

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Tuesday, September 6, 2016

7:00 p.m.

MEETING #5045

CALL TO ORDER

ROLL CALL

INVOCATION BY Pastor Justin Hayes, Church of the Nazarene

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

1. Public Hearing to Consider the Establishment of a Rural Housing Incentive District and Adoption of a Development Plan for Reflection Living.
2. Public Hearing to Consider the Establishment of a Rural Housing Incentive District and Adoption of a Development Plan for Candletree Unit 7 Addition to the City of Dodge City.

PETITIONS & PROCLAMATIONS

Constitution Week Proclamation

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, August 15, 2016;
2. Appropriation Ordinance No. 17, September 6, 2016;
3. Cereal Malt Beverage License:
 - a. Dillons Store, 1700 N. 14th Avenue,
 - b. Taylor's Roadhouse, 302 S. 2nd Avenue,
 - c. El Rodeo Bar & Grill, 102 W. Wyatt Earp Blvd.,

- d. Osaki Sushi House Inc., 2100 W. Wyatt Earp Blvd.,
4. Temporarily Allow Consumption of Alcoholic Beverages in Eisenhower Park on September 23, 2016.
5. Change Order No. 1 for 2015 Asphalt Street Projects.
6. Change Order No. 1 for 2015 Asphalt Street Projects.

ORDINANCES & RESOLUTIONS

Ordinance No. 3635: An Ordinance of the Governing Body of the City of Dodge City, Kansas, Establishing a Rural Housing Incentive District Within the City , Adopting a Plan for the Development of Housing and Public Facilities in Such District, and Making Certain Findings in Conjunction Therewith (Reflection Living). Report by Special Projects Coordinator Mollea Wainscott.

Ordinance No. 3636: An Ordinance of the Governing Body of the City of Dodge City, Kansas, Establishing a Rural Housing Incentive District Within the City , Adopting a Plan for the Development of Housing and Public Facilities in Such District, and Making Certain Findings in Conjunction Therewith (Candletree Unit 7 Addition). Report by Special Projects Coordinator Mollea Wainscott.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of the Equipment Sales Agreement with Guild Associates Inc. Report by Director of Engineering, Ray Slattery.
2. Approval of Bids for Central Avenue Improvements (Phase 2) from Layton to Highway 50 Bypass. Report by Director of Engineering, Ray Slattery.
3. Appointment of League of Kansas Municipalities Voting Delegates. Report by Finance Director/City Clerk, Nannette Pogue.
4. Discussion of Arkansas River Basin Improvements Funding Options (As Required by FEMA). Report by City Manager, Cherise Tieben.

OTHER BUSINESS

ADJOURNMENT

**DEVELOPMENT PLAN
CKR PROPERTIES ONE, LLC – REFLECTION LIVING RURAL HOUSING
INCENTIVE DISTRICT OF THE CITY OF DODGE CITY, KANSAS**

September 6, 2016

INTRODUCTION

On June 6, 2016 the Governing Body of the City of Dodge City, Kansas (the “City”) adopted Resolution 2016-17 that found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within Dodge City pursuant to the Act.

Following the adoption of Resolution 2016-17, a certified copy of said Resolution was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in Dodge City, as required by K.S.A. 12-5244(c).

On June 21, 2016, the Secretary of Commerce provided written confirmation, approving the establishment of CKR Properties One, LLC – Reflection Living Rural Housing Incentive District (the “District”) (Resolution 2016-17, Exhibit A-19).

DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once the City receives approval from the Secretary of Commerce for the development of a Kansas Rural Housing Incentive District, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

DEVELOPMENT PLAN

As a result of the shortage of quality housing within Dodge City, the City proposes this Development Plan to assist in the development of quality housing within the City.

1. The legal description of the CKR Properties One LLC – Reflection Living Rural Housing Incentive District is:

Lot 2, Block 1, Trinity Subdivision, Dodge City, Ford County, Kansas

A map of the District is attached as **Exhibit A** to this document.

2. The assessed valuation of all real estate within the District for 2016 is \$8,022.00. There are no existing structures on the real estate within the District.

3. The name and address of the owner of record for the real estate within the District is:

CKR Properties One, LLC
912 Clubview
Dodge City, KS 67801

4. The housing and public facilities projects that are proposed to be constructed include the following:

Housing Facilities

The housing facility will be composed of one (1) twelve (12) unit resident senior living home licensed under the Kansas Department of Aging as a HOME PLUS designation facility with a market value of not less than One Million, Two Hundred Fifty Thousand Dollars (\$1,250,000.00).

Public Facilities

Public improvements will also include construction of infrastructure improvements located within the boundaries of the District, including water, sanitary sewer, storm sewer, storm water detention, streets and street lighting. The public improvements will be constructed as necessary to serve the Project as described above.

5. The names, addresses and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities is:

Owner of Real Property: CKR Properties One, LLC
912 Clubview
Dodge City, KS 67801

Developer: CKR Properties One, LLC
(Site Work and Infrastructure) 912 Clubview
Dodge City, KS 67801

Individuals with Specific Interest: Dr. Merrill Conant
912 Clubview
Dodge City, KS 67801

Quentin Conant
10562 US Hwy 50
Dodge City, KS 67801

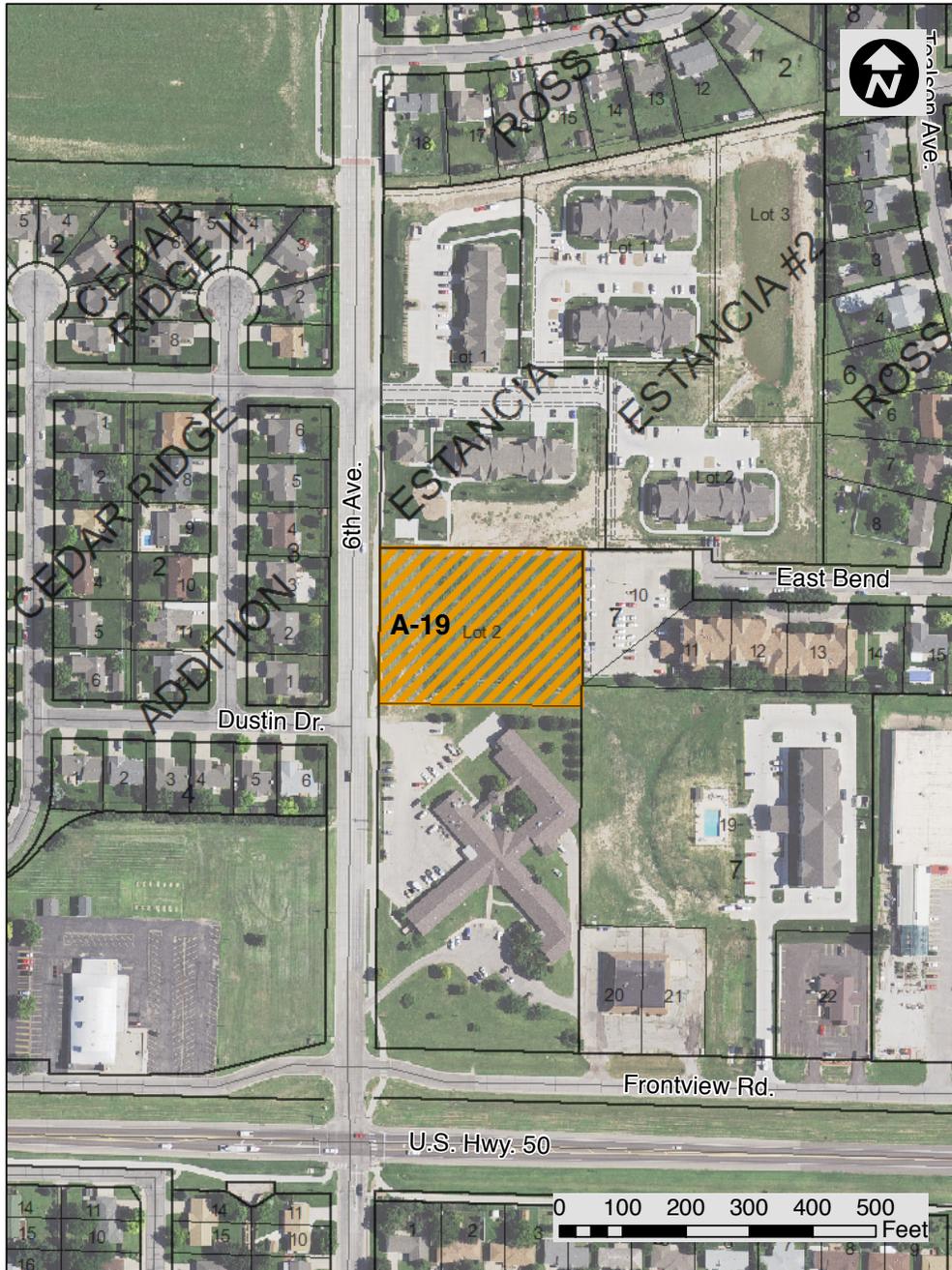
Kevin Fralick
11251 108 Road
Dodge City, KS 67801

6. The Governing Body of the City entered into a Development Agreement with CKR Properties One, LLC, a Kansas limited liability corporation, (the “Developer”) in September of 2016. The Development Agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the Developer and financial and administrative support from the City. The complete Development Agreement is attached hereto as **Exhibit C**.

7. The City’s Finance Director conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue provided by the Developer, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached hereto as **Exhibit B**. The analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support reimbursement to the Developer for all or a portion of the costs of financing the public infrastructure. The estimates indicate that the revenue realized from the project would be adequate to pay all or a significant portion of the eligible costs.

DEVELOPMENT PLAN - EXHIBIT A

MAP OF THE CKR PROPERTIES ONE, LLC – REFLECTION LIVING
RURAL HOUSING IMPROVEMENT DISTRICT



DEVELOPMENT PLAN - EXHIBIT B
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

Reflection Living (Denny Wright) - RHID

Cost of Infrastructure Improvements	461,300				
		<u>Current Value</u>	<u>Property Class</u>	<u>Mill Levy</u>	
Current Property Tax	66,850	12.00%	187.888	1,507.24	
Estimated Current Value of Vacant Land					
		<u>Estimated Value</u>	<u>Property Class</u>	<u>Mill Levy</u>	<u>Est. Property Tax</u>
At 100% increment going to pay off infrastructure costs	1,250,000	11.50%	187.888	27,008.90	<u>Annual Increment Tax</u>
Nursing Home/Adult Care Facility					<u>Increment Tax For 15 Years</u>
				25,501.66	382,524.94

If the units are valued at \$1,250,000 for the complex, the increment tax for 15 years would total approximately \$382,524.94. This would be less than the amount spent on eligible costs for infrastructure. The estimated appraised value is based on an estimate from the Ford County Appraisal Office.

DEVELOPMENT PLAN - EXHIBIT C
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), entered into this 6^h day of September, 2016, by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation, (the “City”), and **CKR PROPERTIES ONE, LLC**, a Kansas limited liability corporation, with its principal place of business in Dodge City, Kansas (the “Developer”).

RECITALS

- A. **WHEREAS**, the City and the Developer (the “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of senior living residence development to be known as “Reflection Living” (the “Development”); and,
- B. **WHEREAS**, the Developer is the titled owner of real property located within the boundaries of the City and described in *Exhibit A*, attached hereto and incorporated herein by reference (the “Property”); and,
- C. **WHEREAS**, the Developer desires to develop the Property by construction of senior living residences and all related internal infrastructure improvements, all as more fully described herein; and,
- D. **WHEREAS**, the City has determined that the construction of the Development will foster the economic development of the City and the surrounding area of Ford County, Kansas; and,
- E. **WHEREAS**, the Parties hereto are authorized to enter into this Agreement and to complete the responsibilities set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following words and terms shall have the meaning set forth below:

“**Agreement**” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

“**City**” means the City of Dodge City, Kansas.

“**Concept Site Plan**” means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to the City, attached hereto as *Exhibit C* and incorporated herein by reference, depicting the conceptual program for construction of the Development Project and the Internal Infrastructure Improvements.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

“**Developer**” means CKR Properties One, LLC, a Kansas limited liability corporation, with its principal place of business in Dodge City, Kansas, or its permitted successors or assigns in interest.

“**Development Area**” means the collective areas described in *Exhibit B* attached hereto and incorporated herein by this reference.

“**Development Project**” means quality senior living residences to be constructed in the Development Area in accordance with the Concept Site Plan.

“**Governing Body**” means the City Commission of Dodge City, Kansas.

“**Internal Infrastructure Improvements**” means the water, sanitary sewer, electric, water, storm sewer, storm water detention, street, street lighting, sidewalks and all other public infrastructure improvements necessary for the Development and located within the boundaries of the Development Area, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for the Development, all as more specifically described on *Exhibit D* attached hereto and incorporated herein by this reference.

“**Material Change**” shall mean any change in the Concept Site Plan that significantly affects the nature of the Internal Infrastructure Improvements, the number of Units, or increases/decreases the cost of the Development Project by Twenty-Five Thousand Dollars (\$25,000.00) or more for each change.

“**Mayor**” means the Mayor of Dodge City, Kansas or his/her duly authorized agent.

“**Plans and Specifications**” means the plans and specifications for the Internal Infrastructure Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to the City.

“**Project Costs**” means all costs associated with the completion of the Internal Infrastructure Improvements, and all associated legal, engineering and other soft costs, all as described on the cost estimates set forth on *Exhibit D* attached hereto and incorporated herein by this reference.

“**Property**” means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) on which the Development Project will be located, more specifically described in *Exhibit A* attached hereto and incorporated herein by this reference.

“**Related Party**” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

“**Rural Housing Incentive District**” means a rural housing incentive district to be created by the City for the Development Project pursuant to the Kansas Rural Housing Incentive District Act.

“**Substantial Completion**” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that the Developer can occupy or utilize the Work for its intended purpose.

“**Unit**” means each individual senior living residence development.

“**Work**” means all work necessary to prepare the Property and to construct the Development Project and the Internal Infrastructure Improvements, including; (1) demolition and removal of certain existing improvements located on the Property; (2) construction, reconstruction and/or relocation of utilities; (3) construction of the senior living residential structures, including surface parking facilities, and screening and site landscaping on the Property, as described in the Concept Site Plan; and (4) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II

RURAL HOUSING INCENTIVE DISTRICT

2.1 Preliminary Resolution. The Governing Body has heretofore adopted Resolution No. 2016-17 (the “Resolution”) on June 6, 2016, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in the City and declaring an intent to establish Rural Housing Incentive Districts within the City, which would include the Property.

2.2 Department of Commerce Finding. Pursuant to the Resolution, the City caused to be prepared a Housing Needs Analysis and forwarded the same, along with the Resolution, to the Kansas Secretary of Commerce. On June 24, 2016, the Kansas Secretary of Commerce issued a letter to the City making certain findings required by the Rural Housing Incentive District Act, and approved the City’s ability to establish a Rural Housing Incentive District.

2.3 Further Proceedings Regarding the Rural Housing Incentive District Act. The City has caused to be prepared a Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, adopted a resolution calling a public hearing relative to such Development Plan, conducted a public hearing, and will pass an

Ordinance approving the Development Plan, this Agreement, establish a Rural Housing Incentive District that includes the Property. The Rural Housing Incentive District will be deemed to be established at the time said Ordinance is passed by the Governing Body. The Parties acknowledge that the creation of the Rural Housing Incentive District is subject to nullification in the manner set forth in K.S.A. 12-5246.

ARTICLE III

CONSTRUCTION OF THE PROJECT AND INTERNAL INFRASTRUCTURE IMPROVEMENTS

3.1 Development Project Construction Schedule. The Developer shall commence construction of the Development Project and Internal Infrastructure Improvements within the Development Area, not more than sixty (60) days after the Rural Housing Incentive District ordinance is passed by the Governing Body. The Developer will diligently pursue Substantial Completion of the Development Project.

- a. Modifications to the Development Project. The Parties acknowledge that due to economic conditions the scope of the Development Project and the amount of real estate included within any Development Area may be modified prior to and/or during the construction of such Development Project. Developer shall notify the City at least thirty (30) days in advance of any proposed Material Change of the Development Project or Development Area, as well as the factual basis necessitating the proposed Material Change.

3.2 Construction of the Development Project. The Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans, on file at City Hall.

