

EL DORADO CITY COMMISSION – REGULAR MEETING AGENDA
CITY HALL – 220 E. FIRST AVENUE
December 2, 2019 – 6:30 PM

- 1. Call to Order**
- 2. Roll Call**
- 3. Invocation** – Major Eric Johnson – Salvation Army
- 4. Pledge of Allegiance-** The Flinthills Rock and Rollers

Proclamations and Recognition

5. Service Awards
6. Appreciation of Service – Outgoing Mayor
- 7. Adjournment Sine Die**

Commissioner _____ moved to adjourn the City Commission meeting sine die.

Commissioner _____ seconded the motion.

- 8. Swear in New Members of the Commission**

- 9. Call to Order**

10. Personal Appearances. Personal appearances are opportunities for organizations or citizens to make special presentations before the City Commission. Such appearances are scheduled in advance of the meeting by calling City Clerk Tabitha Sharp at (316) 321-9100 by 5:00 pm the Tuesday preceding the meeting. Presentations are limited to ten minutes. Any presentation is for information purposes only; no action will be taken.

11. Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon the Mayor. Comments on personnel matters and matters pending in court are not permitted. Speakers are limited to three minutes. Any presentation is for information purposes only; no action will be taken.

Consent Agenda (*Consent agenda items will be acted on by one motion unless a majority of the City Commission votes to remove an item for discussion and separate action.*)

- 12.** [City Commission Minutes from November 18, 2019](#) and [Special City Commission Meeting Minutes from October 30 and November 13, 2019.](#)

- 13.** [Civic Center and Train Depot Rates](#)

Old Business

- 14.** None

New Business

- 15 Purchase of 904 North Orient
- 16. Project #524 Bike Path/BNSF Agreement
- 17. Flint Creek Estates Planned Development Overlay District
- 18. 2019 Budget Amendment
- 19. CONFAB and OCI Tax Abatement Public Hearing
- 20. BG Products Taxable Industrial Revenue Bond Approval

Reports

- 21. City Commission and Advisory Board Updates
- 22. City Manager

Adjournment

- 23. Consideration of a motion to adjourn the December 2, 2019 regular meeting

PUBLIC COMMENT POLICY:

Citizens are encouraged to address the City Commission during regularly scheduled meetings. This policy is intended to provide some guidelines to ensure that all El Dorado citizens have a chance to address the Commission.

- 1. Each citizen will state their name and address before making comments.
- 2. There are no residency requirements.
- 3. Each citizen will have 3 minutes to present his or her comments.
- 4. An extension of time, if necessary, may be approved but must be by a majority of the City Commission.
- 5. Comments or questions will be directed only to the City Commission.
- 6. Citizens will follow the decorum policy.
- 7. Debate or argument between parties in the audience will not be allowed.
- 8. Certain legal issues may not be discussed. (Examples include but are not limited to personnel issues, lawsuits, etc.)
- 9. Violation of this public comment policy will result in the citizen being directed to cease or resume sitting.

Approved by the Commission this 2nd day of May 2005.

EL DORADO CITY COMMISSION MEETING

November 18, 2019

The El Dorado City Commission met in a regular session on November 18, 2019 at 6:30 p.m. in the Commission Room with the following present: Mayor Vince Haines, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Nick Badwey, City Manager David Dillner, City Engineer Scott Rickard and City Clerk Tabitha Sharp. Absent: Commissioner Kendra Wilkinson

VISITORS

Brad Meyer	222 E Locust	El Dorado, KS
Bob Hendricks	1114 W Kansas	El Dorado, KS

CALL TO ORDER

Mayor Vince Haines called the November 18, 2019 meeting to order.

INVOCATION

Pastor David Crook, First Southern Baptist Church, opened the meeting with an invocation.

PLEDGE OF ALLEGIANCE

Skelly Elementary Student Leadership Team led the Pledge of Allegiance.

PUBLIC COMMENT

Mayor Vince Haines opened the floor for public comment.

Bob Hendricks, 1114 W Kansas, stated that the home next to his at 1110 W Kansas burnt down and was removed, but the garage has been knocked over and not cleaned up. He stated that it is collecting animals. He stated that at 1107 and 1105 Cave Springs, the house is in disrepair and the homeless have been congregating there.

Scott Rickard, City Engineer, stated that they are on the list of structures being dealt with by Code Enforcement or the Court. He stated that staff will take a look, but it would be helpful if he could encourage his neighbors to come sign a petition to encourage the court to do more.

CONSENT AGENDA

Approval of City Commission Minutes from November 4, 2019.

Approval of Appropriation Ordinance No. 10-19 in the amount of \$4,111,279.18.

Commissioner Nick Badwey moved to approve the consent agenda as amended.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

LIBRARY BOARD CHARTER ORDINANCE

Mayor Vince Haines stated that the Commissioner had discussed this ordinance allowing them to charter out of the State Statute that requires the Mayor to serve on the Library Board. He stated that the ordinance will allow anyone on the Commission to serve.

Commissioner Matt Guthrie moved to approve Charter Ordinance No. 23, a Charter Ordinance exempting the City of El Dorado, Kansas from K.S.A. Section 12-1222, and providing substitute and additional provisions on the same subject.

Commissioner Nick Badwey seconded the motion.

Roll Call Vote

	Mayor Vince Haines	Yes
Position No. 1	Commissioner Matt Guthrie	Yes
Position No. 2	Commissioner Gregg Lewis	Yes
Position No. 3	Commissioner Nick Badwey	Yes
Position No. 4	Commissioner Kendra Wilkinson	Absent

CNG COMPRESSOR PURCHASE

Public Works Director Brad Meyer stated that the City received about \$40,000 as a rebate for converting the refuse fleet to all Compressed Natural Gas (CNG). He stated that they had put in a 12 gallon per hour pump when they began the program and it is now filling around 34 vehicles with CNG. He stated that in addition to the city fleet, there are several other companies using CNG and purchasing it at our pump.

Public Works Director Meyer stated that a compressor has come available for \$54,000, and staff would like to purchase it with the \$40,000 and funds from fund balance.

Commissioner Matt Guthrie asked how many vehicles it can fill now.

Public Works Director Meyer stated that the compressor is used to refill the tanks, not the vehicles. He stated that this one will fill thirty gallons in an hour and so will run less than the current one.

Commissioner Gregg Lewis moved to approve the purchase of a compressor for the CNG station from CNG Services in the amount of \$54,000.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

PROJECT NO. 543 – SETTING A PUBLIC HEARING FOR UNION TANK CAR WATER MAIN PROJECT

City Engineer Scott Rickard stated that staff are requesting that Commission set the public hearing for this project now that it is complete. He stated that it was to increase the size of the water line to serve their fire suppression services. He stated that Union Tank will pay \$204,015, they have not yet decided if they will pay their portion in one payment or over 20 years. He stated that the remainder of the project, which was increased in scope, will be paid for by the water department and the economic development fund.

Commissioner Nick Badwey moved to set the public hearing for 6:30 p.m. on December 2, 2019 to be held for the purpose of considering the proposed assessments of the cost of Project No. 543, and further direct individual mailings to each owner liable for the special assessments.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

STREET NAMING ORDINANCE

Mayor Vince Haines stated that the Commission discussed this at the work session and are ready to move forward with the naming of the road near BG Products in the Industrial Park.

Mayor Vince Haines moved that Ordinance No. G-1315, an ordinance naming a street in the City of El Dorado, Kansas be approved.

Commissioner Nick Badwey seconded the motion.

Roll Call Vote

EL DORADO CITY COMMISSION MEETING

November 18, 2019

Position No. 1	Commissioner Matt Guthrie	Yes
Position No. 2	Commissioner Gregg Lewis	Yes
Position No. 3	Commissioner Nick Badwey	Yes
Position No. 4	Commissioner Kendra Wilkinson	Absent
	Mayor Vince Haines	Yes

REPORTS

CITY COMMISSION

Commissioner Nick Badwey wished everyone a Happy Thanksgiving. He stated that he attended the Library Board meeting as a meeting of the public. He stated that the board and the Friends of the Library board are very passionate about their work.

Commissioner Badwey stated that on Saturday the City had a large water leak in the 100 block of North Main. He stated that one of the building owners, David Sundgren, stated that the City did a great job getting there quickly and getting things repaired.

Commissioner Matt Guthrie wished everyone a Happy Thanksgiving as well.

Mayor Vince Haines stated that this is his last full meeting, he thanked the Commission for working with him.

CITY MANAGER

City Manager David Dillner stated that all of the taxing entities have approved the NRP, and now we will await approval from the Attorney General.

City Manager Dillner stated that the City will need to amend the 2019 budget. Debt service fund, the water fund, refuse and CNG funds will all need to be amended.

City Manager Dillner stated that the Wichita Area Chamber of Commerce and BCC have invited the Commission to meetings, he asked that they let him know if they want to attend.

City Manager Dillner stated that KDOT announced on Friday that the project at K254 and Boyer was not approved, but that they would review the projects every two years and it might be considered again. He stated that KDOT, the City, and the Turnpike are working on a study for the project.

City Manager Dillner stated that city offices would be closed next Thursday and Friday for Thanksgiving. He encouraged citizens to shop local this season.

City Manager Dillner announced that the Old Fashioned Christmas would be on December 7th downtown.

City Clerk Tabitha Sharp stated that December 2nd the City would be honoring the Mayor's service at 6 p.m. with a reception.

City Manager Dillner reviewed the third quarter financial report.

EXECUTIVE SESSION

Commissioner Nick Badwey moved to recess into executive session pursuant to the attorney client privilege exception under K.S.A. 75-4319(b)(2) for the purposes of discussing ongoing litigation and to reconvene the meeting at 7:35 p.m. in the City Commission Room.

Commissioner Gregg Lewis seconded the motion.

Motion carried 4 – 0.

Mayor Vince Haines called the meeting back to order at 7:35 p.m.

EL DORADO CITY COMMISSION MEETING
ADJOURNMENT

November 18, 2019

Commissioner Nick Badwey moved to adjourn the meeting at 7:35 p.m.

Commissioner Matt Guthrie seconded the motion.

Motion carried 5 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

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The El Dorado City Commission met in special session on October 30, 2019 at 5:00 pm at City Hall with the following present: Vice Mayor Kendra Wilkinson, Commissioner Matt Guthrie, Commissioner Gregg Lewis, Commissioner Nick Badwey, City Manager David Dillner, City Engineer Scott Rickard and City Clerk Tabitha Sharp. Absent: Mayor Vince Haines

VISITORS

Curt Zieman	128 N Vine	El Dorado, KS
Tammy Schaffer	220 E 1 st Ave	El Dorado, KS
Kurt Bookout	220 E 1 st Ave	El Dorado, KS
Michelle Linson	220 E 1 st Ave	El Dorado, KS
Jason Patty	220 E 1 st Ave	El Dorado, KS
Brad Meyer	222 E 2 nd Ave	El Dorado, KS

CALL TO ORDER

Vice Mayor Kendra Wilkinson called the October 30, 2019 Special City Commission meeting to order at 5:00 p.m.

FATS, OILS AND GREASES PROGRAM

Public Utilities Director Kurt Bookout stated that we have 47 food establishments in El Dorado and 41 are currently not in compliance with the Fats, Oils and Greases ordinance because we do not have reports from them.

The City Commission reviewed the letter that would be sent and agreed that the sentence stating that water and sewer services may be discontinued should be changed to “will” be discontinued.

HANDS-FREE ORDINANCE

Commissioner Matt Guthrie asked to table this item until Bill Young takes office because he believed he had some thoughts on the topic.

The Commission agreed to table the item.

FLOODPLAIN MANAGEMENT ORDINANCE

City Engineer Scott Rickard stated that the City of El Dorado has received the updated floodplain maps from FEMA. He stated that at the next regular meeting, staff would be providing an ordinance on building within the floodplain from FEMA. He stated that in order to receive disaster funding, the City would be required to adopt it.

2020 AIRPORT PROJECT

Public Works Director Brad Meyer stated that after participating in a phone call with the FAA, staff were made aware that we would not be receiving the requested funds for our full project to replace lights at the airport. He stated that they wished to split the project into smaller portions.

Public Works Director Meyer stated that staff have requested to do the project at once, the City will pay the up-front costs and save on mobilization by doing it at one time. He stated that the City will use a temporary note to pay the project costs and then pay it off with the \$150,000 annual payment we receive for airport projects from the FAA.

UPCOMING AGENDA ITEMS

City Manager David Dillner reviewed the upcoming agenda.

REPORTS

Commissioner Gregg Lewis asked if staff could look at the grass between Constant Creek and the college apartments.

Vice Mayor Kendra Wilkinson stated that she received an e-mail thanking the City for the demolitions we had been doing.

City Manager David Dillner stated that he met with Emily Connell and Frank Patton from El Dorado Main Street. He stated that he will be presenting the information on the reduction of planters at their next downtown assembly. He stated that Main Street has an idea for a larger initiative.

The City Commission directed him to present the existing plan at the meeting and that if any of them have questions, direct them to talk to the Commissioners.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 6:25 p.m.

Commissioner Matt Guthrie seconded the motion.

Motion carried 4 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

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EL DORADO CITY SPECIAL COMMISSION MEETING November 13, 2019

The El Dorado City Commission met in special session on November 13, 2019 at 5:00 pm at City Hall with the following present: Mayor Vince Haines (left at 5:55), Commissioner Matt Guthrie, Commissioner Gregg Lewis (arrived at 5:10), Commissioner Nick Badwey, Commissioner Kendra Wilkinson, City Manager David Dillner, City Engineer Scott Rickard and City Clerk Tabitha Sharp.

VISITORS

Curt Ziemann	128 N Vine	El Dorado, KS
Tammy Schaffer	220 E 1 st Ave	El Dorado, KS
Linda Jolly	El Dorado Inc.	El Dorado, KS
Jordan Buxton	El Dorado Chamber of Commerce	El Dorado, KS
Kurt Bookout	220 E 1 st	El Dorado, KS
Bill Young	1751 E Lakeland Dr	El Dorado, KS
Brad Meyer	222 E 2 nd	El Dorado, KS

CALL TO ORDER

Mayor Vince Haines called the November 13, 2019 Special City Commission meeting to order at 5:00 p.m.

STREET NAMING OF INDUSTRIAL PARK ROAD

Mayor Vince Haines stated that the new road in the Industrial Park by Pioneer Balloon and BG Products does not currently have a name. He asked if the Commission would be willing to consider using the name Garcia.

The Commission agreed that they would vote at the next regular meeting.

WATER SALES POLICY

Mayor Vince Haines stated that he wanted to discuss the options City Manager Dillner had previously presented regarding water sales and lake debt.

The City Commission discussed the information and agreed to revisit the discussion at the beginning of 2020.

CARDBOARD RECYCLING UPDATE

Public Works Director Brad Meyer stated that the cardboard market has firmed up and there has been a larger demand for the material. He stated that he also believes there will be an increase in demand again in January. He recommended no change to the program at this time.

INCREASE IN FACILITY RATES

City Clerk Tabitha Sharp stated that staff would like to increase rates at the Civic Center and Train Depot. She stated that the rates are low compared to other facilities, and we could use the increased revenue to pay for upkeep and renovations to those facilities.

The City Commission agreed to vote at the next meeting and asked to increase the deposit for the facilities to ensure that they are cleaned properly.

ADVISORY BOARDS

City Clerk Tabitha Sharp presented the advisory board status and requested that the Commission provide staff with names for their appointments by January.

LAKE MASTER PLAN

Linda Jolly, El Dorado Inc., presented a summary of the 2006 report on lake development and some thoughts for moving forward.

City Manager David Dillner stated that staff need direction and support from the Commission to get started on a planning process. He stated that he would convene a few stakeholders and build a phase one plan that deals with marketing, promotion and maybe a few events. He stated that staff would return by the end of the first quarter with more information.

UPCOMING AGENDA ITEMS

City Manager David Dillner reviewed the upcoming agenda.

REPORTS

Commissioner Matt Guthrie asked if staff could provide information on why Main Street is not participating in the State program.

ADJOURNMENT

Commissioner Nick Badwey moved to adjourn the meeting at 7:02 p.m.

Commissioner Matt Guthrie seconded the motion.

Motion carried 5 – 0.

City Clerk Tabitha D. Sharp

Mayor Bill Young

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2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: City Clerk Tabitha Sharp & Community Marketing Manager Molly Denton
SUBJ: Civic Center and Train Depot Rates
DATE: November 6, 2019

Background:

The current Civic Center and Train Depot rental rates were passed by the City Commission in 2015. Since that time the facilities have been well used, and are showing their age. Items to be placed in the CIP for these buildings include, but are not limited to: painting the outside of the Depot; adding a screen and projector at the Depot; replacing chairs and tables at both facilities; replacing the partition doors at the Civic Center; and replacing the parking lot at both facilities. These rates are no longer supporting the facilities' needs and so staff are recommending changes to the price structure.

A policy for fee exceptions was passed by City Commission in 2009, staff have made suggestions for changes to that policy. We have also made changes to the rental agreements for the Depot and Civic Center. All policies are included in the packet.

Policy Issue:

The rental rates for both facilities are comparably lower than other rental spaces in the area. At the Civic Center, there are two rates offered: a breakout room rate and a full facility rate. At the Train Depot, there are two sides available for rent (West and East), both with a different rate. These are depicted in item A in the support documents.

Alternatives:

- A. Increase the rates as shown in Item B.
- B. Provide staff with direction on a rate structure.
- C. Do not make a change.

Fiscal Impact:

The summary shows the overall fiscal impact.

Trade-offs:

As mentioned, there are several projects that we would like to do involving these rental facilities and without the increase, we will be unable to begin them unless there is available fund balance.

Staff Recommendation:

Increase the rates as shown in Item B.

Commission Actions:

Commissioner _____ moved to approve the proposed rates for the Civic Center and Train Depot and to approve the policy for rental fee exceptions.

Commissioner _____ seconded the motion.

