicable laws providing equal employment opportunities. Questions can be directed to EEO/AAP Officer Susan Metzger, Waste Connections, Inc, 10001 Woodlands Forest Dr., Suite 400, The Woodlands, Tx. 77380.

Environmental Policy

Ensuring that all WCI employees understand that the Company is committed to environmental excellence in the operation and maintenance of facilities, including providing the appropriate support to all technical employees, policies, and programs to ensure compliance with all applicable laws and regulations.

We have a number of specific environmental policies, including:

1. Environmental Excellence (ENG-P001)
2. Corporate and Region Responsibilities concerning environmental protection (ENG-P002; ENG-P003)
3. Groundwater Quality Program (ENG-P004)
4. Training and Goals for Technical Personnel (ENG-P005; ENG-P006)
5. Value Engineering (ENG-P007)
6. Notification of Critical Events (ENG-P009)
7. Waste Acceptance (ENG-P010)
8. Environmental Audit Program and Regulatory Compliance (ENG-P011; ENG-P015)

In addition to our broad scope of environmental policies, WCI lives a set of Core Operating Values that promote Environmental Protection (Number 1 – Safety; Number 2 – Integrity). (WCI Operating Values page #10)

When we will collect. We will make curbside collections once a week for trash and every other week for single stream recycle between the hours of 6:00 a.m. to 5:00 p.m. each week. If your scheduled collection day falls on or after a holiday, collection will be delayed by one day (Friday customers will have their collection on Saturday). The holidays we observe are New Year's Day, Thanksgiving, and Christmas. Should there be a permanent change in your scheduled collection day, we will notify you in advance. If we miss your collection, please call us and we will return to pick it up, without charge, on the same day if the driver is still in the City of Bel Aire. If driver has already left the City of Bel Aire WCI will pick up the missed stop the following week. We will resolve any other complaints within the same time period.

What we will not collect.

We will not collect liquid hazardous waste, including paints, pesticides, petroleum derivatives such as motor oil and solvents. Explosive items also will not be accepted. If these items are identified in your trash, the unaccepted items will be set aside and not taken.

Where we will pick up. You must set your carts at the curb. If we agreed to collect on private driveways or pavement, we will ask you to sign a waiver of damage liability and/or indemnification.

Weight limitations of carts. The weight limit for each automated cart is as follows: 95- gallon Cart = 200 lbs

Replacement/removal/repair. All replacements, repairs and removals will take place on the residents next schedule collection day at no charge. The same service pertains with carts with graffiti.

Where you can contact us. You may call us regarding service or complaints toll free at 1-800-388-5902 or 316-838-4920 for residential customer service. Between 8:00 a.m. and 5:00 p.m. weekdays, except holidays and from 8:00 a.m. to 12:00 p.m. (noon) on Saturdays. You may come to our office located at 2745 N. Ohio St. N. Wichita, Ks. 67219 or you may mail correspondence to our office address.

We do not discriminate. If you are entitled to service, we will not discriminate against you on account of race, creed, color, sex, gender, national origin, ancestry, religion, age, physical or mental disability, marital status, or political affiliation.

Rights of Privacy. We will observe and protect your rights of privacy and trade secrets. Unless you give us permission, we will not reveal any information identifying you or the composition or contents of your solid waste to any person except City or if required by law.

All WCI employees will wear uniforms and all equipment will have a neat and tidy appearance.

Waste Connections of Kansas, Inc. would like to provide The City of Bel Aire three (3) options for Residential solid waste and single stream recyclable service.

Option #1 - Contract length of 5 years

1- 95-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$14.00** per month. Up to three additional bags are allowed at no cost.

1- 65-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$13.00** per month. (Extra bags will be \$1 per bag.)

Option #2 - Contract length of 7 years

1- 95-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$13.25** per month. Up to three additional bags are allowed at no cost.

1- 65-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$12.25** per month (Extra bags will be \$1 per bag.)

Option #3 - Contract length of 10 years

1- 95-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$12.50** per month. Up to three additional bags are allowed at no cost.

1- 65-Gallon weekly curbside trash service and 1-95 Gallon every other week curbside recycling service
Cost **\$11.50** per month (Extra bags will be \$1 per bag.)

Rollout service for disabled customer at no charge. For all other customers, this service will be provided at a charge equal to half the basic service rate.

2nd 95-gallon trash cart service – Cost \$5.00 per month

(WCI will provide carts for curbside Trash & RecycleBank Service)

Bulky Items - \$15 each (Furniture/Appliances- free of CFC's and HCFC's Refrigerants by a certified refrigeration technician.)

List of all items included in single stream recycling program.

- Corrugated Cardboard
- Chip Board – Cereal, pop, shoe, boxes etc.
- Newspapers / Magazines / Junk Mail / Phone Books
- Other Light Colored Papers
- Plastics #1-#7
- Steel Cans
- Aluminum Cans
- Clean Aluminum Foil
- Glass (Glass Food Containers) brown, clear, green & etc

WCI will provide **FREE** service to all City owned facilities and events;

- Bel Aire Recreation Center. – Trash carts and portable restroom services
- Bel Aire Public Works Facility – Trash, recycle carts and 20yd roll off (City responsible for disposal cost)
- Bel Aire Park – Portable restroom
- Bel Aire Pool – Trash and recycle carts
- City Wide Clean Ups-Spring & Fall – WCI will provide trucks and drivers for bulk curbside collection through out the City of Bel Aire, of nonhazardous materials.
- Shredding event once per year.
- Bel Aire Spring and Fall Festival – Trash Carts and portable restroom service.

Waste Connections of Kansas, Inc. Wichita Hauling Company

Statement of Operating Values



Safety. We strive to assure complete safety of our employees, our customers and the public in all of our operations. Protection from accident or injury is paramount in all we do.

Integrity. We define integrity as "saying what you will do and then doing it." We keep our promises to our customers, our employees and our stockholders. Do the right thing, at the right time, for the right reason.

Customer Service. We provide our customers the best possible service in a courteous, effective manner, showing respect for those we are fortunate to serve.

To be a Great Place To Work. We maintain a growth culture where our employees can maximize their potential personally and professionally. Our objective is to provide an environment where people enjoy what they do and take pride in their work. We wish to embody a work hard, play harder culture.

To be the Premier Solid Waste Services Company in Wichita, Kansas. We continue to provide superior returns, remain environmentally responsible, and continue to grow in a disciplined way, deploying resources intelligently and benefiting communities we live in.

CONSENT TO AND AGREEMENT FOR ANNEXATION

THIS CONSENT TO AND AGREEMENT FOR ANNEXATION is made and entered into as of the ____ day of _____, 2022, by and between the City of Bel Aire, Kansas, a municipal corporation of the State of Kansas, and Marjorie A. Wirth, who holds fee simple title to the real property hereinafter described.

WHEREAS, Marjorie A. Wirth, who holds fee simple title to the real property hereinafter described, desires the annexation of said real property into the corporate boundaries of the City of Bel Aire, Kansas; and


WHEREAS, the Governing Body of the City of Bel Aire, Kansas desires to annex said real property into the corporate boundaries of the City of Bel Aire, Kansas;

NOW, THEREFORE, Marjorie A. Wirth, who holds fee simple title to the following real property, does hereby request, petition and consent to the annexation, pursuant to K. S. A. 12-520 (7), into the corporate boundaries of the City of Bel Aire, Kansas by the Governing Body of the City of Bel Aire, Kansas, of the following real property, to-wit:

The North Half of the Southwest Quarter of Section 21, Township 26 South, Range 2 East of the 6th P.M. Sedgwick County, Kansas, EXCEPT that part lying North and West of Mopac ROW, and EXCEPT the West 60 feet for road.

WHEREFORE, the parties hereto agree that the provisions contained herein shall inure to and run with said real property and as such shall be binding upon their heirs and assigns.

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


OWNER - Marjorie A. Wirth

CITY OF BEL AIRE, KANSAS
MAYOR, JIM BENAGE

SEAL

ATTEST:

CITY CLERK, MELISSA KREHBIEL

ACKNOWLEDGMENTS

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this _____ day of _____, 2022, before me a notary public in and for said county and state, came Jim Benage, Mayor of the City of Bel Aire, Kansas, a municipal corporation of the State of Kansas, and Melissa Krehbiel, City Clerk of said City who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

Notary Public

My Appointment Expires: _____

STATE OF IOWA)
) ss:
COUNTY OF LOUISA)

BE IT REMEMBERED that on this 2 day of May, 2022, before me, a notary public in and for said county and state, came Marjorie A. Wirth, who is personally known to me to be the same person who executed the within instrument and such person duly acknowledged the execution of the same as owner of the above-described property.

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

Julie Heindel
Notary Public

My Appointment Expires: 04-29-24



(First Published in the Ark Valley News on the ____ day of _____ 2022.)

THE CITY OF BEL AIRE, KANSAS

ORDINANCE NO. _____

AN ORDINANCE ANNEXING AND INCORPORATING A PORTION OF SECTION 21 INTO THE BOUNDARIES OF THE CITY OF BEL AIRE, KANSAS.

WHEREAS, WHEREAS, Marjorie A. Wirth, who holds fee simple title to the real property hereinafter described, desires the annexation of said real property into the corporate boundaries of the City of Bel Aire, Kansas; and has requested the same in writing;

WHEREAS, the Governing Body of the City of Bel Aire, Kansas desires to annex said real property into the corporate boundaries of the City of Bel Aire, Kansas;.

WHEREAS, in accordance with KSA 520(e) section (f); No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of land owned by or held in trust for the city or any agency thereof or land all of the owners of which petition for or consent thereto in writing.

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

SECTION 1: Hereby certifies the land described below shares a common boundary with the City of Bel Aire and is not currently part of the City of Bel Aire.

SECTION 2: The real property is legally described as:

The North Half of the Southwest Quarter of Section 21, Township 26 South, Range 2 East of the 6th P.M. Sedgwick County, Kansas, EXCEPT that part lying North and West of Mopac ROW, and EXCEPT the West 60 feet for road.

SECTION 3: The above described property meeting one or more of the conditions for annexation prescribed in KSA 520(e) section (f), is hereby annexed and incorporated within the corporate limits of the city of Bel Aire by this Ordinance.

SECTION 4: The officers, employees, and agents of the City of Bel Aire 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.

SECTION 5: This ordinance shall take effect and be in force after publication in the official City newspaper.

ADOPTED by the Governing Body of the City of Bel Aire, Kansas this__ day of, June 2022.

Approved:

Jim Benage, Mayor

Attest:

Melissa Krehbiel, City Clerk

STAFF REPORT

DATE: June 1, 2022

TO: Governing Body

FROM: City Attorney

RE: Term Limits



Council had several workshops regarding term limits and duration last spring and summer. In the fall of 2021 Council requested a survey be collected to see what the public thought about limits during the November 2021 election. The results were published to Council in January for review and discussion. Last month the Mayor requested this ordinance be prepared to give Council a chance to consider moving this forward before November 2022 ballots are prepared (this timeline gives sufficient time for any referendums to be added to the November ballot). **This ordinance will act to achieve the following Council goals:**

- A. Prevent people from serving excessively long periods on the governing body, risking becoming, “career politicians”. This will allow for new ideas to cycle through the governing body.
 - **Term limit for Council Members.** Beginning in the November 2023 election cycle, a duly elected council member shall be limited to serving no more than two full consecutive terms.
 - **Term limit for Mayor.** Beginning in the November 2023 election cycle, a duly elected mayor shall be limited to serving no more than 8 years consecutively.
- B. Increasing the mayor’s term to 4 years so that mayor can better cycle a vision.
 - **Duration of single Mayoral term.** Beginning in November 2023 election cycle, a duly elected mayor’s term shall increase from 2 years to 4 years.

Next Steps if approved: This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper, and shall take effect sixty-one days after its final publication, unless a sufficient petition for a referendum is filed in conformance with Article 12, Section 5 of the Constitution of the State of Kansas. If a referendum is held, this ordinance shall become effective on the day after approved by a majority of the electors voting thereon.

(First published in The Ark Valley News on _____ and again on _____)

CHARTER ORDINANCE NO. 21

A CHARTER ORDINANCE EXEMPTING THE CITY OF BEL AIRE FROM KSA 14-103 and 14-204 AND AMENDING RELEVANT SECTIONS OF CHARTER ORDINANCE 16 and 17 RELATED TO TERMS OF ELECTED OFFICIALS OF THE CITY OF BEL AIRE, KANSAS, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS FOR THE SAME.

Be it ordained by the Governing Body of the City of Bel Aire, Kansas,

Section 1. Exemption.

Pursuant to the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, the City of Bel Aire, Kansas does hereby elect to exempt itself from and make inapplicable to this City all portions of the following statutes which are Acts of the Kansas Legislature that are non-uniform in application: KSA 14-103 and 14-204 regarding terms for elected officials, and to adopt the following substitute provisions:

Section 2. Governing Body Term Limitations.

A. Term Limitations for Council.

No person shall qualify to run as a candidate for a City of Bel Aire Council seat if that person has served eight (8) years consecutively as a duly elected Council Member. The term of office for each duly elected Council member shall commence upon that member being sworn in to a council seat. A person's term will not be considered to be consecutive if there is at least a four year break between the conclusion of an elected term and the commencement of that same person's newly elected term. Any break in service less than four (4) years shall be considered consecutive for the purpose of this section. No person shall qualify to run for Council seat if that person cannot qualify to complete an entire term at the time of the election.

B. Exception to Term Limitations for Council.

The term limitations set by this section shall not apply to Council appointments. Serving in an appointed term shall not count towards consecutive terms. Any Council member's terms served prior to November 2023 shall not count towards consecutive terms for the purpose of this section.

C. Duration of a Single Term of Office for the Mayor.

The Mayor shall be elected for a four year term and until a successor has been duly elected and qualified. The Mayor whose term expires in November of 2023 shall continue to serve until that Mayor's successor is duly elected and qualified following the elections held on the Tuesday following the first Monday of November 2023. The Mayor elected in November of 2023 shall serve a four year term.

D. Term Limitations for Mayor.

No person shall qualify to run as a candidate for a City of Bel Aire Mayor's seat if that person has served more than eight (8) years consecutively as a duly elected Mayor of the City of Bel Aire. The term of office for each duly elected Mayor shall commence upon that candidate being sworn in as Mayor. A person's term will not be considered to be consecutive if there is at least a four year break between the conclusion of serving a duly elected term as Mayor and the commencement of that same person's newly elected term as Mayor. Any break in service less than four (4) years shall be considered consecutive. No person shall qualify to run for Mayor if that person cannot qualify to complete an entire term at the time of the election. No person shall qualify to run for Mayor if that person cannot qualify to complete an entire term at the time of the election.

E. Exception to Term Limitations for Mayor.

Any time a person served filling a vacancy, or by virtue of filling mayor duties as council president shall not count towards consecutive terms. Any time a person served as mayor prior to November 2023 shall not count towards consecutive terms for the purpose of this section.

Section 3. Saving Clause.

If any phrase, clause, paragraph or section of this Charter Ordinance is declared unconstitutional or invalid by any court of competent jurisdiction, it is hereby declared that the Governing Body would have enacted the remaining portions of this Charter Ordinance without such phrase, clause, paragraph or section so held unconstitutional or invalid.

Section 4. Effective Date.

This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper, and shall take effect sixty-one days after its final publication, unless a sufficient petition for a referendum is filed in conformance with Article 12, Section 5 of the Constitution of the State of Kansas. If a referendum is held, this ordinance shall become effective on the day after approved by a majority of the electors voting thereon.