3.3 Concept Site Plan. The Developer, at its cost, has had prepared a Concept Site Plan. Said Concept Site Plan is hereby approved by the Parties. The Developer shall promptly notify the City in writing of any proposed Material Changes to the Concept Site Plan at least thirty (30) days prior to the implementation of any such Material Change, including a description of the Material Change and reasons therefore. During the progress of the Work, Developer may make changes to the Concept Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be necessary or desirable in the sole determination of the Developer to enhance the economic viability of the Development Project provided, however, that the Developer may not make any Material Changes to the Internal Infrastructure Improvements or reduce the number of Units on the Concept Site Plan without the advance written consent of the City.

3.4 Construction of Internal Infrastructure Improvements. The Developer shall construct, at its cost, the Internal Infrastructure Improvements in a good and workmanlike manner in accordance with the Plans and Specifications approved by the City consistent with the construction of the Development Project so that the Substantial Completion of

the Internal Infrastructure Improvements associated with the Development Project shall be completed on or before Substantial Completion of the Development Project.

- a. Acquisition of Easements, Permits.** The Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the Internal Infrastructure Improvements and the City will cooperate with the Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements shall be considered a Project Cost. The City shall cooperate with the Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.
- b. Construction Contracts; Insurance.** The Developer may enter into one or more construction contracts to complete the Work for the Internal Infrastructure Improvements. Prior to the commencement of construction of the Internal Infrastructure Improvements, the Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage as provided in **Section 5.8** hereof and shall deliver evidence of such insurance to the City. The Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Internal Infrastructure Improvements or part thereof, if such contract relates to less than all of the Internal Infrastructure Improvements. If the Developer serves as general contractor for the Internal Infrastructure Improvements, the Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.
- c. Certification of Substantial Completion.** Promptly after Substantial Completion of the Work with respect to the Internal Infrastructure Improvements, or a phase thereof, in accordance with the provisions of this Agreement, the Developer will furnish to the City a Certificate of Substantial Completion in the form attached hereto as **Exhibit E**. The City shall, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion. Each Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such thirty (30) day period after delivery to the City of each Certificate of Substantial Completion, the City furnishes to the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. At Substantial Completion of the Internal Infrastructure Improvements, the Developer will dedicate to the City, and the City will accept, title to the Internal Infrastructure Improvements designated on **Exhibit D**. Following said dedication, the City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and shall maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar Internal Infrastructure Improvements in the City.

Notwithstanding the foregoing, the Developer may, at its sole discretion and expense, enhance the maintenance or operation of the Internal Infrastructure Improvements for the betterment of the Development Project.

ARTICLE IV

FINANCING OBLIGATIONS

4.1 Financing of Internal Infrastructure Improvements. All costs of the Internal Infrastructure Improvements shall be paid in cash or financed by the Developer. The City agrees to pay to the Developer, in reimbursement of all or a portion of the Project Costs, those amounts paid to the Treasurer of the City, as a result of this Project, pursuant to K.S.A. 12-5250(b)(2)(A). These payments shall be made within thirty (30) days of receipt of such funds from the County Treasurer beginning in 2016 and shall continue until such time as the Project Costs have been fully reimbursed to the Developer, but not to exceed fifteen (15) years from the date of the establishment of the Rural Housing Incentive District. The City shall have no liability and/or responsibility to the Developer for any payment greater than the amounts received from the Ford County Treasurer as mandated in K.S.A. 12-5250(b)(2)(A).

ARTICLE V

GENERAL PROVISIONS

5.1 City's Right to Terminate. In addition to all other rights of termination as provided herein, the City may terminate this Agreement at any time if the Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from the City of such default or breach.

5.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, the Developer may terminate this Agreement at any time if the City defaults in or breaches any material provision of this Agreement (including any City default under Article IV hereof) and fails to cure such default or breach with thirty (30) days after receipt of written notice from the Developer of such default or breach.

5.3 Successors and Assigns.

- a This Agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.
- b Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after completion of the Development Project, whereupon the Party disposing of its interest in the Property or assigning its

interest under this Agreement shall be thereafter released from further obligation under this Agreement (although prior to Substantial Completion of the Improvements to such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, however, that the buyer, transferee or assignee shall be financially solvent as demonstrated to the City.

- c Until Substantial Completion of the Development Project has occurred, the obligations of the Developer under this Agreement may not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by the Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project, all in accordance with this Agreement. Notwithstanding the foregoing, the Developer may be permitted to subcontract the construction of any portion of the Development Project except for Internal Infrastructure Improvements without the consent of City as long as the Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with, (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in this Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Development Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of the Developer to assign the Developer's rights, duties and obligations under this Agreement to a Related Party; or (c) the right of the Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project; provided that in each such event the Developer named herein shall remain liable hereunder for the Substantial Completion of the Development Project, and shall be released from such liability hereunder only upon Substantial Completion of the Development Project.

5.4 Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) shall, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and thereupon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received

pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the Rural Housing Incentive District. For purposes of this Section, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same. Prior to instituting any legal proceedings after an event of default has been noticed and no cure has occurred, the Parties agree to attempt to resolve the dispute through non-binding mediation. In the event such mediation is not successfully completed within forty-five (45) days following the expiration of any period for cure, the aggrieved Party may then immediately institute legal proceedings against the breaching Party.

5.5 Force Majeure. Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by the Developer, and further provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

5.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first-class mail, postage prepaid, or delivered personally,

- a In the case of the Developer, to:
CKR Properties One, LLC
912 Clubview
Dodge City, KS 67801
Attention: Dr. Merrill Conant
Phone: (620) 225-3127

- b In the case of the City, to:
City of Dodge City, Kansas
806 N. Second Avenue
Dodge City, KS 67801
Attention: City Clerk

Phone: (620) 225-8100
Fax: (620) 225-8144

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this section.

5.7 Conflict of Interest. No member of the Governing Body or any branch of City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Development, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. The City represents to the Developer that no such conflicts of interest exist as of the date hereof.

5.8 Insurance; Damage or Destruction of Development Projects.

- c The Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of the City, shall furnish the City with proof of payment of premiums on:
 - i Builder's Risk insurance, written on the so called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of the City shall be protected in accordance with a clause in form and content satisfactory to the City; and,
 - ii Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Three Million Dollars (\$3,000,000.00) for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
 - iii Workers compensation insurance, with statutorily required coverage.
- d The policies of insurance required pursuant to clauses (i) and (ii) above shall be in form and content reasonably satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with a general policy holder's rating of not less than A- and a financial

rating of A- as rated in the most current available “Best’s” insurance reports. The policy of insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this Section shall name City as an additional insured. The Developer shall deliver to the City evidence of all insurance to be maintained hereunder.

5.9 Inspection. The Developer shall allow authorized representatives of the City access to the Work site from time to time upon reasonable advance notice, which notice is in accordance with its normal practices with respect to inspection of construction projects in the City, prior to the completion of the Work for reasonable inspection thereof. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer’s compliance with the terms of this Agreement.

5.10 Choice of Law. This Agreement shall be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

5.11 Entire Agreement: Amendment. The Parties agree that this Agreement and the Development Plan constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

5.12 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instruments.

5.13 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

5.14 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

5.15 Legal Actions. If a third party brings an action against the City, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this Agreement, or the ordinance approving this Agreement, the Developer may, at the Developer’s option but only with the City’s consent, assume

the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which the Developer has assumed the defense) with counsel of the Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City throughout the course of any such action and Developer shall pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City shall be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City shall be paid by City.

5.16 Release and Indemnification. The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of *subsection 5.16(g)* of this Agreement.

- a Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable to Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.
- b The Developer releases from, agrees to indemnify and hold harmless the City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that the City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorney fees, except for those matters arising out of the willful and/or wanton negligence of the City and its Governing Body members, officers, agents, servants and employees.
- c The City and its Governing Body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of the City and its Governing Body members, officers, agents, servants and employees.

- d All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.
- e No official, employee or representative of the City shall be personally liable to the Developer in the event of a default or breach by any Party to this Agreement.
- f The Developer releases from and covenants and agrees that the City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its Governing Body members, officers, employees, agents and independent contractors, harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of the Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of the Developer or its agents in connection with or relating to the Development Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly out of the willful and/or wanton negligence of the City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by the City following termination of this Agreement as the Development Project or portion thereof.
- g Notwithstanding anything to the contrary in this Agreement, including but not limited to the provisions related to indemnification and release set out in this Section, the Developer shall have no obligation to indemnify the City, or any other Party referenced in this Agreement, unless the claim for which indemnity is sought is actually covered by the insurance required by **Section 5.8** of this Agreement and the Developer shall hereby be released for any and all claims otherwise referenced in this Section that are not actually covered by the insurance policies required by **Section 5.8** of this Agreement.

5.17 Cost of the Legal Fees. Upon execution of this Agreement Developer shall reimburse the City for all legal and professional costs, fees and expenses incurred by the City with regard to the preparation of this Agreement and any and all other Ordinances, Resolutions or other documents necessary for implementation of the Rural Health Incentive District as well as for representation and appearances of legal

counsel at any hearings or proceedings required to implement the Rural Housing Incentive District or the Project. All such reimbursement paid by the Developers shall be considered Project Costs.

5.18 Survival. Notwithstanding the expiration, termination or breach of this Agreement by either Party, the agreements contained in Section 5.16 of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by the Parties hereto.

ARTICLE VI

REPRESENTATIONS OF THE PARTIES

6.1 Representations of City. The City hereby represents and warrants that to the best of its collective knowledge and belief it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

6.2 Representations of Developer. The Developer hereby represents and warrants it has full corporate power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF DODGE CITY, KANSAS

By: _____
Rick Sower, Mayor

Dated: September 6, 2016

ATTEST: (SEAL)

Nannette Pogue, City Clerk

CKR Properties, LLC

By: _____
Dr. Merrill Conant, Managing Member

Dated: September 6, 2016

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

- Exhibit A Property Description
- Exhibit B Map of Rural Housing Improvement District Boundaries for Reflection Living
Development Project
- Exhibit C Reflection Living Site Development Plan
- Exhibit D Eligible Costs for Reflection Living Development Project
- Exhibit E Certification of Substantial Completion Form

EXHIBIT A

PROPERTY DESCRIPTION

Lot 2, Block 1, Trinity Subdivision, Dodge City, Ford County, Kansas

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR REFLECTION LIVING DEVELOPMENT PROJECT**



EXHIBIT D

**ELIGIBLE COSTS FOR
REFLECTION LIVING DEVELOPMENT PROJECT**

Land	\$ 226,000.00
Site Preparation	\$ 38,000.00
Sanitary and Storm Sewage and Lift Stations	\$ 22,000.00
Sewer Extension	\$ 51,000.00 *
Pavement Marking	\$ 2,300.00
Street grading, Paving, Graveling, Curbing, Guttering, and Surfacing	\$ 98,000.00
Street Lighting Fixtures, Connection and Facilities	\$ 20,000.00
Underground Gas, and Connections	\$ 18,000.00
Sidewalks	\$ 11,000.00
Water Mains, Distribution and Extensions	<u>\$ 23,000.00</u>
	\$ 509,300.00

*** Upon substantial completion, internal infrastructure shall be dedicated to the City of Dodge City.**

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of CKR Properties One, LLC (the “Developer”), pursuant to Section 3.4.3 of the Development Agreement dated as of September 6, 2016, by and among the City of Dodge City, Kansas, and the Developer (the “Development Agreement”), hereby certifies as follows. All capitalized terms used herein shall have the meaning attributable to such terms in the Development Agreement.

1. The Work with respect to the Internal Infrastructure Improvements in the Development Project is sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. The Work has been completed in a good and workmanlike manner.
3. There are no mechanic’s or materialmen’s liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for the Work which could form the basis of a mechanic’s, materialmen’s or other statutory lien against the Property have been paid in full, and within the past four (4) months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated: _____

CKR Properties One, LLC

By: _____

Name: Dr. Merrill Conant

Title: Managing Member

**DEVELOPMENT PLAN
VOLZ BUILDERS, LLC – CANDLETREE 7 RURAL HOUSING INCENTIVE
DISTRICT OF THE CITY OF DODGE CITY, KANSAS**

September 6, 2016

INTRODUCTION

On April 4, 2016 the Governing Body of the City of Dodge City, Kansas (the “City”) adopted Resolution 2016-11 that found and determined that:

1. There is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. The shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. The shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. The future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within Dodge City pursuant to the Act.

Following the adoption of Resolution 2016-11, a certified copy of said Resolution was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in Dodge City, as required by K.S.A. 12-5244(c).

On May 10, 2016, the Secretary of Commerce provided written confirmation, approving the establishment of Volz Builders, LLC – Candletree 7 Rural Housing Incentive District (the “District”) (Resolution 2016-11, Exhibit A-17).

DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once the City receives approval from the Secretary of Commerce for the development of a Kansas Rural Housing Incentive District, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

DEVELOPMENT PLAN

As a result of the shortage of quality housing within Dodge City, the City proposes this Development Plan to assist in the development of quality housing within the City.

1. The legal description of the Volz Builders, LLC – Candletree 7 Rural Housing Incentive District is:

BEGINNING AT THE NORTHWEST CORNER LOT 1, BLOCK 3, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 00°26'13” W 301.14 FEET TO THE WESTERLY CORNER OF LOT 4, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 27°23'20” E 203.98 FEET TO THE SOUTHWEST CORNER OF LOT 6, CANDLETREE ADDITION, UNIT 5 AND THE NORTH LINE OF

CANDLETREE ADDITION #4, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE N 88°40'58" W 1002.23 FEET ALONG THE NORTH LINE OF CANDLETREE ADDITION #4 TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 14; THENCE N 00°36'03" E 742.06 FEET; THENCE S 88°40'58" E 367.02 FEET; THENCE S 01°09'11" W 160.00 FEET; THENCE S 88°40'58" E 449.04 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 48.51 FEET, CHORD BEING N 75°52'37" E 47.92 FEET; THENCE N 60°26'14" E 13.21 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET, AN ARC DISTANCE OF 78.54 FEET, CHORD BEING N 75°26'13" E 77.65 FEET; THENCE S 89°33'47" E 137.78 FEET; THENCE S 00°26'13" W 145.30 FEET; THENCE N 88°33'14" W 179.82 FEET TO THE POINT OF BEGINNING, CONTAINING 14.27 ACRES.

A map of the District is attached as **Exhibit A** to this document.

2. The assessed valuation of all real estate within the District for 2016 is \$1,068.00. There are no existing structures on the real estate within the District.
3. The name and address of the owner of record for the real estate within the District is:

Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801

4. The housing and public facilities projects that are proposed to be constructed include the following:

Housing Facilities

The housing facilities will be composed of thirty (30) single-family residences with an assessed evaluation of not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) each. The housing facilities will be constructed in Phases. The proposed single family units consist of three bedroom homes with garages comparable to the area.

Public Facilities

Public improvements include the extension of water and sewer by the City of Dodge City, gas distribution lines by Black Hills Energy and electric distribution lines to the boundaries of the District by Victory Electric. These improvements will be constructed concurrently with the project.

