

SPECIAL CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, April 23, 2012

5:30 p.m.

MEETING #4884

CALL TO ORDER

ROLL CALL

PUBLIC HEARING

1. Consider the Establishment of an RHID District and Development Plan for La Estancia Partners II, LLC Project 2012.

Approval of Development Plan for RHID (La Estancia Partners II, LLC Project 2012)

Approval of Development Agreement for RHID (La Estancia Partners II, LLC Project 2012)

ORDINANCES & RESOLUTIONS

Ordinance No. 3532: 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 (La Estancia Partners II, LLC Project 2012). Report by Assistant City Manager, Cherise Tieben.

Resolution No. 2012-18: A Resolution of the Governing Body of the City of Dodge City, Kansas Approving the Form of Bond Agreement Amendment No. 2, Amending and Supplementing a Certain Bond Agreement Entered Into by the City in Connection with the Issuance by the City of its Taxable Industrial Revenue Bonds, Series A, 2007 and Series B, 2007 (La Quinta Inn Project). Report by City Manager, Ken Strobel.

NEW BUSINESS

1. Approval of OMI Amendment No. 5. Report by City Manager, Ken Strobel.

EXECUTIVE SESSION

Attorney/Client Privilege Matter

ADJOURNMENT

**DEVELOPMENT PLAN
FOR THE LA ESTANCIA PARTNERS II, L.L.C. PROJECT 2012RURAL
HOUSING INCENTIVE DISTRICT OF THE CITY OF DODGE CITY, KANSAS**

April 23, 2012

INTRODUCTION

On September 8, 2009 the Governing Body of the City of Dodge City, Kansas (the “City”) adopted Resolution 2009-19 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 2009-19, a certified copy 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 October 7, 2009, the Secretary of Commerce provided written confirmation, approving the establishment of the La Estancia Partners, L.L.C. Rural Housing Incentive District (the “District”) (Resolution 2009-19, exhibit A-6, B-6).

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, City proposes this Development Plan to assist in the development of quality housing within the City.

- (1) The legal description of the La Estancia Partners, L.L.C. Rural Housing Incentive District is:

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross

Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

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 2011 is \$236,460.
- (3) The name and address of the owner of record for the real estate within the District is:

La Estancia Partners II, L.L.C.
7500 College Blvd., Suite 500
Overland Park, KS 66210

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

Housing Facilities

The housing facilities will include two (2) multi-family sixteen (16) unit apartment complexes referred to as Phase II. If adequate tax credits are provided by the State of Kansas then Phase III will be incorporated; which includes an additional multi-family sixteen (16) unit apartment. Each apartment unit will include individual laundry facilities, cable television hook-ups and on-site parking.

Public Facilities

Public improvements will 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 to accommodate Phase II and if adequate tax credits are provided, Phase III infrastructure will be included.

- (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: La Estancia Partners II, L.L.C.
7500 College Blvd., Suite 500
Overland Park, KS 66210

Developer: Overland Property Group, L.L.C.
(Site Work and Infrastructure) 7500 College Blvd., Suite 500
Overland Park, KS 66210

Individuals with Specific Interest:

Brett Johnson
2850 SW Mission Woods Dr.
Topeka, KS 66614

Ed Keating
2850 SW Mission Woods Dr.
Topeka, KS 66614

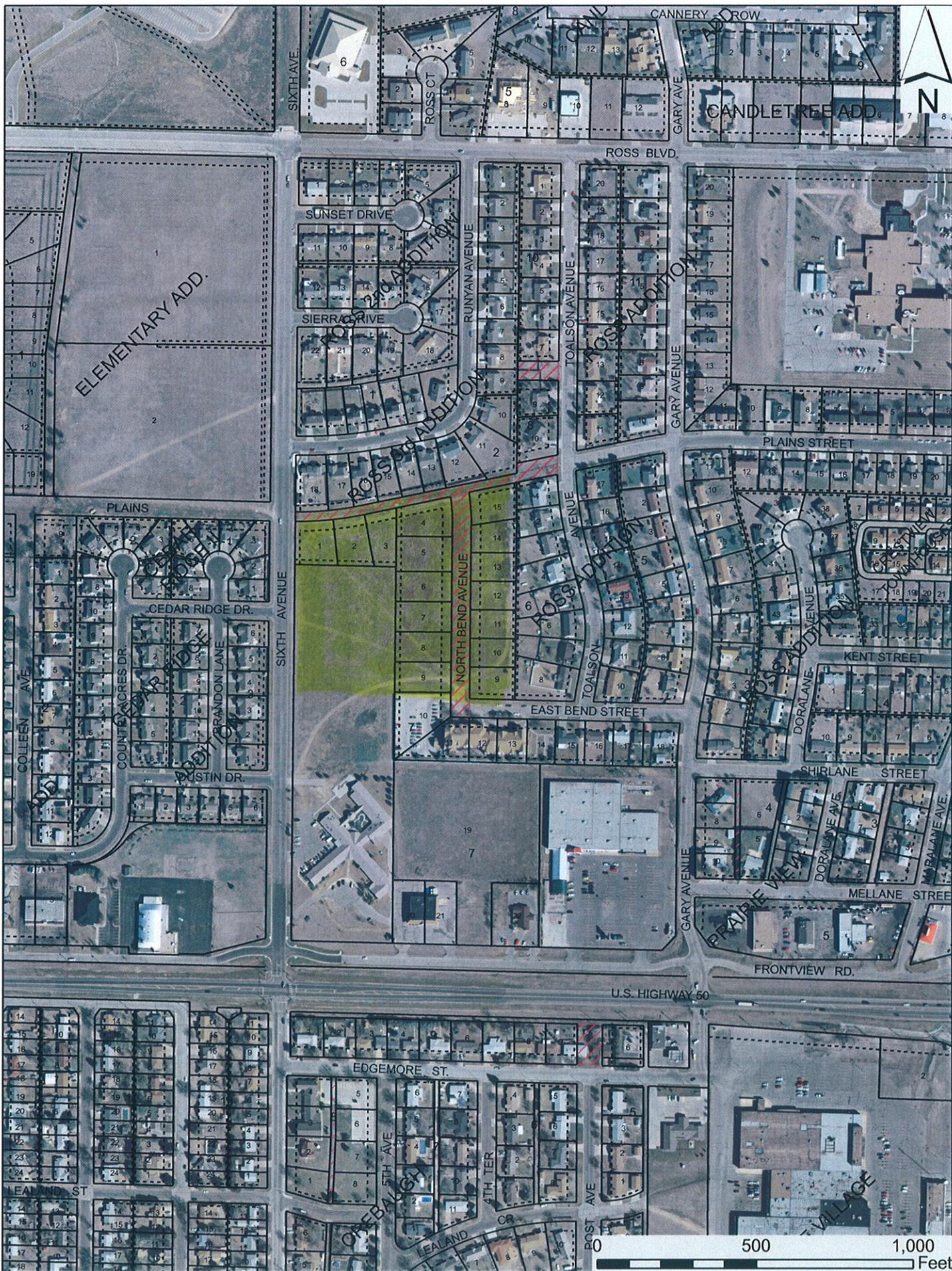
Pat Beatty
2850 SW Mission Woods Dr.
Topeka, KS 66614