Passed by two-thirds vote of the members elect of the Bel Aire City Council this ____ day of June, 2022.

Approved by the Mayor this ____ day of June, 2022.

MAYOR JIM BENAGE

ATTEST:

MELISSA A. KREHBIEL, CITY CLERK

SEAL

CITY OF BEL AIRE
STAFF REPORT

DATE: June 1, 2022
TO: Ty Lasher, City Manager
FROM: Dave Leiker, Public Works Director

RE: Water Service Installation Bids

Many homes are being constructed in the Chapel Landing 3rd Subdivision (53rd East of Oliver) and are in need of water services. This subdivision is unique in the fact that most of the homes are being constructed simultaneously. On May 25th staff received a request for water services from the builder. In total there are 28 services that need installed before the driveways can be poured. Staff realizes the importance of the builders need to maintain a schedule to sell these properties, so we expedited the bidding process to get this project started. This bid is for the installation of the meter cans, meter setters, and rings and lids. Staff will follow behind the contractor to install the meters.

Three local contractors were contacted on May 25th and sent a request for proposal. All bid requests were received. Staff recommends that UMC be awarded the bid. UMC came in at low bid price and can provide a 2-3 lead time to begin the project. Thank you for your consideration.

CONTRACTOR	Lead Time to Start Project	Bid Price
Nowak Construction	3 Weeks	\$51,800.00
Duling Construction	18 -24 Weeks	\$75,900.00
Utility Maintenance Contractors	2-3 Weeks	\$38,600.00

Sanitary Sewers • Storm Sewers • Water • Gas • Ditching • Road Boring

DULING CONSTRUCTION CO., INC.

4200 S. West St. • Wichita, Kansas 67217
Phone (316) 522-3458 • Fax: (316) 522-0343



To: City of Bel Aire
Attn: Tim Aelmore
Phone 316-744-2888
Fax: 316-744-6292

Quote Date: 6/1/2022
Project: WTR Service Install
Loc: Bel Aire Ks

Duling Construction proposes to furnish all labor, equipment, and material to complete the portion of work quoted below for:

Bid Item	Item Description	QTY	Unit	Unit Cost	Amount
		Approximately			
1	Install Short Water Service	20	EA	\$ 2,200.00	\$ 44,000.00
2	Relocate Out of Driveway & Install Material	6	EA	\$ 4,000.00	\$ 24,000.00
3	Install Long Water Service	2	EA	\$ 3,950.00	\$ 7,900.00
					<u>\$ 75,900.00</u>

Notes:

Do to material shortages 18-24 week lead time may be needed to get the material in.

Exclusions:

Special permits, fees, licenses are excluded.
Staking, surveying, inspection, testing
Liquidated damages are excluded.
Bonding/ Bid Security

Tax excluded
Any erosion control measures are excluded.
Site Restoration Clean Up

Thank you for the opportunity to quote this work

Nowak Construction

Section XII, Item J.

PO Box 218
200 South Goddard Rd
Goddard, KS 67052

Phone: (316) 794-8898
Fax: (316) 794-2243

To:	Bel Aire, Kansas	Contact:	
Address:	Bel Aire, KS	Phone:	
		Fax:	
Project Name:	2022-06-01 - Bel Aire Water Services	Bid Number:	
Project Location:	Bel Aire, KS	Bid Date:	6/1/2022
Addendum #:	0		

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
1	5508 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
2	5506 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
3	5502 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
4	5500 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
5	5498 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
6	5496 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
7	5492 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
8	5490 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
9	5486 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
10	5484 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
11	5480 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
12	5478 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
13	5474 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
14	5472 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
15	5468 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
16	5466 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
17	5462 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
18	5460 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
19	5456 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00
20	5454 E. Colburn Ct. - Long Service	1.00	EACH	\$1,900.00	\$1,900.00
21	5450 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
22	5448 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
23	5444 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
24	5442 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
25	5438 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
26	5436 E. Colburn Ct. - Connect To Existing Long Service Line, Move Out Of Driveway, Install Meter Setter, Can, Ring And Lid	1.00	EACH	\$2,000.00	\$2,000.00
27	5432 E. Colburn Ct. - Long Service	1.00	EACH	\$1,900.00	\$1,900.00

Nowak Construction

Section XII, Item J.

PO Box 218
200 South Goddard Rd
Goddard, KS 67052

Phone: (316) 794-8898
Fax: (316) 794-2243

To: Bel Aire, Kansas Address: Bel Aire, KS	Contact: Phone: Fax:
Project Name: 2022-06-01 - Bel Aire Water Services Project Location: Bel Aire, KS Addendum #: 0	Bid Number: Bid Date: 6/1/2022

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
28	5430 E. Colburn Ct. - Short Service	1.00	EACH	\$1,800.00	\$1,800.00

Total Bid Price: \$51,800.00

Notes:

- No Sales Tax
- Bond and Insurance included
- Water Meters by City
- No Staking, you need to locate meter locations and grade.
- No Pavement of any kind replaced
- No seed or sod
- No Erosion Control work

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. Buyer: _____ Signature: _____ Date of Acceptance: _____	CONFIRMED: Nowak Construction Authorized Signature: _____ Estimator: Alan Blough (316) 794-8898 alan@nowakconstruction.com
---	--



Date: June 1, 2022

To: City of Bel Aire, KS

Attn: David Leiker, parks@belaire.kscoxmail.com
Tim Aelmore taelmore@belaire.kscoxmail.com

Ref: **Water Service Connections – City of Bel Aire, KS**

Utility Maintenance Contractors, LLC (UMC) places our employee's safety as our top priority on every job, every day. Through safe work practices we can continue to ensure our employee's safety and the safety of those around them. We emphasize that production is a result of working safe. UMC will be responsible for providing its employees with all required safety equipment and conducting regular maintenance and inspection of that equipment.

UMC will meet all minimum industry standards for safety related to this work including but not limited to; PPE, confined space, first aid/CPR/AED training, material handling, ventilation and air monitoring. All onsite UMC employees will follow all OWNER established rules, policies and guidelines regarding safety and security.

1. UMC proposes to provide the labor, supervision, equipment and material to complete the **installation of twenty (20) short water meters, two (2) long services, and six (6) existing longs** as follows:
 - a. UMC will call in locates prior to beginning work
 - b. UMC will excavate, tap, and install service connection
 - c. UMC will set a 21"x30" meter box and install meter (meter provided by City)
 - d. UMC will communicate with builders but UMC cannot be held liable for delays caused by builder (i.e. equipment/debris in work area, wiped out utilities, etc.)

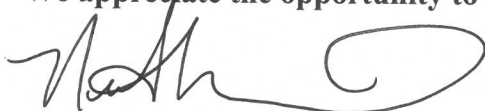
Item	Description	Qty	U.O.M.	Unit Price	Extended Price
Base	20 short services on Colburn Ct in Bel Aire	20	EA	\$1300.00	\$26,000.00
Base	2 long services to be drilled on Colburn Ct in Bel Aire	2	EA	\$1800.00	\$3600.00
Base	6 existing longs to be moved on Colburn Ct. in Bel Aire	6	EA	\$1500.00	\$9000.00

Total amount for work to be done : \$38,600.00

2. UMC's proposal includes:
 - a. All materials other than water meters
 - b. All safety equipment needed for above work
 - c. OWNER to provide uninterrupted access to the work areas for the duration of the project
 - d. Excavations that require shoring may result in additional charge
 - e. Traffic control or pavement remove and replace will result in an additional charge
3. UMC's proposal excludes:
 - a. All taxes, please provide a tax-exempt certificate or add tax to the proposed price
 - b. Bonding (bid, performance, payment, assurance, statutory)

- c. Davis Bacon wage rates
 - d. Special insurance, permits and fees
 - e. Traffic control other than cones and work ahead signs
 - f. Groundwater pumping/dewatering
 - g. Site clearing or restoration other than rough grading
 - h. Remediation, hauling or disposal of any hazardous materials discovered during UMC work
 - i. Providing as-built drawings once work is complete
 - j. Winter weather or any other weather controls
 - k. Night, weekend or overtime hours
 - l. Delays caused by Owner or others may result in standby rates being charged
 - m. Hauling off or disposal of debris created during the project
 - n. Customer scope of work changes
 - o. Liability for work performed by others
 - p. Responsibility for job site access restrictions
 - q. Changes due to actual conditions discovered at the job site
4. UMC's payment requirements:
- a. UMC will honor the above pricing for 30 calendar days from the time submitted:
 - b. Once UMC has submitted billing payment is required within 30 calendar days
 - c. No retainage will be withheld from payments

We appreciate the opportunity to quote this work.



Nick Manning
Superintendent

ACCEPTANCE OF UTILITY MAINTENANCE CONTRACTOR'S PROPOSAL

PLEASE SIGN, DATE & RETURN UPON ACCEPTANCE OF THIS PROPOSAL:

OWNER'S REPRESENTATIVE: (print)

OWNER'S REPRESENTATIVE: (signature)

DATE:

**AGREEMENT
CONCERNING THE DEVELOPMENT
OF THE PRAIRIE PRESERVE, BEL AIRE, SEDGWICK COUNTY, KANSAS**

This agreement is made and entered into by and between TOWANDA LAND COMPANY, LLC., a Kansas limited liability company, hereinafter referred to as the "DEVELOPER" and the CITY OF BEL AIRE, KANSAS, hereinafter referred to as the "CITY."

WHEREAS, the DEVELOPER desires platting by the CITY of a tract of land more fully described below and herein referred to as the Prairie Preserve, Bel Aire, Sedgwick County, Kansas (hereinafter, PRAIRIE PRESERVE); and

WHEREAS, the CITY is willing to consider platting of said PRAIRIE PRESERVE;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the DEVELOPER and the CITY agree as follows:

PURPOSE: This agreement is necessary to address certain financial, infrastructure and drainage conditions arising from the platting process which must be dealt with prior to final plat approval and as such, approval of this Agreement is a condition precedent to final consideration by the CITY of the DEVELOPER'S request for approval of the final plat on a tract of land more fully described below and herein referred to as PRAIRIE PRESERVE.

Specifically, this agreement is to assure that necessary improvements are in place to support development of PRAIRIE PRESERVE. Therefore, the DEVELOPERS compliance with the terms and conditions of this Agreement shall be a condition precedent to the granting of building and/or occupancy permits for development on said property. The DEVELOPER shall strictly observe and comply with the terms of this Agreement, all regulations, resolutions, policies, and ordinances of the CITY and Sedgwick County, and all statutes and laws of the State of Kansas and of the United States.

The development of PRAIRIE PRESERVE shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development, and may result in suspension or termination of such building permit. It is understood by the parties that the final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans may be submitted by the DEVELOPER and approved by the CITY in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs permit fees, review fees, and building and zoning permit and review fees incurred or required by city staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

PRAIRIE PRESERVE LEGAL DESCRIPTION: The tract of land herein referred to as Prairie Preserve, Bel Aire, Sedgwick County, Kansas, a replat of part of Chapel Landing,

Bel Aire, Sedgwick County, Kansas, has the following pre-platting legal description, to-wit:

That part of Chapel Landing, Bel Aire, Sedgwick County, Kansas, described as beginning at the northwest corner of Lot 23, Block E, in said addition; thence East along the north line of said Lot 23 and extended, 600.02 feet to the southwest corner of Reserve "R" in said addition; thence North along the west line of said Reserve "R", 216.40 feet to the northwest corner of said Reserve "R"; thence East along the north line of said Reserve "R", 148.43 feet to the northeast corner of said Reserve "R"; thence southeast perpendicular to the southeast right of way of Pinecrest St, 66.00 feet to said southeast right of way; thence southwest along said southeast right of way, 94.24 feet to the northerly most corner of Lot 25, Block F, in said addition; thence southeasterly along the northeast line of said Lot 25, 94.96 feet to the northeast corner of said Lot 25, Block F; thence South along the east line of said Lot 25, Block F and extended, 110.74 feet to the northwest corner of Lot 29, Block F, in said addition; thence East along the north line of said Lot 29, Block F and extended, 579.21 feet to the southeast corner of Lot 17, Block F, in said addition; thence North along the east line of said Lot 17, Block F, 159.65 feet to the northeast corner of said Lot 17, Block F; thence Northerly along the right of way of Pinecrest Ct., being a non-tangent curve to the left with a radius of 50.00 feet, and an arc length of 15.75 feet to the southerly most corner of Lot 16, Block F, in said addition; thence northeasterly along the southeast line of said Lot 16, Block F, 40.95 feet to the southeast corner of said Lot 16, Block F; thence North along the east line of said Lot 16, Block F, 129.46 feet to the northwest corner of Reserve "CC" in said addition; thence East along the north line of said Reserve "CC", 83.55 feet to a point of intersection on said north line; thence East 80.21 feet to the northeast corner of said Reserve "CC"; thence South along the east line of said Reserve "CC", 148.54 feet to the northwest corner of Lot 43, Block F, in said addition; thence East along the north line of said Lot 43, Block F, 137.97 feet to the northeast corner of said Lot 43, Block F; thence southeasterly 60.80 feet to the northwest corner of Lot 62, Block F, in said addition; thence East along the north line of said Lot 62, Block F, 143.95 feet to the northeast corner of said Lot 62, Block F; thence North along the west line of Lot 64, Block F, 8.47 feet to the northwest corner of said Lot 64, Block F; thence northeasterly along the northwest line of said Lot 64, Block F and extended, 147.23 feet to the westerly most corner of a tract described in Statutory Warranty Deed recorded at Doc.#Flm-Pg: 30092514 with the Register of Deeds in Sedgwick County, Kansas; thence southeast along the southwest line of said Statutory Warranty Deed with a deflection to the Right of 60°25'54" for a distance of 82.10 feet; thence southeast along the southwest line of said Statutory Warranty Deed with a deflection to the Left of 05°11'10" for a distance of 165.90 feet; thence southeast along the southwest line of said Statutory Warranty Deed with a deflection to the Right of 45°52'19" for a distance of 132.02 feet to the southerly most corner of said Statutory Warranty Deed, also being the south line of Lot 61, Block C, in said addition; thence southwesterly along the south line of said Lot 61, Block C and extended, 9.57 feet to a point of intersection on the south line of Lot 62, Block C, in said addition; thence southwesterly along the south line of said Lot 62, Block C and extended, 451.56 feet to a point of intersection on the south line of Lot 68, Block C, in said addition; thence southwesterly along the south line of said Lot 68, Block C and extended, 477.56 feet to the southwest corner of Lot 72, Block C, in said addition; thence South along the east line of

Lot 73, Block C, in said addition, 1.68 feet to the southeast corner of said Lot 73, Block C; thence southwesterly along the south line of said Lot 73, Block C and extended, 1134.58 feet to the southerly most southeast corner of Lot 93, Block C, in said addition; thence West along the south line of said Lot 93, Block C and extended, 688.28 feet to the southwest corner of Lot 101, Block C, in said addition; thence North along the west line of said Lot 101, Block C and extended, 1267.95 feet to the place of beginning.

PERMITTED USE: All lots are zoned R-1, and construction upon such lots shall be limited to single-family units.

BUILDING SETBACKS: The minimum building setbacks for residential lots shall be:

- Front building setback – fifty (50) feet
- Street side building setback – fifty (50) feet
- Side yard building setback – 20% of lot width for primary structure and ten (10) feet for any secondary structures
- Rear building setback – thirty five (35) feet

CONSTRUCTION PERIOD REQUIREMENTS. In addition to other requirements set forth within this agreement regarding property maintenance, the following requirements shall be met specifically during the period of time during which construction of PRAIRIE PRESERVE is being developed:

All lots covered by this Agreement shall be subject to the CITY’S storm water regulations. The Contractor shall install and the DEVELOPER maintains the storm water protection devises established by the CITY and the master drainage / grading plan until such time the devises are no longer needed due to the adequate establishment of ground cover. All lots covered by this agreement shall be kept clean, shall not pond water, shall be mowed to a height not exceeding eight (8) inches, and shall comply with all applicable laws and regulations pertaining to erosion control.