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A. Current Rental Rates

Civic Center				
	Price per day	Avg. # Rentals	Deposit Refunded	Total
Church	\$450	50	n/a	\$22,500.00
Full Facility	\$700	38	-\$150	\$20,900.00
Breakout Room (all day)	\$125	14	n/a	\$1,750.00
Breakout Room (< 4 hours)	\$50	20	n/a	\$1,000.00
Approx. Revenue				\$46,150.00

Train Depot			
	Price per day	Avg. # Rentals	Total
West Side	\$35	160	\$5,600
East Side	\$25	95	\$2,375.00
Approx. Revenue			\$7,975.00

B. Proposed New Rental Rates

Civic Center				
	Price per day	Avg. # Rentals	Deposit Refunded	Total
Church	\$550	50	n/a	\$27,500.00
Full Facility (Monday – Thursday)	\$1,100	18	-\$250	\$15,300.00
Full Facility (Friday & Saturday)	\$1,600	20	-\$250	\$27,000.00
Breakout Room (all day)	\$150	14	n/a	\$2,100.00
Breakout Room (< 4 hours)	\$75	20	n/a	\$1,500.00
Approx. Revenue				\$73,400.00

Train Depot			
	Price per day	Avg. # Rentals	Total
West Side	\$70	160	\$11,200.00
East Side	\$50	95	\$4,750.00
Approx. Revenue			\$15,950.00

C. Summary

Facility	Current Revenue	Increased Revenue (approx.)	Average Expenses	Profit/Loss (approx. with new rates)
Civic Center	\$46,150.00	\$73,400.00	\$81,607.21	-\$8,207.21
Train Depot	\$7,975.00	\$15,950.00	\$9,072.56	\$6,877.44

**El Dorado Civic Center
Rental Fee Exceptions/Clarifications**

Governmental Entities

Unified School Districts –

- Rental fee shall be \$_____ (amount defined by City Commission)

Butler County-

- Fee waived for elections.

Butler Community College-

- Rental fee shall be \$_____ (amount defined by City Commission)

Outside Governments- non-profit rental fee applies

Non-Profit Entities

A non-profit rate is available for full facility rentals only. Organizations must provide proof of their non-profit status to receive the discount. The discount given is 20% of the rental fee.

El Dorado Partner Organizations

El Dorado Inc., El Dorado Chamber of Commerce and El Dorado Main Street

- Rental fee waived for Annual Meetings
 - This waived rental fee may be applied toward another reservation if no Annual Meeting is held at facility.
- The non-profit rental fee shall apply to other uses of the facility, unless otherwise provided in a written agreement by the City Commission.

Other City Associated Events

Reservations held at the facility that have an association with the City may be eligible for a waived rental fee. These reservations must request approval in writing from the City Manager.

Special Events

All other reservations requesting a discounted or waived rental fee will be addressed at the discretion of the City Manager.

Physical Address:
El Dorado Civic Center
201 E. Central
El Dorado, KS 67042

Business Address:
El Dorado City Hall
220 E. 1st Ave.
El Dorado, KS 67042

El Dorado Civic Center Rental Agreement Form

Lessee Information

Event Date(s):	Purpose:
Responsible Party:	Organization:
Email:	Address:
Contact Phone:	
Name and Address for deposit refund check (if different than above):	

Event Information

Room Requested: ☐ Breakout Room (meeting room) ☐ Full Facility (banquet room, kitchen, serving room and breakout rooms)	
Start Time (including set-up):	Close Time (including clean-up):
Marquee Sign Display Message:	
Estimated Attendance:	Will Admission be Charged? Y N
Will Food be Served? Y N	Will Alcohol be Served? Y N
Will you need WIFI? Y N <i>(available by request at the time of your reservation)</i>	

Rental Policies and Procedures

Reservation and Payment:

- Reservations will be made on a first come first serve basis. Reservations will only be confirmed when the written application and \$25 deposit has been returned.
- The rental fee must be paid in full two weeks prior to the event. If the payment is not received within the time limit, the reservation will be subject to cancellation.
- Payments can be made using cash, credit, or check. Checks must be written to the City of El Dorado.
- Cancellations must be given 2 weeks from scheduled event for a full refund. Cancellations given 1 week from scheduled event will receive a refund in half of the amount paid. NO refunds will be submitted if the cancellation is less than six days regardless of amount paid. If the cancellation is due to a medical emergency or death, written notice is required and will be at management discretion. Cancellations will result in forfeiture of the \$25 rental deposit.
- Rental fees will be assessed based on the following:

Area of Rental Per Day	Monday - Thursday	Friday & Saturday
Breakout Room Rental Fee (>4 hours)	\$150	\$150
Breakout Room Rental Fee (<4 hours)	\$75	n/a

Area of Rental Per Day	Monday - Thursday	Friday & Saturday
Full Facility Rental Fee	\$850	\$1,350
Deposit (refundable)	\$250	\$250

- *A copy of a debit/credit card and valid driver's license is required to hold for any damages, stolen property or lost keys.*
- *Non-profit rates available for full facility rentals only. Organization must provide proof of their status. A \$200 discount for Monday–Thursday rentals and \$300 discount for Friday-Saturday rentals.*
- *An additional charge of \$150 will apply if the stage is requested to be moved or taken down.*
- *Additional charges will apply for our staff to make changes to set up after it is complete.*
- *Sunday is currently not available to rent.*

Decorations: _____ (Initial)

- **NO** nails, tape, tacks or staples are allowed on the Civic Center walls. Blue Painters tape is an acceptable adherent.
- **NO** Glitter, confetti, hay and straw are allowed to be used for decorating within the facility.
- **NO** Kegs, coolers, or drink machines are allowed in the building unless they remain on the bare concrete floor in the receiving room on the east side of the building.
- **All** decorations, equipment, foods, supplies, etc. are to be unloaded at the east overhead door. (No exceptions.)
- No tables, chairs or other abrasive items are allowed on the dance floor.
- Renter is responsible for bringing all decorating materials including ladder, scissors, tape, etc.
- **All** candles must be placed on non-combustible surfaces. All materials provided by the rental agreement must be kept free of wax or residue.
- **All** items brought into the building by lessee need to be removed by the end of the rental period. Lessees are asked to remove food, materials, equipment, furnishings and decorations or garbage left after use of the facility.
- **No** fork lifts or pallet jacks of any kind are allowed in the Civic Center building.
- **Failure to comply with any of the aforementioned decoration rules will result in a forfeiture of the entire Clean-up and Damage Deposit.**

Set-up and Clean-up: _____ (Initial)

- The City will be responsible for set-up and tear down of all tables and chairs. Set-up will be completed in accordance with the Lessee's requests. If the lessee requests additional set-up changes beyond those reflected on the initial set-up form, they will be charged at \$50 per-hour.
- **The lessee is responsible to clean floors, tables and kitchen. Including sweeping, disposing of all trash, and wiping down surfaces. The lessee is responsible to leave the facility in the same condition it was found.**
- Renter is responsible for removal of all trash to the dumpsters on the east side of the building.
- Renter is responsible for cleanup of excessive spills or accidents. Failure to do so will result in additional charges.

Damages: _____ (Initial)

- Lessee agrees to return the premises of the El Dorado Civic Center in the same condition as rented from the Center. The City will inspect the premises to its satisfaction after the lessee's use. Any damage or excessive cleanup needs, noted by the inspector, to the Civic Center building and/or grounds will result in additional charges. **Any damage in excess of the pre-paid fee will be charged to the lessee.** The lessee shall pay the balance of the costs within ten days of the receipt of a statement for repairs or replacement. It is the responsibility of the lessee to ensure that the caterer provides proper cleanup. **In the event of no detected damage or excessive cleanup, the designated portion of the deposit will be mailed to the renter within 30 business days following the completion of the lessee's use of the facility.**

Alcohol Policy: _____ (Initial)

- The El Dorado City Commission promotes the use of the Civic Center for any and all events.
- The City Manager or his designee must approve all events at which alcoholic or malt beverages will be served. The City Manager or his designee has the authority to make special regulations for any such event, which may be more restrictive than those included in the original contract.
- Any caterer charging a fee for alcoholic or malt beverages must be licensed with the State of Kansas and approved by the City Manager or his designee.
- The lessee will be responsible for providing adequate supervision for the dispensing and serving of alcoholic beverages to guests attending the event.
- All guests attending an event serving alcoholic beverages must be 21 years of age except:
 - If an individual is employed for the event to perform a service i.e. entertainment, catering, etc.
 - If an individual is accompanied by a parent, legal guardian or other relative over the age of 21.
- The City Manager has the authority to deviate from the administrative policy.
- Any violation of the policy will result in the immediate termination of the event.

Key Request and Event Walk Through: _____ (Initial)

- An entrance key is available for Civic Center renters. A copy of a valid credit card will be required when the key is picked up.
- A Walk Through is required for any weekend, evening or multi day event. The Walk Through will be completed between 3:00-4:30PM on the business day prior to the event (or the day of the event for weekday evening events).
- When the event is over, clean-up has taken place, and all doors are securely locked, drop the key into the drop box in the corridor.
- The lessee or person 21 years of age or older designated by the lessee is required to pick-up the key during the event walk through.
- All doors (interior and exterior) must be locked and the key must be returned to the drop box in the Civic Center entrance upon the completion of the rental period. Failure to return the facility key will result in a \$500 replacement fee charged to the credit card on file.

Non-Refundable Deposit Information: _____ (Initial)

- A \$25 deposit is required to reserve the facility, and must be paid by cash or check. The deposit will be deducted from the total rental fee. In the event of cancelation, the fee will not be refunded to the lessee unless deemed appropriate by Civic Center management.
- If any Civic Center property is missing upon completion of event, an automatic \$100 will be deducted from the possible \$150 Clean-Up and Damage Deposit. This includes the HDMI, VGA, sound cords and rechargeable batteries that are provided for use for the projection and sound equipment.

General Building Policies: _____ (Initial)

- Use of illegal drugs, smoking, and/or gambling is not permitted in the El Dorado Civic Center.
- Only those rooms specified on the agreement will be available for use by the lessee.
- All minors on the premises must have adequate adult supervision.
- The City of El Dorado cannot be responsible for accident, injury or loss/damage of personal property.
- Rules and regulations are subject to change at the City's discretion.
- The Fire Department has the right to walk-through the building at any point during the event to check the occupancy and ensure compliance with the fire code.
- The lessee signing this agreement agrees to be the responsible party.
- All activities shall end at 1:00am on the date following the final day of the lease agreement unless special permission has been granted and approved by the Civic Center management. **All guests, decorations, and items not provided by the Civic Center must be out of the building by the designated time or the lessee will be subject to an additional charge.**

Hold Harmless Agreement: _____ (Initial)

- The lessee as well as their representative organization or group, agrees to defend, indemnify and hold harmless the City of El Dorado, its officers, employees and agents from any and all claims for injury to person (including death) or property arising out of, or in any way connected to its/our use of the rented Civic Center space except to the extent any such claims may arise from any act or omission of the City of El Dorado.

I have read the procedures for use of the El Dorado Civic Center and agree to abide by the regulations set forth by the City of El Dorado. I assume responsibility for any damages that might occur during my use of the facility.

Signature of Responsible Party

Date

Name of Responsible Party

Lessee Reminders

Civic Center Outer Doors

- East Door is unlocked from the inside
- West Door is locked and unlocked from the outside
- When unlocked check handicap buttons to ensure they are functioning properly

General Policies

- No Parking in Fire Lanes
- Use of illegal drugs, smoking, and/or gambling is not permitted in the El Dorado Civic Center
- Only those rooms specified on the agreement will be available for use
- All minors on the premises must have adequate adult supervision
- **All activities shall end at 1:00 a.m. on the date following the final day of the lease agreement unless special permission has been granted and approved by the Civic Center Management. All guests, decorations, and items not provided by the Civic Center must be out of the building by the designated time or the lessee will be subject to an additional charge.**

Decorations

- **NO** nails, tape, tacks or staples are allowed on the Civic Center walls. Blue Painters tape is an acceptable adherent.
- **NO** glitter, confetti, hay and straw are allowed to be used for decorating within the facility.
- **NO** Kegs, coolers, or drink machines are allowed in the building unless they remain on the bare concrete floor in the receiving room on the east side of the building.
- **All** decorations, equipment foods, supplies, etc. are to be unloaded at the east overhead door. (No exceptions.)
- No tables, chairs or other abrasive items are allowed on the dance floor.
- Renter is responsible for bringing all decorating materials including ladder, scissors, tape, etc.
- **All** candles must be placed on non-combustible surfaces. All materials provided by the rental agreement must be kept free of wax or residue.
- **All** items brought into the building by lessee need to be removed by the end of the rental period. Lessees are asked to remove food, materials, equipment, furnishings and decorations or garbage left after use of the facility.
- **No** fork lifts or pallet jacks of any kind are allowed in the Civic Center building.
- **Failure to comply with any of the aforementioned decoration rules will result in a forfeiture of the entire Clean-up and Damage Deposit.**

Post Event Checklist

- ☐ All trash has been moved to the dumpster on the east side of the building
- ☐ Ensure all floors, tables and kitchen areas are clean including sweeping, disposing of all trash, and wiping down surfaces
- ☐ Excessive spills and accidents have been cleaned
- ☐ All sound equipment has been returned to the media room and are turned off
- ☐ All HDMI, VGA and sound cords have been returned to media room
- ☐ All lights and projectors are turned off
- ☐ All doors are locked
- ☐ Catering equipment has been removed and kitchen appliances turned off
- ☐ Keys are deposited in the drop box

For non-emergency issues contact: DO NOT CONTACT 911 FOR CIVIC CENTER ISSUES!

- 316-321-9100 (during regular business hours)
- 316-323-4214 (after hours)

Physical Address:
El Dorado Train Depot
430 N. Main
El Dorado, KS 67042

Business Address:
City of El Dorado
220 E. 1st Ave
El Dorado, KS 67042

Office use only:

- ☐ Paid R# _____
☐ Reservation on Website

Train Depot Rental Agreement Form

Lessee Information

Event Date(s):	
Responsible Party:	
Organization (if applicable):	Address:
Contact Phone:	Email:

Event Information

Room Requested (West or East):			
Event Description:			
Is this a public event?	Yes	☐	No ☐
Will you need WIFI?	Yes	☐	No ☐ (WIFI available by request at the time of your reservation)

Rental Policies and Procedures

Reservation and Payment:

- Reservations will be made on a first come first serve basis. Reservations will only be confirmed when the written application and rental fee have been returned. **A major credit card and a valid driver's license is required at time of reservation for the facility and key deposit.**
- Payments can be made using cash, credit or check. Checks must be written to the City of El Dorado.
- Cancellations must be given 2 weeks from scheduled event for a full refund. Cancellations given 1 week from scheduled event will receive a refund in half of the amount paid. NO refunds will be submitted if the cancellation is less than six days regardless of amount paid. If the cancellation is due to a medical emergency or death, written notice is required and will be at management discretion.
- The KEY must be picked up by 5:00 p.m. on the day of your reservation. Weekend reservations must pick up the key by 5:00 p.m. the Friday before. Key is due back to our office the following business day.**
- Rental fees will be assessed based on the following:

<i>Area of Rental</i>	<i>Capacity (approx.)</i>	<i>Rental Fee (per day)</i>
East Room	15-25	\$50
West Room	60-75	\$70
Full Facility		\$100

The rental of the El Dorado Train Depot Facility is subject to the following provisions:

- The use of the facility must be confined to that stated in the event description above.
- The Lessee signing the agreement for the use of the facility will be responsible for all persons entering the facility which they are using regardless of whether or not all those entering are members of the group which has been permitted to use the facility. Only the specific section of the facility mentioned in the agreement is to be used by the group. This includes the community room, kitchen, restrooms, and lawn area.
- Use of tobacco, illegal drugs or disorderly conduct is prohibited.
- All groups must observe all post regulations in the rental facility.

5. The rental fee must be paid in advance of facility use to the City of El Dorado. Failure to pay the rental fee will be reason enough to deny the use of the facility by the group or organization.
6. Any and all events with minors in attendance must provide adequate supervision for all underage attendees. The City reserves the right to refuse use of the facility by any groups not in compliance with this regulation if they feel it is in the City's best interest to do so.
7. The lessee is responsible to leave the facility in the same condition it was found. This includes removal of all trash to outside dumpster, wiping down tables and chairs, returning tables and chairs to the storage area, and sweeping the floors.
8. Renter is responsible for cleanup of excessive spills or accidents.
9. City will inspect the premises to its satisfaction after the lessee's use. Any damage or excessive cleanup needs, noted by the inspector, to the Depot building and/or grounds will result in a charge to the credit card on file. The lessee shall be notified of the additional fee to be assessed to the card. It is the responsibility of the lessee to ensure that the caterer provides proper cleanup. In the event of no detected damage or excessive cleanup, the credit card and license information on file will be securely shredded at no expense to the Lessee.
10. An entrance key is available for Depot renters. When the event is over, clean-up has taken place, lights are off and all doors are securely locked, return the key to the drop box on the east side of the City Hall building. Failure to return the facility key will result in a \$500 replacement fee charged to the credit card on file.
11. The following policies apply to all decorations:
 - a. **NO** nails, tape, tacks or staples are allowed on the Depot walls. Blue painters tape is an acceptable adherent.
 - b. **NO** glitter, confetti, hay or straw are allowed to be used for decorating within the facility. Candles are also prohibited unless granted a permit by the El Dorado Fire Department.
 - c. **NO** items which may cause damage to the facility floor or grass are permitted. Porta-potties are allowed but must remain on the paved parking lot surface.
 - d. Bouncy Houses are strictly prohibited unless special permission is requested and granted by the City.
 - e. **Failure to comply with any of the aforementioned decoration rules will result in a loss of all facility usage privileges.**
12. The City of El Dorado cannot be responsible for accident, injury or loss/damage of personal property.
13. Rules and regulations are subject to change at the City's discretion.
14. The Fire Department has the right to walk-through the building at any point during the event to check the occupancy and ensure compliance with the fire code.
15. The lessee signing this agreement agrees to be the responsible party.

Hold Harmless Agreement

- The lessee as well as their representative organization or group, agrees to defend, indemnify and hold harmless the City of El Dorado, its officers, employees and agents from any and all claims for injury to person (including death) or property arising out of, or in any way connected to its/our use of the rented Depot space except to the extent any such claims may arise from any act or omission of the City of El Dorado.

I have read the procedures for use of the El Dorado Train Depot and agree to abide by the regulations set forth by the City of El Dorado. I assume responsibility for any damages that might occur during my use of the facility.

Signature of Responsible Party

Date

Name of Responsible Party

Lessee Reminders

General Policies

- No Parking in Fire Lanes.
- Use of illegal drugs, smoking, and/or gambling is not permitted at The Depot.
- Only those rooms specified on the agreement will be available for use.
- All minors on the premises must have adequate adult supervision.