Public improvements will also include construction of infrastructure improvements located within the boundaries of the District, including electric, gas, water, sanitary sewer, storm sewer, storm water detention, streets, street lighting, fire services and sidewalks. Infrastructure improvements will be constructed concurrently with the project

5. The names, addresses and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities is:

Owner of Real Property: Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801

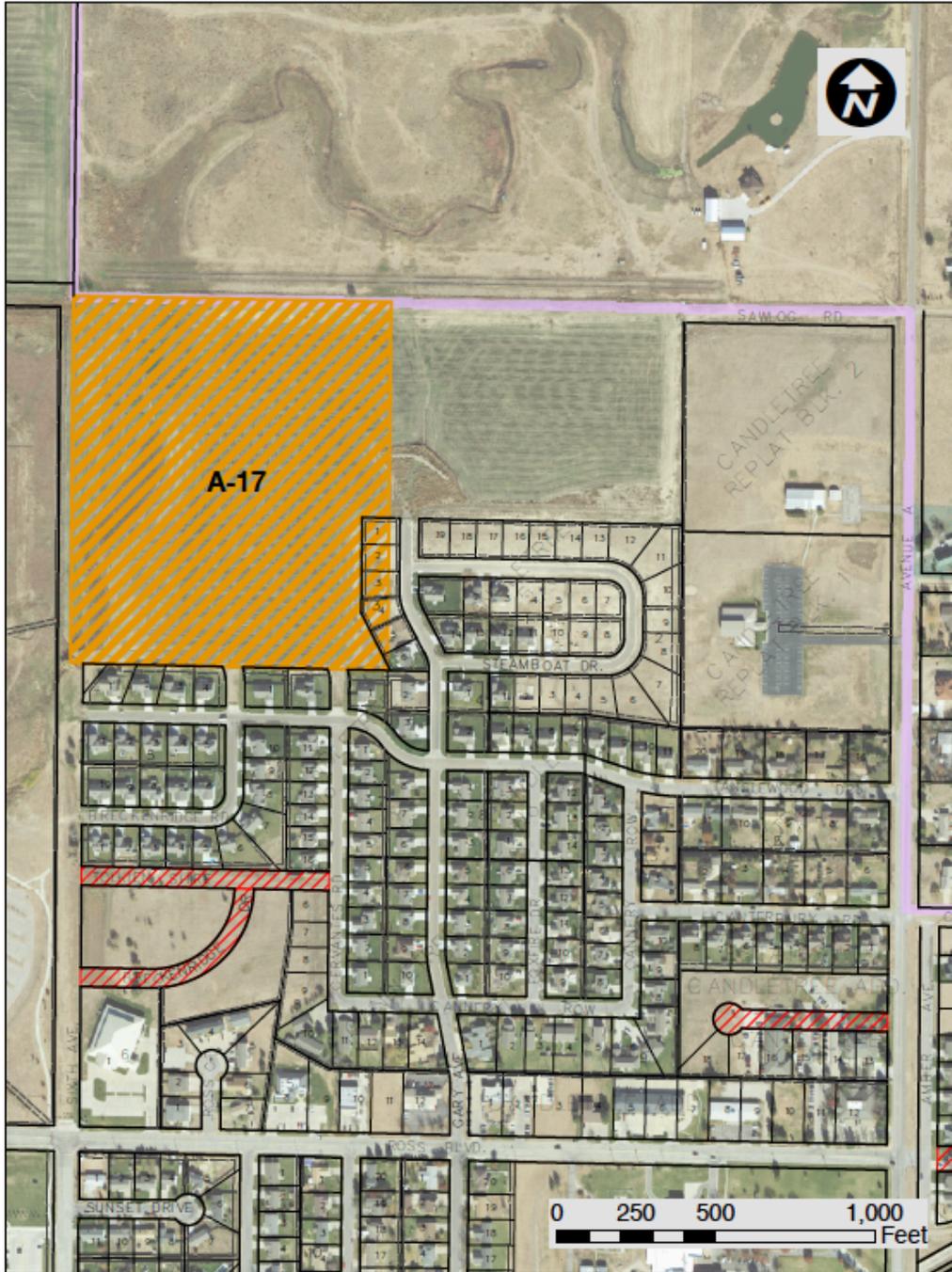
Developer:
(Site Work and Infrastructure) Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801

Individuals with Specific Interest: Volz Builders, LLC Members
Timothy E. Volz
11170 Kliesen
Dodge City, KS 67801

6. The Governing Body of the City entered into a Development Agreement with Volz Builders, LLC, a Kansas limited liability corporation, (the “Developer”) in September of 2016. The Development Agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the Developer and financial and administrative support from the City. The complete Development Agreement is attached hereto as **Exhibit C**.
7. The City’s Finance Director conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue provided by the Developer, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached hereto as **Exhibit B**. The analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support financing the public infrastructure. The revenue stream is compared to the estimated debt service of any bonds needed to finance the project. The estimated costs of the improvements and the costs of the financing is compared to the estimated revenue stream. The estimates indicate that the estimated revenue realized from the project would not be adequate to pay the costs of the public infrastructure.

DEVELOPMENT PLAN - EXHIBIT A

**MAP OF THE VOLZ BUILDERS, LLC – CANDLETREE 7
RURAL HOUSING IMPROVEMENT DISTRICT**



DEVELOPMENT PLAN - EXHIBIT B
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

Candletree Addition, Unit 7

Cost of Infrastructure Improvements

1,298,000
 Annual Payments assuming 4% for 15 years 116,743.55
 Annual Payments assuming 4% for 13 years 129,986.56

1,751,153.25
 1,689,825.28

Current Value	Property Class	Mill Levy	Estimated Value	Property Class	Mill Levy	Est. Property Tax	Less State 1.5 Mills	Less USD 20 Mills	Property Tax Less Amt. Not Eligible	Annual Increment Tax	Annual Cumulative	Year 1	Year 2	Year 3	Year 4	Year 5	Future Years	Total for Life of Project	
2,600	30.00%	187.888	146.55																

Current Property Tax

Land - Candletree Addition, Unit 5

At 100% increment going to pay off infrastructure costs

Lot 1	Block 1	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	3,432.09	3,432.09	3,432.09	3,432.09	24,903.97	46,375.85	67,847.73	85,740.96	89,319.61	32,207.82	44,617.22
Lot 2	Block 1	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	7,010.74	7,010.74	7,010.74	7,010.74	28,482.62	49,954.50	71,426.38	88,162.32	92,898.26	32,207.82	46,522.40
Lot 3	Block 1	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	10,589.39	10,589.39	10,589.39	10,589.39	35,639.91	53,533.14	75,005.02	92,162.32	96,476.90	32,207.82	46,522.40
Lot 4	Block 1	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	14,168.03	14,168.03	14,168.03	14,168.03	39,218.56	57,111.79	78,583.67	95,123.32	99,476.90	32,207.82	46,522.40
Lot 1	Block 2	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	17,746.68	17,746.68	17,746.68	17,746.68	42,903.97	60,690.44	82,162.32	98,740.96	100,055.55	32,207.82	46,522.40
Lot 2	Block 2	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	21,325.33	21,325.33	21,325.33	21,325.33	44,822.62	62,609.11	84,080.98	100,621.32	103,634.20	32,207.82	46,522.40
Lot 3	Block 2	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	24,903.97	24,903.97	24,903.97	24,903.97	48,822.62	66,609.11	88,080.98	104,621.32	107,212.84	32,207.82	46,522.40
Lot 4	Block 2	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	28,482.62	28,482.62	28,482.62	28,482.62	52,402.27	70,188.56	91,660.44	108,101.32	110,634.20	32,207.82	46,522.40
Lot 1	Block 3	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	32,061.27	32,061.27	32,061.27	32,061.27	64,022.54	81,808.83	103,280.70	120,021.32	122,554.20	32,207.82	46,522.40
Lot 2	Block 3	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	35,639.91	35,639.91	35,639.91	35,639.91	71,279.82	89,065.11	110,536.98	127,277.32	130,000.20	32,207.82	46,522.40
Lot 3	Block 3	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	39,218.56	39,218.56	39,218.56	39,218.56	78,437.12	96,222.41	117,694.28	134,435.32	137,158.20	32,207.82	46,522.40
Lot 4	Block 3	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	42,797.21	42,797.21	42,797.21	42,797.21	85,594.42	103,378.71	124,850.58	141,591.32	144,314.20	32,207.82	46,522.40
Lot 1	Block 4	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	46,375.85	46,375.85	46,375.85	46,375.85	92,751.70	110,537.00	132,008.87	148,749.60	151,472.48	32,207.82	46,522.40
Lot 2	Block 4	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	49,954.50	49,954.50	49,954.50	49,954.50	99,909.00	117,694.30	139,166.17	155,906.90	158,629.78	32,207.82	46,522.40
Lot 3	Block 4	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	53,533.14	53,533.14	53,533.14	53,533.14	107,066.28	124,851.57	146,323.44	163,064.17	165,787.05	32,207.82	46,522.40
Lot 4	Block 4	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	57,111.79	57,111.79	57,111.79	57,111.79	114,223.58	132,008.87	153,480.74	170,221.47	172,944.35	32,207.82	46,522.40
Lot 1	Block 5	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	60,690.44	60,690.44	60,690.44	60,690.44	121,380.88	139,166.17	160,638.04	177,378.77	180,101.65	32,207.82	46,522.40
Lot 2	Block 5	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	64,269.08	64,269.08	64,269.08	64,269.08	128,538.16	146,323.44	167,795.31	184,536.04	187,258.92	32,207.82	46,522.40
Lot 3	Block 5	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	67,847.73	67,847.73	67,847.73	67,847.73	135,695.46	153,480.74	174,952.61	191,693.34	194,416.22	32,207.82	46,522.40
Lot 4	Block 5	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	71,426.38	71,426.38	71,426.38	71,426.38	142,852.76	160,638.04	182,109.91	198,850.64	201,573.52	32,207.82	46,522.40
Lot 1	Block 6	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	75,005.02	75,005.02	75,005.02	75,005.02	150,010.04	167,795.31	189,267.18	206,007.91	208,730.79	32,207.82	46,522.40
Lot 2	Block 6	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	78,583.67	78,583.67	78,583.67	78,583.67	157,167.34	175,002.63	196,474.50	213,215.23	215,938.11	32,207.82	46,522.40
Lot 3	Block 6	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	82,162.32	82,162.32	82,162.32	82,162.32	164,324.64	182,109.91	203,581.78	220,322.51	223,045.39	32,207.82	46,522.40
Lot 4	Block 6	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	85,740.96	85,740.96	85,740.96	85,740.96	171,481.92	189,267.18	210,739.05	227,479.78	230,202.66	32,207.82	46,522.40
Lot 1	Block 7	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	89,319.61	89,319.61	89,319.61	89,319.61	178,639.22	196,474.50	217,946.37	234,687.10	237,410.00	32,207.82	46,522.40
Lot 2	Block 7	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	92,898.26	92,898.26	92,898.26	92,898.26	187,796.52	205,630.00	227,101.87	243,842.60	246,565.48	32,207.82	46,522.40
Lot 3	Block 7	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	96,476.90	96,476.90	96,476.90	96,476.90	194,953.80	213,785.24	235,257.11	252,007.84	254,730.72	32,207.82	46,522.40
Lot 4	Block 7	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	100,055.55	100,055.55	100,055.55	100,055.55	202,109.10	220,264.34	241,736.21	258,486.94	261,209.82	32,207.82	46,522.40
Lot 1	Block 8	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	103,634.20	103,634.20	103,634.20	103,634.20	207,268.40	225,423.64	246,895.51	263,646.24	266,369.12	32,207.82	46,522.40
Lot 2	Block 8	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	107,212.84	107,212.84	107,212.84	107,212.84	214,425.64	232,580.88	254,052.75	270,803.48	273,526.36	32,207.82	46,522.40
Lot 3	Block 8	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	110,791.49	110,791.49	110,791.49	110,791.49	221,987.98	240,143.22	261,615.09	278,365.82	281,088.70	32,207.82	46,522.40
Lot 4	Block 8	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	114,370.14	114,370.14	114,370.14	114,370.14	229,544.28	247,699.52	269,171.39	285,922.12	288,645.00	32,207.82	46,522.40
Lot 1	Block 9	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	117,948.79	117,948.79	117,948.79	117,948.79	237,099.98	255,255.22	276,727.09	293,477.82	296,200.70	32,207.82	46,522.40
Lot 2	Block 9	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	121,527.44	121,527.44	121,527.44	121,527.44	244,655.68	262,810.92	284,282.79	301,033.52	303,756.40	32,207.82	46,522.40
Lot 3	Block 9	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	125,106.09	125,106.09	125,106.09	125,106.09	252,211.92	270,367.16	291,839.03	308,589.76	311,312.64	32,207.82	46,522.40
Lot 4	Block 9	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	128,684.74	128,684.74	128,684.74	128,684.74	259,768.16	277,923.40	299,395.27	316,146.00	318,868.88	32,207.82	46,522.40
Lot 1	Block 10	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	132,263.39	132,263.39	132,263.39	132,263.39	267,323.80	285,479.04	306,950.91	323,701.64	326,424.52	32,207.82	46,522.40
Lot 2	Block 10	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	135,842.04	135,842.04	135,842.04	135,842.04	274,879.94	293,034.18	314,506.05	331,257.38	333,980.26	32,207.82	46,522.40
Lot 3	Block 10	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	139,420.69	139,420.69	139,420.69	139,420.69	282,435.88	300,589.32	322,061.19	338,813.12	341,535.00	32,207.82	46,522.40
Lot 4	Block 10	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	142,999.34	142,999.34	142,999.34	142,999.34	290,000.02	308,144.46	329,609.55	346,368.86	349,091.70	32,207.82	46,522.40
Lot 1	Block 11	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	146,577.99	146,577.99	146,577.99	146,577.99	297,555.16	315,700.60	337,164.69	353,924.60	356,647.48	32,207.82	46,522.40
Lot 2	Block 11	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	150,156.64	150,156.64	150,156.64	150,156.64	305,110.30	323,255.74	344,719.77	361,479.50	364,202.38	32,207.82	46,522.40
Lot 3	Block 11	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	153,735.29	153,735.29	153,735.29	153,735.29	312,665.44	330,810.88	352,274.85	369,034.32	371,757.20	32,207.82	46,522.40
Lot 4	Block 11	185,000	11.50%	189.709	4.036.06	31.91	425.50	3,578.65	157,313.94	157,313.94	157,313.94	157,313.94	320,220.58	338,366.02	360,030.00	377,589.14	380,312.02	32,207.82	46,522.40
Lot 1	Block 12	185,000	11.50%	189.709	4.036.06														

DEVELOPMENT PLAN - EXHIBIT C
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”), entered into this 6th day of September, 2016, by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation, (the “City”), and **VOLZ BUILDERS, LLC**, a Kansas limited liability corporation, with its principal place of business in Dodge City, Kansas (the “Developer”).

RECITALS

- A. **WHEREAS**, the City and the Developer (the “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of single-family residential development to be known as “Candletree 7” (the “Development”); and,
- B. **WHEREAS**, the Developer is the titled owner of real property located within the boundaries of the City and described in *Exhibit A*, attached hereto and incorporated herein by reference (the “Property”); and,
- C. **WHEREAS**, the Developer desires to develop the Property by construction of single-family residences and all related internal infrastructure improvements, all as more fully described herein; and,
- D. **WHEREAS**, the City has determined that the construction of the Development will foster the economic development of the City and the surrounding area of Ford County, Kansas; and,
- E. **WHEREAS**, the Parties hereto are authorized to enter into this Agreement and to complete the responsibilities set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 Definitions.** As used in this Agreement, the following words and terms shall have the meaning set forth below:

“**Agreement**” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

“**City**” means the City of Dodge City, Kansas.

“**Concept Site Plan**” means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to the City, attached hereto as *Exhibit C* and incorporated herein by reference, depicting the conceptual program for construction of the Development Project and the Public Improvements.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

“**Developer**” means Volz Builders, LLC, a Kansas limited liability corporation, with its principal place of business in Dodge City, Kansas, or its permitted successors or assigns in interest.

“**Development Area**” means the collective areas described in *Exhibit B* attached hereto and incorporated herein by this reference.

“**Development Project**” means construction of not less than thirty (30) quality residences in the Development Area in accordance with the Concept Site Plan.

“**External Infrastructure Improvements**” means the extension of sanitary sewer from an existing sewer located adjacent to the Iron Rd. Right-of-Way (R/W) to the Development Area and the extension of the City water from the present location to the Development Area.

“**Governing Body**” means the City Commission of Dodge City, Kansas.

“**Internal Infrastructure Improvements**” means the water, sanitary sewer, electric, storm sewer, storm water detention, street, street lighting, sidewalks and all other public infrastructure improvements necessary for the Development and located within the boundaries of the Development Area, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for the Development, all as more specifically described on *Exhibit D* attached hereto and incorporated herein by this reference.

“**Material Change**” shall mean any change in the Concept Site Plan that significantly affects the nature of the Public Improvements, the number of Units, or increases/decreases the cost of the Development Project by Twenty-Five Thousand Dollars (\$25,000.00) or more for each change.

“**Mayor**” means the Mayor of Dodge City, Kansas or his/her duly authorized agent.

“**Plans and Specifications**” means the plans and specifications for the Public Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to the City.

“Project Costs” means all costs associated with the completion of the Public Improvements, and all associated legal, engineering and other soft costs, all as described on the cost estimates set forth on *Exhibit D* attached hereto and incorporated herein by this reference.