All temporary construction units must be removed when building in the immediate vicinity is completed.

All temporary utility connections made to expedite the development must be removed immediately as utility services are provided; i.e. temporary above ground power supply.

Vehicle access to the tract of land herein referred to as the PRAIRIE PRESERVE shall be limited to one entry point along Oliver Street as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in PRAIRIE PRESERVE shall be limited to vehicles under 20 tons, with the exception of construction vehicles and equipment during active construction phase of the project. DEVELOPER shall be responsible for installation and removal of any temporary roads during construction. Such temporary roads shall be approved by the CITY. All roadways must be kept free of construction debris and mud. Dust created during construction must be controlled avoiding

a nuisance for motorist and neighbors.

DETENTION PONDS. Any on-site detention ponds will be designed to control two, twenty-five year storm events and one, hundred year storm event. Additionally, the ponds will act as temporary sedimentation basins during construction but are limited to the amount of sediment allowed and DEVELOPER responsible for any dredging required.

Any on-site detention ponds and associated inflow and outflow systems to the property as well as the reserves, and ditches are to be maintained by the DEVELOPER indefinitely unless transferred to a homeowner's association or equal resolution approved by the CITY, excluding paving and utilities within dedicated rights of ways as indicated on plat documents. Failure of the DEVELOPER to maintain such areas and property as described shall be grounds for the CITY to enforce these provisions as a nuisance abatement action, and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

DRAINAGE. Protecting surrounding platted property from the impacts of changes in drainage across such property resulting from the development of PRAIRIE PRESERVE must be addressed as part of the platting process. The DEVELOPER shall prepare a storm drainage plan which shall address the various impacts of increased/modified drainage, meet CITY drainage specifications, and be approved by the City Engineer. Prior to approval of said proposed storm drainage plan, the City Engineer may impose modifications upon such proposed plan as Engineer deems necessary to insure the effectiveness of such plan. After approval by the City Engineer of said storm drainage plan, including any necessary modifications, the DEVELOPER shall install, or cause to be installed, the improvements pursuant to the drainage plan.

The DEVELOPER shall maintain a master drainage plan throughout the development stage for each parcel, by providing grass and installing landscape to ensure the reduced yard requirements have no consequence to the drainage of the property.

DRAINAGE PLAN. The DEVELOPER must provide a maintenance plan within the HOA Covenant document that will provide adequate provisions to protect the master drainage plan engineered design as such was approved by the CITY. The Maintenance Plan will include but not limited to: how to initiate the maintenance process for the drainage plan, how to inspect, what to inspect, when to inspect, how to correct drainage problems that are discovered, the appropriate records to be maintained and designating the party responsible for maintaining such records. The CITY may request a copy of the inspection report to monitor compliance on a biannual basis. Failure of the HOA to maintain such records or provide such records to the CITY in a timely manner, shall be grounds for the CITY, or the CITY'S designee, to conduct an inspection and charge the costs associated with such inspection back to the HOA.

ELECTRIC: All electric lines shall be installed underground and paid for by the DEVELOPER.

EROSION AND SEDIMENT CONTROL. The DEVELOPER must follow all National Pollution Discharge Elimination System (NPDES) Kansas Department of Health and Environment (KDHE) and City of Bel Aire Standards for erosion and sediment control on site.

FENCING & SCREENING: Fencing and screening methods and materials shall blend in with the architectural design of the buildings and to reasonably hide the materials, trash and recycling containers from ground view, and all fencing and screening methods and materials must be pre-approved in writing by the CITY. Vinyl coated chain link fencing materials and other similar fencing material may be allowed if such materials blend in with the architectural design elements of the building and adjacent sites. Any plans for outside storage facilities shall comply with the applicable ordinances and zoning regulations of the CITY and be submitted in writing to the CITY for prior approval. No barbed wire is allowed.

FIRE HYDRANTS: All fire hydrants shall be of a type and quality specified by CITY standards, but not less than the minimum standards of the National Board of Fire Underwriters, and shall be provided and connected to the CITY'S municipal water supply system. Such hydrants shall be subject to the inspection and approval of the applicable Fire Chief.

FOUNDATION CERTIFICATIONS. Foundation Certifications will be required on each foundation after construction. Minimum low opening certifications will be required on all lots with minimum pads indicated on the face of the plat.

HOMEOWNERS' ASSOCIATION. DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, drainage systems, detention ponds and construction areas associated with PRAIRIE PRESERVE.

INFRASTRUCTURE PETITION AND INSTALLATION: The development of PRAIRIE PRESERVE is being accomplished by virtue of a multi-phase process. Representatives of the parties shall formally meet and review the existing and proposed phases of development as well as the requirements of this agreement, prior to the submission of petitions for infrastructure improvements for each phase of development.

Installation of all improvements shall be in compliance with requirements of all applicable federal, state and local legislation, including the Americans with Disabilities Act. All electric power, street lights and telephone service shall be installed underground. The DEVELOPER shall contract with an approved Engineering Firm to perform the engineering design, and inspection of water mains, sanitary sewer collection system, storm water systems and paving necessary for the platting and development of the tract of land herein referred to as the PRAIRIE PRESERVE, Bel Aire, Sedgwick County, Kansas which said improvements, with the exception of the sanitary sewer system, shall be dedicated to and owned and maintained by the CITY. The DEVELOPER shall contract with an approved Contractor for the construction and installation of water mains, sanitary sewer collection

system, storm sewer and paving required for the development. The sanitary sewer collection systems shall be owned and maintained by the HOA up to the point of connection to the City's collection system at a location agreed upon by the DEVELOPER and CITY. Said improvements shall be installed on CITY owned property or within public right of ways or easements. The DEVELOPER shall pay for the actual costs of the engineering design, construction and inspection of all improvements necessary for the platting and development of the tract of land herein referred to as the PRAIRIE PRESERVE unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas.

The DEVELOPER shall dedicate necessary public right-of-ways and easements and install, or cause to be installed, all improvements necessary for the platting and development of the tract of land herein referred to as the PRAIRIE PRESERVE. Said improvements include, but are not limited to streets, street signs, storm water system, water distribution system, sanitary sewer collection system, corner pins, driveways and utilities. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction. The DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government.

Whenever existing sanitary sewer, storm water, water lines, drainage channels, culverts, underground and overhead electric, communications, gas lines, pipe lines or transmission lines are required to be installed, lowered, encased, modified or relocated due to the subdivision or construction improvements required, and in the event it was not known at time of platting approval, the DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction.

LANDSCAPING & SCREENING: The "Landscape Plan" submitted for PRAIRIE PRESERVE shall govern. The "Landscaping Plan" shows contours, utilities, size and spread at planting, any type of ground cover, shrubs, and shall coordinate with the Drainage Plan and Site Plan for the project.

Planting of interior trees by homeowners and/or Developers shall meet the CITY'S street tree requirements. Any areas outside of the general boundaries of each development phase shall be planted to appropriate turf or ground cover adequate to prevent undue soil erosion and shall be maintained in accordance with applicable CITY ordinances. Within all detailed landscape plans, ground mounted mechanical equipment and trash receptacles shall be screened from ground level view. Plantings shall take place within 6 months of the certificate of occupancy being granted.

LIGHTING: A Street and parking lighting plan shall be submitted to the CITY for approval and comply with the City zoning ordinance. Outdoor lighting sources shall employ cutoff luminaires to minimize light trespass and glare. Wood poles will not be

allowed.

MAINTENANCE: DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, Oliver Street right-of-way, and construction outside boundaries of PRAIRIE PRESERVE.

PERMITS. No construction shall commence on any portion of the tract of land herein referred to as PRAIRIE PRESERVE without the DEVELOPER having first obtained the proper building and zoning permits from the CITY.

The development of PRAIRIE PRESERVE shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development. The final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted and approved in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs, permit fees, review fees, and building and zoning permit and review fees incurred or required by city staff and review and/or through building and zoning review shall be paid by the DEVELOPER and/or potential homeowners.

ROADWAYS, PARKING, DRIVES, and ACCESS: The DEVELOPER shall cause to be installed, according to the design standards of the CITY, minimum twenty-four (24) foot edge to edge asphalt mat paved street in PRAIRIE PRESERVE, utilizing a 12” concrete stabilized base with 3” AC asphalt surface placed in two separate lifts. This design is outlined in a letter dated April 7, 2022 from Mr. Brit D. Clubb, P.E. to Mr. Chris Snook, Bob Bergkamp Construction Co., Inc. The DEVELOPER agrees to maintain the street for a period of five (5) years following construction – maintenance shall include the filling and sealing of any cracks or other deformities that arise throughout the five-year maintenance period.

All driveways shall be per CITY ordinance. Access controls are as shown on the final plat of PRAIRIE PRESERVE.

Vehicle access to the tract of land herein referred to as the PRAIRIE PRESERVE shall be limited to one entry point along Oliver Street as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in PRAIRIE PRESERVE shall be limited to vehicles under 20 tons.

SANITARY SEWER: The DEVELOPER hire a licensed engineer in the State of Kansas to preform the engineering design and inspection of the sanitary sewer system and shall hire a qualified contractor to install said system. The sanitary sewer system will be tied into the existing sanitary sewer system of the City of Bel Aire, Kansas at a point determined in conjunction with the City Engineer. Said sewer system shall be dedicated to and owned and maintained by the DEVELOPER/HOA. Said sewer main shall be installed within

dedicated easements. If not shown on the final plat, necessary easements shall be granted by the DEVELOPER or acquired and dedicated by separate instrument prior to the start of the sewer system construction.

All low-pressure trunk lines shall have a locate wire installed with the force main. The DEVELOPER/HOA shall contract with a private locate company and be solely responsible for locating the sewer lines per the Kansas 811 one-call system. The City will bear no responsibility for locating these lines, nor will the City bear any responsibility for damages done to any non-located private sewer line. All Sanitary Sewer User Fees and Hookup Fees are subject to City Ordinances.

SIDEWALKS: No sidewalks will be installed in this development.

SIGNAGE. Signs of such location, type and size as shall be approved as part of the building permit process or by the Governing Body, giving due regard to the prevailing type, size and pattern of location utilized throughout the area. All signage shall comply with the applicable ordinances and zoning regulations of the City and be submitted in writing to the CITY for written approval.

All signs, other than regulatory signs or street name signs, are to be maintained by the DEVELOPER indefinitely unless transferred to a homeowner's association or equal resolution approved by the CITY. Failure of the DEVELOPER to maintain such areas and property shall be grounds for the CITY to enforce this provision as a nuisance abatement action, and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

WATER: The DEVELOPER shall engage an Engineering Firm to perform the engineering design and inspection of transmission water lines minimum (8) inches in diameter, to the municipal water supply system of the City of Bel Aire, Kansas. The DEVELOPER will be responsible for selecting a reputable construction firm to install said water system. Said water transmission lines shall be dedicated to and owned and maintained by the CITY. Lines shall be designed to loop, if feasible (as determined by the City Engineer). Said water transmission lines shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted to the CITY by the DEVELOPER or acquired prior to the construction project and dedicated by separate instrument. All Water User Fees and Hook Up Fees are subject to City Ordinances.

BONDING CAPACITY. Not required of the DEVELOPER, as this is a private pay and no funding will be required of the City.

MISCELLANEOUS:

The DEVELOPER must make mail delivery provisions for each household with the U.S. Postal Services.

MODIFICATION OF PLAT THROUGH REPLATTING PROCESS. While it is intended by the parties that the development will proceed in compliance with this Agreement and the plat of

PRAIRIE PRESERVE nothing herein shall be construed to prohibit modifications to the PRAIRIE PRESERVE development as a result of the formal replatting process.

RESPECTIVE RESPONSIBILITIES OF CITY AND DEVELOPER: Notwithstanding anything to the contrary contained herein, the DEVELOPER shall be responsible for the funding and construction of streets, sewer, and water facilities for PRAIRIE PRESERVE or other projects or additions, including excavation, storm sewers and detention ponds.

The DEVELOPER agrees to assume responsibility to see that all original purchasers of lots in the Addition receive a copy of the Developer's Agreement and the Restrictive Covenant at the time of purchase.

Each DEVELOPER, individual, or entity who is presently an owner of a lot or lots in PRAIRIE PRESERVE or any individual or entity who later becomes a DEVELOPER by acquiring ownership of a lot or lots in said projects, shall do so subject to the terms of this Development Agreement, and shall be liable for the payment of other costs and expenses payable by DEVELOPER hereunder which are incurred for improvements or facilities located on the lots or which are used or are available for the benefit of the lot or lots owned by the DEVELOPER.

Likewise, each DEVELOPER shall be responsible for the performance or compliance with other obligations or requirements contained herein which may be performed on the lot or lots owned by the DEVELOPER or which the DEVELOPER otherwise has the legal power and authority to perform. In the event any improvements or facilities are constructed on the lot or lot of a DEVELOPER not to serve the needs of that lot or lots, but rather to serve the needs of a lot or lots not owned by the DEVELOPER, the DEVELOPER shall have no liability or responsibility for the costs and expenses incurred in the construction or maintenance of those improvements or facilities.

Finally, in the event improvements or facilities are constructed and maintained to serve lots owned by more than one DEVELOPER or for the use of all DEVELOPERS, the costs and expenses for such construction and maintenance shall be paid by all DEVELOPERS whose lots are served by such improvements and facilities which costs and expenses shall be allocated to those DEVELOPERS whose lots are being served in the proportion that the number of square feet in the lots being served and respectively owned by them bears to the total square feet of all lots being served.

RECORDING: The DEVEOLPER shall file an executed copy of this Agreement with the Sedgwick County Register of Deeds. A copy of this Agreement showing said recording along with a copy of the recorded plat shall be furnished by the DEVELOPER to the general contractor before building permits are issued.

BINDING: The terms and conditions of this Agreement, as set forth herein, shall be binding upon the City and the DEVELOPER, their successors, representatives, trustees, and assigns.

THIS AGREEMENT is hereby executed on this _____ day of _____, 2022.

Towanda Land Company, LLC, a
Kansas limited liability company

CHRIS SNOOK, MANAGING MEMBER
THE PRAIRIE PRESERVE,
Bel Aire, Sedgwick County, Kansas

THIS AGREEMENT was approved by vote the City Council of the City of Bel Aire, Kansas
on the _____ day of _____, 2022 and is hereby executed on this _____ day of
_____, 2022.

MAYOR, JIM BENAGE

SEAL

ATTEST:

CITY CLERK, MELISSA KREHBIEL

ACKNOWLEDGEMENTS

COUNTY OF SEDGWICK
STATE OF KANSAS

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Chris Snook, Managing Member, on behalf of Towanda Land Company, LLC, a Kansas limited liability company, who is known to me and who personally acknowledged execution of the foregoing Agreement as the Developer of PRAIRIE PRESERVE, Bel Aire, Sedgwick County, Kansas.

NOTARY PUBLIC

My Appointment Expires:_____

COUNTY OF _____
STATE OF _____

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Mr. Jim Benage, who is known to me to be the Mayor of Bel Aire, Kansas and who personally acknowledged execution of the foregoing Agreement Concerning the Development of PRAIRIE PRESERVE, Bel Aire, Sedgwick County, Kansas, and Melissa Krehbiel, who is known to me to be the City Clerk of Bel Aire, Kansas and who personally acknowledged attesting the signature of said Mr. Jim Benage.