Rex Vanier
2850 SW Mission Woods Dr.
Topeka, KS 66614

- (6) The Governing Body of the City of Dodge City entered into a Development Agreement with Overland Property Group, L.L.C., a Kansas limited liability corporation, on April 23, 2012. 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 of Dodge 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, 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 eligible 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 LA ESTANCIA PARTNERS, L.L.C.
RURAL HOUSING IMPROVEMENT DISTRICT**



DEVELOPMENT PLAN - EXHIBIT B
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

Overland Property Group-Phase 2 - RHID

Cost of Infrastructure Improvements

441,403

	Current Value	Property Class	Mill Levy			
Current Property Tax						
Estimated Current Value of Vacant Land	218,400	12.00%	186.624	4,891.04		
	<u>Estimated Value</u>	<u>Property Class</u>	<u>Mill Levy</u>	<u>Est. Property Tax</u>	<u>Annual Increment Tax</u>	<u>Increment Tax For 15 Years</u>
At 100% increment going to pay off infrastructure costs						
2 - 16 Units - Phase II	2,370,000	11.50%	189.709	51,705.19	46,814.15	702,212.19

If the units are valued at \$1,185,000 per 16 unit complex, the increment tax for 15 years would total approximately \$702,212.19. This would be \$260,509 more than the amount spent on eligible costs for infrastructure. The estimated appraised value is based on the units in Hays, Kansas.

DEVELOPMENT PLAN - EXHIBIT C
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”), entered into this 23rd day of April, 2012, by and between the **CITY OF DODGE CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and **LA ESTANCIA PARTNERS II, LLC**, a Kansas limited liability corporation, with its principal place of business in Overland Park, Kansas (hereinafter “Developer”).

RECITALS

- A. **WHEREAS**, City and Developer (hereinafter “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of a multi-family residential development to be known as “The Reserves at Cimarron Valley II” (hereinafter “the Development”); and,
- B. **WHEREAS**, Developer is the title owner of real property located within the boundaries of City and described on *Exhibit A* attached hereto and incorporated herein by reference (hereinafter “the Property”); and,
- C. **WHEREAS**, Developer desires to develop the Property by construction of multi-family residences and all related internal infrastructure improvements, all as more fully described herein; and,
- D. **WHEREAS**, City has determined that the construction of the Development will foster the economic development of 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 I

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 City, attached as *Exhibit C* hereto 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 La Estancia Partners II, LLC, a Kansas limited liability corporation, with its principal place of business in Overland Park, 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 reference.

“**Development Costs**” means the total amount spent or expected to be spent by Developer to construct the Work.

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

“**Eligible Costs**” means that portion of the costs of the Internal Infrastructure Improvements which are reimburseable to the Developer pursuant to the provisions of K.S.A. 12-5249.

“**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 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 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 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 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 Developer can occupy or utilize the Work for its intended purpose.

“Unit” means each individual apartment unit in a multi-family residence 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 the multi-family residences and 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. Governing Body has heretofore adopted Resolution No. 2009-19 on September 8, 2009, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in City and declaring an intent to establish Rural Housing Incentive Districts within City, which would include the Property.

2.2 Department of Commerce Finding. Pursuant to the resolution described in *Section 2.1* hereof, City caused to be prepared a Housing Needs Analysis and forwarded the same, along with said resolution, to the Kansas Secretary of Commerce. On October 7, 2009, the Kansas Secretary of Commerce issued a letter to City making certain findings required by the Rural Housing Incentive District Act, and approved City's ability to establish a Rural Housing Incentive District.

2.3 Further Proceedings. 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 and 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. 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. 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 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.

- (b) In conjunction with the Development Project, the parties acknowledge that La Estancia Partners II, LLC has applied for low-income housing tax credits. The City has adopted a resolution in support of such application.

3.2 Construction of the Development Project. 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.

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

3.3 Concept Site Plan. Developer, at its cost, has had prepared a Concept Site Plan. Said Concept Site Plan is hereby approved by the Parties. Developer shall promptly notify City in writing of any 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 Developer to enhance the economic viability of the Development Project provided, however, that 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 City.

3.4 Construction of Internal Infrastructure Improvements. 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 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.

3.4.1 Acquisition of Easements, Permits. 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 City will cooperate with 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. City shall cooperate with Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.

3.4.2 Construction Contracts; Insurance. 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, 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 City. 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 Developer serves as general contractor for the Internal Infrastructure Improvements, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

3.4.3 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, Developer will furnish to City a Certificate of Substantial Completion in the form attached hereto as *Exhibit E*. 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 City unless, prior to the end of such thirty (30) day period after delivery to City of each Certificate of Substantial Completion, City furnishes 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, Developer will dedicate to City, and City will accept, title to the traditional Internal Infrastructure Improvements. Following said dedication, 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 City. Notwithstanding the foregoing, 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. All costs of the Internal Infrastructure Improvements shall be paid in cash or financed by Developer. City agrees to pay to

Developer, in reimbursement of all or a portion of the Eligible 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 2011 and shall continue until such time as the Eligible Costs have been fully reimbursed to 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 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, City may terminate this Agreement at any time if 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 City of such default or breach.