Decorations

- **NO** nails, tape, tacks or staples are allowed on the Depot walls. Blue painters tape is an acceptable adherent.
- **NO** glitter, confetti, hay and straw are allowed to be used for decorating within the facility. Candles are also prohibited unless granted a permit by the El Dorado Fire Department.
- **NO** items which may cause damage to the facility floor or grass are permitted. Porta-potties are allowed but must remain on the paved parking lot surface.
- Bouncy Houses are strictly prohibited unless special permission is requested and granted by the City.
- **Failure to comply with any of the aforementioned decoration rules will result in a loss of all facility usage privileges.**

Post Event Checklist

- ☐ All trash has been removed to the outside dumpster
- ☐ Ensure all floors, tables and chairs areas are clean and returned to the storage area including sweeping, disposing of all trash, and wiping down surfaces
- ☐ Excessive spills and accidents have been cleaned
- ☐ All lights are turned off
- ☐ All doors are locked
- ☐ Keys are returned to City Hall or deposited in the drop box at City Hall.

For non-emergency issues contact:

316-321-9100 (during regular business hours)
316-323-4214 (after hours)

2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Scott Rickard
SUBJ: Purchase of 904 North Orient
DATE: November 25, 2019

Background:

David Turner the owner of 904 North Orient desires to sell his property to the City. This property is located within a FEMA regulated flood plain. The acquisition has two benefits to the City. First is the removal of a structure from the floodplain and second is the expansion of the North Main Park per the recommendations of the connect 2025 plan. The owner of the property desires to receive \$14,000, Staff has already negotiated to this price. According to the Butler County Appraiser the value of the structure is \$20,500 with the land value set at \$4,400. The City owns the two lots to the North of 904 North Orient, see map of current City owned properties in the area.

Policy Issue:

Per the Real-Estate Policy the City Commission must give the City Manager approval to proceed with the purchase of property.

Fiscal Impact:

The \$14,000 cost to purchase the property will come from the Building Demolition Fund and Park Land Acquisition fees.

Trade-offs:

At this point the property is vacant, staff believes that if we do not proceed and the property is rented cost for acquisition will increase.

Staff Recommendation:

Proceed with the purchase of the property.

Commission Actions:

Commissioner _____ moved to authorize the City Manager to purchase and acquire 904 North Orient for floodplain mitigation and parkland expansion.

Commissioner _____ seconded the motion.



E 10th Ave

W 9th Ave

N Main St

N Orient St

N Cherokee St

N Osage St

E 8th Ave

1029 ORIENT
EL DORADO
SFR LLC

1036 ORIENT
JACKSON,
SUSAN L

1027 OSAGE
WILSON, TOMMY
& MELISSA

0 10TH
REUTER,
JEREMY M

1035 CHEROKEE
STEWART,
RICK & CARA

1023 CHEROKEE
OERVANTES, ANDREW
ROBERT & BEVERLY KAY

1019 CHEROKEE
CERVANTES, ANDREW
ROBERT & BEVERLY KAY

1013 CHEROKEE
SILVER, FRED
W; LIV TRUST

939 CHEROKEE
MCHATTEN, ELDRIDGE
J & DAPHNE

937 CHEROKEE
MCHATTEN, ELDRIDGE J
& MCHATTEN, DAPHNE

0 OSAGE
BROWN,
CATHERINE

1020 ORIENT
BURKHOLDER,
STEPHEN; REV TR

1000 ORIENT
KINGSLEY,
LEONARD

924 ORIENT
WALLER
PROPERTIES LLC

920 ORIENT
HOGAN,
SHERRY L

907 ORIENT
PRATER,
AGNES N

905 ORIENT
HEDGES, WILLARD
L & MARY L

904 ORIENT
TURNER,
DAVID B

902 ORIENT
WEDEL PROPERTY &
MANAGEMENT LLC

904 Orient



TN & return to:
City of El Dorado, Kansas
220 E 1st Ave
El Dorado, KS 67042

GENERAL WARRANTY DEED
(Statutory)

5142332

David B. Turner, a single person

convey and warrant to

City of El Dorado, Kansas

all the following REAL ESTATE in the County of BUTLER, and the State of Kansas, to-wit:

Lot 44, on Orient Street, formerly El Dorado Street, in Block 26 in RIVERSIDE, an Addition to the Town, now City of El Dorado, Butler County, Kansas.

for the sum of one dollar and other good and valuable consideration.

EXCEPT AND SUBJECT TO: Easements, restrictions and assessments of record, and all the taxes and assessments that may be levied, imposed or become payable hereafter.

Dated this _____ day of _____, 2019.

David B. Turner

State of Kansas, County of BUTLER §

The foregoing instrument executed was acknowledged before me this _____ day of _____, 2019, by **David B. Turner, a single person.**

Notary Public

My appointment expires: _____

2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Scott Rickard
SUBJ: Project #524 Bike Path/BNSF Agreement
DATE: November 25, 2019

Background:

The BNSF Railroad is requiring the City of El Dorado to enter into an agreement to allow for a crossing of their Right of Way which is necessary for the construction and existence of the 3rd phase of our bike path. The cost of the permit to the City of El Dorado is \$56,292.00 with a 25 year term. The City of El Dorado entered into an agreement with the Kansas Department of Transportation for construction of this Bike Path. The project estimated construction cost is \$569,220 with \$415,530.60 coming in the form of a grant. At this point the project is scheduled to let in March of 2020.

Policy Issue:

The City Commission must authorize the City Manager to execute the agreement

Fiscal Impact:

The cost associated with the agreement will be funded via. Project 524 thru General Obligation bonds/Federal Fund Exchange Dollars

Trade-offs:

If the agreement is not authorized the project will not proceed and grant dollars will be forfeited. To date the City of El Dorado has spent \$84,671 on the development of the project.

Staff Recommendation:

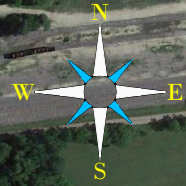
Proceed with the agreement.

Commission Actions:

Commissioner _____ moved to authorize the City Manager in enter into an agreement with BNSF for the construction of Phase III of the Bike Path.

Commissioner _____ seconded the motion.

EXHIBIT A



CENTRAL PARK

EXISTING PATH
PHASE II

RIVERVIEW
PARK

EAST PARK

END PART 1

BEGIN PHASE III
PART 1

0.75 MILES
WALNUT RIVER

DOG PARK
Owner
City of El Dorado

BNSF RAILROAD

Owner
City of El Dorado

CONSTRUCT RAILROAD
UNDERPASS COVER

City of El Dorado
Bicycle/Pedestrian Path
Phase III, Part 1

LICENSE FOR BICYCLE PATH/PEDESTRIAN WALKWAY

THIS LICENSE FOR BICYCLE PATH/PEDESTRIAN WALKWAY ("License"), is made to be effective _____, 2019 (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor"), and **CITY OF EL DORADO, KS**, a Kansas municipality ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), a bicycle path (the "**Trail**") across or along Licensor's rail corridor at or near El Dorado, County of Butler, State of Kansas, Line Segment 7100, Mile Post between 173.76 and 173.37 as shown on the attached Drawing No.76766, dated September 26, 2019, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance and use of the Trail in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of Fifty-Six Thousand Two Hundred Ninety-Two and No/100 Dollars (\$56,292.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises, or the presence, construction and maintenance of the Trail including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2.5%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Trail) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Trail, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Trail as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of Trail the or the construction of a new trail to replace the Trail. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Trail promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Trail.**
- 11.1 Licensee shall notify Licensor's Roadmaster at 301 E 5th St. Augusta, KS 67010 or telephone 316-708-8574, at least ten (10) business days prior to entry onto the Premises for construction of the Trail and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
 - 11.4 Any contractors or subcontractors performing work on the Trail or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
 - 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor

has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Trail in such a manner and of such material that the Trail will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Trail shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Trail or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Trail at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Trail by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Trail, it being solely Licensee's responsibility to ensure that the Trail is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Trail by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Trail. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Trail and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than twenty-six (26) inch diameter and at a depth less than ten (10) feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

- 12.3 Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
 - 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees (including, but not limited to, member of the general public), licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
 - 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
 - 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
 - 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL**

CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$2,000,000 per occurrence and an aggregate limit of at least \$4,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing operations and completed operations;
 - Separation of insureds; and
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Trail including coverage for, but not limited to:
 - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Trail. **THE CONSTRUCTION OF THE TRAIL SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Trail is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensors Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$633.00.

- ☐ License may **elect** to participate in Licensors Blanket Policy;
- ☐ Licensee **declines** to participate in Licensors Blanket Policy.

15.5 Other Requirements:

- 15.5.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.5.2 Licensee agrees to waive its right of recovery against Licensors for all claims and suits against Licensors. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensors for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensors for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.5.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.
- 15.5.4 Licensee is not allowed to self-insure without the prior written consent of Licensors. If Licensors allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensors liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.5.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Trail, Licensee shall furnish to Licensors an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.5.6 Licensee agrees to provide evidence to Licensors that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensors or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.5.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.5.9 Licensee agrees to provide evidence to Licensors that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.5.11 Not more frequently than once every five years, Licensors may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

- 15.5.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.5.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.5.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.5.15 In the event of a claim or lawsuit involving Licensor arising out of this agreement, Licensee will make the policy covering such claims or lawsuits available to Licensor.
- 15.5.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, Licensor requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Licensor.
- 15.5.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services performed under this License is performed.
- 15.5.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Trail and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the website www.BNSFcontractor.com (the "**Safety Orientation**") within one (1) year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Trail and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last

day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Trail in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.
- 16.6 While this License is personal to Licensee and its invitees, it is recognized that the Trail may be used by unauthorized persons, and Licensee agrees that for the purposes of this License all persons using the Trail shall be deemed the agents or invitees of Licensee.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Trail on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 17.2.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Trail which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

- 18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR**

OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.2 LICENSEOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE TRAIL WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSEOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21 or any other Section of this License.**

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes**" levied or assessed by any governmental or quasi-governmental body upon the Trail or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.**

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:**

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.**

23.2 Should Licensee not comply fully with the obligations of **Section 17 regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.**

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.**

- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements;
 - 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
 - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Electric Supply Line and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Electric Supply Line and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Electric Supply Line and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Electric Supply Line and the other Improvements to Licensor for no additional consideration.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Rd., Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2301 Lou Menk Dr., GOB-3W
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of El Dorado, KS
220 E. 1st Ave.
El Dorado, KS 67042

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Trail and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensors and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensors harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensors of the breach of any provision herein by Licensee shall in no way impair the right of Licensors to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

END OF PAGE – SIGNATURE PAGE FOLLOWS

37. Licensors Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Rd., Suite 110
Fort Worth, TX 76155

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

City of El Dorado, KS, a Kansas municipality

220 E. 1st Ave.
El Dorado, KS 67042

By: _____

Name: _____

Title: _____

Date: _____

COORDINATE SYSTEM: KS, S

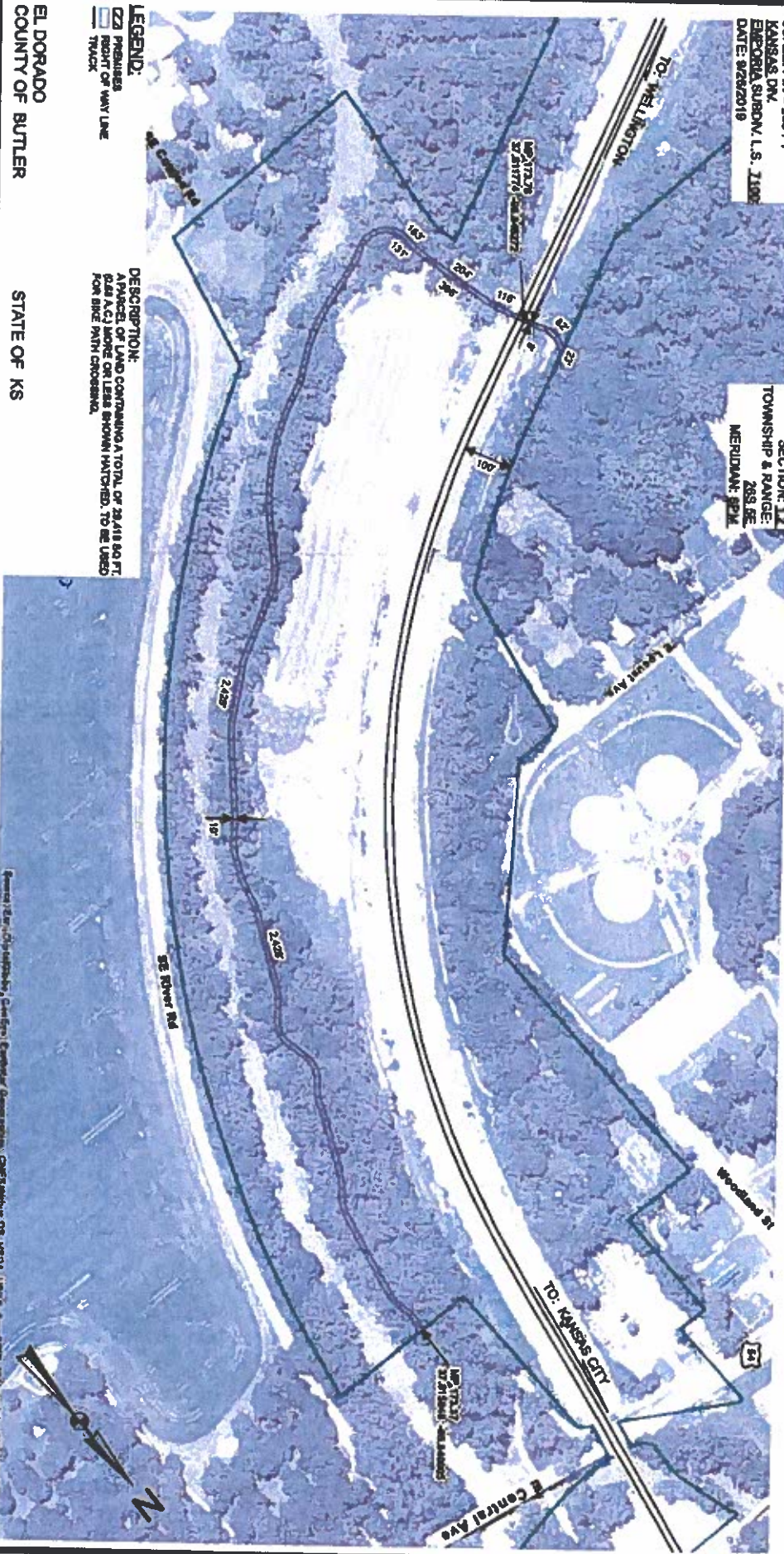
TRACING NO. 1845722

EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

CITY OF EL DORADO, KS

SCALE: 1 IN. = 200 FT
KANSAS DN.
ELECTRA SUBDIV. L.S. 2100
DATE: 9/26/2019

SECTION: 12
TOWNSHIP & RANGE:
28S 12E
MERIDIAN: BPL



LEGEND:
[Thick black line] PROPOSED
[Thin black line] EXISTING
[Dashed line] TRAIL LINE

DESCRIPTION:
APPROX. OF LAND CONTAINING A TOTAL OF 29,418 SQ. FT.
FOR A.C. 100.00 OR LESS SHOWN HATCHED, TO BE USED
FOR RAILWAY CROSSING.

EL DORADO
COUNTY OF BUTLER

STATE OF KS

DRAWN BY: JNC DRAWING NO. 76766

MAP REF. 502031

2018 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Engineering Department
SUBJ: Flint Creek Estates Planned Development Overlay District
DATE: November 21, 2019

Background:

The Griler Addition was platted in 2004 and created a number of residential lots located within pipeline easements. As of today, the majority of buildable lots with infrastructure access have been purchased and developed. The property went to tax sale and the city purchased the property to prevent losing infrastructure investment in the form of special assessments. The City has been marketing the unpurchased properties for residential development since that time.

El Dorado Housing Partners submitted an application for a Planned Development Overlay District (P-D) to reconfigure the existing lots into a buildable layout, reducing the total number of lots from 37 to 32. The Planning Commission held a public hearing on November 14th, 2019, to review the application. The Planning Commission voted to unanimously recommend approval of the P-D application. The staff memo, map, and Planning Commission minutes are attached.

Policy Issue:

The Planned Development Overlay District allows for the blanket issuance of waivers and variances for a large development in return for adequate dedication of open space. The P-D works in conjunction with the base zoning district, R-1 Low Density Residential, to modify these base regulations. The property is currently zoned for single-family residential and will continue to be zoned for these uses.

This property is a prime candidate for a P-D due to the presence of two large pipeline easements, floodplain, and oil infrastructure. The requested reductions do not apply to every lot, but specific lots as needed to adequately develop around the existing obstacles.

Alternatives:

Approval of the P-D allows the developer to create developable lots in an area with numerous obstacles. The alternative option, denial of the application, will leave this portion of Griler Addition as it is today – primarily undevelopable. It is possible that a future developer could create a workable configuration of the property without the need for lot reductions. However, that has yet to happen.

Fiscal Impact:

The approval of the P-D itself does not create direct costs to the City of El Dorado. However, any new residential development, regardless of P-D or rezoning, incurs costs for utility extension in the short-term and increased tax collection for the developed lots in the long-term.

Staff Recommendation:

Approve the Planned Development Overlay District application.

Commission Actions:

Commissioner_____ moved to approve Case No. 19-01-PD, requesting a Planned Development Overlay District on 11.6 acres located at the southeast corner of Norris Street and Sixth Avenue and that Ordinance No. _____ be approved.

Commissioner _____ seconded the motion.

Roll Call Vote

Position No. 2	Commissioner Gregg Lewis
Position No. 3	Commissioner Nick Badwey
Position No. 4	Commissioner Kendra Wilkinson
	Mayor Bill Young
Position No. 1	Commissioner Matt Guthrie

[Return to Agenda](#)

PLANNING COMMISSION MEMO

TO: Planning Commission
CC: Scott Rickard, Engineering Director
FROM: Jay Shivers, AICP
Re: Flint Creek Planned Development Overlay District

The City recently received an application for a Planned Development Overlay District (P-D) to create 32 residential lots and two open space lots for dedication to the City. The project, known as Flint Creek Estates, encompasses 11.6 acres at the southeast corner of Norris Street and 6th Avenue on a portion of the Griler Addition. The City of El Dorado currently owns the property; El Dorado Housing Partners is under contract to purchase the property and hired Crockett Engineering to plan the development. An overlay district is a set of additional requirements or allowances that works in conjunction with the underlying, or base, zoning district. The zoning ordinance provides the following goal of the P-D:

The purpose of this district is to provide for elements of flexibility in design, placement, arrangement, bulk and other considerations involved in planned districts; to provide a framework within which the structures and uses in the planned district may be interrelated with adjacent development and areas; and to maintain the desired overall intensity of land use, desired population densities, and desired areas of open space. The use of planned zoning procedures is intended to encourage large-scale developments, efficient development of small tracts, innovative and imaginative site planning, and conservation of resources.