NOTARY PUBLIC

My Appointment Expires:_____

**AGREEMENT
CONCERNING THE DEVELOPMENT
OF SKYVIEW AT BLOCK 49 3RD ADDITION,
BEL AIRE, SEDGWICK COUNTY, KANSAS**

This agreement is made and entered into by and between Block 49, LLC, a Kansas limited liability company, hereinafter referred to as the "DEVELOPER" and the CITY OF BEL AIRE, KANSAS, hereinafter referred to as the "CITY."

WHEREAS, the DEVELOPER desires platting by the CITY of a tract of land more fully described below and herein referred to as SKYVIEW AT BLOCK 49 3RD ADDITION, Bel Aire, Sedgwick County, Kansas (hereinafter, SKYVIEW AT BLOCK 49 3RD); and

WHEREAS, the CITY is willing to plat said SKYVIEW AT BLOCK 49 3RD under certain applicable conditions stated herein;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the DEVELOPER and the CITY agree as follows:

PURPOSE: This agreement is necessary to address certain public interest, infrastructure, financial, and drainage conditions arising from the platting process. As such, approval of this Agreement is a condition precedent to the filing of the final plat and conveyance of the tract of land more fully described below and herein referred to as SKYVIEW AT BLOCK 49 3RD.

Specifically, this agreement is to assure that necessary improvements are in place to support development of SKYVIEW AT BLOCK 49 3RD. The DEVELOPER'S compliance with the terms and conditions of this Agreement shall be a condition precedent to the granting of building and/or occupancy permits for development on said property. The DEVELOPER shall strictly observe and comply with the terms of this Agreement, all regulations, resolutions, policies, and ordinances of the CITY and Sedgwick County, and all statutes and laws of the State of Kansas and of the United States.

The development of SKYVIEW AT BLOCK 49 3RD shall proceed in accordance with this Agreement and all other platting requirements. Any deviation, may result in suspension or termination of such building permit. It is understood by the parties that the final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted by the DEVELOPER and approved by the CITY in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for

review and approval by the CITY. Any and all costs incurred by DEVELOPER to comply with the requirements of this agreement including permit fees, review fees, and building and zoning permit and review fees, shall be paid by the DEVELOPER.

SKYVIEW AT BLOCK 49 3RD LEGAL DESCRIPTION: The tract of land herein referred to as SKYVIEW AT BLOCK 49 3RD ADDITION, Bel Aire, Sedgwick County, Kansas, has the following pre-platting legal description, to-wit:

The East 1,235.00 feet of the South Half of the Northeast Quarter of Section 20, Township 26 South, Range 2 East of the 6th/ P.M., Sedgwick County, Kansas, EXCEPT the North 882.00 feet thereof.

PERMITTED USE: The lot will be zoned to C-2/PUD and remain controlled by a for-profit development, as a single controlling entity or owner for the approved development as presented, and construction upon such lot shall adhere to the following conditions:

1. Enclosed and outside storage, living quarters for storage facility as shown on the approved site plan.
2. Accessory structures to contain trash or mowing equipment as approved.
3. Any other use permitted in the C-2 district.

CONSTRUCTION PERIOD REQUIREMENTS. In addition to other requirements set forth within this agreement regarding property maintenance, the following requirements shall be met specifically during the period of time during which construction of SKYVIEW AT BLOCK 49 3RD is being developed:

All lots covered by this Agreement shall be subject to the CITY'S storm water regulations. The Contractor shall install and the DEVELOPER maintains the storm water protection devices established by the CITY and shown in the construction plans for master drainage / grading plan until such time the devices are no longer needed due to the adequate establishment of ground cover. All lots covered by this agreement shall be kept clean, shall not pond water, shall be mowed to a height not exceeding eight (8) inches, and shall comply with all applicable laws and regulations pertaining to erosion control.

All temporary construction units must be removed when building in the immediate vicinity is completed. Temporary construction units will be relocated to areas actively being constructed.

All temporary utility connections made to expedite the development must be removed immediately as utility services are provided; i.e. temporary above ground power supply.

Construction traffic shall enter from WEBB ROAD. DEVELOPER shall be responsible for installation and removal of any temporary roads during construction. Such temporary roads shall be approved by the CITY. All roadways must be kept free of construction debris and mud. Dust created during construction must be controlled avoiding a nuisance for motorists and neighbors.

DETENTION POND. The pond will act as temporary sedimentation basins during construction but is limited to the amount of sediment allowed and DEVELOPER responsible for any dredging required. The drainage pond shall be designed to provide detention for the increased impervious surface area beyond what was originally planned for in the Tierra Verde drainage plan.

DRAINAGE. Protecting surrounding platted property from the impacts of changes in drainage across such property resulting from the development of SKYVIEW AT BLOCK 49 3RD must be addressed as part of the platting process. The DEVELOPER shall prepare a storm drainage plan which shall address the various impacts of increased/modified drainage, meet CITY drainage specifications, and be approved by the City Engineer. Prior to approval of said proposed storm drainage plan, the City Engineer may impose modifications upon such proposed plan as Engineer deems necessary to insure the effectiveness of such plan. After approval by the City Engineer of said storm drainage plan, including any necessary modifications, the DEVELOPER shall install, or cause to be installed, the improvements pursuant to the drainage plan.

The DEVELOPER shall maintain a master drainage plan throughout the development stage for each phase.

ELECTRIC: All electric lines shall be installed underground and paid for by the DEVELOPER.

EROSION, STORMWATER, AND SEDIMENT CONTROL. The DEVELOPER must follow all National Pollution Discharge Elimination System (NPDES), Kansas Department of Health & Environment (KDHE) and City of Bel Aire Standards for erosion, stormwater, and sediment control on site.

FENCING & SCREENING: Fencing and screening methods and materials shall blend in with the architectural design of the buildings and to reasonably hide the materials, trash and recycling containers from ground view, and all fencing and screening methods and materials shall be as shown on the submitted landscape plan. If any fencing or screening is installed by the DEVELOPER during Development, all future maintenance and upkeep shall be performed by the lot owner.

FIRE HYDRANTS: All fire hydrants shall be of a type and quality specified by CITY Specification Standards, but not less than the minimum standards of the National Board of Fire Underwriters, and shall be provided and connected to the CITY'S municipal water supply system. Such hydrants shall be subject to the inspection and approval of the applicable Fire Chief.

INFRASTRUCTURE PETITION AND INSTALLATION: The development of SKYVIEW AT BLOCK 49 3RD is being accomplished by virtue of a multi-phase process. Representatives of the parties shall formally meet and review the existing and proposed

phases of development as well as the requirements of this agreement, prior to the submission of petitions for infrastructure improvements for each phase of development. Petitions will only be provided for improvements to be installed using special assessment financing.

Installation of all improvements shall be in compliance with requirements of all applicable federal, state and local legislation, including the Americans with Disabilities Act. All electric power, street lights and telephone service shall be installed underground. The DEVELOPER shall pay for the engineering design, construction and inspection of water mains, sanitary sewer mains, storm water systems and paving necessary for the platting and development of the tract of land herein referred to as the SKYVIEW AT BLOCK 49 3RD, Bel Aire, Sedgwick County, Kansas unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas. Storm sewer that conveys drainage from adjoining properties and the water mains for water service and fire protection shall be dedicated to and owned and maintained by the CITY. Said improvements shall be installed on CITY owned property or within public right of ways or easements. All other improvements will be owned and maintained by the DEVELOPER.

Whenever existing sanitary sewer, storm water, water lines, drainage channels, culverts, underground and overhead electric, communications, gas lines, pipe lines or transmission lines are required to be installed, lowered, encased, modified or relocated due to the subdivision or construction improvements required, and in the event it was not known at time of platting approval, the DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during said construction.

LANDSCAPING & SCREENING: The DEVELOPER has submitted to the CITY, a "Landscape Plan" that is representative of the landscaping to be provided as each phase of SKYVIEW AT BLOCK 49 3RD is developed. The "Landscaping Plan" shows contours, utilities, size and spread at planting, any type of ground cover, shrubs, and coordinate with the Drainage Plan and Site Plan for the project.

Any areas outside of the general boundaries of each development phase shall be planted to appropriate turf or ground cover adequate to prevent undue soil erosion and shall be maintained in accordance with applicable CITY ordinances. Any future Phases to be constructed shall also submit and have approved by the CITY, detailed landscape plans for that Phase. Within all detailed landscape plans, ground mounted mechanical equipment and trash receptacles shall be screened from ground level view.

LIGHTING: Outdoor lighting sources shall employ cutoff luminaires to minimize light trespass and glare onto adjoining properties, and shall be mounted at a height not exceeding 20 feet.

MAINTENANCE: DEVELOPER will be required to provide continuous maintenance for Reserve "A", and all identified common areas, ponds, irrigation systems within said reserve in SKYVIEW AT BLOCK 49 3RD. Improvements within Reserve "A" shall be installed and owned by the DEVELOPER.

PERMITS. No construction shall commence on any portion of the tract of land herein referred to as SKYVIEW AT BLOCK 49 3RD without the DEVELOPER having first obtained the proper building and zoning permits from the CITY.

ROADWAYS, PARKING, DRIVES, and ACCESS:

All driveways shall be constructed in compliance with CITY ordinance.

SANITARY SEWER: The subject property is currently served by an existing sewer main that is owned and maintained by the CITY. No additional sewer mains are proposed to serve this property. All Sanitary Sewer User Fees and Hookup Fees are subject to City Ordinances. In the event that additional sanitary sewer mains are deemed necessary, the DEVELOPER shall petition the CITY to perform the engineering design review, construction and inspection of collection lines to transport sewage and discharge into existing downstream sanitary sewer mains. Said sewer main shall be dedicated to and owned and maintained by the CITY. Said sewer main shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted by the DEVELOPER or acquired as part of the construction project and dedicated by separate instrument.

SIGNAGE. Along 49th Street North a six-foot wide monument type sign, not exceeding 6 feet in height shall be permitted. Along Webb Road a 2-sided pole sign will be permitted which shall not exceed 30 feet in height and have a maximum of 50 square feet per side. All signage shall comply with the applicable ordinances and zoning regulations of the City and be submitted in writing to the CITY for written approval.

Signs are to be maintained by the DEVELOPER indefinitely unless an alternative plan approved by the CITY. Failure of the DEVELOPER to maintain such areas and property shall be grounds for the CITY to enforce this provision as a nuisance abatement action, at the cost and expense of the DEVELOPER and/or HOA.

WATER: The DEVELOPER shall petition the CITY to perform the engineering design, construction and inspection of transmission water lines to the municipal water supply system of the City of Bel Aire, Kansas. Said water transmission lines shall be dedicated to and owned and maintained by the CITY. Lines shall be designed to loop if possible. Said water transmission lines shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted to the CITY by the DEVELOPER or acquired as part of the construction project and dedicated by separate instrument. All water taps and service lines up to the meter shall be installed at the time of the water line construction. All Water User Fees and Hookup Fees are subject to City Ordinances.

BONDING CAPACITY. Assurances are to be provided whenever the CITY has been

furnished a financial guarantee (irrevocable letter of credit, corporate completion bond, cashier's check, escrow account or cash) on 35% of the estimated principal cost of the project (engineering design, construction, inspections, temp note interest and administration). The Letter of Credit (LOC) or bond will be in the form approved by the CITY and name the City of Bel Aire as beneficiary. The assurances will serve to protect the general taxpayers of Bel Aire from subsidizing the special assessment debt. The assurance shall be filed prior to any debt being issued by the CITY for any of the expenses mentioned above and be in the amount equal to 35% of these same costs. It is understood that this letter of credit shall be automatically renewed for additional 2-year periods unless the DEVELOPER notifies the CITY in writing at least sixty (60) days prior to the then relevant expiration date that it will not be renewed at which time the DEVELOPER may draw up to the full amount of the credit available at that time. Provided there are no delinquent taxes or special assessments owed by the DEVELOPER, the financial guarantee will be released upon request of the DEVELOPER when development (issuance of satisfactory framing by the City of Bel Aire) of 35% of the properties covered by the LOC, the CITY will, by written instruction, authorize the release of this letter of credit, provided, however, that before this letter of credit is released the CITY shall be entitled to a partial drawing against the credit in the amount of any delinquent special assessments.

MISCELLANEOUS:

The DEVELOPER must make mail delivery provisions for the living quarters with the U.S. Postal Services.

Any land dedicated to or owned by a municipal authority shall be exempt from any and all assessments including those assessed by Homeowners Association Covenants. Land within this plat owned by such a municipal organization, exempt from taxation by the laws of the State of Kansas, shall not be subject to any non-taxing authority assessments throughout the duration of such ownership.

MODIFICATION OF PLAT THROUGH REPLATTING PROCESS. While it is intended by the parties that the development will precede in compliance with this Agreement and the existing plat of SKYVIEW AT BLOCK 49 3RD nothing herein shall be construed to prohibit modifications to the SKYVIEW AT BLOCK 49 3RD development as a result of the formal replatting process.

RESPECTIVE RESPONSIBILITIES OF CITY AND DEVELOPER: Notwithstanding anything to the contrary contained herein, the CITY shall be responsible for the construction of streets, sewer, and water facilities for SKYVIEW AT BLOCK 49 3RD or other projects or additions, including excavation, storm sewers and detention ponds, the costs for which shall be spread as special assessments against the addition on a square footage basis, but not for three (3) years following the completion of construction, or until the year 2025.

The DEVELOPER agrees to assume responsibility to see that all original purchasers of lots

in the Addition receive a copy of the Developer's Agreement and the Restrictive Covenants at the time of purchase.

The DEVELOPER agrees to provide the CITY with a copy of the Restrictive Covenants once adopted.

Each DEVELOPER, individual, or entity who is presently an owner of a lot or lots in SKYVIEW AT BLOCK 49 3RD or any individual or entity who later becomes a DEVELOPER by acquiring ownership of a lot or lots in said projects, shall do so subject to the terms of this Development Agreement, and shall be liable for the payment of other costs and expenses payable by DEVELOPER hereunder which are incurred for improvements or facilities located on the lots or which are used or are available for the benefit of the lot or lots owned by the DEVELOPER.

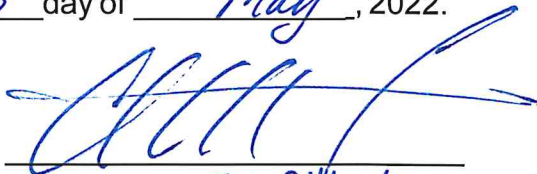
Likewise, each DEVELOPER shall be responsible for the performance or compliance with other obligations or requirements contained herein which may be performed on the lot or lots owned by the DEVELOPER or which the DEVELOPER otherwise has the legal power and authority to perform. In the event any improvements or facilities are constructed on the lots or lot of a DEVELOPER not to serve the needs of that lot or lots, but rather to serve the needs of a lot or lots not owned by the DEVELOPER, the DEVELOPER shall have no liability or responsibility for the costs and expenses incurred in the construction or maintenance of those improvements or facilities.

Finally, in the event improvements or facilities are constructed and maintained to serve lots owned by more than one DEVELOPER or for the use of all DEVELOPERS, the costs and expenses for such construction and maintenance shall be paid by all DEVELOPERS whose lots are served by such improvements and facilities which costs and expenses shall be allocated to those DEVELOPERS whose lots are being served in the proportion that the number of square feet in the lots being served and respectively owned by them bears to the total square feet of all lots being served.