5.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, Developer may terminate this Agreement at any time if 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 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 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 City.
- (c) Until Substantial Completion of the Development Project has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval shall not be

unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by 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, Developer may be permitted to subcontract the construction of any portion of the Development Project without the consent of City as long as Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, City hereby approves, and no prior consent shall be required in connection with, (a) the right of Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in the 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 Developer to assign Developer's rights, duties and obligations under the Agreement to a Related Party; or (c) the right of 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 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 Developer's and 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 5.4*, 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 City nor 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 Developer, and further provided that Developer notifies 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,

(i) In the case of Developer, to:
La Estancia Partners II, LLC
7500 College Blvd, Suite 500
Overland Park, Kansas 66210
Attention: Brett Johnson
Phone: 913/693-7970
Fax: 913/693-7799

(ii) In the case of 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 Developer's undertakings, or of 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. City represents to Developer that no such conflicts of interest exist as of the date hereof.

5.8 Insurance; Damage or Destruction of Development Projects.

- (a) 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 City, shall furnish 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 City shall be protected in accordance with a clause in form and content satisfactory to 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 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. Developer shall deliver to City evidence of all insurance to be maintained hereunder.

5.9 Inspection. Developer shall allow authorized representatives of 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 City, prior to the completion of the Work for reasonable inspection thereof. Developer shall also allow 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 City determines is reasonable and necessary to verify 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 City shall be personally liable to 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 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, Developer may, at Developer's option but only with City's consent, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which Developer has assumed the defense) with counsel of 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 City and Developer in any such proceeding; provided, Developer and its counsel shall consult with 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 5.16* shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of *subsection 5.16.7* of this Agreement.

5.16.1 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.

5.16.2 Developer releases from, agrees to indemnify and hold harmless City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that 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 attorneys fees, except for those matters arising out of the willful and/or wanton negligence of City and its governing body members, officers, agents, servants and employees.

5.16.3 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 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 City and its Governing Body members, officers, agents, servants and employees.

5.16.4 All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.

5.16.5 No official, employee or representative of City shall be personally liable to Developer in the event of a default or breach by any Party to this Agreement.

5.16.6 Developer releases from and covenants and agrees that City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold 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 Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by 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 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 City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by City following termination of this Agreement as the Development Project or portion thereof.

5.16.7 Notwithstanding anything to the contrary in this Agreement, including but not limited to the provisions related to indemnification and release set out in the *Section 5.16*, Developer shall have no obligation to indemnify 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 Developer shall hereby be released for any and all claims otherwise referenced in this *Section 5.16* 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 City for all legal and professional Costs, fees and expenses incurred by 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 Developers shall be considered Eligible 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. 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 City, enforceable in accordance with its terms.

6.2 Representations of Developer. 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 Developer, enforceable in accordance with its terms.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed in their respective names and 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: April 23, 2012

ATTEST: (SEAL)

Nannette Pogue, City Clerk

LA ESTANCIA PARTNERS II, LLC

By: _____
Brett Johnson

Dated: _____, 2012

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

- Exhibit A Property Description
- Exhibit B Map of Rural Housing Improvement District Boundaries for La Estancia Partners
LLC Project
- Exhibit C The Reserves at Cimarron Valley II Site Development Plan
- Exhibit D Estimated Site Work Costs for The Reserves at Cimarron Valley II Project
- Exhibit E Certification of Substantial Completion Form