The subject land is all zoned R-1 Low Density Residential District. The P-D allows for an increase in height requirements and setback reductions of the base zoning district. The P-D also encourages more open space to balance out the reduction in lot sizes. Staff recommended the applicant pursue the P-D overlay on this property due to large pipeline easements restricting development on portions of the development.

The applicant is planning to re-subdivide a portion of the Griler Addition into a compact residential development that can be compatibly developed alongside the existing pipeline easements. The Griler Addition was originally platted in 2004 with residential lots covering existing pipeline easement; subsequently, a large number of lots were unbuildable due to the restrictions on the pipeline ROWs.

Character of the neighborhood.

The existing land uses in the immediate area consist of low to medium density residential with single-family residential to the west across Norris Street, a mix of single-family, duplex, and triplex residential units to the south and east, and vacant land to the north across 6th Avenue. The subject property and surrounding neighborhoods feature pump jacks and tank batteries.

Consistency with the Comprehensive Plan and ordinances of the City of El Dorado.

The Comprehensive Plan Vision Statement calls for improved availability and variety of quality new housing options. The Future Land Use Map (FLUM) designates the subject property as Low Density Residential, defined as “single or two-family residential land uses with a density generally no greater than eight units per acre.” The Flint Creek Estates plan proposes 2.75 units per acre, well below the recommended maximum of eight units per acre.

Adequacy of public utilities and other needed public services.

Adequate capacity is available for all public utilities.

Suitability of the uses to which the property has been restricted under its existing zoning.

R-1 is one of the most restrictive zoning districts in the zoning ordinance. The property is generally restricted to its current use, single-family residential. In-home daycare and group homes are allowed by right. Institutional uses are possible with a Special Use Permit (SUP). An accessory apartment is also possible with a SUP.

Length of time property has remained vacant as zoned.

The subject property is currently vacant with limited oil production infrastructure.

Compatibility of the proposed district classification with nearby properties.

The area is residential in nature with slightly higher densities to the east. The zoning of the subject property will remain the same and primarily allows single-family residential with the option of a few other uses by Special Use Permit. The property will remain R-1 and is consistent with R-1 zoning to the west, south, and a mix of residential zoning to the east. North of 6th Avenue is zoned I-1 Light Industrial. 6th Avenue in this area is generally the dividing line between residential and commercial uses on the south side and industrial to the north.

The extent to which the zoning amendment may detrimentally affect nearby properties.

The City does not anticipate additional single-family residential to be detrimental to properties in the area. The proposed road will provide access to 6th Avenue, an arterial-class road, rather than directing traffic through other subdivisions.

Whether the proposed amendment provides a disproportionately great loss to the individual land owners nearby relative to the public gain.

The potential benefit of this P-D includes development of vacant land into new residential options for the citizens of El Dorado. Residential development at any level will improve housing options. As of today, approximately 65% of current housing within El Dorado was built prior to 1959 and 85% built before 1979.

The Zoning Ordinance treats the P-D Overlay process as a rezoning and requires the submission of a preliminary development plan. The preliminary development plan shows the exact modifications to the underlying zoning district, which will remain R-1,

and the exact layout of the property. Once this is approved, the Planning Commission may approve the preliminary plat.

The applicant has submitted a preliminary development plan for their Flint Creek project. The project meets all of the zoning and subdivision requirements and requests the following waivers and variances as allowed by the P-D overlay:

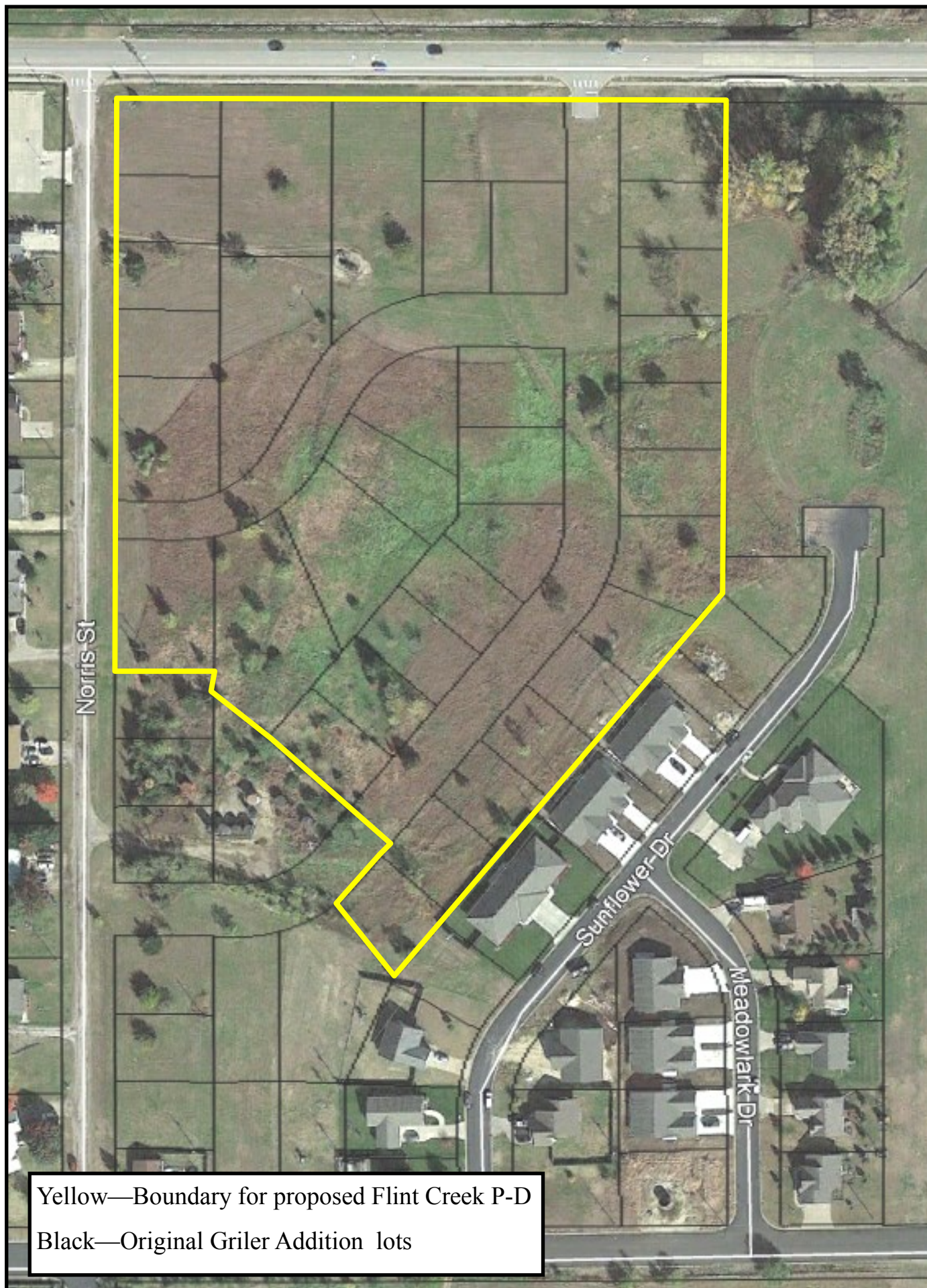
	R-1 Low Density Residential	P-D Overlay Waivers and Variances
Minimum Lot Size	8,000'	7,000'
Minimum Lot Width	70'	55'
Front Setback	30'	20'
Side Setback	10% of lot width, minimum of 8'	6'
Rear Yard	25'	15' for lots 31 and 32
Utility Easements	Rear, Side	Front

The applicant is asking for a number of reductions to make this development work around the pipeline easements. In return for the lot reductions, the applicant is dedicating two open space lots to the city to remain open space around the proposed neighborhood. These open space lots are primarily over the pipeline easements and are 1.35 acres and 1.14 acres in size. Crockett Engineering initially submitted a preliminary development plan that included less lot size reductions but featured a dead end street. The applicant's current submission features one street that loops through the development and connects Norris Street and 6th Avenue, improving traffic flow over the original submission. However, to provide a better street alignment and accommodate their preferred number of lots, additional reductions are needed.

Staff worked with Crockett Engineering over the last few months in preparation of the preliminary development plan and preliminary plat. Staff supports the P-D request and recommends approval of the application. Kyle Miller with Crockett Engineering will present the project at the meeting.

Suggested Motion:

I move to recommend approval of Case No. 19-01-PD, an application by El Dorado Housing Partners, for a Planned Development Overlay District on 11.6 acres at the south east corner of Norris Street and 6th Avenue, for reasons stated in the staff recommendation and heard at this public hearing.



Yellow—Boundary for proposed Flint Creek P-D
Black—Original Griler Addition lots



November 1, 2019

Jay Shivers
City Planner
216 N. Vine St.
El Dorado, KS 67042

Re: Flint Creek PD Plan Design Modifications

Dear Mr. Shivers,

I am writing to you on behalf of my client, El Dorado Housing Partners, L.P., on their future development called Flint Creek Estates. This project is to consist of the construction of 32 single family residential homes, driveways, and the associated roads and utilities. This site is located at the southeast corner of the intersection of 6th Avenue and Norris Drive in El Dorado.

This development is to be a re-plat of the previously platted Griler Addition Subdivision completed in the 2004. This piece has since been purchased by the City of El Dorado. This site has many constraints and design restrictions that has made it difficult for development. The northeast corner of the site lies within the 500-year and 100-year floodplain. Also located within this tract is the FEMA regulated floodway. Furthermore, this piece of land has two existing transmission pipelines running through it. A Magellan and Shell pipeline, both lines have a 100-foot wide easement (50' on either side of existing pipelines) that restricts the placement of homes, crossings and overall development. Furthermore, following a geotechnical investigation it was determined that rock on this piece is very shallow and will require extensive and detailed excavation and trenching.

Due to the site constraints as described above we are requesting from the El Dorado's Board of Adjustment and Planning & Zoning the following design modifications. To obtain these adjustments it was suggested by City staff that this development be re-zoned with a "PD overlay". As defined by the PD overlay district definition it allows the developer and City staff to be flexible "in design, placement, arrangement, bulk and other considerations involved in planned districts" and to create a development efficient to the site constraints and location. All design modifications requested are to the Zoning Regulations, Article 5 - District Regulations, section "R-1" residential district.

Item 4 of this section states a minimum lot width of 70-feet shall be used in a R-1 district. We are requesting that the lot width be reduced to a minimum of 55-feet at the building setback line. Due to the constraints listed above, providing adequate roadway frontage is limited within this tract. Additionally, the homes that are to be built are less than 40-feet wide. With a 55-



foot front yard width there is still suitable space between the homes. Item 4 also lists that the lots are to be a minimum of 8,000 square feet in lot area. We have found that due to the pipeline easements tight constraints, the previously platted subdivision boundaries, and 55-foot lot widths, a reduction is needed to meet the proposed development layout. We are requesting a minimum lot area at 7,000 square feet. Please keep in mind that not all lots will be less than the standard R-1 regulation. In fact, the average lot size out of the 32 buildable lots is 10,560 square feet, which is well above the requirement.

Item 6 of this section defined the setbacks per each lot within the subdivision. Per the R-1 zoning district front yard setbacks are 30-feet. With the size of the homes and tight site constraints we are requesting some front yard setbacks to be 20-feet to provide tolerable rear yards on all homes. We are still maintaining city required 60-foot wide street right-of-way and will grant the required 10-foot utility easement that will keep ample distance between homes across the street and allow for the proper installation of utilities. Per the R-1 zoning district side yard setbacks are "ten percent of the lot width, except that such side yard shall not be less than 8 feet and need not be more than 15 feet. Structure on corner lots shall provide a side yard on the street side of not less than 15 feet". All lots will maintain a 6-foot side yard requirement even though most of them have above an 8-foot side yard setback. All corner lots maintain the City requirement. City required road rights-of-way are still being maintained and the house is offset from the curb between 30 & 40-feet. Lastly, a rear yard zoning modification is being requested for only lots 31 & 32. When tying into the existing platted road right-of-way, the existing pipeline easement location, and the existing property boundary lines, the back yard of lot 31 gets reduced greatly providing the need for the request. This lot is the only lot needing the variance but in order to keep a consistent setback we will request this for both lots that are along the same property boundary line.

In total, there is five design modifications we are requesting for this development. Of the five requests above, none will hinder or obstruct proper final designs that are to meet City of El Dorado's construction standards or specifications.

Please feel free to contact me should you have any additional questions pertaining to the information above.

Sincerely,

A handwritten signature in black ink that reads "Kyle Miller". The signature is written in a cursive, flowing style.

Kyle Miller, P.E.
Crockett Engineering Consultants, LLC
(573) 447-0292
kmiller@crockettengineering.com



LOCATION MAP
NOT TO SCALE

NOTES:

- IT IS THE INTENT OF THIS PLAT TO DEVELOP THE PROPERTY FOR SINGLE FAMILY RESIDENTIAL USE.
- WATER AND SEWER DISTRIBUTION TO BE PROVIDED BY CITY OF EL DORADO.
- THE EXISTING ZONING OF THIS TRACT IS R-1. WILL BE REQUESTING R-1 WITH PD OVERLAY
- THIS PLAN CONTAINS 11.64 ACRES OF GROSS AREA.
- THIS PLAN CONTAINS 1.22 ACRES THAT LIE WITHIN A MAGELLAN AND SHELL PIPELINE EASEMENT.
- ELECTRIC DISTRIBUTION PROVIDED BY WESTAR ELECTRIC.
- THE MAXIMUM HEIGHT OF ANY BUILDING WILL NOT EXCEED 35'.
- ALL SIDE YARD BUILDING SETBACKS TO BE 6', EXCEPT FOR CORNER LOTS WHICH ARE OTHERWISE NOTED.
- ALL SIGNAGE SHALL CONFORM TO THE CITY OF EL DORADO SIGN REGULATIONS.
- REFER TO PLAN FOR FRONT AND REAR YARD BUILDING SETBACKS. ALL FRONT YARDS TO HAVE A 20' SETBACK EXCEPT LOTS 23-31. ALL REAR YARDS TO HAVE 25' SETBACKS EXCEPT LOTS 31 AND 32.
- ENTRANCE ONTO NORRIS AVENUE TO UTILIZE EXISTING PLATTED STREET LOCATION; TO BE COORDINATED WITH THE CITY OF EL DORADO. THIS DEVELOPMENT SHALL ALSO UTILIZE AN EXISTING ENTRANCE LOCATED ON 6TH STREET.
- ALL STREETS, STORM WATER SYSTEMS, SEWER MAINS, WATER MAINS, AND AREA WITHIN THE RIGHT-OF-WAY ARE TO BE DEDICATED TO THE CITY OF EL DORADO AFTER THE FINAL PLAT IS APPROVED AND ALL CONSTRUCTION IS COMPLETED.
- LOTS C1 AND C2 ARE COMMUNITY COMMON SPACES AND TO BE DEDICATED TO THE CITY OF EL DORADO AFTER THE FINAL PLAT IS APPROVED AND ALL CONSTRUCTION IS COMPLETED.
- PER THE CITY OF EL DORADO, NO DETENTION OR WATER QUALITY IS REQUIRED FOR THIS PROJECT.
- SURVEY INFORMATION WAS PERFORMED BY SAVOY COMPANY, P.A. AND DATED AUGUST 28, 2019.
- SIDEWALKS ARE NOT REQUIRED FOR THIS DEVELOPMENT PER THE CITY OF EL DORADO.
- EXISTING RIGHT-OF-WAY, EASEMENTS, SETBACKS, AND LOTS FROM THE GRILER ADDITION PLAT WITHIN THE BOUNDARY OF THIS DEVELOPMENT TO BE VACATED WITH APPROVAL OF THE FINAL PLAT OF THIS DEVELOPMENT.
- ALL STORM SEWER PIPING, STRUCTURES, LABELS AND LOCATION ARE PRELIMINARY AND MAY CHANGE DURING FINAL DESIGN.
- ALL SANITARY SEWER PIPING, STRUCTURES, LABELS AND LOCATION ARE PRELIMINARY AND MAY CHANGE DURING FINAL DESIGN.

WAIVERS AND VARIANCES:

THIS DEVELOPMENT IS LOCATED IN AN R-1 DISTRICT AND SEEKING A PD OVERLAY THAT WILL INCORPORATE THE FOLLOWING WAIVERS AND VARIANCES: THE OVERALL DEVELOPMENT IS SUBJECT TO THE FINAL DEVELOPMENT PLAN AND FINAL PLAT WITH THE CITY OF EL DORADO, KANSAS, AS PART OF THE "PD" OVERLY DISTRICT.

THE FOLLOWING VARIANCE REQUEST ARE FOR ARTICLE 5-DISTRICT REGULATIONS, SECTION "R-1" RESIDENTIAL DISTRICT.

PART 4: ORDINANCE MINIMUM LOT AREA IS 8,000 SQ. FT. AND REQUESTING 7,000 SQ FT. ORDINANCE MINIMUM LOT WIDTH IS 70 FT. AND REQUESTING 55 FT. AT THE BUILDING SETBACK LINE.

PART 6: YARD REGULATIONS: FRONT, SIDE AND REAR YARD SETBACKS. ORDINANCE FRONT YARD SETBACK IS 30 FT. AND REQUESTING 20 FT. LOTS 24-30 WILL MEET THE 30 FT SETBACK REQUIREMENT FOR THIS ZONING. ORDINANCE SIDE YARD SETBACK IS 8 FT. FOR R-1 ZONING AND REQUESTING 6 FT. ORDINANCE REAR YARD SETBACK IS 25 FT. AND REQUESTING 15 FT ONLY ON LOTS 31 & 32, ALL OTHERS TO MEET ORDINANCE AT 25'.

PER ARTICLE 4, SECTION 5-EASEMENTS, OF THE SUBDIVISION CODE, EASEMENTS OF NOT LESS THAN TEN (10) FEET IN WIDTH SHALL BE PROVIDED ON EACH SIDE OF ALL REAR LOT LINES. WE WILL BE PLATING A 10' UTILITY EASEMENT ALONG THE FRONTAGE OF ALL BUILDABLE RESIDENTIAL LOTS, HOWEVER, NO REAR YARD EASEMENTS ARE TO BE INSTALLED IN THESE LOTS UNLESS REQUIRED BY CITY STAFF OR REQUIRED FOR PUBLIC INFRASTRUCTURE.