“Property” means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) on which the Development Project will be located, more specifically described in *Exhibit A* attached hereto and incorporated herein by this reference.

“Public Improvements” means the External and Internal Infrastructure Improvements.

“Related Party” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

“Rural Housing Incentive District” means a rural housing incentive district to be created by the City for the Development Project pursuant to the Kansas Rural Housing Incentive District Act.

“Substantial Completion” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that the Developer can occupy or utilize the Work for its intended purpose.

“Unit” means each individual single-family residence in the development.

“Work” means all work necessary to prepare the Property and to construct the Development Project and the Public Improvements, including; (1) demolition and removal of certain existing improvements located on the Property; (2) construction, reconstruction and/or relocation of utilities; (3) construction of not less than thirty (30) single-family residential structures, including surface parking facilities, and screening and site landscaping on the Property, as described in the Concept Site Plan; and (4) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II

RURAL HOUSING INCENTIVE DISTRICT

- 2.1 Preliminary Resolution.** The Governing Body has heretofore adopted Resolution No. 2016-11 (the “Resolution”) on April 4, 2016, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in the City and declaring an intent to establish Rural Housing Incentive Districts within the City, which would include the Property.
- 2.2 Department of Commerce Finding.** Pursuant to the Resolution, the City caused to be prepared a Housing Needs Analysis and forwarded the same, along with the Resolution, to the Kansas Secretary of Commerce. On May 10, 2016, the Kansas Secretary of Commerce issued a letter to the City making certain findings required by the Rural Housing Incentive District Act, and approved the City’s ability to establish a Rural Housing Incentive District.
- 2.3 Further Proceedings Regarding Special Assessments.** Developer has petitioned the City for special assessment financing for infrastructure improvements as reflected in *Exhibit D*. Said special assessment charges will be eligible costs to be paid by Rural Housing Incentive District incremental proceeds.
- 2.4 Further Proceedings Regarding the Rural Housing Incentive District Act.** The City has caused to be prepared a Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, adopted a resolution calling a public hearing relative to such Development Plan, conducted a public hearing, and will pass an Ordinance approving the Development Plan, this Agreement, establish a Rural Housing Incentive District that includes the Property and adopt a Resolution establishing a benefit district for the financing of certain internal improvements within the Property. The Rural Housing Incentive District will be deemed to be established at the time said Ordinance is passed by the Governing Body. The Parties acknowledge that the creation of the Rural Housing Incentive District is subject to nullification in the manner set forth in K.S.A. 12-5246.

ARTICLE III

CONSTRUCTION OF THE PROJECT AND INTERNAL INFRASTRUCTURE IMPROVEMENTS

- 3.1 Development Project Construction Schedule.** The Developer shall commence construction of the Development Project and Public Improvements within the Development Area, not more than sixty (60) days after the Rural Housing Incentive District ordinance is passed by the Governing Body. The Developer will diligently pursue Substantial Completion of the Development Project.

- a Modifications to the Development Project. The Parties acknowledge that due to economic conditions the scope of the Development Project and the amount of real estate included within any Development Area may be modified prior to and/or during the construction of such Development Project. Developer shall notify the City at least thirty (30) days in advance of any proposed Material Change of the Development Project or Development Area, as well as the factual basis necessitating the proposed Material Change.

3.2 Construction of the Development Project. The Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans, on file at City Hall.

3.3 Concept Site Plan. The Developer, in coordination with the City and at the cost of the City, has had prepared a Concept Site Plan and the same is hereby approved by the Parties. Either party shall promptly notify the other in writing of any proposed Material Changes to the Concept Site Plan at least thirty (30) days prior to the implementation of any such Material Change, including a description of the Material Change and reasons therefore. During the progress of the Work, the Developer may make changes to the Concept Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be necessary or desirable in the sole determination of the Developer to enhance the economic viability of the Development Project provided, however, that the Developer may not make any Material Changes to the Public Improvements or reduce the number of Units on the Concept Site Plan without the advance written consent of the City.

3.4 Construction Public Improvements. The Developer and the City shall be financially responsible for the Public Improvements as delineated on *Exhibit D*. The Developer shall allow the City to contract with and direct the work of an agreed upon contractor to construct portions of the Public Improvements. The Developer and the City shall assure that their respective Public Improvements are completed in a good and workmanlike manner in accordance with the Plans and Specifications approved by the City consistent with the construction of the Development Project so that the Substantial Completion of the Public Improvements associated with the Development Project shall be completed on or before Substantial Completion of the Development Project.

- a **Acquisition of Easements, Permits.** The Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the External or Internal Infrastructure Improvements and the City will cooperate with the Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements shall be considered a Project Cost. The City shall cooperate with the Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.

- b **Construction Contracts; Insurance.** Each party may enter into one or more construction contracts to complete the Work for the Public Improvements. Prior to the commencement of construction of the Public Improvements, each Party shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage as provided in **Section 5.8** hereof and shall deliver evidence of such insurance to the City. Each Party shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Public Improvements or part thereof, if such contract relates to less than all of the Internal Infrastructure Improvements. If the Developer serves as general contractor for the Internal Infrastructure Improvements, the Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

- c **Certification of Substantial Completion.** Promptly after Substantial Completion of the Work with respect to the Public Improvements, or a phase thereof, in accordance with the provisions of this Agreement, the Developer will furnish to the City a Certificate of Substantial Completion in the form attached hereto as **Exhibit E**. The City shall, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion. Each Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such thirty (30) day period after delivery to the City of each Certificate of Substantial Completion, the City furnishes to the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. At Substantial Completion of the Public Improvements, the Developer will dedicate to the City, and the City will accept, title to the Internal Infrastructure Improvements designated on **Exhibit D**. Following said dedication, the City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and shall maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar public improvements in the City. Notwithstanding the foregoing, the Developer may, at its sole discretion and expense, enhance the maintenance or operation of the Internal Infrastructure Improvements for the betterment of the Development Project.

ARTICLE IV

FINANCING OBLIGATIONS

4.1 Financing of Public Improvements. The costs of the Public Improvements shall be allocated between the Developer and the City as set out in **Exhibit D**. The City agrees to finance a portion of the Developer's share of the Internal Infrastructure costs through the issuance of general obligation special assessment bonds (the "Bonds") as indicated on **Exhibit D** and as authorized by Resolution 2016-20. The City shall

deposit the amounts received by the City, pursuant to K.S.A. 12-5250(b)(2)(A) (the “Increment”) in a special assessment bond obligation account (the “Assessment Account”). Funds from said Assessment Account shall be used to pay all or a portion of the principle and interest on the Bonds and to reimburse the Developer for all or a portion of other eligible costs of Internal Infrastructure Improvements not covered by the Bonds.

- a Funds from the Assessment Account shall be accrued and disbursed in accordance with the following guidelines and in the time and manner following:
 - i The Developer shall be responsible for and shall upon request reimburse the City for any and all funds advanced by the City from accounts other than the Assessment Account and applied to payment of principle and interest on said Bonds. Said reimbursement if requested shall be made by the Developer within thirty (30) days of receipt from the City of written request for payment accompanied by documentation of such advance payments;
 - ii The City shall apply the Increment payments received (1) to reimbursement to the City of any non-reimbursed advanced Bond payments; (2) to a Bond payment reserve in an amount equal to two annual Bond payments; (3) to annual Bond payments currently due; and (4) to reimbursement to the Developer for payments made by the Developer pursuant to paragraph (1) above to reimburse the City for advance payments made by the City, and/or to reimburse the Developer for other eligible Internal Infrastructure Improvement costs incurred by the Developer and not paid from the Bond proceeds.
 - iii Once all Bond obligations have been fully paid and all reimbursable costs to the Developer have been fully satisfied and the Project completed the Assessment Account shall be closed and all future Increments shall be disbursed pursuant to the provisions of K.S.A. 12-5250(b)(2)(B).
- b Payments due to the Developer, if any, shall be made within thirty (30) days following the annual Bond Payment by the City beginning in 2016 and continuing until such time as the General Obligation Bonds and eligible Developer Financed Project Costs in accordance with **Exhibit D** have been fully reimbursed to the Developer, but not to exceed fifteen (15) years from the date of the establishment of the Rural Housing Incentive District. City shall have no liability and/or responsibility to the Developer for any payment greater than the amounts received from the Ford County Treasurer as mandated in K.S.A. 12-5250(b)(2)(A). The Developer shall be responsible for any bond payment or portion thereof not covered by the payment made from the Assessment Account.

ARTICLE V

GENERAL PROVISIONS

5.1 City's Right to Terminate. In addition to all other rights of termination as provided herein, the City may terminate this Agreement at any time if the Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from the City of such default or breach.

5.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, the Developer may terminate this Agreement at any time if the City defaults in or breaches any material provision of this Agreement (including any City default under Article IV hereof) and fails to cure such default or breach with thirty (30) days after receipt of written notice from the Developer of such default or breach.

5.3 Successors and Assigns.

- a This Agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.
- b Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after completion of the Development Project, whereupon the Party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although prior to Substantial Completion of the Improvements to such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, however, that the buyer, transferee or assignee shall be financially solvent as demonstrated to the City.
- c Until Substantial Completion of the Development Project has occurred, the obligations of the Developer under this Agreement may not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by the Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project, all in accordance with this Agreement. Notwithstanding the foregoing, the Developer may be permitted to subcontract the construction of any portion of the Development Project except for Public Improvements without the consent of City as long as the Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with, (a) the right of the Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in this Agreement to secure loans,

advances or extensions of credit to finance or from time to time refinance all or any part of the Development Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of the Developer to assign the Developer's rights, duties and obligations under this Agreement to a Related Party; or (c) the right of the Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project; provided that in each such event the Developer named herein shall remain liable hereunder for the Substantial Completion of the Development Project, and shall be released from such liability hereunder only upon Substantial Completion of the Development Project.

5.4 Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) shall, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and thereupon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the Rural Housing Incentive District. For purposes of this Section, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same. Prior to instituting any legal proceedings after an event of default has been noticed and no cure has occurred, the Parties agree to attempt to resolve the dispute through non-binding mediation. In the event such mediation is not successfully completed within forty-five (45) days following the expiration of any period for cure, the aggrieved Party may then immediately institute legal proceedings against the breaching Party.

5.5 Force Majeure. Neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control,

including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by the Developer, and further provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

5.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first-class mail, postage prepaid, or delivered personally,

a In the case of the Developer, to:

Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801
Attention: Tim Volz
Phone: (620) 225-3127

b In the case of the City, to:

City of Dodge City, Kansas
806 N. Second Avenue
Dodge City, KS 67801
Attention: City Clerk
Phone: (620) 225-8100
Fax: (620) 225-8144

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this section.

5.7 Conflict of Interest. No member of the Governing Body or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Development, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. The City represents to the Developer that no such conflicts of interest exist as of the date hereof.

5.8 Insurance; Damage or Destruction of Development Projects.

- a The Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of the City, shall furnish the City with proof of payment of premiums on:
 - i Builder's Risk insurance, written on the so called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of the City shall be protected in accordance with a clause in form and content satisfactory to the City; and,
 - ii Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Five Million Dollars (\$5,000,000.00) for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
 - iii Workers compensation insurance, with statutorily required coverage.
- b The policies of insurance required pursuant to clauses (i) and (ii) above shall be in form and content reasonably satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with a general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policy of insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this Section shall name City as an additional insured. The Developer shall deliver to the City evidence of all insurance to be maintained hereunder.

5.9 Inspection. The Developer shall allow authorized representatives of the City access to the Work site from time to time upon reasonable advance notice, which notice is in accordance with its normal practices with respect to inspection of construction projects in the City, prior to the completion of the Work for reasonable inspection thereof. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

5.10 Choice of Law. This Agreement shall be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

5.11 Entire Agreement: Amendment. The Parties agree that this Agreement and the Development Plan constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

5.12 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instruments.

5.13 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

5.14 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

5.15 Legal Actions. If a third party brings an action against the City, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this Agreement, or the ordinance approving this Agreement, the Developer may, at the Developer's option but only with the City's consent, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which the Developer has assumed the defense) with counsel of the Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City throughout the course of any such action and Developer shall pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City shall be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City shall be paid by City.

5.16 Release and Indemnification. The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of **subsection 5.16(g)** of this Agreement.

- a Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors shall

not be liable to the Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.

- b The Developer releases from, agrees to indemnify and hold harmless the City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that the City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorney fees, except for those matters arising out of the willful and/or wanton negligence of the City and its Governing Body members, officers, agents, servants and employees.
- c The City and its Governing Body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of the City and its Governing Body members, officers, agents, servants and employees.
- d All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.
- e No official, employee or representative of the City shall be personally liable to the Developer in the event of a default or breach by any Party to this Agreement.
- f The Developer releases from and covenants and agrees that the City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its Governing Body members, officers, employees, agents and independent contractors, harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of the Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance

by the Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of the Developer or its agents in connection with or relating to the Development Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly out of the willful and/or wanton negligence of the City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by the City following termination of this Agreement as the Development Project or portion thereof.

- g Notwithstanding anything to the contrary in this Agreement, including but not limited to the provisions related to indemnification and release set out in this Section, the Developer shall have no obligation to indemnify the City, or any other Party referenced in this Agreement, unless the claim for which indemnity is sought is actually covered by the insurance required by **Section 5.8** of this Agreement and the Developer shall hereby be released for any and all claims otherwise referenced in this Section that are not actually covered by the insurance policies required by **Section 5.8** of this Agreement.

5.17 Cost of the Legal Fees. Upon execution of this Agreement Developer shall reimburse the City for all legal and professional costs, fees and expenses incurred by the City with regard to the preparation of this Agreement and any and all other Ordinances, Resolutions or other documents necessary for implementation of the Rural Health Incentive District as well as for representation and appearances of legal counsel at any hearings or proceedings required to implement the Rural Housing Incentive District or the Project. All such reimbursement paid by the Developers shall be considered Project Costs.

5.18 Survival. Notwithstanding the expiration, termination or breach of this Agreement by either Party, the agreements contained in Section 5.16 of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by the Parties hereto.

ARTICLE VI

REPRESENTATIONS OF THE PARTIES

6.1 Representations of City. The City hereby represents and warrants that to the best of its collective knowledge and belief it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will

be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

6.2 Representations of Developer. The Developer hereby represents and warrants it has full corporate power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF DODGE CITY, KANSAS

By: _____
Rick Sowers, Mayor

Dated: September 6, 2016

ATTEST: (SEAL)

Nannette Pogue, City Clerk

VOLZ BUILDERS, LLC

By: _____
Tim Volz

Dated: September 6, 2016

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

- Exhibit A Property Description
- Exhibit B Map of Rural Housing Improvement District Boundaries for Candletree 7 Development Project
- Exhibit C Candletree 7 Site Development Plan
- Exhibit D Eligible Costs for Candletree 7 Development Project
- Exhibit E Certification of Substantial Completion Form

EXHIBIT A

PROPERTY DESCRIPTION

BEGINNING AT THE NORTHWEST CORNER LOT 1, BLOCK 3, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S $00^{\circ}26'13''$ W 301.14 FEET TO THE WESTERLY CORNER OF LOT 4, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S $27^{\circ}23'20''$ E 203.98 FEET TO THE SOUTHWEST CORNER OF LOT 6, CANDLETREE ADDITION, UNIT 5 AND THE NORTH LINE OF CANDLETREE ADDITION #4, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE N $88^{\circ}40'58''$ W 1002.23 FEET ALONG THE NORTH LINE OF CANDLETREE ADDITION #4 TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 14; THENCE N $00^{\circ}36'03''$ E 742.06 FEET; THENCE S $88^{\circ}40'58''$ E 367.02 FEET; THENCE S $01^{\circ}09'11''$ W 160.00 FEET; THENCE S $88^{\circ}40'58''$ E 449.04 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 48.51 FEET, CHORD BEING N $75^{\circ}52'37''$ E 47.92 FEET; THENCE N $60^{\circ}26'14''$ E 13.21 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET, AN ARC DISTANCE OF 78.54 FEET, CHORD BEING N $75^{\circ}26'13''$ E 77.65 FEET; THENCE S $89^{\circ}33'47''$ E 137.78 FEET; THENCE S $00^{\circ}26'13''$ W 145.30 FEET; THENCE N $88^{\circ}33'14''$ W 179.82 FEET TO THE POINT OF BEGINNING, CONTAINING 14.27 ACRES.