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT BOUNDARIES
FOR LA ESTANCIA PARTNERS II, LLC PROJECT 2012**

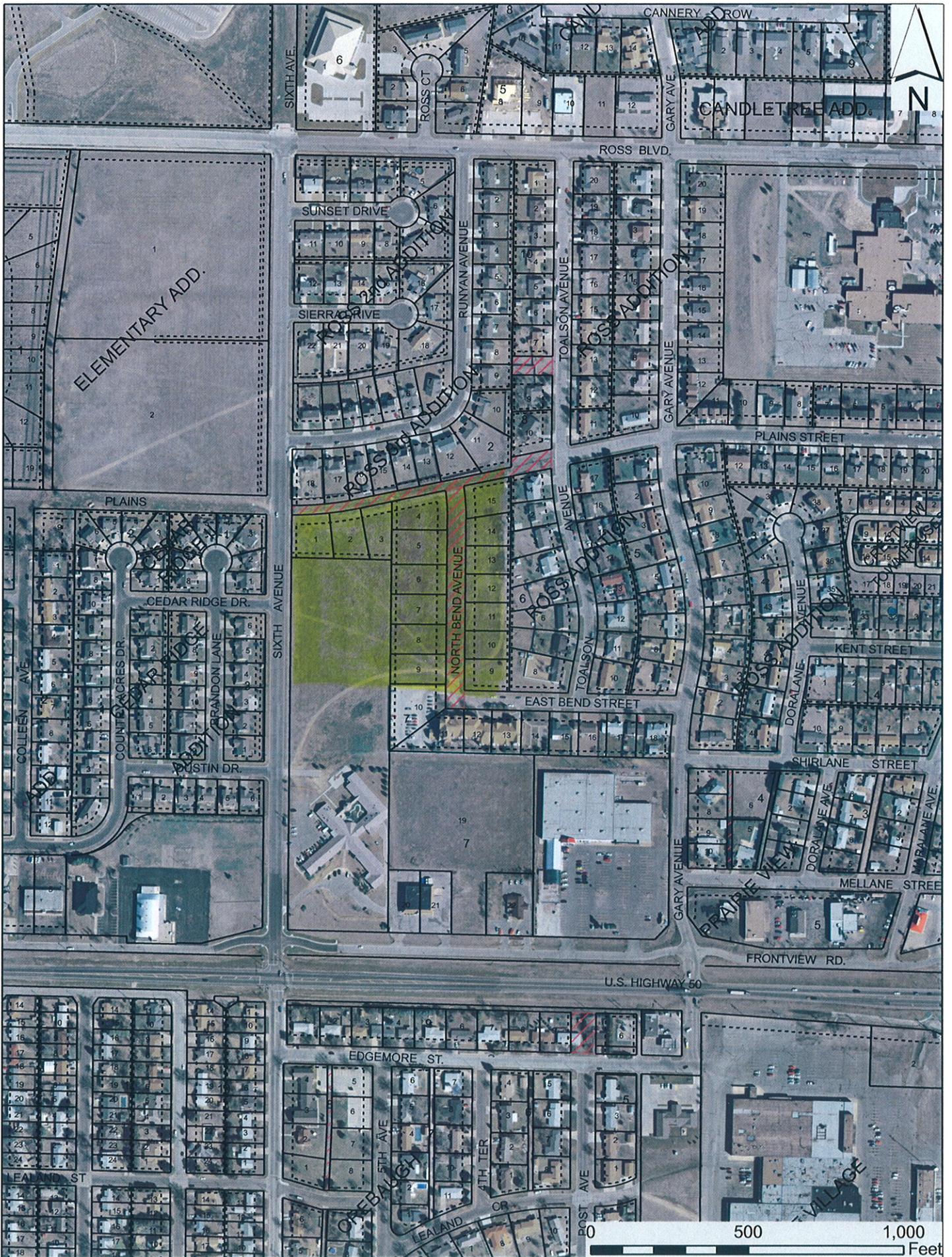


EXHIBIT C

**THE RESERVES AT CIMARRON VALLEY II
SITE DEVELOPMENT PLAN**

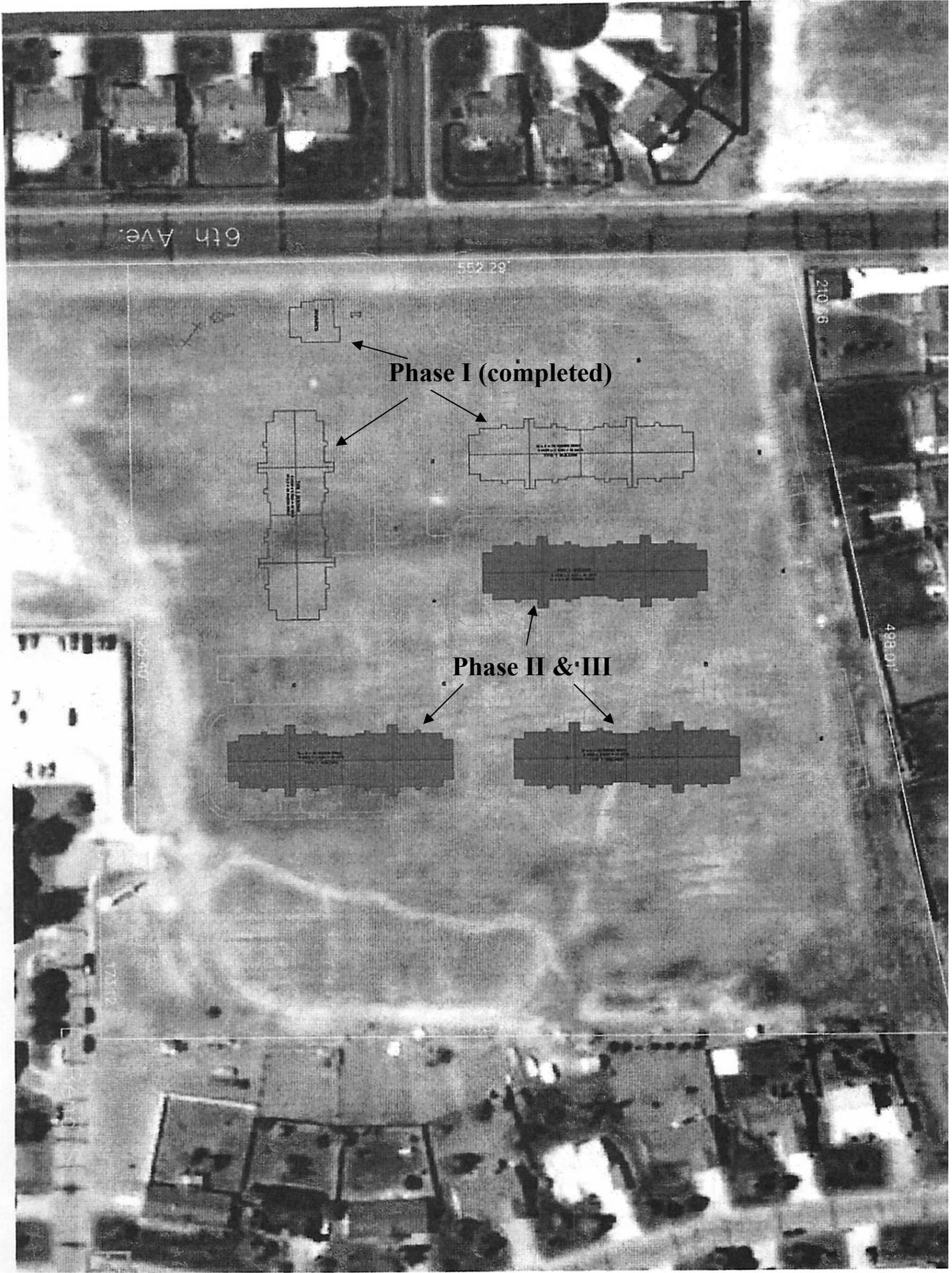


EXHIBIT D

**ESTIMATED SITE WORK COSTS FOR
THE RESERVES AT CIMARRON VALLEY II PROJECT**

Dodge Phase 2 Site Work Estimate 32 Units

Haul off-Dem-Dump fees	\$6,045.00
Construction Staking	\$9,000.00
Excavation Rental Equip.	\$34,543.00
Mass Cut	\$9,120.00
Mass Fill	\$38,680.00
Soil Stabilization	\$15,920.00
Erosion Control	\$15,050.00
Dirt Testing	\$5,500.00
Concrete Testing	\$3,000.00
Termite Control	\$2,400.00
Power Transmission and Dist.	\$41,000.00
Concrete Paving	\$63,318.00
Concrete Walks	\$30,419.00
Concrete Curb and Gutter	\$50,678.00
Pavement Marking	\$1,850.00
Water Distribution	\$22,000.00
Storm Sewage	\$45,860.00
Sanitary Sewage	\$5,020.00
Irrigation	\$17,000.00
Landscaping	\$25,000.00
Total	\$441,403.00

Actual Site Work costs which are considered eligible by
K.S.A. 12-5249 will be reimbursed.