EROSION CONTROL PLAN:

EROSION CONTROL FOR THIS DEVELOPMENT SHALL BE ADDRESSED BY PROPER PERMITTING AT THE TIME OF THE DESIGN PLANS. ALL STATE AND LOCAL LAND DISTURBANCE AND EROSION CONTROL REGULATIONS SHALL BE ADHERED TO.

FLOOD PLAIN STATEMENT:

A PORTION OF THIS TRACT IS LOCATED WITHIN THE 100 YEAR FLOOD PLAIN AS SHOWN BY THE FEMA FIRM PANEL 20015C0378E DATED JUNE 2, 2009. AND AS DEPICTED ON THIS PLAT.

WETLAND STATEMENT:

ACCORDING TO THE ALTA SURVEY CONDUCTED BY SAVOY COMPANY, P.A. DATED AUGUST 28TH, 2019, THERE IS NO DESIGNATED WETLANDS ON THIS PROPERTY.

PHASING PLAN:

IT IS THE INTENT OF THIS DEVELOPMENT TO BE BUILT IN ONE PHASE.

PARKING:

THIS PLAN WILL COMPLY WITH ALL CITY OF EL DORADO PARKING OFF-SITE PARKING REQUIREMENTS. THIS WILL BE VERIFIED AT THE TIME OF FINAL CONSTRUCTION PLANS WITH ALL LOTS DESIGNATED FOR RESIDENTIAL USE.

LEGAL DESCRIPTION:

LOTS 7 THRU 19, BLOCK 3; LOTS 4 THRU 15, BLOCK 4; AND LOTS 1 THRU 11, BLOCK 5, GRILER ADDITION TO THE CITY OF EL DORADO, BUTLER COUNTY, KANSAS

CURRENT OWNER:

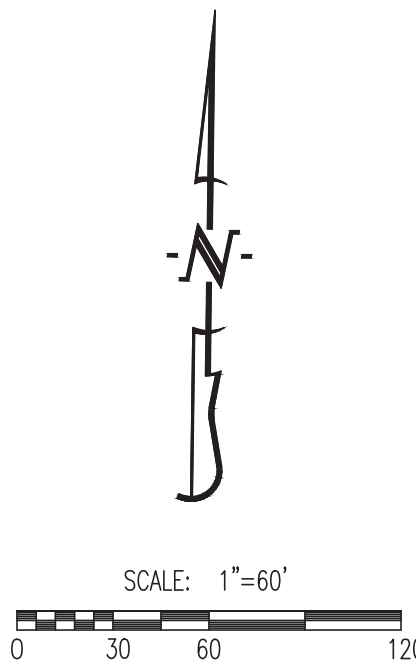
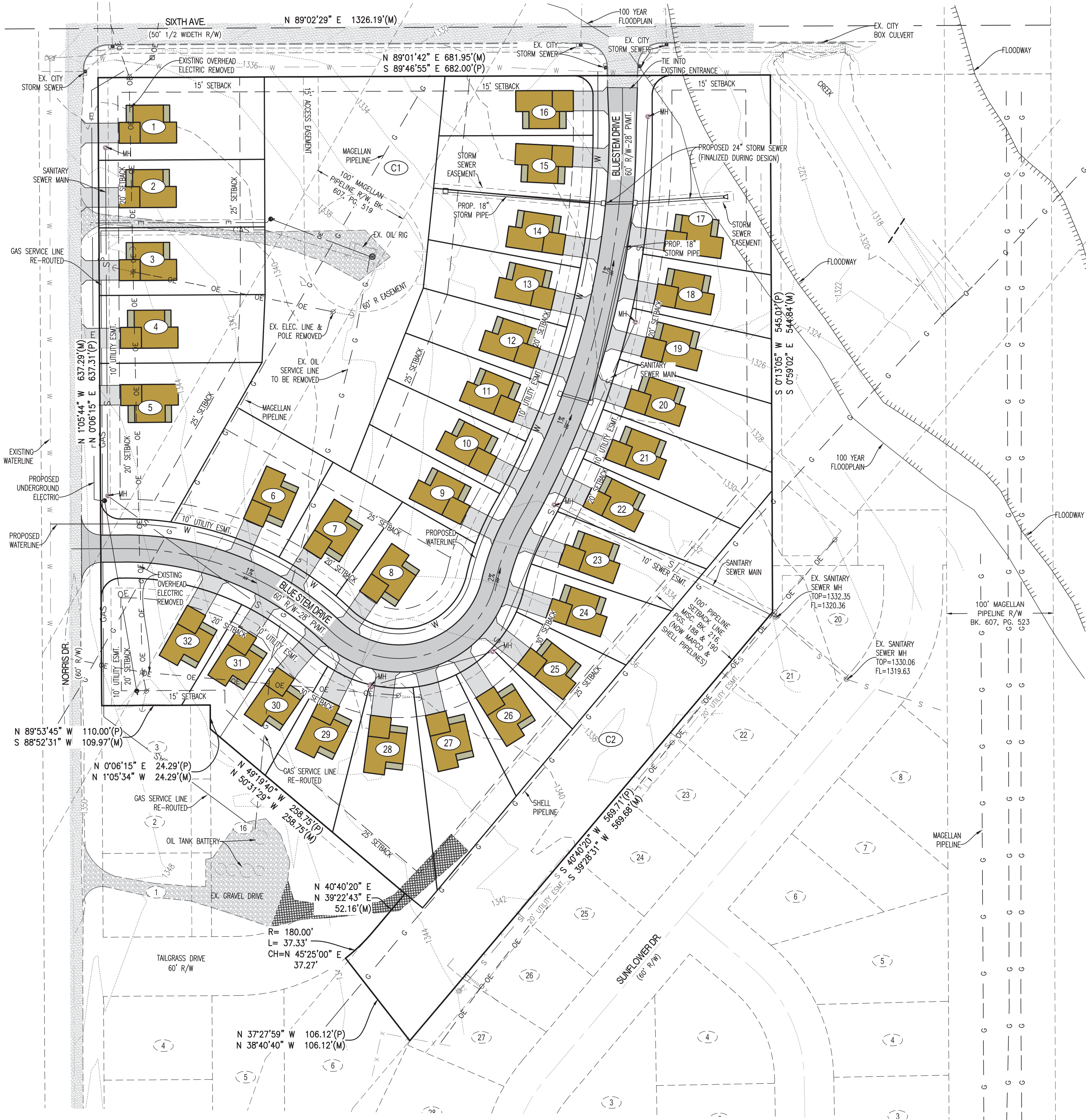
CITY OF EL DORADO
220 E. 1ST AVENUE
EL DORADO, KS 67042

DEVELOPER:

EL DORADO HOUSING
PARTNERS, LP
10777 BARLEY STREET
OVERLAND PARK, KS 66211

PRELIMINARY DEVELOPMENT PLAN
FLINT CREEK ESTATES
A REPLAT OF GRILER ADDITION

SECTION 4, TOWNSHIP 26 S, RANGE 5 E
EL DORADO, BUTLER COUNTY, KANSAS
NOVEMBER, 2019



APPROVED BY THE CITY OF EL DORADO PLANNING AND ZONING COMMISSION THIS ____ DAY OF ____, 20__

KELLY TETRICK - CHAIRPERSON

LEGEND:

- 805 EXISTING 2FT CONTOUR
- 820 EXISTING 10FT CONTOUR
- OE EXISTING ELECTRIC
- OE PROPOSED ELECTRIC
- CURB
- S EXISTING SANITARY SEWER
- S PROPOSED SANITARY SEWER
- MANHOLE/CLEANOUT
- W EXISTING WATERLINE
- W PROPOSED WATERLINE
- EXISTING STORM SEWER
- PROPOSED STORM SEWER
- BUILDING LINE
- EASEMENT
- XXX EX. LOT NUMBER
- XXX LOT NUMBER
- PROPOSED PAVEMENT
- FLOODWAY
- 100 YEAR FLOOD PLAN

THIS SHEET HAS BEEN SIGNED SEALED AND DATED ELECTRONICALLY



11/01/2019

TIMOTHY D. CROCKETT, P.E. - 21597

PREPARED BY:

CROCKETT
ENGINEERING CONSULTANTS

1000 West Nifong Boulevard, Building #1
Columbia, Missouri 65202
(573) 447-0292

www.crockettengineering.com

ORDINANCE NO. _____

AN ORDINANCE ZONING CERTAIN LAND IN THE CITY OF EL DORADO, KANSAS, R-1 LOW DENSITY RESIDENTIAL DISTRICT WITH P-D PLANNED DEVELOPMENT OVERLAY DISTRICT AND AMENDING THE ZONING MAP OF THE CITY

WHEREAS, an application has been filed with the El Dorado Planning Commission requesting a Planned Development Overlay District to allow certain waivers and variances for a new residential development and;

WHEREAS, on the 14th day of November, 2019, at a Planning Commission meeting duly convened, the Planning Commission held a public hearing and voted to recommend and does hereby recommend that the Governing Body approve the Planned Development Overlay District, and;

WHEREAS, it is determined by the Governing Body of the City of El Dorado, Kansas, that certain property located within the City should be zoned R-1/P-D Low Density Residential District with Planned Development Overlay District;

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

Section 1: That the following described real estate should be and is hereby applied the P-D Planned Development Overlay District:

Lots 7-19, Block 3; Lots 4-15, Block 4; Lots 1-11, Block 5, Griler Addition to the City of El Dorado, Butler County

Section 2: The Governing Body hereby directs that the City Zoning map be amended to conform herewith and the attached Preliminary Development Plan adopted;

Section 3: This Ordinance shall take effect and be in full force from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, and

APPROVED by its Mayor, this 2nd day of December, 2019.

Bill Young, Mayor

ATTEST:

Tabitha Sharp, City Clerk

APPROVED AS TO FORM:

Ashlyn Lindskog, City Attorney

PRELIMINARY DEVELOPMENT PLAN
FLINT CREEK ESTATES
A REPLAT OF GRILLER ADDITION

SECTION 4, TOWNSHIP 28 S, RANGE 3 E
EL DORADO, BUTLER COUNTY, KANSAS
NOVEMBER 2019

DEVELOPER:
EL DORADO HOUSING
PARTNERS, LP
1077 BARLEY STREET
OVERLAND PARK, KS 66201

CURRENT OWNER:
CITY OF EL DORADO
220 E 1ST AVENUE
EL DORADO, KS 67042

LEGAL DESCRIPTION:
LOTS 7 THRU 19, BLOCK 3, LOTS 4 THRU 15, BLOCK 4,
AND LOTS 1 THRU 11, BLOCK 5, GRILLER ADDITION TO THE
CITY OF EL DORADO, BUTLER COUNTY, KANSAS

SUBDIVISION DETAILS	
GROSS PAVED AREA	11.64 ACRES
DEDICATED STREET R/W AREA	1.39 ACRES
DEDICATED COMMON SPACE AREA	2.49 ACRES
TOTAL COMMON LOTS	2 LOTS
TOTAL BUILDABLE LOTS	32 LOTS
MAX BUILDABLE LOT SIZE	23,777 S.F.
MIN BUILDABLE LOT SIZE	7,043 S.F.
AVERAGE LOT SIZE	10,540 S.F.



NOTES

- IT IS THE INTENT OF THIS PLAN TO DEVELOP THE PROPERTY FOR SINGLE FAMILY RESIDENTIAL USE.
- WATER AND SEWER DISTRIBUTION TO BE PROVIDED BY CITY OF EL DORADO.
- THE EXISTING ZONING OF THIS TRACT IS R-1. WILL BE REQUESTING R-1 WITH PD OVERLAY.
- THIS PLAN CONTAINS 11.64 ACRES OF GROSS AREA.
- THIS PLAN CONTAINS 22 ACRES THAT LIE WITHIN A MAGNETIC AND SHELL PIPELINE EXCLUSION.
- ELECTRIC DISTRIBUTION PROVIDED BY WESTAR ELECTRIC.
- THE MAXIMUM HEIGHT OF ANY BUILDING WILL NOT EXCEED 35'.
- ALL SIDE YARD BUILDING SETBACKS TO BE 4', EXCEPT FOR CORNER LOTS WHICH ARE OTHERWISE NOTED.
- ALL SETBACKS SHALL CONFORM TO THE CITY OF EL DORADO ZONING REGULATIONS.
- REFER TO PLAN FOR FRONT AND REAR YARD BUILDING SETBACKS. ALL FRONT YARDS TO HAVE A 20' SETBACK EXCEPT LOTS 23-31-31. ALL REAR YARDS TO HAVE 25' SETBACKS EXCEPT LOTS 31 AND 32.
- EXISTING UTILITY LOCATIONS TO BE COORDINATED WITH THE CITY OF EL DORADO. THIS DEVELOPMENT SHALL MAINTAIN EXISTING UTILITIES LOCATED ON GRILLER ADDITION.
- ALL EXISTING SYSTEM WATER SYSTEMS, SEWER LINES, WATER MAINS, AND AREA WITHIN THE BOUNDARY OF THIS TRACT TO BE RELOCATED TO THE CITY OF EL DORADO AFTER THE FINAL PLAN IS APPROVED AND ALL CONSTRUCTION IS COMPLETED.
- LOTS C1 AND C2 ARE COMMUNITY COMMON SPACES AND TO BE DEDICATED TO THE CITY OF EL DORADO AFTER THE FINAL PLAN IS APPROVED AND ALL CONSTRUCTION IS COMPLETED.
- PER THE CITY OF EL DORADO, NO DETENTION OR WATER QUALITY IS REQUIRED FOR THIS PROJECT.
- SURVEY INFORMATION WAS PERFORMED BY SHAW COMPANY, P.A. AND DATED AUGUST 20, 2019.
- SETBACKS ARE NOT REQUIRED FOR THIS DEVELOPMENT FROM THE CITY OF EL DORADO.
- EXISTING RIGHT-OF-WAY, EASEMENTS, SETBACKS AND LOTS FROM THE GRILLER ADDITION PLAN WITHIN THE BOUNDARY OF THIS DEVELOPMENT TO BE MAINTAINED WITH APPROVAL OF THE FINAL PLAN OF THIS DEVELOPMENT.
- ALL EXISTING SETBACKS, UTILITIES, LINES AND LOCATIONS ARE PRELIMINARY AND MAY CHANGE DURING FINAL DESIGN.
- ALL SANITARY SEWER PIPES, STRUCTURES, LINES AND LOCATIONS ARE PRELIMINARY AND MAY CHANGE DURING FINAL DESIGN.

WARNERS AND VARIANCES

THIS DEVELOPMENT IS LOCATED IN AN R-1 ZONING AND SETBACK A PD VARIANCE IS REQUESTED FOR THE DEVELOPMENT TO BE COMPLETED WITHIN THE BOUNDARY OF THIS DEVELOPMENT. THE DEVELOPMENT IS SUBJECT TO THE FINAL PLAN OF THIS DEVELOPMENT. THE DEVELOPMENT IS SUBJECT TO THE FINAL PLAN OF THIS DEVELOPMENT. THE DEVELOPMENT IS SUBJECT TO THE FINAL PLAN OF THIS DEVELOPMENT.

THE FOLLOWING VARIANCE REQUEST IS FOR ARTICLE 5-SETBACK REGULATIONS, SECTION 7-1-1 RESIDENTIAL, DISTRICT:

PARCELS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 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EL DORADO

THE FINE ART OF LIVING WELL

PLANNING COMMISSION MINUTES - DRAFT

November 14th, 2019

6:30 p.m.

1. CALL TO ORDER & ROLL CALL

Chairman Tetrick called the meeting to order at 6:30pm.

Members Present:

Scott Leason
Brad Long
Kyle McLaren
David Stewart
Kelly Tetrick
Gerald Watson

Staff Present:

Jay Shivers
Scott Rickard

Others Present:

Roger Cutsinger	Savoy Company
Roni Bowlin	647 Norris St.
Teri Bowlin	647 Norris St.
Nick Dieker	639 Norris St.
Brenda Nixon	614 Village Rd.
Keyon Reynolds	501 Norris St.
James Heusner	501 Norris St.
Kristy Bradshaw	W. Pine

2. APPROVAL OF MINUTES

Commissioner Long moved to approve the minutes, seconded by Commission Leason. The motion passed (6-0).

3. NEW BUSINESS

ITEM NO. 1 – CASE NO. 19-02-PLAT: CONSIDERATION OF THE PRELIMINARY PLAT OF GDW ADDITION.

Commissioner Watson stepped down from the board due to a conflict of interest. Commission Stewart said he worked on the project in the past but no longer has any financial interest or expect future financial interest in the project. Commissioner Stewart said if there are any concerns, he will step down for the item. The Planning Commission discussed and determined there would not be a problem.

A) Presentation of Request

Jay Shivers gave a brief overview of the plat and said it creates only one lot with no right-of-way or easement dedications. He said the plat is not required but a preference of the applicant. Roger Cutsinger of Savoy Company said the intent it to have four twin homes on the property.

Commissioner Long asked if they could only enter off of Central Avenue and exit off of First Avenue. Mr. Cutsinger said that is the plan. Commissioner Long asked about buffering and landscaping. Mr. Shivers said they are focusing on the boundaries and making sure it meets subdivision requirements. He said buffering and screening will be reviewed when the applicant submits a site plan for building permits.

B) Discussion by Planning Commission

C) Motion

Commissioner Leason moved to approve the Preliminary Plat of GDW Addition as presented, seconded by Commissioner McLaren.

Roll Call Vote:

Scott Leason	Y
Brad Long	Y
Kyle McLaren	Y
David Stewart	Y
Kelly Tetrick	Y
Gerald Watson	Abstained

The motion passed unanimously (5-0).

Commissioner Watson rejoined the Planning Commission.

ITEM NO. 2 – CASE NO. 19-01-PD: PUBLIC HEARING FOR THE CONSIDERATION OF A REQUEST FOR A PLANNED DEVELOPMENT OVERLAY DISTRICT ON 11.6 ACRES AT THE SOUTHEAST CORNER OF NORRIS STREET AND 6TH AVENUE.

A) Presentation of Request

Mr. Shivers said they received an application for a Planned Development Overlay District on 11.6 acres just south of 6th Avenue and east of Norris Street. The area is currently zoned for single family residential and features 37 lots. The area could be partially developed and features a number of easements blocking development on many of the lots. The Comprehensive Plan calls for single and two-family residential in this area. Mr. Shivers said single family residential is allowed today, and single family residential is proposed.