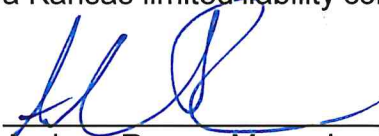
RECORDING: The DEVELOPER shall file an executed copy of this Agreement with the Sedgwick County Register of Deeds. A copy of this Agreement showing said recording along with a copy of the recorded plat shall be furnished by the DEVELOPER to the general contractor before building permits are issued.

BINDING: The terms and conditions of this Agreement, as set forth herein, shall be binding upon the City and the DEVELOPER, their successors, representatives, trustees, and assigns.

THIS AGREEMENT is hereby executed on this the 13th day of May, 2022.



DEVELOPER, Eric Gilbert
Skyview at Block 49, LLC,
a Kansas limited liability company



Andrew Reese, Managing Member
Skyview at Block 49, Bel Aire,
Sedgwick County, Kansas

THIS AGREEMENT was approved by vote of the City Council of the City of Bel Aire,
Kansas on the _____ day of _____, 2022 and is hereby executed on this
_____ day of _____, 2022.

MAYOR, JIM BENAGE

SEAL

ATTEST:

CITY CLERK, MELISSA KREHBIEL

ACKNOWLEDGEMENTS

STATE OF Kansas
COUNTY OF Sedgwick

BE IT KNOWN BY ALL PERSONS that on this 13th day of May, 2022, before me, a Notary Public, came Eric Gilbert and Andrew Reese, who ^{are} ~~is~~ known to me and who personally acknowledged execution of the foregoing Agreement as the Developer of Skyview at Block 49 3rd Addition, Bel Aire, Sedgwick County, Kansas.

[Notary Stamp]



Melissa A. Krehbiel
NOTARY PUBLIC

My Appointment Expires: 8/28/2022

STATE OF KANSAS
COUNTY OF SEDGWICK

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Mr. Jim Benage, who is known to me to be the Mayor of Bel Aire, Kansas and who personally acknowledged execution of the foregoing Agreement Concerning the Development of Skyview at Block 49 3rd Addition, Bel Aire, Sedgwick County, Kansas, and Melissa Krehbiel who is known to me to be the City Clerk of Bel Aire, Kansas and who personally acknowledged attesting the signature of said Mr. Jim Benage.

[Notary Stamp]

NOTARY PUBLIC

My Appointment Expires: _____

-

**AGREEMENT
CONCERNING THE DEVELOPMENT
OF CHAPEL LANDING 5TH ADDITION, AN ADDITION
TO BEL AIRE, SEDGWICK COUNTY, KANSAS**

This agreement is made and entered into by and between WOODLAWN 53, LLC., a Kansas Company, hereinafter referred to as the "DEVELOPER" and the CITY OF BEL AIRE, KANSAS, hereinafter referred to as the "CITY."

WHEREAS, the DEVELOPER desires platting by the CITY of a tract of land more fully described below and herein referred to as CHAPEL LANDING 5TH, Bel Aire, Sedgwick County, Kansas (hereinafter, CHAPEL LANDING 5TH); and

WHEREAS, the CITY is willing to consider platting of said CHAPEL LANDING 5TH;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the DEVELOPER and the CITY agree as follows:

PURPOSE: This agreement is necessary to address certain financial, infrastructure and drainage conditions arising from the platting process which must be dealt with prior to final plat approval and as such, approval of this Agreement is a condition precedent to final consideration by the CITY of the DEVELOPER'S request for approval of the final plat on a tract of land more fully described below and herein referred to as CHAPEL LANDING 5TH.

Specifically, this agreement is to assure that necessary improvements are in place to support development of CHAPEL LANDING 5TH. Therefore, the DEVELOPERS compliance with the terms and conditions of this Agreement shall be a condition precedent to the granting of building and/or occupancy permits for development on said property. The DEVELOPER shall strictly observe and comply with the terms of this Agreement, all regulations, resolutions, policies, and ordinances of the CITY and Sedgwick County, and all statutes and laws of the State of Kansas and of the United States.

The development of CHAPEL LANDING 5TH shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development, and may result in suspension or termination of such building permit. It is understood by the parties that the final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted by the DEVELOPER and approved by the CITY in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs permit fees, review fees, and building and zoning permit and review fees incurred or required by city staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

CHAPEL LANDING 5TH LEGAL DESCRIPTION: The tract of land herein referred to as CHAPEL LANDING 5TH, Bel Aire, Sedgwick County, Kansas, has the following pre-platting legal description, to-wit:

A replat of Lots 6 - 57, Block C; Lots 26 – 40, Block J; Lots 1 – 6, Block K; Lots 1 – 40, Block L; AND Reserves AA, J, I T and K, Chapel Landing, Bel Aire, Sedgwick County, Kansas.

PERMITTED USE: All lots are zoned R-4. Single-family units are intended for this development, but two-family units are allowed with no future notification or review process required.

BUILDING SETBACKS: The minimum building setbacks for residential lots shall be:

Front building setback – twenty five (25) feet
 Street side building setback – fifteen (15) feet
 Side yard building setback – Six (6) feet for primary structure
 Rear building setback – twenty (20) feet

CONSTRUCTION PERIOD REQUIREMENTS. In addition to other requirements set forth within this agreement regarding property maintenance, the following requirements shall be met specifically during the period of time during which construction of CHAPEL LANDING 5TH is being developed:

All lots covered by this Agreement shall be subject to the CITY'S storm water regulations. The Contractor shall install and the DEVELOPER maintains the storm water protection devices established by the CITY and the master drainage / grading plan until such time the devices are no longer needed due to the adequate establishment of ground cover. All lots covered by this agreement shall be kept clean, shall not pond water, shall be mowed to a height not exceeding eight (8) inches, and shall comply with all applicable laws and regulations pertaining to erosion control.

All temporary construction units must be removed when building in the immediate vicinity is completed.

All temporary utility connections made to expedite the development must be removed immediately as utility services are provided; i.e. temporary above ground power supply.

Vehicle access to the tract of land herein referred to as the CHAPEL LANDING 5TH shall be limited to the existing street connections at Forbes Street, Highland Street and Farmstead Street as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in CHAPEL LANDING 5TH shall be limited to vehicles under 20 tons. Construction traffic shall enter from Central Park Avenue.

DEVELOPER shall be responsible for installation and removal of any temporary roads during construction. Such temporary roads shall be approved by the CITY. All roadways must be kept free of construction debris and mud. Dust created during construction must be controlled avoiding a nuisance for motorist and neighbors.

DETENTION PONDS. Any on-site detention ponds will be designed to control two, twenty-five year storm events and one, hundred year storm event. Additionally, the ponds will act as temporary sedimentation basins during construction but are limited to the amount of sediment allowed and DEVELOPER responsible for any dredging required.

Any on-site detention ponds and associated inflow and outflow systems to the property as well as the reserves, and ditches are to be maintained by the DEVELOPER indefinitely unless transferred to a home owner's association or equal resolution approved by the CITY, excluding paving and utilities within dedicated rights of ways as indicated on plat documents. Failure of the DEVELOPER to maintain such areas and property as described shall be grounds for the CITY to enforce this provisions as a nuisance abatement action, and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

DRAINAGE. Protecting surrounding platted property from the impacts of changes in drainage across such property resulting from the development of CHAPEL LANDING 5TH must be addressed as part of the platting process. The DEVELOPER shall prepare a storm drainage plan which shall address the various impacts of increased/modified drainage, meet CITY drainage specifications, and be approved by the City Engineer. Prior to approval of said proposed storm drainage plan, the City Engineer may impose modifications upon such proposed plan as Engineer deems necessary to insure the effectiveness of such plan. After approval by the City Engineer of said storm drainage plan, including any necessary modifications, the DEVELOPER shall install, or cause to be installed, the improvements pursuant to the drainage plan.

The DEVELOPER shall maintain a master drainage plan throughout the development stage for each parcel, by providing grass and installing landscape to ensure the reduced yard requirements have no consequence to the drainage of the property.

DRAINAGE PLAN. The DEVELOPER must provide a maintenance plan within the HOA Covenant document that will provide adequate provisions to protect the master drainage plan engineered design as such was approved by the CITY. The Maintenance Plan will include but not limited to: how to initiate the maintenance process for the drainage plan, how to inspect, what to inspect, when to inspect, how to correct drainage problems that are discovered, the appropriate records to be maintained and designating the party responsible for maintaining such records. The CITY may request a copy of the inspection report to monitor compliance on a biannual basis. Failure of the HOA to maintain such records or provide such records to the CITY in a timely manner, shall be grounds for the CITY, or the CITY'S designee, to conduct an inspection and charge the costs associated with such inspection back to the HOA

ELECTRIC: All electric lines shall be installed underground and paid for by the DEVELOPER.

EROSION AND SEDIMENT CONTROL. The DEVELOPER must follow all National Pollution Discharge Elimination System (NPDES) Kansas Department of Health and Environment (KDHE) and City of Bel Aire Standards for erosion and sediment control on site.

FENCING & SCREENING: Fencing and screening methods and materials shall blend in with the architectural design of the buildings and to reasonably hide the materials, trash and recycling containers from ground view, and all fencing and screening methods and materials must be pre-approved in writing by the CITY. Vinyl coated chain link fencing materials and other similar fencing material may be allowed if such materials blend in with the architectural design elements of the building and adjacent sites. Any plans for outside storage facilities shall comply with the applicable ordinances and zoning regulations of the CITY and be submitted in writing to the CITY for prior approval. No barbed wire is allowed.

FIRE HYDRANTS: All fire hydrants shall be of a type and quality specified by CITY standards, but not less than the minimum standards of the National Board of Fire Underwriters, and shall be provided and connected to the CITY'S municipal water supply system. Such hydrants shall be subject to the inspection and approval of the applicable Fire Chief.

FOUNDATION CERTIFICATIONS. Foundation Certifications will be required on each foundation after construction. Minimum low opening certifications will be required on all lots with minimum pads indicated on the face of the plat.

HOMEOWNERS' ASSOCIATION. DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, drainage systems, detention ponds and construction areas associated with CHAPEL LANDING 5TH. Any land dedicated to or owned by a municipal authority shall be exempt from any and all assessments including those assessed by Homeowners Association Covenants. Land within this plat owned by such a municipal organization exempt from taxation by the laws of the State of Kansas, shall not be subject to any non-taxing authority assessments throughout the duration of such ownership.

INFRASTRUCTURE PETITION AND INSTALLATION: The development of CHAPEL LANDING 5TH is being accomplished by virtue of a single phase process. Representatives of the parties shall formally meet and review the existing and proposed phases of development as well as the requirements of this agreement, prior to the submission of petitions for infrastructure improvements for each phase of development.

Installation of all improvements shall be in compliance with requirements of all applicable federal, state and local legislation, including the Americans with Disabilities Act. All electric power, street lights and telephone service shall be installed underground. The CITY shall

perform the engineering design, construction and inspection of water mains, sanitary sewer mains, storm water systems and paving necessary for the platting and development of the tract of land herein referred to as the CHAPEL LANDING 5TH, Bel Aire, Sedgwick County, Kansas which said improvements shall be dedicated to and owned and maintained by the CITY. Said improvements shall be installed on CITY owned property or within public right of ways or easements. The DEVELOPER shall reimburse the CITY for the actual costs of the engineering design, construction and inspection of all improvements necessary for the platting and development of the tract of land herein referred to as the CHAPEL LANDING 5TH unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas.

The DEVELOPER shall dedicate necessary public right-of-ways and easements and install, or cause to be installed, all improvements necessary for the platting and development of the tract of land herein referred to as the CHAPEL LANDING 5TH. Said improvements include, but are not limited to streets, curb, gutter, street signs, storm water system, sidewalks, water distribution system, sanitary sewer lines, corner pins, driveways and utilities. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction. The DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government.

Whenever existing sanitary sewer, storm water, water lines, drainage channels, culverts, underground and overhead electric, communications, gas lines, pipe lines or transmission lines are required to be installed, lowered, encased, modified or relocated due to the subdivision or construction improvements required, and in the event it was not known at time of platting approval, the DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements unless otherwise petitioned and approved by the Governing Body of the City of Bel Aire, Kansas and/or another unit of government. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction.

LANDSCAPING & SCREENING: The “Landscape Plan” that was previously submitted for CHAPEL LANDING 2ND shall govern for CHAPEL LANDING 5TH. The “Landscaping Plan” shows contours, utilities, size and spread at planting, any type of ground cover, shrubs, and coordinate with the Drainage Plan and Site Plan for the project.

Planting of interior trees shall meet the CITY’S street tree requirements. Any areas outside of the general boundaries of each development phase shall be planted to appropriate turf or ground cover adequate to prevent undue soil erosion and shall be maintained in accordance with applicable CITY ordinances. Within all detailed landscape plans, ground mounted mechanical equipment and trash receptacles shall be screened from ground level view. Plantings shall take place within 6 months of the certificate of occupancy being granted.

LIGHTING: A Street and parking lighting plan shall be submitted to the CITY for approval and comply with the City zoning ordinance. Outdoor lighting sources shall employ cutoff luminaires to minimize light trespass and glare. Wood poles will not be allowed.

MAINTENANCE: DEVELOPER and/or Homeowners Association will be required to provide continuous maintenance for all identified reserves, common areas, ponds, Central Park Avenue right-of-way and construction outside boundaries of CHAPEL LANDING 5TH.

PERMITS. No construction shall commence on any portion of the tract of land herein referred to as CHAPEL LANDING 5TH without the DEVELOPER having first obtained the proper building and zoning permits from the CITY.

The development of CHAPEL LANDING 5TH shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development. The final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted and approved in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY. Any and all costs permit fees, review fees, and building and zoning permit and review fees incurred or required by city staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

ROADWAYS, PARKING, DRIVES, and ACCESS: The DEVELOPER shall cause to be installed, according to the design standards of the CITY, minimum twenty nine (29) foot back to back paved street with curb and gutter on all streets in CHAPEL LANDING 5TH.

All driveways shall be per CITY ordinance.

Vehicle access to the tract of land herein referred to as the CHAPEL LANDING 5TH shall be limited to the existing street connections at Forbes Street, Highland Street and Farmstead Street as recommended by the Sedgwick County Fire Department for fire protection purposes and emergency vehicles. Traffic in CHAPEL LANDING 5TH shall be limited to vehicles under 20 tons.

SANITARY SEWER: The DEVELOPER shall petition the CITY to perform the engineering design review, construction and inspection of collection lines, not less than (8) inches in diameter, to transport sewage and discharge in the existing main. Said sewer main shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted by the DEVELOPER or acquired as part of the construction project and dedicated by separate instrument. All Sanitary Sewer User Fees and Hookup Fees are subject to City Ordinances.

SIDEWALKS: Sidewalks shall be installed on one side of all non-cul-de-sac streets. Sidewalks shall comply with the ADA Accessibility Guidelines (ADAAG). Sidewalks shall be handicap accessible and be required to extend or complete connecting links in the sidewalk system.

In general, sidewalks shall be constructed with the outside edge of the sidewalk as close as practical to the property line, subject to the discretion of the engineer designated by the CITY. The Sidewalk along shall be 5 feet wide (6" thick). Sidewalks shall be installed per the sidewalk plan approved by the CITY with curb ramps for road crossings. Sidewalks shall be installed when the streets are installed.

SIGNAGE. Signs of such location, type and size as shall be approved as part of the building permit process or by the Governing Body, giving due regard to the prevailing type, size and pattern of location utilized throughout the area. All signage shall comply with the applicable ordinances and zoning regulations of the City and be submitted in writing to the CITY for written approval.