Dodge Phase 2 Site Work Estimate48 Units

Haul off-Dem-Dump fees	\$7,858.00
Construction Staking	\$11,700.00
Excavation Rental Equip.	\$44,905.00
Mass Cut	\$11,862.50
Mass Fill	\$50,284.00
Soil Stabilization	\$19,526.00
Erosion Control	\$15,050.00
Dirt Testing	\$7,150.00
Concrete Testing	\$3,300.00
Termite Control	\$3,120.00
Power Transmission and Dist.	\$53,300.00
Concrete Paving	\$82,313.00
Concrete Walks	\$39,544.00
Concrete Curb and Gutter	\$65,881.00
Pavement Marking	\$2,405.00
Water Distribution	\$28,600.00
Storm Sewage	\$59,618.00
Sanitary Sewage	\$6,523.00
Irrigation	\$22,100.00
Landscaping	\$32,500.00
Total	\$567,539.50

Actual Site Work costs which are considered eligible by
K.S.A. 12-5249 will be reimbursed.

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

EXHIBIT E

CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of La Estancia Partners II, LLC (the “Developer”), pursuant to Section 3.4.3 of the Development Agreement dated as of April 23, 2012 (the “Development Agreement”) by and among the City of Dodge City, Kansas, and the Developer, 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 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 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: _____

LA ESTANCIA PARTNERS II, LLC

By: _____

Name:

Title:

ORDINANCE NO. 3532

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 (LA ESTANCIA PARTNERS II, LLC PROJECT 2012)

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 40,000 located in a county with a population of less than 60,000, 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 28,000, is located in Ford County, Kansas, which has an estimated population of approximately 34,000, 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 April 23, 2008 (the “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. 2009-19 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 October 7, 2009, 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 April 23, 2012 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. 2012-13 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 April 23, 2012 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on April 23, 2012, 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.

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

Section 1. Findings. The Governing Body hereby finds that due notice of the public hearing conducted April 23, 2012 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:

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

The boundaries of the District do not contain any property not referenced in Resolution No. 2012-13, 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 April 23, 2012, 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 eligible costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of K.S.A. 12-5249.

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 April 23, 2012.

[SEAL]

_____, Mayor

Nannette Pogue, City Clerk

Memorandum

To: City Commissioners
From: Ken Strobel
Date: Monday, April 23, 2012
Subject: Resolution for LaQuinta Inn Project
Agenda Item: Resolution

Attached is a Resolution for the City of Dodge City to approve a change to the Bond Agreement and form of bond for the LaQuinta inn Industrial Revenue Bond project. The City has already approved the Industrial Revenue Bonds and all the related transactions in previous City Commission meetings and the transaction has been completed. Home National Bank and David, Inc. (LaQuinta Inn) have agreed to lower the floor on the variable rate to 4.75% on the Series 2007 bonds. Therefore it is necessary for the City to pass a Resolution approving those changes. This change does not affect the City in any way, but since the City issues the Industrial Revenue Bonds by City Commission action, the City must also approve any changes to those bonds.

RESOLUTION NO. 2012-18

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS APPROVING THE FORM OF BOND AGREEMENT AMENDMENT NO. 2, AMENDING AND SUPPLEMENTING A CERTAIN BOND AGREEMENT ENTERED INTO BY THE CITY IN CONNECTION WITH THE ISSUANCE BY THE CITY OF ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES A, 2007 AND SERIES B, 2007 (LA QUINTA INN PROJECT).

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

Section 1. Approval of Form of Bond Agreement Amendment No. 2. That the form of Bond Agreement Amendment No. 2 to be entered into between the City of Dodge City, Kansas (the "Issuer"), RCB Bank, Ponca City, Oklahoma, as bondowner of the Series A, 2007 Bond (the "Bondowner"), and consented to by David, Inc. (the "Tenant") amending a Bond Agreement, dated as of the Issue Date of the Series A, 2007 Bonds, between the Issuer, the Tenant and the Bondowner, entered into in connection with the issuance by the Issuer of its Taxable Industrial Revenue Bonds, Series A, 2007 is hereby approved in substantially the form presented to the governing body concurrently with this Resolution.

Section 2. Authorization to Execute and Deliver Documents. The Mayor and City Clerk are hereby authorized to execute and deliver on behalf of the Issuer the Bond Agreement Amendment No. 2 and any other documents or certificates as may be necessary or desirable to carry out the provisions of this resolution upon receipt of the original documents signed on behalf of the Bondowner by a duly authorized officer, and consented to by the Tenant.

Section 3. Effective Date. This Resolution shall take effect from and after its adoption by a majority of the governing body of the Issuer.

Adopted by the City of Dodge City, Kansas this ____ day of April, 2012.

CITY OF DODGE CITY, KANSAS

By: _____
Rick Sowers, Mayor

[SEAL]

ATTEST:

By: _____
Nannette Pogue, City Clerk

BOND AGREEMENT AMENDMENT NO. 2

THIS BOND AGREEMENT AMENDMENT NO. 2, is made effective as of April ____, 2012 between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation ("Issuer"); **RCB BANK**, as successor to Home National Bank, Ponca City, Oklahoma (the "Bondowner"); and **DAVID, INC.**, a Kansas corporation (the "Tenant").