Mr. Shivers reviewed Planned Development regulations and procedures.

Mr. Shivers showed one other Planned Development called the Greens at Prairie Trails and shared that that development also moved utility easements and reduced setbacks, including side setbacks to zero. He showed it for history and education purposes, not for comparison.

Mr. Shivers presented the comparison of R-1 regulations and the applicant's proposed waivers and variances as well as the specific challenges on the property (see attached PowerPoint).

Mr. Shivers said this is the second iteration of plans. Original had a dead end road and fewer lot reductions. However, the current plan has better traffic flow with the dead end removed but requires more reductions for the 32 lot development. The proposed land use does not change, the decision is to grant the reconfiguration of the property and grant certain reductions.

Roger Cutsinger of Savoy Company represented Crockett Engineering. Mr. Cutsinger said the average lot size is around 10,000 square feet with only some of them being 7,000. He said this plan is the best approach to develop the property, and possibly the only way.

Commissioner McLaren asked if the electric service would be underground since the utility easements are in the front. Scott Rickard said his understanding is that it would be underground. He also said sewer would be on one side of the road and water on the other. The 60 foot right-of-way and additional utility easement can accommodate all the utilities.

Commissioner Long said he understood the city does not require sidewalks, asked if there would be in this development. Mr. Shivers said there will not be sidewalks.

B) Public Hearing

Chairman Tetrick opened the public hearing. Roni Bowlin, 647 Norris St., asked what this will cost homeowners on Norris. Mr. Rickard said paving Norris is in the plans regardless of this development being approved. It would not be immediately needed as part of this development. As owner, he could protest the project. Mr. Bowlin said one of the tank batteries leaked salt water a while back. Mr. Rickard said they are working with KCC and working on clean up. Mr. Bowlin asked if they would be slab foundations. Mr. Rickard said they would be.

Commissioner Long asked if the tank battery needed to be fenced off. Mr. Rickard said the developer will have to work with the owner of the mineral rights to relocate lead lines and disposal lines. Mr. Bowlin said he doesn't want to lose his view. Mr. Bowlin asked about property values, said these might be nice homes. Chairman Tetrick said the city can do the paving project for Norris anytime and Griler is already platted, Norris paving probably isn't part

of this project. Mr. Bowlin said one of the easements is supposed to be a park. Mr. Rickard said on the original plat, city had requirements for impact fees or donate land for park space. They donated pipeline easement and floodplain on east side of Griler Addition. Parks master plan calls for equipment in the dedicated easement area. He said there have been discussions about lack of a city park in the circle school district area.

Nick Dieker, 639 Norris, expressed concern about property values and additional special assessments. He was concerned about selling in the future with added specials. He would like to keep the property open space. He would have liked to buy one across the street for a garage.

Keyon Reynolds, 501 Norris, said if the easements are filled in then his house will flood.

James Heusner, 501 Norris, asked about curb and guttering Norris and said they'd have to lower the pipelines. Mr. Rickard said potentially, other roads nearby used a concrete pad over the pipelines to protect them, they are shallow in many areas. Mr. Heusner said his house was there before anything else, even Norris St. Mr. Heusner said he has five oil lines crossing his property and he can't get them abandoned. Mr. Rickard said it would be between the future owner and the oil lease. Mr. Heusner said there may be oil in old pipelines that could create hazardous waste. Mr. Rickard said the buyer has conducted a Phase I environmental assessment and working on a Phase II to figure out issues on the site. Mr. Heusner said curb and guttering Norris will flood his property. Mr. Rickard said the goal is to improve drainage with roadways.

Kristy Bradshaw, W. Pine Avenue, said she heard they would be twin homes. Mr. Rickard said it will be single family homes with around 1,300 square foot of living space. She asked about sidewalks. Mr. Rickard said they are not required. Ms. Bradshaw asked how they would get to school and cross Village Road and walk down 6th Avenue. Mr. Rickard said there is a sidewalk that runs along the south side of 6th Avenue to Oil Hill School. He said there is access, just not proposed through this development.

There being no one else to speak, the public hearing was closed.

C) Discussion by Planning Commissioners

Commissioner Watson asked if they would be rentals. Mr. Rickard said the developer plans for them to be rentals for 20 years, then available for sale.

D) Motion

Commissioner Leason moved to recommend approval of Case No. 19-01-PD, an application by El Dorado Housing Partners, for a Planned Development Overlay District on 11.6 acres at the south east corner of Norris Street and 6th Avenue, for reasons stated in the staff recommendation and heard at this public hearing, seconded by Commissioner Stewart.

Roll Call Vote:

Scott Leason	Y
Brad Long	Y

Kyle McLaren	Y
David Stewart	Y
Kelly Tetrick	Y
Gerald Watson	Y

The motion passed unanimously (6-0). Mr. Shivers says the agenda item will go to the December 2nd City Commission meeting.

ITEM NO. 3 – CASE NO. 19-03-PLAT: CONSIDERATION OF THE PRELIMINARY PLAT OF FLINT CREEK ESTATES ADDITION.

A) Presentation of Request

Mr. Shivers provided a brief overview of the preliminary plat, the plat version of the Preliminary Development Plan. Mr. Shivers said it meets the subdivision and zoning requirements and reflects the lot reductions in the P-D.

B) Discussion by Planning Commission

C) Motion

Commissioner Stewart moved to approve the preliminary plat of Flint Creek Estates Addition as presented, seconded by Commissioner Leason.

Roll Call Vote:

Scott Leason	Y
Brad Long	Y
Kyle McLaren	Y
David Stewart	Y
Kelly Tetrick	Y
Gerald Watson	Y

The motion passed unanimously (6-0).

4. OLD BUSINESS

5. STAFF ITEMS

ITEM NO. 1 - CASE UPDATE

- A) 105 N. Arthur Special Use Permit
- B) Central and School Road Commercial Estates Addition

ITEM NO. 2 - DECEMBER MEETING DATE

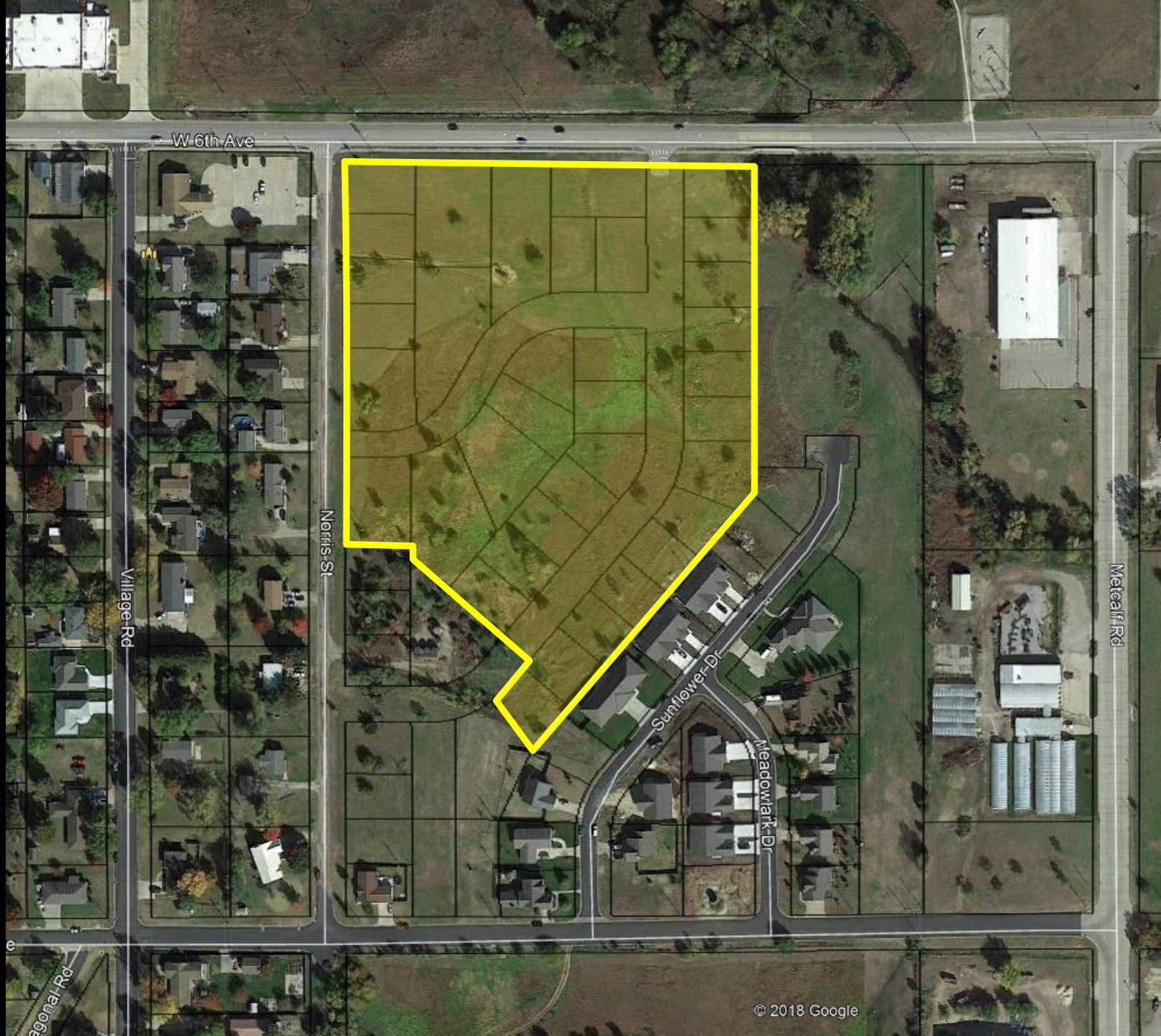
6. ADJOURNMENT

The meeting was adjourned at 7:15pm.



Planning Commission

November 14th, 2019



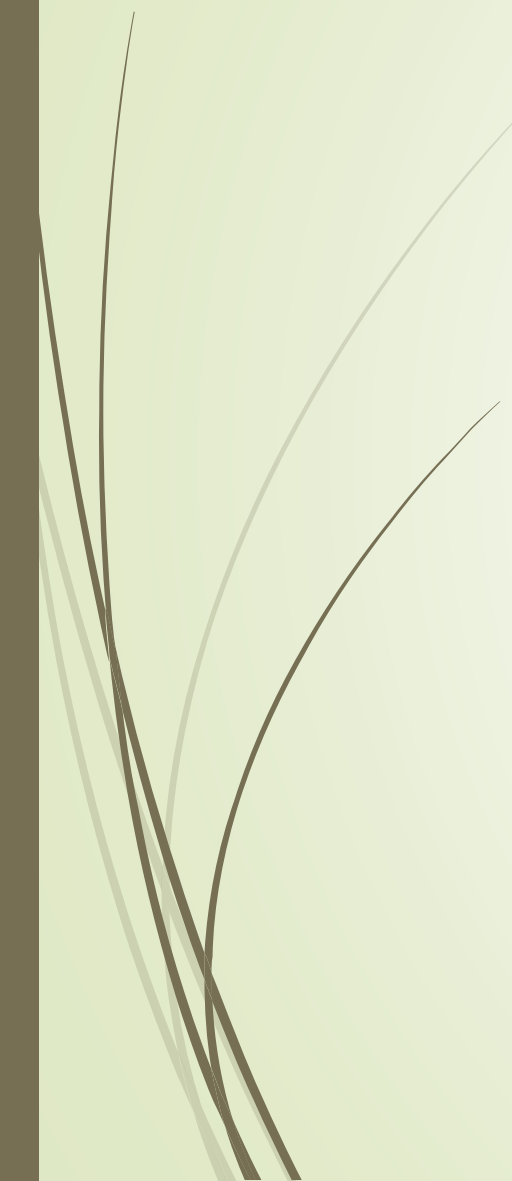


Planned Development Overlays (P-D)

- 
- The purpose of this district is to encourage large-scale developments, efficient development of small tracts, innovative and imaginative site planning, and conservation of resources.
 - Uses a base zoning
 - Allows modifications
 - Open space to counterbalance lot reductions



Procedural Summary



- Planning Commission
 - Preliminary Development Plan
 - Preliminary Plat
- City Commission
 - Preliminary Development Plan (if approved, P-D considered approved)
- Planning Commission
 - Final Plat
- City Commission
 - Final Plat
 - Final Development Plan

Country Club Rd

Iron

E Fairway Dr

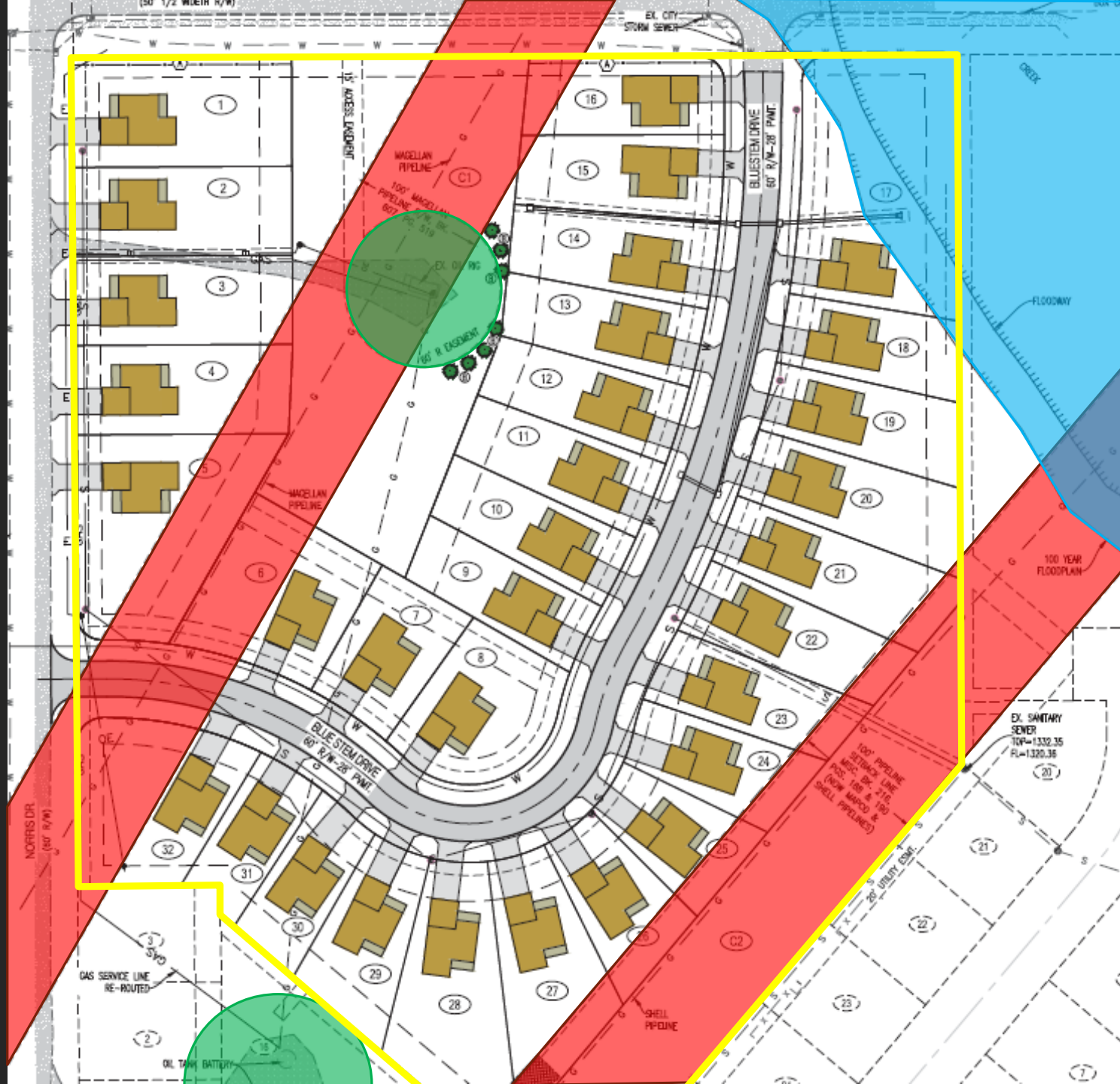
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Google

Proposed Waivers and Variances

	R-1 Low Density Residential	P-D Overlay Waivers and Variances
Minimum Lot Size	8,000’	7,000’
Minimum Lot Width	70’	55’
Front Setback	30’	20’
Side Setback	10% of lot width, minimum of 8’	6’
Rear Yard	25’	15’ for lots 31 and 32
Utility Easements	Rear, Side	Front





Flint Creek Boundary Line

Pipeline Easements

Oil Infrastructure

Floodplain



Recommendation

- Area currently platted and zoned for single-family residential.
- Preliminary Development Plan
 - Grants new layout
 - Allows certain reductions

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Tammy Schaffer, Finance Director
SUBJ: 2019 Budget Amendment
DATE: December 2, 2019

Background:

The follow funds need to be republished for the following reasons and amounts:

- Debt Service Fund - \$2,162,583 for the amount of “Sale of Bonds” to pay off the 4 year temp note not budgeted.
- Water Fund - \$224,682 for (1) 2018 emergency projects completed in 2019 totaling \$56,434 (2) The Prairie Trails pump station repairs for \$71,663 and (3) Unforeseen Lake O&M expenses of \$96,585
- Sewer Fund - \$223,445 for 2018 emergency projects completed in 2019
- CNG - \$73,378 for (1) Federal Grant received of \$41,736 and (2) Remaining fund balance in case we need to purchase a compressor \$31,642

Policy Issue:

The State of Kansas requires the City Commission to hold a public hearing before approving a budget amendment.

Alternatives:

N/A

Fiscal Impact:

This will increase the allowable expenditures in the Debt Service fund by \$2,162,583, the Water fund by \$224,682, the Sewer fund by \$223,445 and the CNG fund by \$73,378.

Trade-offs:

N/A

Staff Recommendation:

Hold the public hearing and approve the amendment.

Public Hearing

Mayor Bill Young will open a public hearing.

Commission Actions:

Commissioner _____ moved to approve the amendment to the 2019 Operating Budget in the Debt Service fund, Water fund, Sewer fund, and the CNG fund as presented.

Commissioner _____ seconded the motion.

[Return to Agenda](#)

2019

**Amended
Certificate
For Calendar Year 2019**

To the Clerk of Butler, State of Kansas
We, the undersigned, duly elected, qualified, and acting officers of
City of El Dorado
certify that: (1) the hearing mentioned in the attached publication was
held;(2) after the Budget Hearing this Budget was duly approved and
adopted as the maximum expenditure for the various funds for the year.