Signs are to be maintained by the DEVELOPER indefinitely unless transferred to a home owner's association or equal resolution approved by the CITY. Failure of the DEVELOPER to maintain such areas and property shall be grounds for the CITY to enforce this provision as a nuisance abatement action, and charge all costs back to the DEVELOPER as set forth in K.S.A. 12-1617e.

WATER: The DEVELOPER shall petition the CITY to perform the engineering design, construction and inspection of transmission water lines minimum (8) inches in diameter, to the municipal water supply system of the City of Bel Aire, Kansas. Said water transmission lines shall be dedicated to and owned and maintained by the CITY. Lines shall be designed to loop. Said water transmission lines shall be installed within dedicated easements. If not shown on the final plat, necessary easements shall be granted to the CITY by the DEVELOPER or acquired prior to the construction project and dedicated by separate instrument. All Water User Fees and Hook Up Fees are subject to City Ordinances.

BONDING CAPACITY. Assurances are to be provided whenever the CITY has been furnished a financial guarantee (irrevocable letter of credit, corporate completion bond, cashier's check, escrow account or cash) on 35% of the estimated principal cost of the project (engineering design, construction, inspections, temp note interest and administration). The Letter of Credit (LOC) or bond will be in the form approved by the CITY and name the City of Bel Aire as beneficiary. The assurances will serve to protect the general taxpayers of Bel Aire from subsidizing the special assessment debt. The assurance shall be filed prior to any debt being issued by the CITY for any of the expenses mentioned above and be in the equal to 35% of these same costs. It is understood that this letter of credit shall be automatically renewed for additional 2-year periods unless the DEVELOPER notifies the CITY in writing at least sixty (60) days prior to the then relevant expiration date that it will not be renewed at which time the DEVELOPER may draw up to the full amount of the credit available at that time. Provided there are no delinquent taxes or special assessments owed by the DEVELOPER, the financial guarantee will be released upon request of the DEVELOPER when development (issuance of

satisfactory framing by the City of Bel Aire) of 35 percent of the properties covered by the LOC, the CITY will, by written instruction, authorize the release of this letter of credit, provided, however, that before this letter of credit is released the CITY shall be entitled to a partial drawing against the credit in the amount of any delinquent special assessments.

MISCELLANEOUS:

The DEVELOPER must make mail delivery provisions for each household with the U.S. Postal Services.

MODIFICATION OF PLAT THROUGH REPLATTING PROCESS. While it is intended by the parties that the development will proceed in compliance with this Agreement and the existing plat of CHAPEL LANDING 5TH nothing herein shall be construed to prohibit modifications to the CHAPEL LANDING 5TH development as a result of the formal replatting process.

RESPECTIVE RESPONSIBILITIES OF CITY AND DEVELOPER: Notwithstanding anything to the contrary contained herein, the CITY shall be responsible for the construction of streets, sewer, and water facilities for CHAPEL LANDING 5TH or other projects or additions, including excavation, storm sewers and detention ponds, the costs for which shall be spread as special assessments against the addition on a square footage basis, but not for three (3) years, or until the year 2025.

The DEVELOPER agrees to assume responsibility to see that all original purchasers of lots in the Addition receive a copy of the Developer's Agreement and the Restrictive Covenant at the time of purchase.

Each DEVELOPER, individual, or entity who is presently an owner of a lot or lots in CHAPEL LANDING 5TH or any individual or entity who later becomes a DEVELOPER by acquiring ownership of a lot or lots in said projects, shall do so subject to the terms of this Development Agreement, and shall be liable for the payment of other costs and expenses payable by DEVELOPER hereunder which are incurred for improvements or facilities located on the lots or which are used or are available for the benefit of the lot or lots owned by the DEVELOPER.

Likewise, each DEVELOPER shall be responsible for the performance or compliance with other obligations or requirements contained herein which may be performed on the lot or lots owned by the DEVELOPER or which the DEVELOPER otherwise has the legal power and authority to perform. In the event any improvements or facilities are constructed on the lot or lot of a DEVELOPER not to serve the needs of that lot or lots, but rather to serve the needs of a lot or lots not owned by the DEVELOPER, the DEVELOPER shall have no liability or responsibility for the costs and expenses incurred in the construction or maintenance of those improvements or facilities.

Finally, in the event improvements or facilities are constructed and maintained to serve lots owned by more than one DEVELOPER or for the use of all DEVELOPERS, the costs and expenses for such construction and maintenance shall be paid by all DEVELOPERS whose

lots are served by such improvements and facilities which costs and expenses shall be allocated to those DEVELOPERS whose lots are being served in the proportion that the number of square feet in the lots being served and respectively owned by them bears to the total square feet of all lots being served.

RECORDING: The DEVEOLPER shall file an executed copy of this Agreement with the Sedgwick County Register of Deeds. A copy of this Agreement showing said recording along with a copy of the recorded plat shall be furnished by the DEVELOPER to the general contractor before building permits are issued.

BINDING: The terms and conditions of this Agreement, as set forth herein, shall be binding upon the City and the DEVELOPER, their successors, representatives, trustees, and assigns.

THIS AGREEMENT is hereby executed on this _____ day of _____, 2022.

RANDEL M. HARDER, PRESIDENT
CHAPEL LANDING 5TH ADDITION,
Bel Aire, Sedgwick County, Kansas

THIS AGREEMENT was approved by vote the City Council of the City of Bel Aire, Kansas on the _____ day of _____, 2022 and is hereby executed on this _____ day of _____, 2022.

MAYOR, JIM BENAGE

SEAL

ATTEST:

CITY CLERK, MELISSA KREHBIEL

ACKNOWLEDGEMENTS

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Randel M. Harder, who is known to me and who personally acknowledged execution of the forging Agreement as the Developer of CHAPEL LANDING 5TH, Bel Aire, Sedgwick County, Kansas.

NOTARY PUBLIC

My Appointment Expires:_____

BE IT KNOWN BY ALL PERSONS that on this _____ day of _____, 2022, before me, a Notary Public, came Mr. Jim Benage, who is known to me to be the Mayor of Bel Aire, Kansas and who personally acknowledged execution of the forgoing Agreement Concerning the Development of CHAPEL LANDING 5TH, Bel Aire, Sedgwick County, Kansas, and Melissa Krehbiel, who is known to me to be the City Clerk of Bel Aire, Kansas and who personally acknowledged attesting the signature of said Mr. Jim Benage.

NOTARY PUBLIC

My Appointment Expires:_____

City of Bel Aire, Kansas



STAFF REPORT

DATE: May 31, 2022
TO: Ty Lasher, City Manager
FROM: Anne Stephens, City Engineer
RE: Chapel Landing 5th Engineering Services

Proposal Focus:

Our Mission

- Attractive growth and safe living – Encourage attractive neighborhoods and new developments.

Our Values

- Working Together – Departments working together as one team. Staff working with residents, HOA’s and neighborhoods. Citizens working with each other.

Current Situation:

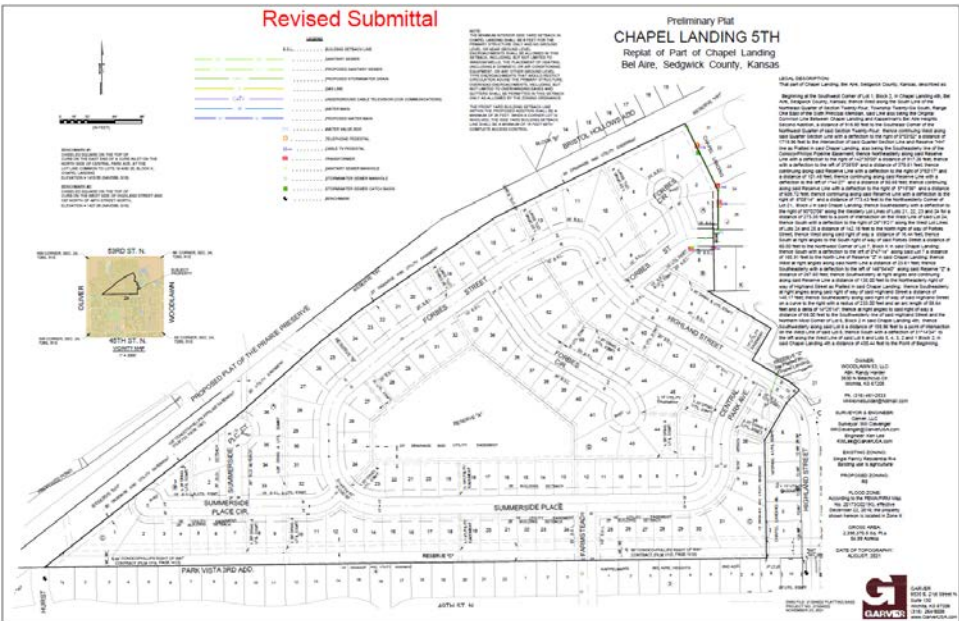
The Developer is ready to initiate the engineering design on the Chapel Landing 5th Development.

Goals:

- To work with the Developer to grow the City in an attractive, safe manner that is consistent with City standards.

Discussion:

The Developer has asked Garver to prepare an agreement for Engineering Design and Construction services for the design and construction observation services for their development.



Financials:

The costs associated with the project will be financed through a bond and spread as special assessments against the benefiting lots.

Recommendation:

Staff recommends that the City Council accept the Agreement for Professional Services from Garver in the amount of \$267,900.00.



AGREEMENT FOR PROFESSIONAL SERVICES

City of Bel Aire, Kansas
7651 E. Central Park Avenue
Bel Aire, Kansas 67220

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is made as of the Effective Date by and between the **City of Bel Aire, Kansas** (hereinafter referred to as “**Owner**”), and **Garver, LLC** (hereinafter referred to as “**Garver**”). Owner and Garver may individually be referred to herein after as a “**Party**” and/or “**Parties**” respectively.

RECITALS

WHEREAS, Owner intends to have designed subdivision infrastructure improvements to serve Chapel Landing 5th Addition Phase 1, Bel Aire, Kansas; including sanitary sewer and water extensions, storm water drainage and street improvements, along with the related construction phase services (the “**Project**”).

WHEREAS, Garver will provide professional Services related to the Project as further described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section

“**Effective Date**” means the date last set forth in the signature lines below.

“**Damages**” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“**Hazardous Materials**” means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

“**Personnel**” means affiliates, directors, officers, partners, members, employees, and agents.

2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service described in Exhibit A attached hereto (“**Services**”). Execution of this Agreement by Owner constitutes Owner’s

written authorization to proceed with the Services. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

3. PAYMENT

3.1. Fee.

For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.

3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished.

3.3. Payment.

3.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.

3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.

3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

4. AMENDMENTS

4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date ("Amendment"). As soon as reasonably possible, Garver shall forward a formal Amendment to Owner with backup supporting the Amendment. All Amendments should include, to the extent known and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional services created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

5. OWNER'S RESPONSIBILITIES

5.1. In connection with the Project, Owner's responsibilities shall include the following:

5.1.1. Those responsibilities set forth in Exhibit A.

- 5.1.2. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Garver pursuant to this Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items as further set forth in Exhibit A.
- 5.1.3. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.
- 5.1.4. Owner shall include "Garver, LLC" as an indemnified party under the contractor's indemnity obligations included in the construction contract documents.
- 5.1.5. Owner will not directly or indirectly solicit any of Garver's Personnel during performance of this Agreement and for a period of one (1) year beyond completion of this Agreement. This excludes voluntary response of an employee to an open job posting.

6. GENERAL REQUIREMENTS

6.1. Standards of Performance.

- 6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices employed by the United States professional services industry.
- 6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- 6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's Project-specific safety programs, which have been provided to Garver in writing in advance of any site visits.
- 6.1.4. Relied Upon Information: Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- 6.1.5. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver neither guarantees the performance of any

contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Garver is performing construction phase services.

- 6.1.6. In no event is Garver acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Consequently, Garver's Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

6.2. Instruments of Service.

- 6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under Exhibit A (the "**Deliverables**"), shall become the property of Owner subject to the terms and conditions stated herein.

- 6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files ("**Electronic Media**"), are tools used solely for the preparation of the Deliverables. Upon Owner's written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner's software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, costs of defense arising out of changes or modifications to the Electronic Media form in Owner's possession or released to others by Owner. Garver's sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner.

- 6.2.3. Property Rights. All intellectual property rights of a Party, including copyright, patent, and reuse ("**Intellectual Property**"), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so imbedded and may not be separated therefrom.

- 6.2.4. License. Upon Owner fulfilling its payment obligations under this Agreement, Garver hereby grants Owner a license to use the Intellectual Property, but only in the operation and maintenance of the Project for which it was provided. Use of such Intellectual Property for modification, extension, or expansion of this Project or on any other project, unless under the direction of Garver, shall be without liability to Garver and Garver's subconsultants. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner's use of the Intellectual Property contrary to the rights permitted herein.

6.3. Opinions of Cost.

- 6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of Project costs or construction costs provided pursuant to Exhibit A, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; but Garver cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Garver.
- 6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- 6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Garver is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Garver responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.
- 6.5. Design without Construction Phase Services.
- 6.5.1. If the Owner requests in writing that Garver provide any specific construction phase services or assistance with resolving disputes or other subcontractor related issues, and if Garver agrees to provide such services, then Garver shall be compensated for the services as an Amendment in accordance with Sections 4 and 10.2.
- 6.5.2. Garver shall be responsible only for those construction phase Services expressly set forth in Exhibit A, if any. With the exception of such expressly required Services, Garver shall have no responsibility or liability for any additional construction phase services, including review and approval of payment applications, design, shop drawing review, or other obligations during construction. Owner assumes all responsibility for interpretation of the construction contract documents and for construction observation and supervision and waives any claims against Garver that may be in any way connected thereto.
- 6.5.3. Owner agrees, to the fullest extent permitted by law, to indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such construction phase services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the construction contract documents to reflect changed field or other conditions, except to the extent such claims arise from the negligence of Garver in performance of the Services.
- 6.6. Hazardous Materials. Nothing in this Agreement shall be construed or interpreted as requiring Garver to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any Hazardous Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless from and against any and all losses which arise out of the performance of the Services and relating to the regulation

and/or protection of the environment including without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of Hazardous Material, whether above or below ground.

- 6.7. Confidentiality. Owner and Garver shall consider: (i) all information provided by the other Party that is marked as “Confidential Information” or “Proprietary Information” or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Garver’s performance of Services to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a “need to know basis” with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include and nothing herein shall limit either Party’s right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving Party or its Personnel; (ii) was or becomes available to the receiving Party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving Party without the use of any Confidential Information of the disclosing Party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes.

7. INSURANCE

7.1. Insurance.

- 7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Upon request, Garver shall name Owner as an additional insured on Garver’s General Liability policy to the extent of Garver’s indemnity obligations provided in Section 9 of this Agreement.

- 7.1.2. Upon request, Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

8. DOCUMENTS

- 8.1. Audit. Garver will retain all pertinent records for a period of three (3) years beyond completion of the Services. Owner may have access to such records during normal business hours with three (3) business days advanced written notice. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).

- 8.2. Delivery. After completion of the Project, and prior to final payment, Garver shall deliver to the Owner all Deliverables required under Exhibit A.

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

- 9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 9.2, Garver agrees to indemnify and hold Owner, and Owner’s Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent such Damages are caused by the negligent acts, errors, or omissions of Garver or any other party for whom Garver is legally liable, in the performance of the Services under this Agreement.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Section 9.2, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

9.2. Waivers. Notwithstanding any other provision to the contrary, the Parties agree as follows:

9.2.1. The Parties agree that any claim or suit for Damages made or filed against the other Party will be made or filed solely against Garver or Owner respectively, or their successors or assigns, and that no Personnel shall be personally liable for Damages under any circumstances.