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR CANDLETREE 7 DEVELOPMENT PROJECT**

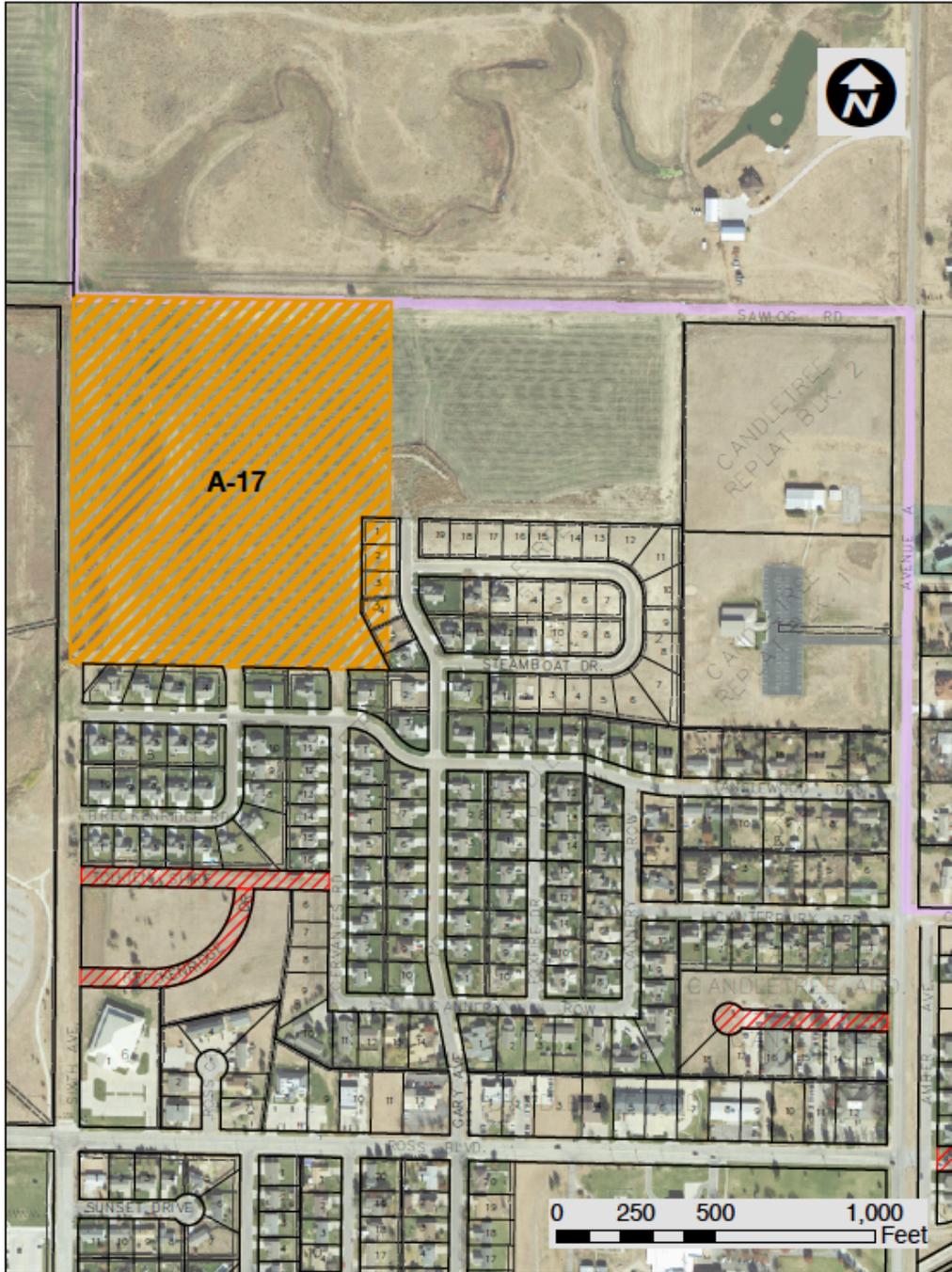


EXHIBIT C
CANDLETREE 7 SITE DEVELOPMENT PLAN

OWNERS CERTIFICATE:

THE UNDERSIGNED, TIMOTHY E. VOLZ AND JACKIE LEE VOLZ, HEREBY CERTIFIES THAT THEY ARE CAUSED TO BE LAID OUT AND PLATTED A TRACT OF LAND TO BE CALLED "FINAL PLAT OF CANDLETREE, UNIT 7" AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, WHICH INCLUDES PORTIONS OF THE FOLLOWING: A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 26 SOUTH, RANGE 25 WEST OF THE SIXTH PRINCIPAL MERIDIAN, FORD COUNTY, KANSAS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER LOT 1, BLOCK 3, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 00°26'13" W 301.14 FEET TO THE WESTERLY CORNER OF LOT 4, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 27°23'20" E 203.98 FEET TO THE SOUTHWEST CORNER OF LOT 6, CANDLETREE ADDITION, UNIT 5 AND THE NORTH LINE OF CANDLETREE ADDITION #4, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE N 88°40'58" W 1002.23 FEET ALONG THE NORTH LINE OF CANDLETREE ADDITION #4 TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 14; THENCE N 00°36'03" E 742.06 FEET; THENCE S 88°40'58" E 367.02 FEET; THENCE S 01°09'11" W 160.00 FEET; THENCE S 88°40'58" E 449.04 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 48.51 FEET, CHORD BEING N 75°52'37" E 47.92 FEET; THENCE N 60°26'14" E 13.21 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET, AN ARC DISTANCE OF 78.54 FEET, CHORD BEING N 75°26'13" E 77.65 FEET; THENCE S 89°33'47" E 137.76 FEET; THENCE S 00°26'13" W 145.30 FEET; THENCE N 88°33'14" W 179.82 FEET TO THE POINT OF BEGINNING, CONTAINING 14.27 ACRES.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

THE UNDERSIGNED, AS SUCH OWNERS, DO HEREBY STATE THAT ALL STREET RIGHT-OF-WAYS AS SHOWN ON THIS PLAT ARE HEREBY DEDICATED TO THE PUBLIC; AN EASEMENT AND LICENSE TO LOCATE, CONSTRUCT, OPERATE, INSPECT, REPLACE, AND MAINTAIN, OR AUTHORIZE THE LOCATION, CONSTRUCTION, OPERATION, INSPECTION, REPLACEMENT AND MAINTENANCE OF POLES, WIRES, CONDUITS, WATER, GAS, AND SEWER PIPES, REQUIRED DRAINAGE CHANNELS OR STRUCTURES; HARD AND IMPERVIOUS SURFACES; OR, OTHER STRUCTURES NECESSARY TO CARRY OUT THE FUNCTION OF THE EASEMENT, UPON THE AREA MARKED FOR EASEMENTS ON THIS PLAT, IS ALSO HEREBY DEDICATED TO THE PUBLIC; WHEN, AND IF, USED ON THIS PLAT, THE TERM "UTILITY" SHALL INCLUDE, BY WAY OF EXAMPLE, BUT NOT LIMITED TO, SEWER, WATER, GAS, ELECTRICITY, CABLE T.V. AND TELEPHONE MEANS, AND IF, USED ON THIS PLAT, THE TERM "TRAVEL" SHALL INCLUDE ALL FORMS OF TRAVEL, BY WHATEVER MEANS, UNLESS THE TERM IS LIMITED BY OTHER WORDS OR PHRASES, SUCH AS, "PEDESTRIAN TRAVEL", ETC. THE UNDERSIGNED ACKNOWLEDGES THAT PURSUANT TO K.S.A. 12-406, THE DEDICATION OF RIGHT-OF-WAYS AND EASEMENTS TO THE PUBLIC CONSTITUTES A CONVEYANCE THEREOF TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, IN TRUST, FOR THE USES NAMED, EXPRESSED OR INTENDED.

ZIMMER GROUP, LLC
PREVIOUS NAME: thezimmergroup, LLC

DON ZIMMER

STATE OF KANSAS
COUNTY OF FORD SS

BEFORE ME, A NOTARY PUBLIC, WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY KNOWN TO ME TO BE THE LEGAL PARTY WHO EXECUTED THE ABOVE AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT SAID PARTY EXECUTED THE SAME AS A FREE AND VOLUNTARY ACT AND DEED FOR THE PURPOSES SET FORTH.

IN WITNESS WHEREOF, I HAVE HEREUNTO PUT MY HAND AND SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

DODGE CITY ZONING BOARD:

THIS PLAT OF "FINAL PLAT OF CANDLETREE, UNIT 7" HAS BEEN SUBMITTED TO AND APPROVED BY THE DODGE CITY ZONING BOARD THIS _____ DAY OF _____, 2016.

CHAIRMAN, FRANK ROSE

SECRETARY, NATHAN LITRELL

REGISTER OF DEEDS CERTIFICATE
STATE OF KANSAS
COUNTY OF FORD SS

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF FORD COUNTY REGISTER OF DEEDS ON THIS _____ DAY OF _____, 2016 IN PLAT BOOK _____, PAGE _____, AND IS DULY RECORDED.

BRENDA POGUE, FORD COUNTY REGISTER OF DEEDS

TRANSFER RECORD CERTIFICATE:

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS ENTERED INTO THE TRANSFER RECORD ON THIS _____ DAY OF _____, 2016.

DEBBIE COX, FORD COUNTY CLERK

OWNER and SUB-DIVIDER:

Volz Builders
11170 Kliesen Street
Dodge City, Kansas 67801
Ph: 620-255-3127
Contact: Tim Volz

SURVEYOR:

SMH Consultants
Tim Sloan, P.S., President
2017 Vanesta Place, Suite 110,
Manhattan, KS 66503
PH: 785-776-0541

CITY APPROVAL
STATE OF KANSAS
CITY OF DODGE CITY

THE ABOVE AND FOREGOING DOCUMENT KNOWN AS "FINAL PLAT OF CANDLETREE, UNIT 7" TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, HAVING BEEN SUBMITTED TO THE GOVERNING BODY OF THE CITY OF DODGE CITY, FORD COUNTY, KANSAS AT THE REGULAR MEETING HELD ON THE _____ DAY OF _____, 2016, HAS BEEN EXAMINED AND CONSIDERED AND THE SAME IS HEREBY APPROVED THIS _____ DAY OF _____, 2016.

THE CITY OF DODGE CITY, KANSAS

JOYCE WARSHAW, MAYOR

NANNETTE POGUE, CITY CLERK

CERTIFICATION BY COUNTY SURVEYOR
STATE OF KANSAS
COUNTY OF FORD SS

THIS PLAT HAS BEEN EXAMINED THIS _____ DAY OF _____, 2016 FOR COMPLIANCE WITH THE REQUIREMENTS OF THE ACT CONCERNING LAND SURVEYS IN THE STATE OF KANSAS, K.S.A. 58-2005.

SIGNATURE _____

PRINT _____

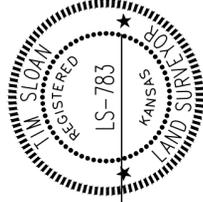
SURVEYOR CERTIFICATE:

I, TIM SLOAN, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM, BY PROFESSION, A LAND SURVEYOR, AND THAT THE PLAT OF "CANDLETREE, UNIT 7", AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION ON THE _____ DAY OF _____, 2016, AND THAT ALL MONUMENTS SHOWN HEREIN ACTUALLY EXIST AND THEIR POSITIONS ARE CORRECTLY SHOWN. THIS SURVEY MEETS THE KANSAS MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING OF A TRACT OF LAND WHICH INCLUDES PORTIONS OF THE FOLLOWING:

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 26 SOUTH, RANGE 25 WEST OF THE SIXTH PRINCIPAL MERIDIAN, FORD COUNTY, KANSAS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER LOT 1, BLOCK 3, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 00°26'13" W 301.14 FEET TO THE WESTERLY CORNER OF LOT 4, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 27°23'20" E 203.98 FEET TO THE SOUTHWEST CORNER OF LOT 6, CANDLETREE ADDITION, UNIT 5 AND THE NORTH LINE OF CANDLETREE ADDITION #4, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE N 88°40'58" W 1002.23 FEET ALONG THE NORTH LINE OF CANDLETREE ADDITION #4 TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 14; THENCE N 00°36'03" E 742.06 FEET; THENCE S 88°40'58" E 367.02 FEET; THENCE S 01°09'11" W 160.00 FEET; THENCE S 88°40'58" E 449.04 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 48.51 FEET, CHORD BEING N 75°52'37" E 47.92 FEET; THENCE N 60°26'14" E 13.21 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET, AN ARC DISTANCE OF 78.54 FEET, CHORD BEING N 75°26'13" E 77.65 FEET; THENCE S 89°33'47" E 137.76 FEET; THENCE N 88°33'14" W 179.82 FEET TO THE POINT OF BEGINNING, CONTAINING 14.27 ACRES.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.



TIM SLOAN, P.S.
PRESIDENT

Final Plat
**CANDLETREE,
UNIT 7**

an Addition, City of Dodge City,
Ford County, Kansas



4201B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
(785) 776-0541 • FAX 776-9760 • Email: tim@sloanandmeier.com
Project #1603DC4010 DD #TDS48

JUNE 2016

SHEET 2 OF 2

EXHIBIT D
ELIGIBLE COSTS FOR
CANDLETREE 7 DEVELOPMENT PROJECT

Internal Infrastructure (APAC) **
 Sanitary Sewer, Waterline, Street
 and Grading

Developer's Responsibility		City's Responsibility
Developer Financed	Financed Thru City Issued Special Assessment	Financed by City at Large
	\$1,298,000.00	
----- \$0.00	----- \$1,298,000.00	----- \$0.00

**Eligible RHID Costs such as Land costs, Gas Infrastructure, Electric Infrastructure
 may be added at project completion
 All Information is Based on Estimates, Final Application will be Based on Actuals

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of Volz Builders, LLC (the “Developer”), pursuant to Section 3.4.3 of the Development Agreement dated as of September 6, 2016 by and among the City of Dodge City, Kansas, and the Developer (the “Development Agreement), hereby certifies as follows. All capitalized terms used herein shall have the meaning attributable to such terms in the Development Agreement.

1. The Work with respect to the Internal Infrastructure Improvements in the Development Project is sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. The Work has been completed in a good and workmanlike manner.
3. There are no mechanic’s or materialmen’s liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for the Work which could form the basis of a mechanic’s, materialmen’s or other statutory lien against the Property have been paid in full, and within the past four (4) months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated:_____

VOLZ BUILDERS, LLC

By:_____

Name: Tim Voltz

Title:

PROCLAMATION FOR CONSTITUTION WEEK

WHEREAS, September 17, 2016, marks the two hundred twenty-ninth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week; and

WHEREAS, the Daughters of the America Revolution is a women's service organization dedicated to promoting historic preservation, education, patriotism and honoring the patriots of the Revolutionary War.

NOW, THEREFORE, by virtue of the authority vested in me as Mayor of the City of Dodge City, do hereby proclaim the week of September 17-23 as

Constitution Week

in Dodge City and ask our citizens to reaffirm the ideals of the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Dodge City to be affixed, this 6th day of September, 2016.

Rick Sowers, Mayor

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, August 15, 2016

7:00 p.m.

MEETING #5044

CALL TO ORDER

ROLL CALL: Mayor Joyce Warshaw, Commissioners Brian Delzeit, Rick Sowers, and Jan Scoggins. Commissioner Kent Smoll was reported absent .

INVOCATION by Chaplain Shannon Sanchez of Ft Dodge

ELECTION OF Mayor and Vice Mayor

Commissioner Joyce Warshaw moved to nominate Rick Sowers as Mayor. Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.

Commissioner Brian Delzeit moved to nominate Kent Smoll as Vice Mayor. Commissioner Rick Sowers seconded the motion. The motion carried 4-0.

Mayor Rick Sowers presided over the meeting.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Mayor Rick Sowers opened the Public Hearing on the 2017 Budget. The Budget was presented by City Finance Director/City Clerk, Nannette Pogue. Jeff Forrest, Board Chairman of the Library commented on the services that the Library provides the community and thanked the City Commission for levying the mill levy that funds the Library. Dwayne Donaldson spoke about the YMCA and thanked the City for supporting that program.