Recitals

A. The Issuer's governing body heretofore passed an ordinance authorizing Issuer to issue its Taxable Industrial Revenue Bonds, Series A, 2007 (La Quinta Inn Project) in the principal amount of \$4,870,000 (the "Series A, 2007 Bond"), and its Taxable Industrial Revenue Bonds, Series B, 2007 (La Quinta Inn Project) in the principal amount of \$530,000 (the "Series B, 2007 Bond"), for the purpose of acquiring, constructing, and equipping a hotel facility (the "Facility").

B. The Issuer, Tenant and Bondowner are parties to a Bond Agreement, dated as of the Issue Date of the Bonds, prescribing the terms of the Bonds. The Bond Agreement was amended by the parties pursuant to Bond Agreement Amendment No. 1, dated as of July 14, 2008 (collectively, the "Bond Agreement")

C. Pursuant to *Section 9* of the Bond Agreement, the parties desire to amend and supplement the Bond Agreement as provided herein.

D. The Bondowner owns all of the outstanding Series A, 2007 Bonds.

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. *Capitalized Terms.* All capitalized terms not otherwise defined shall have the same meanings as in the Bond Agreement.

2. *Ratification of Bond Agreement.* The Issuer, the Bondowner and the Tenant each acknowledges and confirms that the Bond Agreement is in full force and effect as of the date hereof and that none of them knows of the existence of any default under the Bond Agreement.

3. *Amendment to Bond Agreement and Form of Bond.*

(a) The following amendment shall be made to the form of the City of Dodge City, Kansas Taxable Industrial Revenue Bonds (LaQuinta Inn Project), Series A, 2007, attached as Exhibit A-1 to the Bond Agreement and in the originally issued Bonds:

(i) The "Floating Interest Rate" shall mean a rate of interest per annum equal to the Wall Street National Prime, plus

1.00%, provided, however, such rate shall not be less than 4.75% per annum.

(ii) The "Adjustment Date" shall mean the Issue Date and each day thereafter until the entire principal balance is paid in full.

(b) Except as expressly amended herein, the terms of the Bond Agreement and each of the Bonds shall remain unchanged and in full force and effect.

4. *Consent of the Bondowner.* Bondowner hereby represents and warrants that it is the Owner of 100% of the aggregate principal amount of all Outstanding Bonds as of the date hereof. Bondowner hereby acknowledges that, except as expressly amended herein, the Bond Agreement and all related documents shall remain in full force and effect.

[Remainder of page intentionally left blank]

RCB BANK
Ponca City, Oklahoma

By: _____
Name: David M. Schaller
Title: Senior Vice President

DAVID, INC.

By: _____
Name: Atul Patel
Title: President

UNITED STATES OF AMERICA
STATE OF KANSAS

CITY OF DODGE CITY, KANSAS

TAXABLE INDUSTRIAL REVENUE BOND
(LA QUINTA INN PROJECT)
SERIES A, 2007

The City of Dodge City, Kansas (the "Issuer"), hereby promises to pay, solely out of the sources hereinafter specified, **RCB BANK**, the registered owner hereof, or registered assigns (an "Owner"), the principal sum of

[_____] **DOLLARS**

plus interest on the unpaid balance hereof accruing from the Issue Date until paid, in lawful money of the United States of America, at the rates and payable as follows:

- a. From the Issue Date of this Bond to the Adjustment Date, monthly installments of the Amortization Amount, including interest accrued thereon at the Floating Interest Rate (herein defined), being the floating rate of interest determined on the first Adjustment Date as adjusted on that date, and as subsequently adjusted on each succeeding Adjustment Date for the period of time between Adjustment Dates, commencing on the first Payment Date after the first Adjustment Date and continuing on each Payment Date thereafter until the Final Maturity Date.
- b. One final payment in the amount of the entire unpaid balance hereunder (including all accrued and unpaid interest) on the Final Maturity Date.

The "Adjustment Date" shall mean the Issue Date of this Bond and each day thereafter until the entire principal balance is paid in full.

The "Amortization Amount" shall mean an amount sufficient to fully amortize and pay, in substantially equal monthly installments of principal and interest over a period of 133 months commencing on the Issue Date and ending on the Final Maturity Date, the entire unpaid balance of this Bond as of the Issue Date. Prior to the Payment Date, the Bank will provide a schedule of payments including interest calculated at the Floating Interest Rate as in effect. The Amortization Amount will continue to be the payment amount on this Bond on and after the each Payment Date, with each payment being applied first to interest accrued at the Floating Interest Rate, and then to principal.

A "Business Day" shall mean a day on which the Bank is open for business at its commercial bank office in Ponca City, Oklahoma.

The "Final Maturity Date" shall be the first day of the 133rd month after the "Issue Date."

The "Floating Interest Rate" shall mean a rate of interest per annum equal to the Wall Street National Prime, plus 1.00%; provided, however, such rate shall not be less than 4.75% per annum.

The "Issue Date" shall mean the date endorsed by the fiscal and paying agent on the Certificate of Authentication on this Bond.

The "Payment Date" shall be the first day of each calendar month following the First Payment Date.

Payments of principal of and redemption premium, if any, and interest on this Bond shall be made in immediately available funds no later than 11:00 A.M., Central time, on the First Payment Date and each succeeding Payment Date, at the Bank's commercial banking office in Ponca City, Oklahoma or such other place as the Bank may from time to time designate in writing, in lawful money of the United States of America. If the principal of or interest on this Bond falls due on a day other than a Business Day, then such due date shall be extended to the next succeeding full Business Day. Payments not made within five business days of the Payment Date will be deemed in default.

If there is a default in the payment of any item or installment when due, the item or installment so in default shall continue as an obligation hereunder until the same shall be fully paid, and such item or installment shall be payable upon demand with interest thereon.

This Bond is issued pursuant to an Ordinance of the governing body of the Issuer and a Bond Agreement dated as of December 7, 2007 (the "Bond Agreement"), between the Issuer, the Bank and David, Inc. (the "Tenant"), for the purpose of providing funds to pay any existing indebtedness, or reimburse the Tenant for payment of, the costs of acquiring, constructing, equipping and furnishing a hotel facility located in the City of Dodge City, Kansas, including land, buildings, fixtures, improvements, furnishings, machinery, equipment and related support facilities (the "Project"), to be made pursuant to a Lease, dated as of December 7, 2007 (the "Lease"), between the Issuer and the Tenant by the authority of and in conformity with the constitution and statutes of the state of Kansas, including particularly K.S.A. 12-1740 *et seq.*, as amended, and all other laws of said state applicable thereto.