			2019 Amended Budget		
			Amount of 2018 Tax that was Levied	Adopted 2019 Expenditures	Proposed Amended 2019 Expenditures
Table of Contents:		Page No.			
Fund	<u>K.S.A.</u>				
Debt Service	10-113	2	976,351	2,200,698	4,363,281
Water		3		12,363,470	12,588,152
Sewer		4		2,450,206	2,673,651
CNG		5		17,900	91,278
Totals		xxxxxxxxx	976,351	17,032,274	19,716,362
Summary of Amendments		6			

Attested date: _____

County Clerk

Assisted by:

Address:

Email:

Bill Young, Mayor

Matt Guthrie, Commissioner

Gregg Lewis, Commissioner

Nick Badwey, Commissioner

Kendra Wilkinson, Commissioner

Governing Body

City of El Dorado

2019

Adopted Budget

Debt Service	2019 Adopted Budget	2019 Proposed Budget
Unencumbered Cash Balance January 1	416,735	416,735
Receipts:		
Ad Valorem Tax	976,351	976,351
Delinquent Tax	0	0
Motor Vehicle Tax	163,924	163,924
Recreational Vehicle Tax	1,631	1,631
16/20M Vehicle Tax	544	544
Commercial Vehicle Tax	9,053	9,053
Watercraft Tax	1,202	1,202
Concessions and Leases	120,763	120,763
Sale of Bonds	192,915	2,355,498
Special Assessments	289,648	289,648
Delinquent Special Assesments	27,932	27,932
Neighborhood Revitalization Rebate	-26,051	-26,051
Miscellaneous	26,051	26,051
Interest on Idle Funds		
Total Receipts	1,783,963	3,946,546
Resources Available:	2,200,698	4,363,281
Expenditures:		
Contractual Services	1,600	1,600
GO Bond Principal	1,309,643	1,309,643
GO Bond Interest	417,946	417,946
Cost of Issuance	54,775	54,775
Temporary Note Principal	0	2,548,000
Cash Basis Reserve	416,734	31,317
Total Expenditures	2,200,698	4,363,281
Unencumbered Cash Balance December 31	0	0

City of El Dorado

2019

Adopted Budget

Water	2019 Adopted Budget	2019 Proposed Budget
Unencumbered Cash Balance January 1	919,941	919,941
Receipts:		
Intergovernmental	1,000	1,000
Charges for Services	4,153,480	4,153,480
Concessions and Leases	12,200	12,200
Transfer from Lake Debt Reserve	8,180,641	8,180,641
Bad Debt Collection	1,000	1,000
Reimbursements	650	650
Interest on Idle Funds	1,000	1,000
Miscellaneous	50,000	50,000
Interest on Idle Funds		
Total Receipts	12,399,971	12,399,971
Resources Available:	13,319,912	13,319,912
Expenditures:		
Administration	1,368,345	1,368,345
Treatment	847,616	847,616
Maintenance & Distribution	822,353	894,016
Supply	200,000	296,585
Capital Outlay	11,130	11,130
Debt Retirement	8,889,026	8,889,026
Transfer to Lake Debt Reserve	225,000	225,000
Transfer to Construction Fund	0	56,434
Total Expenditures	12,363,470	12,588,152
Unencumbered Cash Balance December 31	956,442	731,760

City of El Dorado

2019

Adopted Budget

Sewer	2019 Adopted Budget	2019 Proposed Budget
Unencumbered Cash Balance January 1	280,191	280,191
Receipts:		
Intergovernmental Revenue	250	250
Charges for Services	2,593,448	2,593,448
Rentals	2,000	2,000
Concessions and Leases	40,000	40,000
Miscellaneous	9,000	9,000
Interest on Idle Funds		
Total Receipts	2,644,698	2,644,698
Resources Available:	2,924,889	2,924,889
Expenditures:		
Administration	473,963	473,963
Treatment	826,961	826,961
Maintenance & Distribution	243,872	243,872
Capital Outlay	10,600	10,600
Debt Retirement	894,810	894,810
Transfer to Construction Fund	0	223,445
Total Expenditures	2,450,206	2,673,651
Unencumbered Cash Balance December 31	474,683	251,238

Page No. 5

2019

Notice of Budget Hearing for Amending the

2019 Budget

The governing body of

City of El Dorado

will meet on the day of 12/2/2019 at 6:30 PM at City Hall for the
purpose of hearing and answering objections of taxpayers relating to the proposed amended use of funds.

Detailed budget information is available at City Hall
and will be available at this hearing.

Summary of Amendments

Fund	2019 Adopted Budget			2019 Proposed Amended Expenditures
	Actual Tax Rate	Amount of Tax that was Levied	Expenditures	
Debt Service	10.615	976,351	2,200,698	4,363,281
Water			12,363,470	12,588,152
Sewer			2,450,206	2,673,651
CNG			17,900	91,278
			0	0
			0	0

Tammy Schaffer

Official Title: Finance Director

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: CONFAB and OCI Tax Abatement Public Hearing
DATE: December 2, 2019

Background:

CONFAB and OCI applied for tax abatements in 2016, the tax abatements were not processed correctly and after discussing it with the County Appraiser's office, staff are resubmitting the applications.

CONFAB Inc. has requested that the City of El Dorado consider a real property tax exemption at the property located at Lot 1, Block 1, R.J. Metcalf 2nd Addition and Lot 4, Block 3 of the Carl E Taylor Addition in the City of El Dorado, Butler County, Kansas, commonly known as 630 N Metcalf Rd. CONFAB Inc., would like to acquire the property for the purpose of a manufacturing facility. The exemption is not to exceed \$800,000.

Owens Construction Inc. has requested that the City of El Dorado consider a real property tax exemption at the property located at Lot 2, Block 1, R.J. Metcalf 2nd Addition in the City of El Dorado, Butler County, Kansas, commonly known as 530 N Metcalf Rd. Owens Construction Inc., would like to acquire the property for the purpose of a manufacturing facility. The exemption is not to exceed \$350,000.

Policy Issue:

The City Commission must approve all ordinances.

Alternatives:

Not applicable.

Fiscal Impact:

The two properties above will be exempt from property taxes for the next ten years.

Staff Recommendation:

Approve the ordinances.

Commission Actions:

Commissioner _____ moved that Ordinance No. _____, an ordinance exempting certain real property from ad valorem taxation for the purpose of economic development for a period of 10 years, not to exceed \$800,000, be approved.

Commissioner _____ seconded the motion.

Roll Call Vote

Position No. 3	Commissioner Nick Badwey
Position No. 4	Commissioner Kendra Wilkinson
	Mayor Bill Young
Position No. 1	Commissioner Matt Guthrie

Position No. 2 Commissioner Gregg Lewis

Commissioner _____ moved that Ordinance No. _____, an ordinance exempting certain real property from ad valorem taxation for the purpose of economic development for a period of 10 years, not to exceed \$350,000, be approved.

Commissioner _____ seconded the motion.

Roll Call Vote

Position No. 4 Commissioner Kendra Wilkinson
Mayor Bill Young

Position No. 1 Commissioner Matt Guthrie

Position No. 2 Commissioner Gregg Lewis

Position No. 3 Commissioner Nick Badwey

[Return to Agenda](#)

November 13, 2019

Board of Education
Unified School District No. 375
901 Main, PO Box 9
Towanda, KS 67144

County Clerk
Board of County Commissioners
Butler County Courthouse
205 W Central
El Dorado, KS 67042

Butler Community College
901 S Haverhill Rd
El Dorado, KS 67042

Re: Not to Exceed \$800,000
City of El Dorado, Kansas
Real Property Tax Exemption
(CONFAB, INC.)

To Whom it May Concern,

We have enclosed for your information a Notice of the Public Hearing and Issuance of Industrial Revenue Bonds proposed by the City of El Dorado, Kansas pursuant to K.S.A. 79-251, as amended.

Sincerely,



Tabitha D. Sharp, City Clerk
City of El Dorado, KS

**NOTICE OF PUBLIC HEARING
REAL PROPERTY TAX EXEMPTION**

The City Commission of the City of El Dorado, Kansas will conduct a public hearing regarding a proposed real property tax exemption to be submitted to the Board of Tax Appeals pursuant to K.S.A. 79-251 and amendments thereto for an expanding business, CONFAB INC. to acquire and make improvements to the property described below in an amount not to exceed \$800,000. Said property will be used for manufacturing purposes and is currently zoned light industrial. CONFAB INC. is currently located at 2200 West 6th Street, El Dorado, Kansas. The proposed real property to be considered for real property tax exemption is described as Lot 1, Block 1, R.J. Metcalf 2nd Addition, in the City of El Dorado, Butler County, Kansas and Lot 4, Block 3, Carl E. Taylor Addition, in the City of El Dorado, Butler County, Kansas, commonly known as 630 N. Metcalf Rd, El Dorado, Kansas.

The hearing is scheduled for 6:30 p.m., Monday, December 2, 2019, to be held in the City Commission room located at 220 East First Avenue, El Dorado, Kansas. Detailed information is available at the City Clerk's office and will also be available at this meeting. All persons desiring to be heard with reference to the proposed exemption shall be heard at the public hearing.

Dated: November 14, 2019

/s/ Tabitha Sharp, City Clerk

ORDINANCE NO. _____

**AN ORDINANCE EXEMPTING CERTAIN REAL PROPERTY FROM
TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES.**

WHEREAS, the Governing Body pursuant to K.S.A 79-251 and as amended, has developed and adopted official policies and procedures for granting property tax exemptions including: an analysis of the costs and benefits of each exemption, the effect of the exemptions on revenues, prior to the granting of such exemptions, and provided for procedure or monitoring the compliance of a business receiving an exemption with any terms or conditions established by the Governing Body for the granting of the exemption; and

WHEREAS, a public hearing on the granting of such exemption had been held this date after notice was published at least once seven (7) days prior to the hearing in the official city newspaper indicating the purpose, time and place thereof; and

WHEREAS, as required by K.S.A. 79-251 and as amended, the City Clerk has notified in writing the Governing Bodies of Butler County, Butler Community College and Unified School District No. 375 of the proposed exemption; and

WHEREAS, the property to be exempted is in compliance with K.S.A. 79-251 and as amended and is zoned light industrial which allows use for either manufacturing, research and development, or storage of goods to be used in interstate commerce.

WHEREAS, CONFAB Inc. is an existing business within the City of El Dorado and will be expanding with the purchase of this property.

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

Section 1: After giving notice as provided by law, the Governing Body on this date held a hearing on the advisability of the real property tax exemptions for CONFAB Inc., on property located at 630 N. Metcalf, El Dorado, Butler County, Kansas. The Governing Body finds the applicant's exclusive use of the exempted property as a manufacturing facility is in compliance with Article 11, Section 13, of the Kansas Constitution and that the business is in compliance with all city stipulations. Additionally, the Governing Body considered the cost benefit analysis prepared by Wichita State University Center for Economic Development and Business Research dated March 8, 2016.

There being no objection voiced to the exemption, the real property at the address listed above and further described in Exhibit "A" attached to this ordinance shall be exempt from real

property taxation for the taxable years of 2020-2029, in the percentages of assessed valuation for each of such years as follows:

<u>Taxable Year</u>	<u>Percentage of Exemption</u>
2020	100%
2021	100%
2022	100%
2023	100%
2024	100%
2025	100%
2026	100%
2027	100%
2028	100%
2029	100%

Section 2: The Governing Body finds that the granting of the tax abatement is in the best interest of the citizens of El Dorado, Kansas and further finds that the business will create 15 new jobs over 10 years and retain employment in Butler County and the state of Kansas. There will be no payment in lieu of tax agreement.

Section 3: A copy of this Ordinance, duly certified, shall be provided to the owner of the property and to the Butler County Appraiser, Clerk and Treasurer.

Section 4: This Ordinance shall be in full force and effect from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, and
APPROVED by its Mayor, this 2nd day of December, 2019.

Bill Young, Mayor

Tabitha Sharp, City Clerk

APPROVED as to form

City Attorney

Exhibit “A”

Lot 1, Block 1, R.J. Metcalf 2nd Addition, in the City of El Dorado, Butler County, Kansas and Lot 4, Block 3, Carl E. Taylor Addition, in the City of El Dorado, Butler County, Kansas, commonly known as 630 N. Metcalf Rd, El Dorado, Kansas.

November 13, 2019

Board of Education
Unified School District No. 375
901 Main, PO Box 9
Towanda, KS 67144

County Clerk
Board of County Commissioners
Butler County Courthouse
205 W Central
El Dorado, KS 67042

Butler Community College
901 S Haverhill Rd
El Dorado, KS 67042

Re: Not to Exceed \$350,000
City of El Dorado, Kansas
Real Property Tax Exemption
(OWENS CONSTRUCTION, INC.)

To Whom it May Concern,

We have enclosed for your information a Notice of the Public Hearing and Issuance of Industrial Revenue Bonds proposed by the City of El Dorado, Kansas pursuant to K.S.A. 79-251, as amended.

Sincerely,



Tabitha D. Sharp, City Clerk
City of El Dorado, KS

**NOTICE OF PUBLIC HEARING
REAL PROPERTY TAX EXEMPTION**

The City Commission of the City of El Dorado, Kansas will conduct a public hearing regarding a proposed real property tax exemption to be submitted to the Board of Tax Appeals pursuant to K.S.A. 79-251 and amendments thereto for an expanding business, Owen's Construction, Inc. to acquire and make improvements to the property described below in an amount not to exceed \$350,000. Said property will be used for manufacturing purposes and is currently zoned light industrial. Owen's Construction, Inc. is currently located at 635 N. Metcalf, El Dorado, Kansas. The proposed real property to be considered for real property tax exemption is described as Lot 1, Block 2, R.J. Metcalf 2nd Addition, in the City of El Dorado, Butler County, commonly known as 530 N. Metcalf Rd, El Dorado, Kansas.

The hearing is scheduled for 6:30 p.m., Monday, December 2, 2019, to be held in the City Commission room located at 220 East First Avenue, El Dorado, Kansas. Detailed information is available at the City Clerk's office and will also be available at this meeting. All persons desiring to be heard with reference to the proposed exemption shall be heard at the public hearing.

Dated: November 14, 2019

/s/ Tabitha Sharp, City Clerk

ORDINANCE NO. ____

**AN ORDINANCE EXEMPTING CERTAIN REAL PROPERTY FROM
TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES.**

WHEREAS, the Governing Body pursuant to K.S.A 79-251 and as amended, has developed and adopted official policies and procedures for granting property tax exemptions including: an analysis of the costs and benefits of each exemption, the effect of the exemptions on revenues, prior to the granting of such exemptions, and provided for procedure or monitoring the compliance of a business receiving an exemption with any terms or conditions established by the Governing Body for the granting of the exemption; and

WHEREAS, a public hearing on the granting of such exemption had been held this date after notice was published at least once seven (7) days prior to the hearing in the official city newspaper indicating the purpose, time and place thereof; and

WHEREAS, as required by K.S.A. 79-251 and as amended, the City Clerk has notified in writing the Governing Bodies of Butler County, Butler Community College and Unified School District No. 375 of the proposed exemption; and

WHEREAS, the property to be exempted is in compliance with K.S.A. 79-251 and as amended and is zoned light industrial which allows use for either manufacturing, research and development, or storage of goods to be used in interstate commerce.

WHEREAS, Owens Construction Inc. is an existing business within the City of El Dorado and will be expanding with the purchase of this property.

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

Section 1: After giving notice as provided by law, the Governing Body on this date held a hearing on the advisability of the real property tax exemptions for Owens Construction Inc., on property located at 530 N. Metcalf, El Dorado, Butler County, Kansas. The Governing Body finds the applicant's exclusive use of the exempted property as a manufacturing facility is in compliance with Article 11, Section 13, of the Kansas Constitution and that the business is in compliance with all city stipulations. Additionally, the Governing Body considered the cost benefit analysis prepared by Wichita State University Center for Economic Development and Business Research dated April 11, 2016.

There being no objection voiced to the exemption, the real property at the address listed above and further described in Exhibit "A" attached to this ordinance shall be exempt from real

property taxation for the taxable years of 2020-2029, in the percentages of assessed valuation for each of such years as follows:

<u>Taxable Year</u>	<u>Percentage of Exemption</u>
2020	100%
2021	100%
2022	100%
2023	100%
2024	100%
2025	100%
2026	100%
2027	100%
2028	100%
2029	100%

Section 2: The Governing Body finds that the granting of the tax abatement is in the best interest of the citizens of El Dorado, Kansas and further finds that the business will create 9 new jobs over 5 years and retain employment in Butler County and the state of Kansas. There will be no payment in lieu of tax agreement.

Section 3: A copy of this Ordinance, duly certified, shall be provided to the owner of the property and to the Butler County Appraiser, Clerk and Treasurer.

Section 4: This Ordinance shall be in full force and effect from and after its publication once in the official city newspaper.

PASSED by the Governing Body of the City of El Dorado, Kansas, and
APPROVED by its Mayor, this 2nd day of December, 2019.

Bill Young, Mayor

Tabitha Sharp, City Clerk

APPROVED as to form

City Attorney

Exhibit “A”

Lot 2, Block 1, R.J. Metcalf 2nd Addition, in the City of El Dorado, Butler County, commonly known as 530 N. Metcalf Rd, El Dorado, Kansas.

2019 Commission Priorities

Water Sales • Community Image • Industrial and Business Parks • Parks and Recreation • Public Safety

TO: City Commission
FROM: Tabitha Sharp, City Clerk
SUBJ: BG Products Taxable Industrial Revenue Bond Approval
DATE: December 2, 2019

Background:

In 2017, BG Products requested a ten year tax abatement to begin after they completed the acquisition, renovation, construction and equipping to expand their facility. The total cost of the project was \$24,220,000.

Policy Issue:

The City Commission must approve all ordinances.

Alternatives:

Not applicable.

Fiscal Impact:

The expansion will be exempt from property taxes for the next ten years.

Trade-offs:

Not applicable

Staff Recommendation:

Approve the ordinance.

Commission Actions:

Commissioner _____ moved to approve Ordinance No. _____, an Ordinance authorizing the City of El Dorado, Kansas to issue its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) for the purpose of paying the costs of acquiring, renovating, constructing and equipping a building and improvements to an existing manufacturing and distribution facility; and authorizing certain other documents and actions in connection therewith.

Commissioner _____ seconded the motion.