Commissioner Jan Scoggins moved to close the public hearing. Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.

PETITIONS & PROCLAMATIONS

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, August 1, 2016;
2. Appropriation Ordinance No. 16, August 15, 2016;
3. Cereal Malt Beverage License:

Commissioner Brian Delzeit moved to approve the Consent Calendar as presented; Commissioner Jan Scoggins seconded the motion. The motion carried 4-0.

ORDINANCES & RESOLUTIONS

Ordinance No. 3634: An Ordinance of the City of Dodge City, Kansas Amending the Official Zoning Map of the City, Changing the Lots Located at 2800 N. 6th Avenue From R-3, Residential Higher Density, to CO, Commercial Office was approved on a motion by Commissioner Jan Scoggins. Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

NEW BUSINESS

1. Commissioner Brian Delzeit moved to approve the 2017 Budget. Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.
2. The base bid and the alternate 3rd floor for the ATSF Depot Buildout was awarded to Conant Construction in the amount of 324,279; Building Solutions in the amount of 37,310; Wes Kan Electric in the amount of 49,995; Glassman in the amount of 144,237; and Phil's Floor Care in the amount of 38,300. Other elements of the bids were approved for an amount not to exceed 139,500 for a total of all bids not to exceed 734,021. The City is eligible for 25% historical credits for the project. The bids listed and amounts not to exceed were approved on a motion by Commissioner Brian Delzeit. The motion was seconded by Commissioner Jan Scoggins. The motion carried 4-0.
3. The bid for the Heritage District Parking Lot Construction (Alternate #1, Concrete surface) from Building Solutions in an amount not to exceed 849,911 was approved on a motion by Commissioner Jan Scoggins; seconded by Commissioner Brian Delzeit. The motion carried 4-0.
4. The bid from Building Solutions in the amount of \$98,000 for the Metal Storage Building at United Wireless Arena was approved on a motion by Commissioner Joyce Warshaw; seconded by Commissioner Rick Sowers. The motion carried 3-1, with Brian Delzeit voting no.
5. The Bid from G & G in the amount of \$62,408 for Two (2) Full Size ½ Ton Crew Short Bed Trucks for the Utilities Department; the bid from Lewis Chevrolet in the amount of \$51,947 for one (1) 4WD¾ Ton extended Cab Truck with Utility Box for the Utilities

Department; and the bid from Lopp Motors in the amount of \$24,756 for One (1) 4WD ½ ton Standard Cab Pickup Truck for Engineering Department were approved on a motion by Commissioner Brian Delzeit. The motion was seconded by Commissioner Joyce Warshaw. The motion carried 4-0.

OTHER BUSINESS

City Manager, Cherise Tieben

- Offered condolences to Floris Jean Hampton in the loss of her husband Marvin;
- August 24, Penn Air will be in town;
- Staff will be working with SKC on a legislation platform. A meeting will be held on September 7 in Liberal.

Commissioner, Jan Scoggins

- Good to see Jane with the book club on High Plains Radio;
- She came upon a 1937 National Geographic with a whole section on Kansas. The part about Dodge City shows the sun dials which at that time were 30 years old.

Commissioner, Rick Sowers

- United Wireless arena is hosting several shows in the near future; Pepe Aguilar this week, Styx next week, a Mexican Ballet, an illusionist and Montgomery Gentry in September. Also announced was Martina McBride coming on November 18. There is a show for everybody. Thanked the Casino for their support.

Commissioner, Brian Delzeit

- Thanked all that helped with Dodge City Days; the City, the Convention and Visitors Bureau, Dodge City Roundup Rodeo; Chamber of Commerce and many, many others;
- Watch out for the school zones.

Mayor, Joyce Warshaw

- School starts for children this week on Wednesday.

Cherise Tieben, City Manager

- Thanked Nannette and Ernestor. They did a good job on the budget.

ADJOURNMENT

Commissioner Brian Delzeit moved to adjourn the meeting; Commissioner Joyce Warshaw seconded the motion. The motion carried 4-0.

ATTEST:

Mayor, Rick Sowers

Nannette Pogue, City Clerk

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of _____ Dodge City _____

SECTION 1 – LICENSE TYPE	
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required):			
Name of Corporation Dillon Stores, Div of Dillon Companies, Inc		Principal Place of Business 2700 E. 4th., P.O. Box 1608	
Corporation Street Address 2700 E. 4th., P.O. Box 1608		Corporation City Hutchinson	State KS
Date of Incorporation 05/13/1921		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name		Phone No.	
Residence Street Address		City	State
			Zip Code

SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Dillon's #1		Name Kroger Business License Dept	
Business Location Address 1700 N 14th St		Address P.O. Box 305103	
City Dodge City, KS	State KS	City Nashville, TN	State TN
Zip 67801		Zip 37230-5103	
Business Phone No. 620-225-6130		<input type="checkbox"/> Applicant owns the proposed business or special event location. <input type="checkbox"/> Applicant does not own the proposed business or event location.	
Business Location Owner Name(s)			

SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Age			
Name		Position	
Residence Street Address		City	State
			Zip Code
Date of Birth			
Spouse Name		Position	
Residence Street Address		City	State
			Zip Code
Age			

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City Kansas

SECTION 1 – LICENSE TYPE

Check One: New License Renew License Special Event Permit

Check One:

- License to sell cereal malt beverages for consumption on the premises.
 License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.

SECTION 2 – APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required): 004-474730212F-01

Name <u>Charles Taylor</u>	Phone No. <u>620 338-3881</u>	Date of Birth
Residence Street Address <u>111 McCasland</u>	City <u>Dodge City Ks</u>	Zip Code <u>67801</u>

Applicant Spousal Information

Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code

SECTION 3 – LICENSED PREMISE

Licensed Premise (Business Location or Location of Special Event)			Mailing Address (If different from business address)		
DBA Name <u>Taylor's Roadhouse #2</u>			Name		
Business Location Address <u>302 S 2nd Ave.</u>			Address		
City <u>Dodge City</u>	State <u>KS</u>	Zip <u>67801</u>	City	State	Zip
Business Phone No. <u>620-227-7271</u>			<input checked="" type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.		
Business Location Owner Name(s) <u>Charles Taylor</u>					

SECTION 4 – APPLICANT QUALIFICATION

I am a U.S. Citizen Yes No

I have been a resident of Kansas for at least one year prior to application. Yes No

I have resided within the state of Kansas for _____ years.

I am at least 21 years old. Yes No

I have been a resident of this county for at least 6 months. Yes No

Within 2 years immediately preceding the date of this application, neither I nor my spouse¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes:
 (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.

Yes Have No Have Not

My spouse has previously held a CMB license. Yes No

My spouse has never been convicted of one of the crimes mentioned above while licensed. Yes No

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City, Ks

SECTION 1 - LICENSE TYPE
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit
Check One: <input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.

SECTION 2 - APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): <u>004-202918375F-03</u>			
Name	Phone No.	Date of Birth	
<u>Eliseo Medrano</u>	<u>785-259-4861</u>	<u>7/6/68</u>	
Residence Street Address	City	Zip Code	
<u>1303 W Brier St</u>	<u>Dodge City KS</u>	<u>67801</u>	
Applicant Spousal Information			
Spouse Name	Phone No.	Date of Birth	
<u>Maria Elena Ortiz</u>	<u>785-259-4861</u>	<u>9/25/68</u>	
Residence Street Address	City	Zip Code	
<u>1303 W Brier St</u>	<u>Dodge City KS</u>	<u>67801</u>	

SECTION 3 - LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name	Name		
<u>El Rodeo Bar and Grill</u>			
Business Location Address	Address		
<u>102 W Wyatt Corp Blvd</u>			
City State Zip	City	State	Zip
<u>Dodge KS 67801</u>			
Business/Phone No.	<input type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.		
Business Location Owner Name(s)			

SECTION 4 - APPLICANT QUALIFICATION	
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>20</u> years.	
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of this county for at least 6 months.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse ¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes Have <input checked="" type="checkbox"/> No Have Not
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 - LICENSE TYPE	
Check One: <input checked="" type="checkbox"/> New License <input type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit	
Check One:	
<input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 - APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required):			
Name of Corporation <u>Osaki Sushi house inc</u>		Principal Place of Business <u>Dodge city</u>	
Corporation Street Address <u>2100 W WYATT EARP BLVD</u>		Corporation City <u>Dodge city</u>	State <u>KS</u>
Date of Incorporation		Articles of Incorporation are on file with the Secretary of State.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Resident Agent Name <u>QI PING LIN</u>		Phone No. <u>(505) 818-9098</u>	
Residence Street Address <u>1902 BARHAM</u>		City <u>DOJGE CITY</u>	State <u>KS</u>
		Zip Code <u>67801</u>	

SECTION 3 - LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name <u>OSAKI SUSHI HOUSE INC</u>		Name <u>Same</u>	
Business Location Address <u>2100 W WYATT EARP</u>		Address	
City <u>DOJGE CITY</u>	State <u>KS</u>	City	State
Zip <u>67801</u>		Zip	
Business Phone No. <u>620-227-5235</u>		<input checked="" type="checkbox"/> Applicant owns the proposed business or special event location.	
Business Location Owner Name(s) <u>QIPING LIN</u>		<input type="checkbox"/> Applicant does not own the proposed business or event location.	

SECTION 4 - OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK			
List each person and their spouse, if applicable. Attach additional pages if necessary.			
Name <u>JIN YOU</u>		Position <u>OWNER</u>	
Residence Street Address <u>1902 BARHAM</u>		City <u>DOJGE CITY</u>	State <u>KS</u>
Spouse Name <u>NO</u>		Date of Birth <u>6-20-77</u>	
Residence Street Address		Zip Code <u>67801</u>	
Name <u>QIPING LIN</u>		Position <u>OWNER</u>	
Residence Street Address <u>1902 BARHAM</u>		City <u>DOJGE CITY</u>	State <u>KS</u>
Spouse Name		Date of Birth <u>6-16-71</u>	
Residence Street Address		Zip Code <u>67801</u>	
Name		Position	
Residence Street Address		City	State
Spouse Name		Date of Birth	
Residence Street Address		Zip Code	

\$225.00

Memorandum

To: Cherise Tieben City Manager
From: Nannette Pogue
Date: August 23, 2016
Subject: Temporarily Allow Consumption of Alcoholic Beverages in Eisenhower Park
Agenda Item: Consent Calendar

Recommendation: I recommend a motion to allow the consumption of alcoholic beverages on a temporary basis for a private function at a City park.

Background: The City of Dodge City's ordinances has a prohibition against the sale, service or consumption of cereal malt beverages or alcoholic beverage on city property unless there is a specific ordinance exempting a location. The ordinance reads that certain city-owned property is exempted from this prohibition and other property be exempted as determined from time to time by duly adopted motion of the City Commission. We have had a request use Eisenhower Park by Mike Doll for an office event on September 23, 2016, from 5:00 to midnight. He has asked if the City would consider allowing the consumption of alcoholic beverages during the event at the park location.

Justification: The City has had similar requests in the past for allowing consumption or sale on city property and has granted this request at Eisenhower Park for the same kind of event. In the past, we have allowed it for a limited time period in a specific location with proper licensing. In this instance, since they will not be selling the beverages, there will be no additional licenses required. The ordinance allows the prohibition to be exempted upon motion of the City Commission. Upon approval by the City Commission, we will limit the time and require that the premises be cleaned.

Financial Considerations: None

Purpose/Mission: Work with the community for a safe and inviting environment.

Legal Considerations: Allowed by City Ordinance

Memorandum

*To: City Manager
City Commissioners*

From: Ray Slattery, Director of Engineering Services

Date: August 29, 2016

*Subject: 2015 Asphalt Street Projects
(ST 1501)*

Agenda Item: Consent Calendar

Recommendation: Approve Change Order No. 1 for 2015 Asphalt Street Projects.

Background: 2015 Asphalt Street Projects was approved on May 6, 2016.

Justification: Pavement Markings — There was a misunderstanding about what was required in this bid item. The Contractor only included temporary markings and not temporary and permanent pavement markings. City staff worked with the contractor and feel the new unit price of \$10,902.93 is acceptable. This is an increase of \$9,702.93. Even with the new unit price the Klotz Sand bid is still \$15,771.37 under the next bidder.

Financial Considerations: Change Order No. 1 is for an increase of \$9702.93.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With these improvements the City is preparing for the community's future and providing new possibilities for current and future citizens of our community.

Legal Considerations: N/A

Attachments: Change Order No. 1

Memorandum

*To: City Manager
City Commissioners*

From: Ray Slattery, Director of Engineering Services

Date: August 30, 2016

*Subject: 2015 Asphalt Street Projects
(ST 1501)*

Agenda Item: Consent Calendar

Recommendation: Approve Change Order No. 2 for 2015 Asphalt Street Projects.

Background: 2015 Asphalt Street Projects was approved on May 6, 2016.

Justification: Sub-Grade Repair— The underrun of Sub-Grade Repair. The reason for the underrun was due to the Contractor not having to repair the sub-grade on Gary Ave. This was a pay as needed item.

4" HMA Base Course— The overrun of 12 Ton of 4" HMA Base Course. The reason for the overrun is due to a difference between theoretical volumes and actual volumes measured and placed in the field.

2" HMA Surface Course— The overrun of 47 Ton of 2" HMA Surface Course. The reason for the overrun is due to a difference between theoretical volumes and actual volumes measured and placed in the field. This overrun was due to the wedging along East Comanche St.

Remove/Replace Curb and Gutter — The overrun of 11 L.F. of Rem./Repl. Curb & Gutter. The reason for the underrun is due to decisions made in the field during construction to remove and replace curb and gutter to either a full or half joint.

2 ½" HMA Surface Course — The overrun of 2 Ton of 2 ½" HMA Surface Course. The reason of this overrun is due to a small section of subgrade that was removed which called for the extra asphalt quantity..

Bid Alternate 2" HMA Surface Course— The overrun of 2 Toms 2" HMA Surface Course. The reason for the overrun is due to the difference between theoretical volumes and actual volumes measured and placed in the field.

Financial Considerations: Change Order No. 2 is for an increase of \$3517.00.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With these improvements the City is preparing for the community's future and providing new possibilities for current and future citizens of our community.

Legal Considerations: N/A

Attachments: Change Order No. 2

Memorandum

*To: City Manager
City Commissioners*
*From: Mollea Wainscott
Special Projects/Housing*
Date: 9/6/16
Subject: RHID
Agenda Item: Ordinance No. 3635

Recommendation: Staff recommends the approval of the Development Agreement between the City of Dodge City and CKR Properties One, LLC. The second action required is the approval of Ordinance 3635 which includes approval of the Ordinance and the Development Plan.

Background: In 2010, the City staff began working with developers interested in building multi-family and single family residential developments. Most developers were interested in utilizing the Rural Housing Incentive District program which provides assistance for various eligible costs such as infrastructure. The CKR Properties One, LLC development will provide one (1) twelve (12) unit resident senior living home licensed under the Kansas Department of Aging as a HOME PLUS designation facility with a market value of not less than One Million, Two Hundred Fifty Thousand Dollars (\$1,250,000.00).

Justification: Offering this incentive helps reduce the cost of construction for the developer which in turn allows projects to cash flow and become feasible. Without such incentives, projects appear to not cash flow in our market, deterring developers.

Financial Considerations: The County and the School District have no risk in this process; in addition, they would not have received the increment as the development would not have been feasible without the incentive.

Purpose/Mission: We value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: Development Agreement, Ordinance 3635 and Development Plan.

ORDINANCE NO. 3635

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (REFLECTION LIVING)

WHEREAS, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

WHEREAS, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

WHEREAS, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

WHEREAS, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and

WHEREAS, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development of housing and public facilities in the proposed district; and

WHEREAS, the City of Dodge City, Kansas (the “City”) has an estimated population of approximately 27,340, is located in Ford County, Kansas, which has an estimated population of approximately 33,848, and therefore constitutes a city as said term is defined in the Act; and

WHEREAS, the Governing Body of the City has performed a Housing Needs Analysis dated May 2015 (the “Needs Analysis”), a copy of which is on file in the office of the City Clerk; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2016-17 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of

such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated June 24, 2016, authorized the City to proceed with the establishment of a Rural Housing Incentive District pursuant to the Act (the “District”); and

WHEREAS, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed District in accordance with the provisions of the Act (the “Plan”); and

WHEREAS, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5244;
2. The existing assessed valuation of the real estate in the proposed District, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 6, 2016 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2016-19 which made a finding that the City is considering the establishment of the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provides a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 6, 2016 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on September 6, 2016, after due published and delivered notice in accordance with the provisions of the Act; and

WHEREAS, upon and considering the information and public comments received at the public hearing, the governing body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

THEREFORE, BE IT ORDAINED by the Governing Body of the City of Dodge City, Kansas as follows:

Section 1. Findings. The Governing Body hereby finds that due notice of the public hearing conducted September 6, 2016 was made in accordance with the provisions of the Act.