This Bond and the interest and redemption premium, if any, hereon are payable solely out of the revenues derived by the Issuer from the Project and pursuant to the Lease. This Bond and the interest and redemption premium, if any, hereon do not constitute a debt of the Issuer, or of the State of Kansas, and neither the Issuer nor said state shall be liable thereon, and this Bond shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. In addition, the payment of the principal of and redemption premium, if any, and interest on this Bond has been unconditionally guaranteed by the Tenant and by Wilson S. Parmar, Atul K. Patel, Kantilal L. Patel, and Ila Shah, jointly and severally, pursuant to a Guaranty Agreement, dated as of the Issue Date of this Bond (the "Guaranty Agreement"). Performance of the obligations of the Tenant as a guarantor under the Guaranty Agreement is secured by a mortgage and security agreement of the Project. Reference is hereby made to the Bond Agreement, the Lease and the Guaranty Agreement for a further description of the Project, the rights, duties and obligations of the Issuer, the Tenant, the Bank and any other owners of the Bonds, the security for this Bond and such obligations hereunder.

In the event of a Change of Circumstances (as defined in the Bond Agreement), this Bond shall be subject to redemption and payment prior to the stated maturity thereof at the option of the Issuer, upon instructions from the Tenant, on any date, at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

This Bond shall be redeemed in part, in order to exhaust any money that may remain in the Project Fund after the Completion Date and after payment in full of all Project Costs (as said terms are defined in the Bond Agreement) as soon as practicable after such Completion Date at a price equal to the principal amount of this Bond to be redeemed, plus accrued interest thereon to the redemption date, without premium.

This Bond shall be redeemed in part, in order to exhaust any Net Proceeds (as defined in the Lease) of insurance or condemnation awards paid into the Bond Fund as soon as practicable after receipt at a price equal to the principal amount of this Bond to be redeemed, plus accrued interest thereon to the redemption date, without premium.

This Bond is also subject to redemption in whole or in part, in even multiples of \$100, at the option of and upon instructions from the Tenant to the Issuer, on any date, at the par value of the principal amount thereof, without premium, plus interest accrued to the date of redemption.

Notice of any call for redemption at the option of the Tenant shall be given by the Issuer or the Tenant on behalf of the Issuer to each owner of the Bonds at its address as it appears on the records maintained by the Bank as fiscal and paying agent by first class mail, postage prepaid, mailed not less than ten (10) days prior to the redemption date.

All portions of this Bond so called for redemption will cease to bear interest on the specified redemption date, provided funds or securities in which such funds are invested for their redemption are on deposit with the paying agent prior to the redemption date, and shall no longer be entitled to the benefits and protection of the Bond Agreement and shall not be deemed to be outstanding.

If this Bond is redeemed in part, it need not be delivered to the Bank or the Issuer to note such partial redemption, but the owner of the Bonds may note such partial redemption by endorsing the acknowledgment provided on this Bond. Any redemption in part of this Bond shall be applied to reduce the principal hereof, and the Bank shall reamortize the remaining principal amount over the remainder of the period to the Final Maturity Date.

This Bond is issuable in the form of a fully registered Bond without coupons. This Bond shall be transferable by the owner of this Bond upon the surrender of the certificate or certificates representing this Bond for transfer or exchange at the offices of the Bank as fiscal and paying agent, accompanied, in the case of a transfer, by a written instrument of transfer executed by the owner of this Bond or its attorney in fact duly authorized in writing. Upon such surrender, the Bank shall cause the Issuer to execute and deliver in the name of the transferee a new registered Bond certificate or certificates in an aggregate principal amount equal to the unpaid principal amount hereof. The Issuer, the Bank, the Tenant and the Guarantor may deem and treat the person in whose name this Bond certificate is registered as the absolute owner of the principal amount of the Bonds represented by this certificate for the purpose of receiving payment of, or on account of, the principal or interest due hereon and for all other purposes. Transfer of this Bond certificate is subject to certain further conditions and restrictions as further endorsed hereon.

In certain events, on the conditions, in the manner and with the effect set forth in the Bond Agreement, the principal of this Bond may be declared due and payable before the stated maturity hereof, together with interest accrued hereon. Modifications or alterations of this Bond may be made only to the extent and in the circumstances permitted by the Bond Agreement.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual signature of the Mayor and attested by the manual signature of the City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused this Series A, 2007 Bond to be dated as of the Issue Date of this Bond.

CITY OF DODGE CITY, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

By: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond certificate evidences ownership of the City of Dodge City, Kansas Taxable Industrial Revenue Bonds, Series A, 2007 (La Quinta Inn Project), as described herein and in the Bond Agreement described herein. The Issue Date of this Series A, 2007 Bond is May 1, 2012.

RCB BANK
as fiscal and paying agent

By: _____
Authorized Officer

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

Print or Type Name and Address of Transferee

the Bonds represented by this certificate and all rights thereunder, and hereby authorizes the transfer of the within Bond on the books kept by the Bank for the registration and transfer of Bonds.

Dated: _____

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

Signature Guaranteed By:

[Seal of owner of the Bonds]

(Name of Eligible Guarantor Institution)

By: _____

Title: _____

Signature must be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240.17-Ad-15).

THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, OR IN A TRANSACTION EXEMPT FROM THE APPLICATION OF FEDERAL AND STATE SECURITIES LAWS.

**ACKNOWLEDGMENT OF PARTIAL REDEMPTION
RECORD OF PAYMENTS**

Partial prepayments of the principal of this Bond may be made directly to the registered owner hereof without surrender hereof to the Bank, and each registered owner hereof may record such prepayment on the table set forth below. Accordingly, any purchaser or other transferee of this Bond should verify with the Bank the principal hereof outstanding prior to such purchase or transfer, and the records of the Bank shall be conclusive for such purposes.