9.2.2. Mutual Waiver. To the fullest extent permitted by law, neither Owner, Garver, nor their respective Personnel shall be liable for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases Garver, and Garver releases Owner, from any such liability.

9.2.3. Limitation. In recognition of the relative risks and benefits of the Project to both the Owner and Garver, Owner hereby agrees that Garver's and its Personnel's total liability under the Agreement shall be limited to five hundred thousand dollars (\$500,000).

9.2.4. No Other Warranties. No other warranties or causes of action of any kind, whether statutory, express or implied (including all warranties of merchantability and fitness for a particular purpose and all warranties arising from course of dealing or usage of trade) shall apply. Owner's exclusive remedies and Garver's only obligations arising out of or in connection with defective Services (patent, latent or otherwise), whether based in contract, in tort (including negligence and strict liability), or otherwise, shall be those stated in the Agreement.

9.2.5. The limitations set forth in Section 9.2 apply regardless of whether the claim is based in contract, tort, or negligence including gross negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever.

10. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to

participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. Arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Bel Aire, Kansas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.1.8. Owner and Garver further agree to use commercially reasonable efforts to include a similar dispute resolution provision in all agreements with independent contractors and subconsultants retained for the Project.

10.1. Litigation Assistance. This Agreement does not include costs of Garver for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

11. TERMINATION

- 11.1. Termination for Convenience. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver ten (10) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with Exhibit B for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, and (ii) all costs reasonably incurred to bring such Services to an orderly cessation.
- 11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.
- 11.3. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

12. MISCELLANEOUS

- 12.1. Governing Law. This Agreement is governed by the laws of the State of Kansas, without regard to its choice of law provisions.
- 12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.
- 12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- 12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.
- 12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.
- 12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.
- 12.7. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together

constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

13. EXHIBITS

13.1. The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A – Scope of Services
- Exhibit B – Compensation Schedule
- Exhibit C – Insurance
- Exhibit D – [Reserved]

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to Garver for our records.

IN WITNESS WHEREOF, Owner and Garver have executed this Agreement effective as of the date last written below.

City of Bel Aire, Kansas

Garver, LLC

By: _____
Signature

By: _____
Signature

Name: _____
Printed Name

Name: Christopher Bohm
Printed Name

Title: _____

Title: Senior Project Manager

Date: _____

Date: 5/25/2022

Attest: _____

Attest: _____

EXHIBIT A (SCOPE OF SERVICES)

1.1 Garver shall provide the following Services (Engineering Design)

Furnish engineering and technical services as required to develop the plans, supplemental specifications and estimates of the quantities of work for the PROJECT in accordance with design standards and in the format and detail required by the City of Bel Aire, Kansas, and as outlined in this Appendix. Plans will include the design of streets, storm water drainage system, sanitary sewer extensions, and water line extensions to serve Chapel Landing 5th Addition Phase 1.

When authorized by the OWNER, proceed with development of plans for the PROJECT based on the preliminary design concepts approved by the OWNER.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for engineering design.
2. Soils and Foundation Investigations. When recommended by Garver, and/or requested by the OWNER, the OWNER shall direct an approved testing laboratory to perform subsurface borings and soils investigations for the PROJECT for the purpose of determining subgrade compaction and soil stabilization requirements. The testing laboratory shall be responsible for the accuracy and competence of their work. The Owner's contract with the testing laboratory shall provide that the testing laboratory is responsible to the OWNER for the accuracy and competence of their work. The cost of soils and boring investigations shall be directly contracted with and billed directly to the OWNER.
3. Review Preliminary Design Concepts. Review preliminary design concepts with the OWNER or its designated representative prior to progressing to detail aspects of the work unless waived by the OWNER.
4. Prepare engineering plans, plan quantities and supplemental specifications as required.
5. Identify all known potential utility conflicts and, when authorized by the OWNER, provide prints of plans to each utility identifying the problem locations. GARVER shall meet with utility company representatives as required to review the PROJECT design and interpret engineering drawings and effect resolutions of conflicts.
6. Deliver original plan tracings and specification originals to the OWNER.
7. When requested by the OWNER, conduct pre-bid and/or pre-construction conferences and assist the OWNER in the bid process.
8. Provide AutoCAD V. 2020 drawing files for the PROJECT to the OWNER.
9. Provide Construction Phase Services consisting of construction staking and construction observation which include the following general duties:

Pre-Construction Activities:

- Assist the City with the preparation and receipt of contracts and project bonds.
- Work with the Contractor to establish a work schedule for the project.
- Receive and review shop drawings and material submittals from the Contractor.
- Verify that on-site underground utility lines have been marked by Kansas One-Call.
- Field check all materials on site to determine compliance with the specifications.
- Notify adjacent property owners concerning construction operations.
- Provide construction staking for line and grade with offsets for marked stakes at the distances specified by the Contractor.

Construction Operations – Water, Sanitary Sewer, Pavement and Storm Water Sewer***Sanitary Sewer System***

- Check trench width and depth.
- Ensure that proper care is taken when connecting to existing structures.
- Check that the bedding material meets pipe requirements and trench conditions.
- Check for pipe alignment and grade.
- Check pipe joints and fittings for proper placement.
- Check that pipe backfill meets compaction requirements.
- Coordinate and supervise testing of manholes and sanitary sewer pipe.
- Ensure that site restoration (driveway removal, yard restoration, street restoration, etc.) is completed properly.
- Revise the original plans to reflect the as-built elevations and structure locations.
- Complete all inspection logs and compile all inspection information for submittal to the City upon completion of the project.
- Verify payment requests from the Contractor.

Water Distribution System

- Check trench width and depth.
- Ensure that proper care is taken when connecting to existing structures.
- Check for pipe alignment and grade.
- Check pipe joints and fittings for proper placement.
- Check that pipe backfill meets compaction requirements.
- Coordinate and supervise testing of water mains.
- Ensure that site restoration (driveway removal, yard restoration, street restoration, etc.) is completed properly.
- Revise the original plans to reflect the as-built elevations and structure locations.
- Complete all inspection logs and compile all inspection information for submittal to the City upon completion of the project.
- Verify payment requests from the Contractor.

Paving, Subgrade and Curb Construction

- Check earthwork cuts and fill against the stakes to verify accuracy.
- Verify drainage ditches for alignment and grade.
- Order soil testing for the subgrade compaction and for treated subgrade as is required by the specifications. Additional testing will be ordered if conditions warrant, or if on-site testing fails.
- Check placement of geogrid reinforcement (if used on project).
- Check subgrade rock depth and width (if used on project).
- Check that subgrade is trimmed to the bluetop stakes after placement of curb.
- Check string lines for alignment and grade.
- Check expansion joint material.

- Check that curb machine is maintained and operating properly.
- Check curb template for proper size and dimensions.
- Check that air temperature and ground conditions meet specifications.
- Take a minimum of two concrete test cylinders on each pour day.
- Deliver cylinders to testing laboratory for testing.
- Revise the original plans to reflect as-built conditions.
- Complete all inspection logs and compile all inspection information for submittal to the City upon completion of the project.
- Verify payment requests from the Contractor.

Storm Water Sewer System

- Check trench width and depth.
- Ensure that proper care is taken when connecting to existing structures.
- Check that the bedding material meets pipe requirements and trench conditions.
- Check for pipe alignment and grade.
- Check pipe joints and fittings for proper placement.
- Check that pipe backfill meets compaction requirements.
- Coordinate and supervise TV testing of storm water sewer pipe.
- Ensure that site restoration (driveway removal, yard restoration, street restoration, etc.) is completed properly.
- Revise the original plans to reflect the as-built elevations and structure locations.
- Complete all inspection logs and compile all inspection information for submittal to the City upon completion of the project.
- Verify payment requests from the Contractor.

The list of inspection items presented here provides an outline of the duties and the responsibilities of Garver prior to and during construction of these projects. The enclosed documents provide information concerning the inspection process but cannot detail all the contingencies that may arise during the construction of the projects. The engineer in charge of inspection must be able to deal with a variety of circumstances that may arise during the construction process.

1.2 In addition to those obligations set forth in the Agreement, Owner shall:

- 1.2.1 Give thorough consideration to all documents and other information presented by Garver and informing Garver of all decisions within a reasonable time so as not to delay the Services.
- 1.2.2 Make provision for the Personnel of Garver to enter public and private lands as required for Garver to perform necessary preliminary surveys and other investigations required under the applicable Work Order.
- 1.2.3 Obtain the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement, except as otherwise described in the Services under Section 1.1.
- 1.2.4 Furnish Garver such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of Owner. Such documents or data will be returned upon completion of the Services or at the request of Owner.
- 1.2.5 Furnish Garver a current boundary survey with easements of record plotted for the project property.
- 1.2.6 Pay all plan review and advertising costs in connection with the project.

- 1.2.7 Provide legal, accounting, and insurance counseling services necessary for the project and such auditing services as Owner may require.
- 1.2.8 Furnish permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
- 1.2.9 Furnishing Garver a current geotechnical report for the proposed site of construction. Garver will coordinate with the geotechnical consultant, Owner has contracted with, on Owner's behalf for the project specific requested information.

**EXHIBIT B
(COMPENSATION SCHEDULE)**

The table below presents a summary of the fee amounts and fee types for this Agreement.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Street Design Services	\$59,200.00	LUMP SUM
Water System Design Services	\$15,400.00	LUMP SUM
Sanitary Sewer System Design	\$21,800.00	LUMP SUM
Pavement Construction Phase Services		
Construction Staking	\$23,900.00	RATE SCHEDULE
Project Administration and Observation	\$84,300.00	RATE SCHEDULE
Water Construction Phase Services		
Construction Staking	\$6,400.00	RATE SCHEDULE
Project Administration and Observation	\$20,500.00	RATE SCHEDULE
Sanitary Construction Phase Services		
Construction Staking	\$7,300.00	RATE SCHEDULE
Project Administration and Observation	\$29,100.00	RATE SCHEDULE
TOTAL FEE	\$267,900.00	

The lump sum amount to be paid under this Agreement is \$96,400. Any unused portion of the fee, due to delays beyond Garver's control, will be increased four percent (4%) annually with the first increase effective on or about July 1, 2023.

The Owner will pay Garver for Service rendered at the agreed upon rates for each classification of Garver's personnel (may include contract staff classified at Garver's discretion) plus reimbursable expenses including but not limited to printing, and reproduction. The total amount paid to Garver under this Agreement is estimated to be \$171,500. The actual total fee may exceed this estimate by supplemental agreement. The agreed upon rates will be increased annually with the first increase effective on or about July 1, 2023. Notwithstanding the foregoing, Garver shall be entitled, in its sole discretion, to substitute a more qualified person (e.g., C-4) with a less qualified person (e.g., C-1); provided however, in such event Garver shall only be entitled to payment at the lesser rate.

Expenses other than salary costs that are directly attributable to performance of our Services will be billed as follows:

1. Direct cost for outside reproduction.
2. \$15 per hour for GPS survey equipment use.

As directed by the Owner, some billable Services may have been performed by Garver prior to execution of this Agreement. Payment for these Services will be made in accordance with the fee arrangement established herein, as approved by the Owner.

Garver shall provide Owner notice when Garver is within ten percent (10%) of the not-to-exceed amount. In which event, Owner may direct Garver to proceed with the Services up to the not-to-exceed

budgetary threshold before ceasing performance of the Services or increase the not-to-exceed amount with notice to Garver. Underruns in any phase may be used to offset overruns in another phase as long as the overall Agreement amount is not exceeded. In no event shall the not-to-exceed amount be interpreted as a guarantee the Services can be performed for the not-to-exceed budgetary threshold.

RATE SCHEDULE JULY 2022 – JUNE 2023

Engineers / Architects	
E-1.....	\$ 118.00
E-2.....	\$ 145.00
E-3.....	\$ 172.00
E-4.....	\$ 192.00
E-5.....	\$ 219.00
E-6.....	\$ 270.00
E-7.....	\$ 330.00
Planners / Environmental Specialist	
P-1.....	\$ 141.00
P-2.....	\$ 177.00
P-3.....	\$ 214.00
P-4.....	\$ 246.00
P-5.....	\$ 281.00
P-6.....	\$ 325.00
P-7.....	\$ 370.00
Designers	
D-1.....	\$ 107.00
D-2.....	\$ 126.00
D-3.....	\$ 150.00
D-4.....	\$ 174.00
Technicians	
T-1.....	\$ 98.00
T-2.....	\$ 127.00
T-3.....	\$ 140.00
Surveyors	
S-1.....	\$ 63.00
S-2.....	\$ 75.00
S-3.....	\$ 114.00
S-4.....	\$ 129.00
S-5.....	\$ 170.00
S-6.....	\$ 193.00
2-Man Crew (Survey).....	\$ 234.00
3-Man Crew (Survey).....	\$ 280.00
2-Man Crew (GPS Survey).....	\$ 256.00
3-Man Crew (GPS Survey).....	\$ 302.00
Construction Observation	
C-1.....	\$ 100.00
C-2.....	\$ 133.00
C-3.....	\$ 159.00
C-4.....	\$ 192.00
Management/Administration	
M-1.....	\$ 370.00
X-1.....	\$ 64.00
X-2.....	\$ 86.00
X-3.....	\$ 125.00
X-4.....	\$ 156.00
X-5.....	\$ 195.00
X-6.....	\$ 240.00
X-7.....	\$ 290.00

**EXHIBIT C
(INSURANCE)**

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

Worker’s Compensation	Statutory Limit
Automobile Liability	
Combined Single Limit (Bodily Injury and Property Damage)	\$500,000
General Liability	
Each Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability	
Each Claim Made	\$1,000,000
Annual Aggregate	\$2,000,000

CITY OF BEL AIRE
STAFF REPORT



DATE: May 31, 2022
TO: Ty Lasher, City Manager
FROM: Dave Leiker, Public Works Director
RE: Public Works Monthly Progress Report – May 2022

STREETS

53rd St. and Rock Rd. is now an all way stop intersection. Staff installed two solar powered LED lighted stop signs, stop ahead signs and stop bar street markings.

Gravel roads were graded 3 times this month and some gravel was added on several roads. Harding St. just north of 37th St. has been built up approximately 4 inches with a mixture of KGE and road gravel. This section of road had a low area and the water was level with the road during the 2.57 inches of rain we received on May 4th. Staff blocked this area off only because there was additional heavy rainfall expected. Fortunately, this did not occur and the road was re-opened. On May 31st, we received 4.8 inches of rainfall in a short amount of time and the gravel roads washed out in a few areas. Staff made repairs by hauling KGE rock and road gravel to these areas and worked the material in with a backhoe. Once the roads are fairly dry, more permanent repairs will be made.

Three pallets of rubber have been received in preparation for crack sealing streets in Bel Aire Village. Staff will resume working in this area when the weather improves. The mastic melting machine is scheduled for delivery towards the end of the month and will be utilized in conjunction with the crack sealer.

WATER

Staff spends a significant amount time everyday performing locates and we have some information to share you might find interesting about this service. We receive locate tickets everyday through Kansas One Call and these are generated from contractors and homeowners. Each ticket we receive indicates exactly where we need to mark and flag underground utilities. About 90% of these ticket requests are for water lines to be marked, the remainder are sewer lines and electric cables owned by the city. In the month of May, 539 locate requests were received and 2,487 YTD. On average it takes 15 minutes per locate to complete. With all the homes being built, locates have dramatically increased taking a large toll on staff time.