Section 2. Creation of Rural Housing Incentive District. A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property in the Development, an addition to the City of Dodge City, Ford County, Kansas:

Lot 2, Block 1, Trinity Subdivision, Dodge City, Ford County, Kansas

The boundaries of the District do not contain any property not referenced in Resolution No. 2016-19, which provided notice of public hearing on the creation of the District and adoption of the Plan.

Section 3. Approval of Development Plan. The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved.

Section 4. Adverse Effect on Other Governmental Units. If, within 30 days following the conclusion of the public hearing on September 6, 2016, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

- a. The Board of Education of U.S.D. No. 443 determines by resolution that the District will have an adverse effect on such school district; or
- b. The Board of County Commissioners of Ford County, Kansas, determines by resolution that the District will have an adverse effect on such county.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of Ford County or Unified School District No. 443.

Section 5. Reimbursement. The Act authorizes the City to reimburse the Developer for all or a portion of the costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of the Act.

Section 6. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

Section 7. Effective Date. This Ordinance shall be effective upon its passage by the Governing Body of the City of Dodge City, Kansas and publication one time in the official City newspaper.

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PASSED by the Governing Body of the City of Dodge City, Kansas and signed by the Mayor on September 6, 2016.

[SEAL]

Rick Sowers, Mayor

Nannette Pogue, City Clerk

Memorandum

*To: City Manager
City Commissioners*
*From: Mollea Wainscott
Special Projects/Housing*
Date: 9/6/16
Subject: RHID
Agenda Item: Ordinance No. 3636

Recommendation: Staff recommends the approval of the Development Agreement between the City of Dodge City and Volz Builders. The second action required is the approval of Ordinance 3636 which includes approval of the Ordinance and the Development Plan.

Background: In 2010, the City staff began working with developers interested in building multi-family and single family residential developments. Most developers were interested in utilizing the Rural Housing Incentive District program which provides assistance for various eligible costs such as infrastructure. The Volz Builders development will provide thirty (30) single-family residences with a market value of not less than \$175,000.00 each. The housing facilities will be constructed in Phases. The proposed single family units consist of three bedroom homes with garages comparable to the area.

Justification: Offering this incentive helps reduce the cost of construction for the developer which in turn allows projects to cash flow and become feasible. Without such incentives, projects appear to not cash flow in our market, deterring developers.

Financial Considerations: The County and the School District have no risk in this process; in addition, they would not have received the increment as the development would not have been feasible without the incentive. The City has minimal risk with this developer due to the issuances of general obligation bonds, and feel that the agreement lessens that risk. Should the developer not complete the full development, the developer will simply not receive the increment.

Purpose/Mission: We value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: Development Agreement, Ordinance 3636 and Development Plan.

ORDINANCE NO. 3636

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (CANDLETREE 7)

WHEREAS, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

WHEREAS, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

WHEREAS, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

WHEREAS, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and

WHEREAS, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development of housing and public facilities in the proposed district; and

WHEREAS, the City of Dodge City, Kansas (the “City”) has an estimated population of approximately 27,340, is located in Ford County, Kansas, which has an estimated population of approximately 33,848, and therefore constitutes a city as said term is defined in the Act; and

WHEREAS, the Governing Body of the City has performed a Housing Needs Analysis dated May 2015 (the “Needs Analysis”), a copy of which is on file in the office of the City Clerk; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2016-11 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of

such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated May 10, 2016, authorized the City to proceed with the establishment of a Rural Housing Incentive District pursuant to the Act (the “District”); and

WHEREAS, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed District in accordance with the provisions of the Act (the “Plan”); and

WHEREAS, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5244;
2. The existing assessed valuation of the real estate in the proposed District, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 6, 2016 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2016-21 which made a finding that the City is considering the establishment of the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provides a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for September 6, 2016 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on September 6, 2016, after due published and delivered notice in accordance with the provisions of the Act; and

WHEREAS, upon and considering the information and public comments received at the public hearing, the governing body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

THEREFORE, BE IT ORDAINED by the Governing Body of the City of Dodge City, Kansas as follows:

Section 1. Findings. The Governing Body hereby finds that due notice of the public hearing conducted September 6, 2016 was made in accordance with the provisions of the Act.

Section 2. Creation of Rural Housing Incentive District. A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property in the Development, an addition to the City of Dodge City, Ford County, Kansas:

BEGINNING AT THE NORTHWEST CORNER LOT 1, BLOCK 3, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 00°26'13" W 301.14 FEET TO THE WESTERLY CORNER OF LOT 4, CANDLETREE ADDITION, UNIT 5, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE S 27°23'20" E 203.98 FEET TO THE SOUTHWEST CORNER OF LOT 6, CANDLETREE ADDITION, UNIT 5 AND THE NORTH LINE OF CANDLETREE ADDITION #4, CITY OF DODGE CITY, FORD COUNTY, KANSAS; THENCE N 88°40'58" W 1002.23 FEET ALONG THE NORTH LINE OF CANDLETREE ADDITION #4 TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 14; THENCE N 00°36'03" E 742.06 FEET; THENCE S 88°40'58" E 367.02 FEET; THENCE S 01°09'11" W 160.00 FEET; THENCE S 88°40'58" E 449.04 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 90.00 FEET, AN ARC DISTANCE OF 48.51 FEET, CHORD BEING N 75°52'37" E 47.92 FEET; THENCE N 60°26'14" E 13.21 FEET; THENCE ON A CURVE TO THE RIGHT WITH A RADIUS OF 150.00 FEET, AN ARC DISTANCE OF 78.54 FEET, CHORD BEING N 75°26'13" E 77.65 FEET; THENCE S 89°33'47" E 137.78 FEET; THENCE S 00°26'13" W 145.30 FEET; THENCE N 88°33'14" W 179.82 FEET TO THE POINT OF BEGINNING, CONTAINING 14.27 ACRES.

The boundaries of the District do not contain any property not referenced in Resolution No. 2016-21, which provided notice of public hearing on the creation of the District and adoption of the Plan.

Section 3. Approval of Development Plan. The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved.

Section 4. Adverse Effect on Other Governmental Units. If, within 30 days following the conclusion of the public hearing on September 6, 2016, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

- a. The Board of Education of U.S.D. No. 443 determines by resolution that the District will have an adverse effect on such school district; or
- b. The Board of County Commissioners of Ford County, Kansas, determines by resolution that the District will have an adverse effect on such county.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of Ford County or Unified School District No. 443.

Section 5. Reimbursement. The Act authorizes the City to reimburse the Developer for all or a portion of the costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of the Act.

Section 6. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

Section 7. Effective Date. This Ordinance shall be effective upon its passage by the Governing Body of the City of Dodge City, Kansas and publication one time in the official City newspaper.

[remainder of this page left blank intentionally]

PASSED by the Governing Body of the City of Dodge City, Kansas and signed by the Mayor on September 6, 2016.

[SEAL]

Rick Sowers, Mayor

Nannette Pogue, City Clerk

Memorandum

*To: City Commissioners
City Manager*
From: Brad Ralph
Date: September 6, 2016
Subject: Guild Equipment Purchase
Agenda Item: New Business

Recommendation: Staff recommends approval of the Equipment Sales Agreement for the biogas upgrading equipment from Guild Associates Inc. for construction of the Warrior Project (biogas upgrading facility).

Background: Guild Associates, Inc. has proposed supplying the biogas upgrading equipment for the Warrior Project at a not-to-exceed cost of \$4,200,000.

Justification: This agreement will jump start the procurement process for the upgrading equipment. This equipment has the longest lead time for the project and the completion date and eventual operation of the City's Warrior Project (biogas upgrading facility) is contingent upon this agreement.

Financial Considerations: Not to exceed amount of \$4,200,000. This will be paid for through the Water Pollution Control Revolving Loan proceeds.

Purpose/Mission: This project follows the City's Core Value of "Ongoing Improvement", together we value progress, growth & new possibilities by providing and preparing for the community's future.

Legal Considerations: This is a "standard" purchase contract with provisions for payments, warranties and operation. The contract is acceptable following legal review.

Attachments: 1) Proposed Equipment Sales Agreement template.

EQUIPMENT SALES AGREEMENT

This EQUIPMENT SALES AGREEMENT (this "Agreement") dated as of _____, 2016 (the "Effective Date"), is entered into by and between Guild Associates, Inc., an Ohio Corporation ("Seller"), and _____, having its principal place of business at _____, _____ ("Buyer"). Buyer and Seller may be referred to, individually, as a "Party" and, collectively, as the "Parties."

WHEREAS, Seller desires to sell, and Buyer desires to purchase, certain equipment and related products specified in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. As used herein, the following terms shall have the following meanings:

- 1.1 Technical Proposal – [insert project description]
- 1.2 Adsorbent – The adsorbent supplied with the Equipment.
- 1.3 Equipment – The equipment to be supplied by the Seller specified in Technical Proposals.
- 1.4 Product Gas – Product gas purity from the Unit as defined in the Technical Proposal, the composition of which averages no more than 1.95% CO₂ provided it is fed with the feed composition as specified in the Technical Proposal.
- 1.5 Services – The services described in the Technical Proposal.
- 1.6 Unit – The Adsorbent and the Equipment, collectively.
- 1.7 Delivery Date - The date Seller advises Buyer that the Unit is ready to ship.

2. Purchase and Sale. Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, the Unit upon the terms and conditions set forth herein.

3. Purchase Price and Payment Schedule.

- 3.1 The purchase price FOB USA shops for the Unit is \$ X,XXX,XXX (the "Purchase Price").
- 3.2 The Purchase Price is due and payable in U.S. Dollars on the following schedule:
 - 3.2.1 \$X,XXX,XXX (35%) upon placement of an approved purchase order. Buyer's compliance with this payment schedule is condition precedent to this Agreement and Seller will not incur any obligations under this Agreement until receipt of the initial payment as set forth herein.
 - 3.2.2 \$X,XXX,XXX (35%) due 3 months after placement of an approved purchase order.
 - 3.2.3 \$X,XXX,XXX (30%) on the Delivery Date. Payments to be divided into monthly lot shipments based on agreed to delivery plan if applicable.

- 3.3 Buyer shall pay Seller the amounts shown in Article 3.2 of this Agreement within (30) thirty days of receipt of invoice for each payment (except for the initial payment in 3.2.1 which is due on order placement). Buyer shall make payment either by direct deposit to the Seller's account (Bank: Wells Fargo NA / ABA: 121000248 / Account: 4945756815) or by check. If payment is made by check, then the check shall be received by Seller within said (30) thirty day period.
- 3.4 The Purchase Price shall be treated as Confidential Information and does not include any applicable sales, use, excise or other taxes, import duties or any other charges imposed upon Seller outside of Seller's scope of supply. Buyer shall pay all such charges or shall reimburse Seller for any such charge paid by Seller.
- 3.5 On all amount set forth in Section 3.2 which Buyer has not timely paid by the date such amount becomes due and payable hereunder, Buyer shall pay interest, calculated daily and compounded monthly, at the lesser rate of (i) the daily prime rate (as defined in the "Wall Street Journal") plus ten (10%) percent per annum or (ii) the highest rate permissible under applicable law, until such amount is paid by Buyer. Buyer shall also reimburse Seller for all costs incurred by Seller in collecting any late payments, including attorney fees and court costs. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may, in Seller's sole discretion, (i) suspend the delivery of any Equipment or Adsorbent, (ii) cancel any accepted orders from Buyer, or (iii) terminate this Agreement upon notice to Seller.
- 3.6 Buyer shall not, and acknowledges that it will have no right, under this Agreement, any order, any other agreement or applicable law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller, whether relating to Seller's breach or non-performance of this Agreement, any other agreement between Seller or Buyer, or otherwise.

4. Title and Delivery.

- 4.1 Delivery is F.O.B. Seller's U.S. shops, and risk of loss and damage shall pass from Seller to Buyer upon delivery of the Unit to a common carrier on the premises of Seller or, as applicable, a subcontractor of Seller. Title to the Unit shall pass to Buyer upon the payment of the Purchase Price, together with any interest due thereon, in full.
- 4.2 In the event that Buyer is unable to take possession of the Unit at the Delivery Date, Seller will, unless otherwise instructed by Buyer in writing, arrange for the storage of the Unit, and obtain insurance in such amounts as Buyer shall notify Seller in writing that it desires to have placed on the Unit. All such storage and insurance, and any incidental costs in connection therewith, shall be promptly paid or reimbursed to Seller by Buyer. Buyer is solely responsible for the adequacy of the storage and for any arranged insurance. Such storage will not impact the payment schedule set forth in Section 3.2.

5. Warranties.

- 5.1 Mechanical Warranty. Seller warrants to Buyer for a period of fifteen (15) months from the Delivery Date or twelve (12) months from the date of production of Product Gas, whichever occurs first, that the Equipment will be free from material defects (each a "Mechanical Defect") in material or workmanship ("Mechanical Warranty"). For items supplied by a third party the third party standard warranty will apply. In the event that Buyer requests the Equipment to be stored pursuant to Section 4, such storage shall not operate to extend in any way the term of this Mechanical Warranty.

- 5.1.1 Remedy Under Mechanical Warranty. In the event of a Mechanical Defect, Seller shall, at its option, either repair or replace the Equipment or the applicable parts or components thereof subject to the conditions set forth in Section 5.1.2. Seller shall be responsible for all costs of repair or replacement including cost of removal and reinstallation of any defective material or component. For items supplied by a third party the third party standard warranty will apply. If Buyer continues to use the Unit after discovery of a Mechanical Defect, Seller shall have no obligation to Buyer for any damage, to the extent caused or aggravated by such continued use. The cost to replace the Adsorbent, if it has been damaged by external factors beyond Seller's control, will be borne by Buyer. Such factors can include, but are not limited to, liquid carryover.
- 5.1.2 Conditions for Remedy Under Mechanical Warranty. The Mechanical Warranty shall be subject to the following conditions:
 - 5.1.2.1 The Unit was properly installed, operated and maintained in accordance with sound engineering procedures and with the drawings and instructions provided to Buyer by Seller;
 - 5.1.2.2 The Unit was not misused, damaged in storage, or negligently handled by Buyer;
 - 5.1.2.3 The Unit was not altered or repaired without Seller's prior written consent;
 - 5.1.2.4 Buyer notified Seller in writing of the Mechanical Defect as soon as it became apparent and in no case later than thirty (30) days after discovery thereof;
 - 5.1.2.5 Buyer shall provide Seller with reasonable access to the Equipment for the purpose of making any repairs. Buyer shall make available to Seller at the location of the Equipment the services of skilled personnel for the making of repairs under Seller's supervision; and
 - 5.1.2.6 In the event that (a) the Equipment is demonstrated by Seller to be operating as warranted or (b) the Equipment is demonstrated not to be operating as warranted through no fault of Seller, then Buyer shall reimburse Seller for all costs incurred by Seller as a result of Buyer's claim under the Mechanical Warranty.
- 5.2 Performance Guarantee. Seller guarantees to Buyer that, during the Acceptance Test (as defined below), the Unit will produce Product Gas ("Performance Guarantee").
 - 5.2.1 Acceptance Test. Buyer shall, at its sole cost and expense, conduct an acceptance test within 30 days of first introduction of feed gas into the Unit to determine the ability of the Unit to produce Product Gas ("Acceptance Test"). The Acceptance Test shall be conducted for a continuous period of twenty four (24) hours with Product Gas produced. Buyer shall give Seller reasonable notice of the dates during which such Acceptance Test is to be conducted and shall permit Seller to witness performance of the Acceptance Test. Any costs incurred by Seller to witness this Acceptance Test shall be the sole responsibility of Seller. For the duration of this Acceptance Test the Unit shall meet the Performance Guarantee. If in Seller's opinion the procedures followed by Buyer in conducting the Acceptance Test do not provide an accurate measurement of performance, Seller shall have the right to perform an Acceptance Test using

procedures which will permit an adequate determination thereof, the results of which shall be conclusive absent manifest error. Unless Buyer conducts the Acceptance Test within thirty (30) days after the date of the initial operation of the Unit or within sixty (60) days of the Delivery Date, whichever occurs first, Buyer shall be deemed to have waived the Acceptance Test. The fact that the Unit may be placed into storage pursuant to Section 4 above shall not operate to extend in any way the time limits for the performance of the Acceptance Test.