<u>Payment</u> <u>Date</u>	<u>Amount</u> <u>Paid</u>	<u>Signature</u>	<u>Payment</u> <u>Date</u>	<u>Amount</u> <u>Paid</u>	<u>Signature</u>
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AMENDMENT NO. 5
To the
AGREEMENT
For
OPERATIONS, MAINTENANCE AND
MANAGEMENT SERVICES

THIS AMENDMENT is made and entered into this ___ day of _____, 2012, by and between the City of Dodge City, Kansas (hereinafter "Owner"), whose address for any formal notice is P.O. Box 880, Dodge City, Kansas 67801 and Operations Management International, Inc. (hereinafter "CH2M HILL OMI"), whose address for any formal notice is 9189 South Jamaica Street, Suite 400, Englewood, CO 80112. This is Amendment No. 5 to the Agreement dated the 1st day of March, 2007, between Owner and CH2M HILL OMI. Collectively, Owner and CH2M HILL OMI will be referred to as the "Parties".

Owner and CH2M HILL OMI agree that the Agreement shall be and is hereby amended and modified in the following manner:

1. Article 5.1 is deleted in its entirety and replaced with the following Article 5.1:

5.1 The initial term of this Agreement shall be for a period of ten (10) calendar years commencing January 1, 2012 through December 31, 2021, notwithstanding the later date of execution of this Agreement. Thereafter, this Agreement shall be automatically renewed for successive terms of five (5) calendar years each unless cancelled by either party by written notice not less than one hundred twenty (120) calendar days prior to expiration of the initial term, or any successive term, or under the provisions so established in Appendix E. The compensation for the January 1, 2011 through December 31, 2011 is set out in Appendix E as E.4 and shall be effective till December 31, 2011. Thereafter, the Base Fee and other compensation will be in accordance with the Agreement.

2. Article B.3.9 in Appendix B is deleted in its entirety and replaced with the following Article B.3.9 in Appendix B:

B.3.9 The Owner shall pay as additional compensation to CH2M HILL OMI a fee of Seventeen Thousand Five Hundred Dollars (\$17,500) for Biosolids Costs for the period of January 1, 2012 through December 31, 2012. CH2M HILL OMI shall provide Owner with a detailed invoice of Biosolids Costs over the annual biosolids limit, and Owner shall pay CH2M HILL OMI for all Biosolids Costs in excess of such limit. CH2M HILL OMI will rebate to Owner the amount that actual Biosolids Costs that is less than the annual biosolids limit in any year of this Agreement.

3. Article E.1.1 in Appendix E is deleted in its entirety and replaced with the following Article E.1.1 in Appendix E:

E.1.1 Owner shall pay to CH2M HILL OMI as compensation for Services performed under this Agreement One Million Five Hundred Ninety-Eight Thousand Three Hundred Fifty

Six Dollars (\$1,598,356.00) (which includes the Base Fee, Biosolids Costs, gypsum, Repairs Costs, Chemicals and the Membrane Performance Agreement) for the period of January 1, 2012 through December 31, 2012. The Base Fee for subsequent calendar years of the initial term and any subsequent terms shall be determined as hereinafter specified.

4. Article E.1.4 in Appendix E is deleted in its entirety and replaced with the following Article E.1.4 in Appendix E:

E.1.4 The total amount CH2M HILL OMI shall be required to pay for acquisition and application of gypsum shall not exceed the limit of One Hundred Fifty Thousand Dollars (\$150,000) for the calendar year January 1, 2012 to December 31, 2012. CH2M HILL OMI shall provide Owner with a detailed invoice of monies spent over the annual limit for gypsum acquisition and application, and Owner shall pay to CH2M HILL OMI for all monies in excess of such limit. CH2M HILL OMI will rebate to Owner the entire amount that the cost of gypsum acquisition and application is less than the annual gypsum application limit.

5. Article E.1.5 in Appendix E is deleted in its entirety and replaced with the following Article E.1.5 in Appendix E:

E.1.5 The total amount CH2M HILL OMI shall be required to pay for Repairs Cost shall not exceed the annual Repairs Limit of One Hundred and Thirty Thousand Dollars (\$130,000) during year January 1, 2012 to December 31, 2012. CH2M HILL OMI shall provide Owner with a monthly accounting reflecting the reason for and the cost of repairs provided. CH2M HILL OMI will rebate to Owner the entire amount that actual Repair Cost is less the annual Repairs Limit during the calendar year. In the event the Repairs Limit is reached, CH2M HILL OMI shall invoice Owner on a monthly basis for Repair Cost in excess of such limit.

6. Paragraph E. 1. 9 is hereby added in Appendix E as follows:

E.1.9 The total amount CH2M HILL OMI shall be required to pay for Chemicals for the Membrane Plant shall not exceed the annual Chemicals Limit of Thirty One Thousand Eight Hundred Forty Four Dollars (\$31,844.00) during the year January 1, 2012 to December 31, 2012. CH2M HILL OMI shall provide Owner with a monthly accounting reflecting the reason for and the cost of chemicals provided. CH2M HILL OMI will rebate to Owner the entire amount that actual Chemicals for the New Plant are less the annual Chemicals Limit for the New Plant during the calendar year. In the event the Chemicals Limit for the New Plant is reached, CH2M HILL OMI shall invoice Owner on a monthly basis for the Chemicals Cost for the New Plant in excess of such limit.

7. Appendix E.4 is deleted in its entirety.

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All other terms and conditions of the original March 1, 2007 Agreement shall remain in effect. The Parties hereby approve this Amendment No. 5 as is indicated by the signatures of their authorized representatives, below.

OPERATIONS MANAGEMENT
INTERNATIONAL, INC.

CITY OF DODGE CITY, KANSAS

Authorized Signature:

Authorized Signature:



Name: Natalie L. Eldredge
Title: Vice President
Date: 4/10/12

Name: Ken W. Strobel
Title: City Manager
Date: _____

CUB 4-9-2012