On May 23 staff received notice of another water leak in the ditch around the 4000 block of N Oliver. Upon inspection it was determined there was a 6 inch cast-iron water main leaking. Staff

exposed the pipe and found a 10” long section of pipe that appeared corroded which blew out. Repairs were made with a 20” clamp. The ditch was put back as best as possible and after it dries out staff will regrade, seed, and apply erosion mat.

Staff received 5 work orders for leaking hydrants this month and we were able to make the repairs.



	Monthly Total	Year-to-Date	Take-or-Pay Agreement
Water Services Installed	15	79	
Water from Wichita	10,680,750	41,685,000	134,750,000
Water from CCUA	15,829,000	54,137,000	150,000,000

SEWER

The CIPP Project in Pearson’s subdivision is complete and no problems were reported.

Fortunately there were no sewer line backups or lift station issues to report this month.

STORMWATER

We have received an enormous amount of rain this month totaling 13.24 inches of rainfall in May. Stormwater inspections were conducted 9 times this month. All area drains were inspected and cleaned to insure they were clear of debris with some needing cleaned. We are happy to report that no major flood damage was observed or reported this month.

PARKS

A new metal park sign has been ordered for Eagle Lake Park and staff will be landscaping the sign area with xeriscaping. In Eagle Lake Park, staff removed an Austrian Pine tree that was suffering from pine wilt disease. Pine wilt spreads to other Pines so it was removed quickly after it was noticed.

Staff mowed parks and all ditches twice this month which totaled around 200 acres. The new 15 ft. rotary mower performed exceptionally well and helped speed up the ditch mowing process.

The Lions Club and Tree Board worked with staff to mulch 30 trees in Central Park. Thanks to their hard work, we completed this project in two hours. Mulching improves the overall health of trees so these volunteers are very much appreciated.





MANAGERS REPORT

DATE: June 2, 2022
TO: Mayor Benage and City Council
FROM: Ty Lasher, City Manager
RE: June 7, 2022 Agenda

Proclamation (Item V):

National Flag Week - Flag Day occurs every year on June 14th, the date the United States Flag was created. The week of June 14th is designated as “National Flag Week” which will be June 12–18, 2022.

Consent Agenda (Item VII)

Contains only the minutes of the May 17th City Council meeting.

Appropriations Ordinance (Item VIII)

This reporting period includes two payroll periods as well as bonded capital project expenses totaling \$494,923.32.

City Requested Appearances (IX)

MKEC- Mayor Benage asked MKEC to attend the meeting to discuss quantity changes that resulted in the last change order. MKEC will share their research on bid quantities verses actual amounts and answer any questions.

Waste Connections – Herschel West would like to request a 2% fee increase for trash and recycling fees effective July 1, 2022.

Appointment and Swearing-In of New Councilmember (Items A-B)

Councilmember Diane Wynn resigned her seat, effective May 1, 2022. Mayor Benage requested interested parties to submit a letter of interest and resume to him by May 19th. Following the Council Vacancy Policy, Mayor Benage shared the applicants with Council and asked for their input. He has selected Tyler Dehn to fill the vacant seat. This seat will be up for a new term in November of 2023. After Tyler is confirmed, the City Clerk will swear him in with the Oath of Office.



Revised IRB Policy (Item C):

Included in your packet is a copy of the current Comprehensive Economic Development Policy approved in 2008 and revised in 2012. Rather than tackle the entire policy at once, I have pulled out the IRB section for you to review and address revisions. I have also been working on the TIF section separately for input at the June 14th workshop. There are several pieces to the IRB policy including tax abatements that outline and define the use of IRB’s and related tax abatements. The sections you will want to pay close attention to are application and renewal fees, origination fee, waivers and tax exemptions.

IRB Amending Resolution for Catholic Care Center (Item D):

The Catholic Care Center is making some improvements to their facilities as well as refinancing a portion of previous debt. Since Catholic Care operates as a non-profit, they do not pay property taxes or sales taxes. However, utilizing an IRB does have additional benefits such as federal income tax-exempt interest rates, which are available to 501c(3) organizations, as long as there is local government issuer of municipal bonds. As with All IRB’s, the city is not liable for the debt nor does it appear on the city’s financial statements. Council approved a Resolution of Advisability for issuing the IRB at the May 3rd meeting which included an origination fee and annual administration fee. The Catholic Care Center (CCC) Board feels the fee is excessive and is asking the fee be reduced or eliminated.

I wanted to explain how the fee was calculated. CCC could use the Kansas Development Finance Authority (KDFA) to issue the bonds so I reviewed their fees (copy included in your packet). Based on the IRB amount and formula for KDFA, below is what they would charge and what I included in the resolution. As noted at the meeting, the sum of these fees equals \$125,000 or .5% of the IRB and in line with current practices.

Application Fee: Waived

Issuers Fee:	.35% for \$10 million = \$35,000	Resolution \$35,000
	.20% for \$15 million = \$30,000	Resolution \$30,000

Annual Fee:	
.04% on \$25 million = \$10,000	Not in Resolution
.04% on \$22.5 million = \$9,000 + \$5,000 flat fee = \$14,000	Resolution is \$13,000
.04% on \$20 million = \$8,000 + \$5,000 flat fee = \$13,000	Resolution is \$13,000
.04% on 17.5 million = \$7,000 + \$5,000 flat fee = \$12,000	Resolution is \$12,000
.04% on 15 million = \$6,000	Resolution is \$6,000
.04% on \$12.5 million = \$5,000	Resolution is \$5,000
.04% on \$10 million = \$4,000	Resolution is \$4,000
.04% on \$7.5 million = \$3,000	Resolution is \$3,000
.04% on 5 million = \$2,000	Resolution is \$2,000
.04% on \$2.5 million = \$1,000	Resolution is \$1,000
Bel Aire annual fee is \$1,000	Resolution is \$1,000

IRB's can be issued by a municipality, state or county. The jurisdiction where the business resides can issue the IRB or the business can go to another entity but must be approved to do so by the municipality where the business is located. In other words, Bel Aire can issue the IRB for CCC or if CCC wants to go to another issuer, Bel Aire must approve that happening. Included in your packet is a list of all the IRBs issued by Bel Aire, the amount of the IRB, as well as origination fee. You can see that 10 have a 1% fee with one being .5% and three having none. Here are the reasons for the three with no fee: Concierge SRC (Tierra Verde) was done with many other incentives to get some kind of commercial going and waived by the City Council at that time. Buzzi was waived as they paid for half the rail siding in the Sunflower Commerce Park with the other half coming from a grant. Epic Sports was waived as we were directly competing with Andover for the large company with 200 employees. Can't remember why Empire was .5%. I can also tell you that SCKEDD and Homestead Affordable Housing are both not-for-profits. As you can see, all business received property tax abatements that vary based on job creation and investment.

The concern I have in adjusting the fee below .5% or waving the fee is that it becomes much more difficult for me to explain why CCC is getting the lower fee. Every business asks to have the fee lowered or waived. In my view, lowering the fee for one will be lowering the fee for all. I understand the thought that a not-for-profit should be waived. However, SCKEDD is a non-profit and was assessed a 1% origination fee as well as later on the agenda Homestead Senior Housing is being consider for an IRB with a 1% origination fee. I assure you I am not trying to penalize not-for-profits but merely trying to maintain a structure that is fair to any business.

On the agenda is an amending resolution for your consideration that has the fee portion blank. You can simply deny the amending resolution which means the original resolution with fee structure approved at the May 3rd meeting stands. You can approve the amending resolution and insert the fee you determine or no fee. I do not believe the tabling the item will be an option for Catholic Care.

IRB Ordinance for Homestead Senior Residences (Item E)

At the February 15th meeting, Council approved a Letter of Intent to issue an Industrial Revenue Bond (IRB) for the Homestead Senior Residences to construct senior living apartments. Then at the April 5th meeting, Council held a public hearing where taxpayers and interested parties were given the opportunity to speak on the matter. At the same meeting the Council approved a Resolution to start the process of issuing the bonds. The Ordinance to issue the bonds now comes before Council for approval.

If Council determines non-profits should pay a different origination fee than the 1% included in the documents or be waived all together, this item will need amended to include that new fee.

Waste Connections Request for 2% Increase in Fees (Item F):

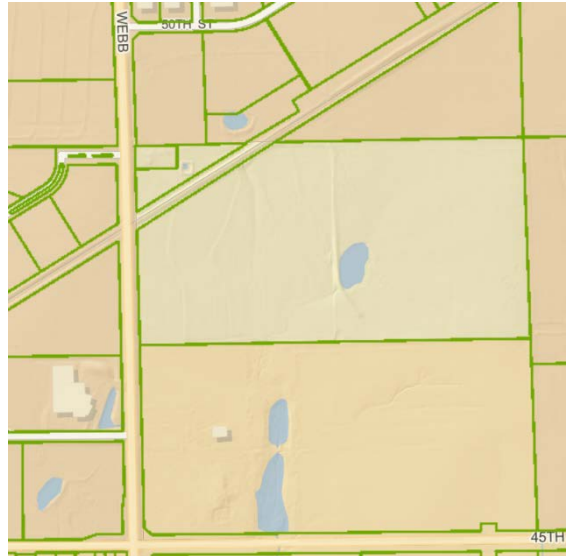
The solid waste collection and recycling agreement with Waste Connections that was approved in 2016 allows for Waste Connections to request a 2% fee increase annually. Included in your packet is a letter requesting such an increase, as well as the agreement. Council approved a 1.5% increase in 2017, nothing in 2018, 2019 or 2020 and 1% in 2021. Herschel West with Waste Connections will be at the meeting to explain the need and answer any questions.

Consent to Annex Agreement (Item G)

This is the first annexation Bel Aire has considered in 20 years as the city purchased 2,000 acres and annexed the land at the time of purchase. The property owner is asking for the parcel to be annexed via a consent form. Below you will find the statute that deals with annexations as well as the portion of our water agreement with Wichita that requires their approval. Under state statutes the highlighted sections allow for the annexation via simple vote and I received an email approval from City Manager Bob Layton that Wichita approves. The right-of-way along Webb is already in the city so that is not a consideration. Bel Aire City limits touch the tract on the north, east and west with Jabara land adjoining the south.

There may be questions regarding the benefit of annexing this partial so I have addressed several:

- Water and sewer lines run along Webb and can serve the site. This adds utility paying customers.
- Bel Aire will control planning and zoning. Any zoning and plating will go through the Bel Aire Planning Commission as well as City Council. If it remains in the county or City of Wichita, zoning and plating go through the MAPD.
- If the property were zoned industrial to match the surrounding sites and were to house six Epic Sports facilities, the city would receive \$915,000 annually in property taxes.



2-520. Conditions which permit unilateral annexation; exceptions; ordinance; severability of ordinance where annexation invalid; limitations. (a) Except as hereinafter provided, the governing body of any city, by ordinance, may annex land to such city if any one or more of the following conditions exist:

- (1) The land is platted, and some part of the land adjoins the city.

(4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

12-520a. Resolution; hearing; notice; publication; sketch of area; criteria considered at hearing; consent, effect.

(f) No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of land owned by or held in trust for the city or any agency thereof or land all of the owners of which petition for or consent thereto in writing.

2. **AMENDMENT OF SERVICE AREAS.** Both parties agree to void restrictions in paragraph 6.5 requiring Bel Aire to submit an administrative application, parcels to have an unbroken boundary line, and to be within the jurisdictional boundary in order for Wichita to grant amendments of service areas. Wording preventing changes to the service area based solely on these requirements are repealed. Parties agree to amend the map of the service area. Paragraph 6.5 is hereby amended in the following manner:

- a. **AMENDED PARAGRAPH 6.5:** The Bel Aire Service Area described herein may be augmented The Bel Aire Service Area described herein may be augmented directly by the Governing Bodies of Bel Aire and Wichita, once each calendar year upon notice to the Wichita City Manager directly from the Bel Aire City Manager. Irrespective of the number of real estate tracts or parcels involved in the request, the cumulative area covered by such an annual request shall not exceed 320 acres. The Wichita City Manager shall not unreasonably withhold approval of such a request, but may accept, deny or place conditions on any such request as deemed reasonable.
- b. **AMENDED SERVICE AREA:** The Bel Aire service area shall be the same as the Bel Aire urban growth area identified in 2035 Urban Growth Areas Map. No approval shall be required to expand service to areas within these parameters. See attached EXHIBIT 2.

Annexation Ordinance (Item H)

If Council accepts the Consent to Annex, then you may consider the Annexation Ordinance which officially brings the parcel into the city limits. The Ordinance will require a roll call vote of the Councilmembers.

Charter Ordinance Amending The Terms Of Elected Officials (Item I)

Council had several workshops regarding term limits and duration last spring and summer. In 2021, Council requested a survey be collected during the November 2021 election period to see what the public thought about limits. The results were published to Council in January for review and discussion. Last month the Mayor requested this ordinance be prepared to give Council a chance to consider moving this forward before November 2022 ballots are prepared (this timeline gives sufficient time for any protest to be added to the November ballot). If approved, this Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper and shall take effect sixty-one days after its final publication, unless a sufficient petition for a referendum is filed. If a referendum is held, this ordinance shall become effective on the day after approved by a majority of the electors voting thereon.

Bid for water services installation in Chapel Landing 3rd (Item J)

Chapel Landing 3rd (53rd East of Oliver) is unique in the fact that most of the homes are being constructed simultaneously. On May 25th staff received a request for water services from the builder. There are 28 services that need installed before the driveways can be poured. This bid is for the installation of the meter cans, meter setters, rings and lids. Staff will follow behind the contractor to install the meters. Three local contractors submitted bids. The low bidder, UMC, can also provide the shortest lead time to begin the project. Staff recommends Council accept the bid from UMC in the amount of \$38,600.00.

Development Agreements (Items K-M)

City Code requires that the Developer file a Development Agreement with the final plat. The Development Agreement outlines the Developer's responsibilities before and after construction. Three agreements now come before Council for approval.

Prairie Preserve – This development is zoned Estate Residential with larger lots. Staff have worked with the Developer to make sure that two unique features, the private sewer system and the streets will meet requirements. The Developer will be responsible for the maintenance of the private sewer system. Sedgwick County Fire Department has commented that they are okay with the narrower than normal streets (24 feet in width instead of 29 feet) as long as no parking is allowed on either side of the street. With the larger lot size and longer drives, enough parking should be available off-street.

Skyview at Block 49 3rd – Dedications on the final plat of Skyview 3rd were approved by Council on March 1st.

Chapel Landing 5th – Dedications on the final plat for this development were approved by Council on April 5th.

Professional Services Agreement, Chapel Landing 5th Phase 1 (Item N)

The Developer for Chapel Landing 5th is ready to move forward with the design phase of the project. He is requesting Garver be the engineers. The costs associated with the project will be financed through a bond and spread as special assessments against the benefiting lots. Staff recommends Council accept the Agreement for Professional Services with Garver in the amount of \$267,900.00.

Tree Board Appointment (Item O)

The Tree Board has one remaining position vacant. Jesse Miller recently moved to Bel Aire and is interested in serving on the Tree Board. Mayor Benage spoke with Jesse as well as Tree Board President Gary Northwall regarding the position. Mayor Benage would like to appoint Jesse to the Tree Board. His term will expire in June 2026.

**June Workshop:**

The regularly scheduled workshop for June is on the 14th at 6:30 pm. So far I have an introduction to the 2023 Budget, CIP, Sign Codes and TIF policy.