5.2.2 Remedy under Performance Guarantee. Subject to the conditions in Section 5.2.3, Seller will promptly take reasonable corrective actions to ensure production of Product Gas. If such corrective actions do not result in the Unit producing Product Gas, the Parties will in good faith negotiate a reduction of the Purchase Price proportional to the extent of the breach of the Performance Guarantee.

5.2.3 Conditions for Remedy Under Performance Guarantee. The Performance Guarantee is subject to the conditions in Section 5.1.2 and the following additional conditions:

5.2.3.1 The loading of the Adsorbent occurred under the advice and counsel and in accordance with the instructions of Seller's technical representative;

5.2.3.2 Buyer conducted the Acceptance Test in accordance with the provisions of Section 5.2.1 and shall permit Seller to take corrective action.

5.2.3.3 Buyer submitted all claims with respect to the Performance Guarantee within sixty (60) days after the performance of the Acceptance Test;

5.2.3.4 The Unit was operated at all times in accordance with the operating and maintenance manual, and all other instructions whether oral or in writing, provided by Seller.

5.3 Limitation of Warranties. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES BY SELLER OTHER THAN THOSE DESCRIBED IN SECTIONS 5.1 AND 5.2 ABOVE AND NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) SHALL BE IMPLIED OR OTHERWISE CREATED UNDER ANY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

5.4 THE REMEDIES PROVIDED FOR IN THIS SECTION 5 ARE THE ONLY REMEDIES PROVIDED TO BUYER BY SELLER UNDER THIS AGREEMENT.

6. Limitations on Liability.

6.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT SELLER WAS AWARE OF THE LIKELIHOOD THEREOF OR WHETHER OR NOT SUCH DAMAGES WERE CAUSED BY OR RESULTED FROM SELLER'S NEGLIGENCE. NO CLAIM OR CLAIMS OF ANY KIND RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER BASED ON CONTRACT, WARRANTY, TORT, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL BE GREATER IN AMOUNT IN THE AGGREGATE THAN ONE-HALF OF THE PURCHASE PRICE.

6.2 Buyer shall be solely responsible for, and hold Seller harmless from, any third party claims based on alleged or actual damages incurred by a third party that resulted from the following:

6.2.1 The Unit, or any part thereof, has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller;

6.2.2 The Unit, or any part thereof, has been reconstructed, repaired or altered by a person other than Seller or Seller's authorized representative; or

6.2.3 The Unit, or any part thereof, has been used with any third-party products, hardware or product that has not been previously approved in writing by Seller.

7. Confidential Information.

7.1 With the exception of Seller's trade secrets, which Buyer shall protect indefinitely for as long as Seller maintains them as such, for ten (10) years following the Effective Date, Buyer shall not reveal to any person, or itself practice or make use of, any secret knowledge or Confidential Information which it might already have or may from time to time acquire. "Confidential Information" shall include, but not be limited to, information concerning customers, pricing, formulae, process, manufacturing instructions or methods of manufacture, types, kinds, suppliers or costs of raw materials, or any other information of a confidential nature concerning the Unit or Seller. Adsorbent shall not be sampled or analyzed. All Confidential Information, regardless of the form in which it is being received or maintained, whether written or oral, including, without limitations, memoranda, notes, sketches, plans, data and other documents, and any and all copies thereof, whether made by Seller, Buyer or others, relating in any way to the Confidential Information is, and shall remain, the sole and exclusive property of Seller and shall be surrendered by Buyer to Seller upon the earlier of the request of Seller or the termination of this Agreement and shall not be disclosed or made available by Buyer, directly or indirectly to any third party nor used for any purpose, except as shall be agreed to in writing by Seller. Buyer shall not make or permit to be made, without Seller's prior written consent, any copies, abstracts or summaries of such Confidential Information. Access to the site by any individual or company engaged in the business of nitrogen or carbon dioxide removal from contaminated gas shall not be permitted without the prior written approval of Seller. Buyer shall only share the Confidential Information with its employees on a "need-to-know" basis and only provided that such employees are subject to confidentiality obligations at least as stringent as set forth herein.

7.2 Buyer indemnifies and holds Seller harmless from any third party claims, liability, loss, damage, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or in connection with any claim that Buyer has used the Confidential Information in breach of this Agreement.

8. Force Majeure. Neither Party shall be liable to the other Party for its failure or delay in performing its obligations hereunder due to any contingency beyond such Party's reasonable control, including, without limitation, acts of God, fires, floods, wars, acts of war, sabotage, labor disputes, and unforeseen changes in applicable laws, excluding, however, a Party's inability to pay. Notification of any such failure or delay shall be communicated in writing by the Party invoking this Force Majeure provision to the other Party promptly after such contingency has occurred.

- 9. Notices.** Any notices and demands required or permitted to be given by either Party to the other Party shall be deemed to have been given when personally delivered, or when deposited in the United States certified mail, return receipt requested, postage prepaid, and addressed to the address set forth herein or to such other address as the Parties may hereafter specify by written notice. Notice or demand sent via certified mail shall be effective on the date indicated on the return receipt.

To Seller:

5750 Shier-Rings Road
Dublin, OH 43016

Attention: Mr. Henry Berns

To Buyer:

Street:
City:

Attention:

- 10. Visits and Publications.** Seller shall have the right to have its representatives and its prospective customers visit the Unit, upon notification and coordination with Buyer, for the purpose of observing the Unit, collecting operating data and evaluating the performance of the Unit. Such visits shall be at mutually agreeable times. Buyer agrees to cooperate with Seller's representatives during such observation, data collection and evaluation. Seller shall have the right to publicize the purchase of this Unit by Buyer, and the general operation of the Unit after start-up, including the right to issue press releases, technical papers, and photographs. All such publicity will be reviewed with Buyer before release.

11. Termination.

- 11.1 Seller's Right to Terminate. Seller may terminate this Agreement, by providing written notice to Buyer:

11.1.1 if Buyer fails to pay any amount when due under this Agreement;

11.1.2 if Seller determines, in its sole discretion, that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory;

11.1.3 if Buyer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it a petition for voluntary or involuntary bankruptcy, or (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver or trustee to take charge of or sell any material portion of its property or business.

- 11.2 Effect of Termination.

11.2.1 Upon the termination of this Agreement, all indebtedness of Buyer to Seller under this Agreement shall become immediately due and payable to Seller, without further notice to Buyer.

11.2.2 Any notice of termination under this Agreement automatically operates as a cancellation of any deliveries that are scheduled to be made subsequent to the effective date of termination.

- 12. Governing Law, Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of laws principles. The Parties agree that the sole venue for any conflicts arising out of this Agreement shall be a court of competent jurisdiction located in Franklin County, Ohio.

13. No Waiver. No delay or omission in the exercise of any right or remedy herein provided or otherwise provided to Seller shall impair or affect Seller's right thereafter to exercise the same or be construed to be a waiver of any such right or remedy. A waiver of any single breach or default shall not be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent or approval on the part of Seller to any breach or default under this Agreement or of any provision or condition hereof must be in writing and effective only to the extent that such writing specifically sets forth.

14. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. ENTIRE AGREEMENT. SELLER AND BUYER ACKNOWLEDGE THAT THERE ARE NO AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, BETWEEN SELLER AND BUYER WITH RESPECT TO THE UNIT OR THE SUBJECT MATTER OF THIS AGREEMENT OTHER THAN AS SET FORTH HEREIN AND THAT THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT THERETO. NO TERM OR PROVISION OF THIS AGREEMENT MAY BE CHANGED, WAIVED, DISCHARGED OR TERMINATED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTY AGAINST WHOM THE ENFORCEMENT OF THE CHANGE, WAIVER, DISCHARGE OR TERMINATION SHALL BE SOUGHT.

16. Survival. The provisions of Sections 6 (Liability), 7 (Confidential Information), 8 (Force Majeure), 10 (Notices), 12 (No Waiver), 13 (Severability), 16 (Survival) and 17 (Assignment) shall survive the termination of this Agreement.

17. Assignment. Buyer shall not assign or transfer any of its rights or obligations under this Agreement without Seller's prior written consent. Notwithstanding anything to the contrary herein, Buyer agrees that the Equipment may not be sold, or made otherwise available, to a then current competitor of Seller.

18. Insurance. Seller shall maintain during the term of this Agreement the following insurance coverage/limits:

Premises Liability: \$1,000,000 each occurrence; \$2,000,000 aggregate;
Personal Injury Liability: \$1,000,000 each occurrence; \$2,000,000 aggregate; and
Product (Completed Operations) Liability: \$1,000,000 each occurrence; \$2,000,000 aggregate.
(This product liability coverage is on a claims-made policy which provides coverage only if a claim is made during the policy period or any applicable extended reporting period.)

Buyer shall be an additional insured on each of the foregoing policies up to the policy limits specified only with respect to those matters for which Seller is obligated to indemnify Buyer under the terms of this Agreement and only to the extent of Seller's indemnification obligation hereunder.

To the extent that Seller may be required to enter upon the premises of the Buyer to provide Services, perform warranty or repair work, Seller agrees to maintain the following insurance coverage/limits:

Workers' Compensation: In accordance with the laws of the State of Ohio;
Automobile Liability (owned, hired and non-owned autos): \$1,000,000 combined single limit; and
Employers' Liability: \$1,000,000 each accident, \$1,000,000 each employee; \$1,000,000 policy limit.

Any additional insurance or coverage in excess of the amounts set forth shall be obtained and maintained by Buyer at its sole cost and expense.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

SELLER:

BUYER:

GUILD ASSOCIATES, INC.

Customer.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COLUMBUS/1741787-v.11

Memorandum

*To: City Manager
City Commissioners*

*From: Tanner Rutschman, E.I.
Civil Engineer*

Date: September 6, 2016

*Subject: Central Avenue Improvements (Phase 2)
ST 1506*

Agenda Item: New Business

TR

Recommendation: Approve the bid from JAG Construction Co. in the amount of \$983,064.50 for the construction of Central Avenue Improvements. The bid from JAG Construction Co. came in 9.9% above the Engineer's Estimate of \$894,830.00.

Background: Due to recent development and increasing traffic along the corridor, traffic flow and perceived safety of traffic on Central Ave. from Layton St. north to near the US 50 intersection has declined. A Two Way Left Turn Lane (TWLTL) along with a signalized intersection at San Jose St. has been proposed and designed by Olsson Associates to more efficiently accommodate the current and future traffic as well as improve safety for the traveling public. This project was outlined in the 2015 Street Program the Commission approved last year.

Justification: To improve access to properties along the corridor, enhance the existing traffic flow and safety on Central Ave.; a TWLTL along with a signalized intersection at San Jose St. will be installed on Central Ave.

Financial Considerations: Funding of this project will be in the form of GOB funds which have already been secured in the amount of \$1,475,000. The contract with JAG Construction Co. is for \$983,064.50. After design, Phase 1 construction, Phase 2 construction, & CID payment the bonded funds will have a remaining amount of \$238,861.58.

Purpose/Mission: This meets the core values of On Going Improvements in regards to the street and enhanced accessibility to abutting properties, as well as improved safety for the travelling public.

Legal Considerations: By approving the bid from JAG Construction Co. the City will enter into a contract with JAG Construction Co. and be responsible to make payments to JAG Construction Co.

Attachments: The bid tabulation which includes the bidders for the project along with the Engineer's Estimate.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: August 30, 2016
Subject: Appointment of Kansas League of Municipalities Voting Delegates
Agenda Item: New Business

Recommendation: I recommend the City Commission appoint four voting and four alternate voting delegates to vote at the Kansas League of Municipalities Annual Business Meeting.

Background: State law provides that the governing body of each member city of the League of Kansas Municipalities may elect city delegates from among the city's officers to represent the city in the conduct and management of the affairs of the League. Voting delegates are qualified to vote by having his or her name registered with the executive director of the League.

Justification: Based on our population, the City of Dodge City is entitled to four votes at the annual meeting.

Financial Considerations: None

Purpose/Mission: To have input on City policy at the State level.

Legal Considerations: None

Attachments: Letter from League

August 19, 2016

Dear City Clerks or City Managers/City Administrators:

We are pleased the League's Annual Conference in Overland Park, October 8-10, 2016, is shaping up to be an exciting experience. We have an outstanding program of speakers, panel discussions and workshops planned which were highlighted in the July issue of the *Kansas Government Journal*.

I am writing to invite your city governing body to register its League voting delegates. State law provides that the governing body of each member city of the League may elect city delegates from among the city's officers to represent the city in the conduct and management of the affairs of the League. League bylaws provide that a city voting delegate or alternate delegate qualifies by having his or her name, city title and address registered with the executive director.

Each member city needs to file new registration forms with the League of Kansas Municipalities. You may send them one of three ways: by mail to League of Kansas Municipalities, 300 SW 8th Avenue, Topeka, KS 66603; scanning the form and emailing adebusk@lkm.org; or via FAX to 785-354-4186. **Please send forms by Friday, September 16th to the attention of Anna DeBusk.**

Article 4, Sec. 5 of the League Bylaws prescribes the total number of votes provided to each member city based on population. The number of delegate registration forms enclosed is based on the following table.

City Population	No. Votes	No. Delegate Forms	No. Alternate Forms
1 - 2,500	1	1	1
2,501 - 7,500	2	2	2
7,501 - 17,500	3	3	3
17,501 - 37,500	4	4	4
37,501 - 77,500	5	5	5
77,501 - 117,500	6	6	6
117,501 - 157,500	7	7	7
157,501 - 197,500	8	8	8
197,501 - 237,500	9	9	9
237,501 - 277,500	10	10	10
277,501 - 355,500	11	11	11
355,501 - 395,500	12	12	12

A business and policy session of city voting delegates will be held on Monday afternoon, October 10th, at the conference in Overland Park.

I look forward to hearing from you.

Sincerely,



Erik A. Sartorius
Executive Director

Enclosures

Memorandum

To: City Commissioners
From: Cherise Tieben
Date: September 1, 2016
*Subject: Arkansas River Basin
Improvements Funding Options
(As Required by FEMA)*
Agenda Item: Discussion

Recommendation: Staff recommends that the Commission discuss in an open public meeting the funding options involved regarding the FEMA Levy Certification project.

Background: Staff has been reviewing the funding options which may be utilized to cover the expenses in phase I and future phases of the Levy Certification project.

Option 1 – issue Revenue bonds which would be repaid through the drainage fees collected through utility billing. Our bond counsel is concerned that the drainage fund may not generate sufficient revenue for the whole project. However, our financial advisor indicates that the funds are sufficient for Phase I of the project.

Option 2 – if we do not want to dedicate all of our proceeds from the drainage fund to Phase I of this project, we would have to consider issuing general obligation bonds. Utilization of this method would definitely be required for expenses beyond Phase I. In order to utilize GO bonds, statutorily we would have to charter out of specific State Statutes that require an election for this type of public project as it does not generally benefit the City as a whole. Passing a bond issue election for a project that does not benefit every home owner in the community will be very difficult at best especially when it entails dealing with flood control of a river that has not had water in it for years. Yet the ramifications will indeed impact the whole community eventually.

Justification: If the Commission desires to utilize GO bonds, I believe it would be necessary to opt out of the election requirement. This issue can be seen very unfavorably by the public. I did not want to have this discussion outside of an open meeting in order to allow public comment.

Financial Considerations: None at this time, however, Phase I is anticipated to cost \$1,000,000.00. It is unknown at this time, if the completion of Phase I will suffice or if additional work will be necessary.

Purpose/Mission: Together, we promote open communications with our community members to improve quality of life and preserve our heritage to foster a better future.

Legal Considerations: None at this time.

Attachments: None