[Return to Agenda](#)

ORDINANCE NO. ____

**OF THE
CITY OF EL DORADO, KANSAS**

**AUTHORIZING THE ISSUANCE OF
\$24,220,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)**

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE CITY OF EL DORADO, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2019 (BG PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING, RENOVATING, CONSTRUCTING AND EQUIPPING A BUILDING AND IMPROVEMENTS TO AN EXISTING MANUFACTURING AND DISTRIBUTION FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF EL DORADO, KANSAS HAS FOUND AND DETERMINED:

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

B. Pursuant to Ordinance No. G-1116 of the Issuer adopted March 21, 2011 and a Trust Indenture dated as of March 30, 2011 (the "Original Indenture") between the Issuer and Commerce Bank, Kansas City, Missouri (the "Trustee") the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series 2011 (BG Products) dated March 30, 2011 (the "Original Bonds"), in the original principal amount of \$64,000,000, for the purpose of acquiring, renovating, constructing and equipping certain manufacturing, office and product distribution facilities (the "Original Project").

C. The Original Project was leased to BG Real Estate, Inc., a Kansas Corporation (the "Tenant"), pursuant to the provisions of a certain Lease dated as of March 30, 2011 between the Issuer and the Tenant (the "Original Lease").

D. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) dated as of December 11, 2019 in the aggregate principal amount of \$24,220,000 (the "Series 2019 Bonds"), for the purpose of providing funds to acquire, renovate, construct and equip a building and improvements to the Original Project (the "Project Additions"), as more fully described in the Supplemental Indenture and in the Supplemental Lease hereinafter authorized.

E. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2019 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Supplemental Trust Indenture dated as of December 11, 2019 with the Trustee (the "Supplemental Indenture"), amending and supplementing the Original Indenture (as supplemented and amended, the "Indenture"), prescribing the terms and conditions of issuing and securing the Series 2019 Bonds;

(ii) a Supplemental Lease dated as of December 11, 2019 (the "Supplemental Lease") with the Tenant, amending and supplementing the Original Lease (as supplemented and amended, the

“Lease”), under which the Issuer will extend, improve and further equip the Original Project and continue to lease the Project to the Tenant in consideration of Basic Rent and other payments; and

(iii) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2019 Bonds by the Issuer to BG Real Estate, Inc., Wichita, Kansas (the “Purchaser”).

F. The Issuer's governing body has found that under the provisions of K.S.A. 79-201a *Twenty-Fourth*, the Project purchased or constructed with the proceeds of the Series 2019 Bonds is eligible for exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made. The Issuer's governing body has further found that the Project should be exempt from ad valorem property taxes for a period of 10 years. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. 12-1749d.

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

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and the Lease referred to herein.

Section 2. **Authority to Cause the Project Additions to be Acquired, Constructed and Equipped.** The City shall cause the Project Additions to be acquired, renovated, constructed and equipped in the manner and as more particularly described in the Supplemental Indenture and the Supplemental Lease hereinafter authorized.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series 2019 Bonds, to be designated " El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project)" in the aggregate principal amount of \$24,220,000, for the purpose of providing funds to pay the costs of the Project Additions. The Series 2019 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series 2019 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Lease of the Project. The Series 2019 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Supplemental Indenture.** The Issuer is hereby authorized to enter into the Supplemental Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series 2019 Bonds on the terms and conditions in the Indenture.

Section 5. **Authorization of Supplemental Lease.** The Issuer is authorized to enter into the Supplemental Lease with the Tenant in the form approved in this Ordinance. The Issuer shall cause the Project Additions to be acquired and leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of the Lease.

Section 6. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series 2019 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 7. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series 2019 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2019 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 8. **Property Tax Exemption.** The Project will be exempt from ad valorem property taxes for 10 years, commencing in the calendar year after the calendar year in which the Series 2019 Bonds are issued. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the State Board of Tax Appeals.

Section 9. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project, including the Project Additions, and the net rentals generated under the Lease to the payment of the Series 2019 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2019 Bonds are paid or deemed to have been paid under the Indenture.

Section 10. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor, in the Mayor's absence, the City Clerk, and any Deputy City Clerk, are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 11. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2019 Bonds and the Bond Documents.

Section 12. **Effective Date.** This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication once in the Issuer's official newspaper.

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

PASSED by the governing body of the Issuer on December 2, 2019 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. ____ of the City of El Dorado, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective date stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF EL DORADO, KANSAS
HELD ON DECEMBER 2, 2019**

The governing body of the City of El Dorado, Kansas met in regular session at the usual meeting place in the City, at 6:30 p.m., the following members being present and participating, to-wit:

Absent:

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

* * * * *

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF EL DORADO, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2019 (BG PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING, RENOVATING, CONSTRUCTING AND EQUIPPING A BUILDING AND IMPROVEMENTS TO AN EXISTING MANUFACTURING AND DISTRIBUTION FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

Aye:

Nay:

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

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

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

[SEAL]

City Clerk

(Published in *The Butler County Times-Gazette* on December 7, 2019)

SUMMARY OF ORDINANCE NO. [__]

On December 2, 2019, the governing body of the City of El Dorado, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF EL DORADO, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2019 (BG PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING, RENOVATING, CONSTRUCTING AND EQUIPPING A BUILDING AND IMPROVEMENTS TO AN EXISTING MANUFACTURING AND DISTRIBUTION FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) in the aggregate principal amount of \$24,220,000 (the "Series 2019 Bonds"), for the purpose of paying the costs of the acquisition, renovation, construction and equipping of a building and improvements to an existing manufacturing and distribution facility (the "Project Additions"), as more fully described in the Indenture and in the Lease authorized by the Ordinance. The Project and Project Additions will continue to be leased by the Issuer to BG Real Estate, Inc., a Kansas corporation. In connection with the issuance of the Series 2019 Bonds, the Issuer approves a 10 year exemption from ad valorem property taxes for the Project Additions.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 220 E. 1st Avenue, El Dorado, Kansas 67042. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.eldoks.com.

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

DATED: December ____, 2019.

City Attorney

GILMORE & BELL, P.C.
NOVEMBER 04, 2019

CITY OF EL DORADO, KANSAS

AS ISSUER

AND

BG REAL ESTATE, INC.

AS TENANT

SUPPLEMENTAL LEASE NO. 1

DATED AS OF DECEMBER 11, 2019

\$24,220,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)

SUPPLEMENTAL LEASE NO. 1

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SUPPLEMENTAL LEASE NO. 1

THIS SUPPLEMENTAL LEASE NO. 1 is made as of December 11, 2019, between the City of El Dorado, Kansas a municipal corporation of the State of Kansas (the "Issuer"), and BG Real Estate, Inc., a Kansas corporation (the "Tenant"), and supplements a Real Estate Lease between the same parties made as of March 30, 2011 (the "Original Lease").

WHEREAS, the parties have heretofore entered into the Original Lease covering the property described in Section 1 of *Schedule I* attached hereto and made a part hereof; and

WHEREAS, all of such property (as well as the Project Additions hereinafter described) is included within the term "Project" as used in the Original Lease and in this Supplemental Lease No. 1 (the Original Lease, as supplemented and amended, including by this Supplement Lease No. 1, herein referred to as the "Lease"); and

WHEREAS, the Project and all rentals due under the Lease were pledged to secure payment of the City of El Dorado, Kansas Taxable Industrial Revenue Bonds Revenue Bonds, Series 2011, in the original principal amount of \$64,000,000 (the "Series 2011 Bonds") the proceeds of which were used to provide funds for the acquisition, renovation, construction and equipping of a manufacturing and commercial facility located on the Land described in *Schedule I*; and

WHEREAS, the Series 2011 Bonds were issued pursuant to a Trust Indenture dated March 30, 2011 (the "Original Indenture") between the Issuer and Commerce Bank, Kansas City, Missouri, as Trustee (the "Trustee"); and

WHEREAS, Issuer is a duly incorporated city of the second class of the State of Kansas, with authority to enter into this Supplemental Lease No. 1, acting by and through its governing body; and

WHEREAS, to provide funds to pay the costs of acquiring, renovating, constructing and equipping a manufacturing and distribution facility and certain additions to, and further equipping (the "Project Additions") the Project, the Issuer intends to issue and sell its Taxable Industrial Revenue Bonds, Series 2019 in the aggregate principal amount of \$24,220,000 (the "Series 2019 Bonds"); and

WHEREAS, *Section 209* of the Original Indenture provides that the Issuer may issue Additional Bonds which shall be on a parity with and shall be entitled to the same benefit and security of the Indenture as the Series 2011 Bonds, upon the satisfaction of certain conditions as set forth in said Section, all of which series of bonds are sometimes hereafter called the "Bonds"; and

WHEREAS, in order to satisfy the conditions set forth in *Section 209* of the Original Indenture precedent to the issuance of Additional Bonds, the governing body of the Issuer has passed an ordinance authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purposes for which such Additional Bonds are being issued, authorizing the Issuer to enter into Supplemental Indenture No. 1 with the Trustee (the "Supplemental Indenture") to provide for the issuance and securing of such Additional Bonds, and authorizing the Issuer to enter into this Supplemental Lease No. 1 to provide for rental payments sufficient to pay the principal of, premium, if any, and interest on all Bonds Outstanding from time to time under the Original Indenture, as supplemented and amended by the Supplemental Indenture (collectively, the "Indenture") (including the Additional Bonds to be issued);

WHEREAS, the Bonds shall be secured by a pledge of the Project and all additions to the Project, including the Project Additions, all of which is hereafter referred to as the "Project," and by a pledge of all rentals under the Original Lease and this Supplemental Lease No. 1; and

NOW, THEREFORE, in consideration of the premises, of other good and valuable consideration, and of the mutual benefits, covenants and agreements herein contained, the parties hereto further supplement the Original Lease and agree as follows:

Section 1. **Definitions.** Capitalized terms not otherwise defined in this Supplemental Lease No. 1 shall have the meanings set forth in the Original Lease and the Indenture. In addition to the words, terms and phrases defined in the Lease and in the Indenture, the capitalized words, terms and phrases as used herein shall have the meanings set forth below, unless the context or use indicates another or different meaning or intent:

"Certificate of Completion" means a written certificate in the form attached hereto as *Appendix B* signed by the Authorized Tenant Representative stating that (1) the Project Additions have been completed in accordance with the plans and specifications prepared or approved by Issuer or Tenant, as the case may be; (2) the Project Additions have been completed in a good and workmanlike manner; (3) no mechanic's or materialmen's liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Project Additions are located or installed upon the Land; and (5) if required by ordinances duly adopted by Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Project Additions.

"Completion Date" means the date of delivery of the Certificate of Completion or December 31, 2020, whichever comes first.

"Original Proceeds" means, with respect to the Series 2019 Bonds, all sale proceeds, including accrued interest, from the sale of the Series 2019 Bonds to the Original Purchaser, and all investment earnings thereon accrued prior to the Completion Date.

"Project Costs" means those costs incurred in connection with construction, acquisition and installation of the Project Additions, including:

(a) all costs and expenses of acquiring such of the Project Additions as are constructed, installed or in progress at the date of issuance of the Series 2019 Bonds;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction; preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, surveyors and engineers in relation to the construction, furnishing and equipping of the Project Additions;

(c) all costs and expenses of constructing, acquiring, installing or equipping the Project Additions;

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

(e) Costs of Issuance.

Section 2. **Additional Property Leased.** In addition to the property described in the Original Lease, Issuer further leases to Tenant and Tenant hires from Issuer, subject to the terms and conditions of the Original Lease and this Supplemental Lease No. 1, the Project Additions as described in *Section 2 of Schedule I* attached hereto.

Section 3. **Representations and Covenants of Tenant.** Tenant hereby ratifies and confirms the covenants and representations of Tenant set forth in *Section 1.2* of the Original Lease are hereby reaffirmed and ratified with respect to all the Series 2019 Bonds and the Project Additions.

Section 4. **Acquisition and Construction of Project Additions.** Tenant covenants to cause the Project Additions to be purchased and constructed in accordance with plans and specifications prepared by Tenant and in accordance with this Supplemental Lease No. 1. The Authorized Tenant Representative may make changes and alterations in the plans and specifications so long as such changes do not impair the usefulness of the Project Additions or change the character of the Project Additions. In addition, Tenant covenants that it will pay or cause to be paid any and all Costs of Issuance not paid from the proceeds and sale of the Series 2019 Bonds and all expenses of the Issuer incurred in connection with the issuance of the Series 2019 Bonds.

Section 5. **Kansas Retailers' Sales Tax.** The parties have entered into this Supplemental Lease No. 1 in contemplation that, under the existing provisions of K.S.A. 79-3606(d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project Additions are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that Issuer shall, upon the request of and with Tenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers a project exemption certificate for the construction of the Project Additions. Tenant covenants that said exemption shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Project Additions.

Section 6. **Ad Valorem Taxes.** The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds (except such property used for certain retail uses) is eligible to receive exemption from *ad valorem* taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has complied with certain notice, hearing and procedural requirements established by law, and proper application has been made. The Issuer represents that such notice, hearing and procedural requirements will have been complied with at the Issue Date. The Issuer will, at the Tenant's request, with information furnished by Tenant and the Trustee, make all necessary filings regarding the application for 100% *ad valorem* tax exemption for the full 10-year period in the calendar year following the calendar year in which the Bonds were issued, and will renew said application from time to time and take any other action as may be necessary to maintain such *ad valorem* tax exemption in full force and effect, in accordance with K.S.A. 79-201a, 79-210 *et seq.* and the requirements of the State Board of Tax Appeals. If it becomes necessary to litigate the issue of availability or applicability of the *ad valorem* tax exemption, the Issuer will cooperate fully with Tenant in pursuing such litigation, but all litigation costs and reasonable attorney fees must be paid by Tenant, either directly or as Additional Rent.

Section 7. **Delivery of Possession and Extension of Lease Term.** Delivery of possession of the Project Additions shall be immediate upon completion. The Term of the Original Lease is extended until December, 31, 2029, or until all the Bonds and all interest thereon shall have been paid or provision made for their payment, whichever is earlier.

Section 8. **Supplemental Rent.** "Basic Rent" as payable under *Section 3.1* of the Original Lease shall be increased to provide funds sufficient to permit the Trustee to make all interest and principal payments

on the Series 2019 Bonds when due, as well as all other Bonds Outstanding under the Indenture (less Basic Rent Credits as set out in the Original Lease and any other credits provided in the Original Indenture).

Section 9. **Insurance.** The amount of fire and extended coverage insurance required in the Original Lease shall be increased to the full insurable value of the Project, including the Project Additions. Tenant shall also purchase, from the Project Fund or from Tenant's own funds, a certificate of title evidencing the owner's fee simple title to the Land in Issuer.

Section 10. **Other Original Lease Provisions.** Except as may be specifically otherwise provided herein, and except as a contrary intention clearly appears, all provisions of the Original Lease and this Supplemental Lease No. 1 are hereby declared to be applicable to the Project including the Project Additions. As used in the Original Lease, the terms "Project" and "Bonds" shall include the Project Additions and the Series 2019 Bonds, respectively.

Section 11. **Ratification and Confirmation of Original Lease.** Except as expressly modified in this Supplemental Lease No. 1, the Original Lease and the covenants therein contained are hereby ratified and confirmed by the parties as of the date of this Supplemental Lease No. 1 and shall apply to the Series 2019 Bonds, the proceeds thereof, and the Project Additions.

(THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the Issuer has caused this Supplemental Lease No. 1 to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

CITY OF EL DORADO, KANSAS
as Issuer

[SEAL]

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF BUTLER)

This instrument was acknowledged before me on the ____ day of _____, 2019, by Bill Young as Mayor of the City of El Dorado, Kansas, a municipal corporation of the State of Kansas.

[SEAL]

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, the Tenant has caused this Supplemental Lease No. 1 to be signed by an authorized officer, such signature to be attested by an authorized officer, and its corporate seal (if any) to be applied, as of the date first above written.

BG REAL ESTATE, INC.

By: _____
Title:

"TENANT"

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF BUTLER)

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, _____, of BG Real Estate, Inc., a Kansas corporation.

(Seal)

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF CERTIFICATE FOR PAYMENT OF PROJECT COSTS

**CITY OF EL DORADO, KANSAS
Project Fund
(BG Products Project)
Payment Order No. ____**

Commerce Bank
Kansas City, Missouri
Attn: Corporate Trust Department

Dear Sir:

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of BG Real Estate, Inc. (the "Tenant") to disburse funds held by you as Trustee in the above-mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedules attached hereto and incorporated herein by reference (the "Payment Schedules").

I hereby certify that the amounts requested in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project Additions. I further certify that the fair value of such work or materials, machinery and equipment, is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

I further certify that, except for the amounts set forth in the Payment Schedules, there are no outstanding indebtednesses which are now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Project or any part thereof.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the said Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of March 30, 2011 by and between the City of El Dorado, Kansas, Kansas, as Issuer and the Tenant, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 between the Issuer and the Tenant, were on the date of said Supplemental Lease No. 1, and are on the date hereof true and correct in all respects and are being complied with in every respect.

I further certify that the amounts set forth in the Payment Schedules constitute Project Costs, as said term is defined in Supplemental Lease No. 1, and that all insurance policies which are required to be in force

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as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of Supplemental Lease No. 1 are in full force and effect.

DATED _____, 20____.

Authorized Tenant Representative

EXHIBIT A - Payment Order No. ____

**PAYMENT SCHEDULE
FOR BUILDINGS, IMPROVEMENTS AND MISCELLANEOUS COSTS**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Payee Address</u>	<u>Purpose or Nature of Payment</u>	<u>Amount</u>
-------------------	----------------------	-------------------------------------	---------------

Initials

EXHIBIT B - Payment Order No. ____

**PAYMENT SCHEDULE
FOR MACHINERY AND EQUIPMENT**

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

<u>Payee Name</u>	<u>Description of Equipment</u>	<u>Amount</u>
	(include name and address of seller, manufacturer, descriptive name, technical description, capacity, serial number of model number as appropriate)	

Initials

APPENDIX B

CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for BG Real Estate, Inc. (the "Tenant"), as tenant under a certain Lease dated as of March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 (as amended and supplemented, the "Lease"), between the City of El Dorado, Kansas (the "Issuer") and the Tenant, and as beneficiary of the Issuer's Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) issued pursuant to a certain Trust Indenture dated as of March 30, 2011, as amended and supplemented by the Supplemental Indenture dated as of December 11, 2019 (as supplemented and amended, the "Indenture"), hereby certifies as follows. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture and Lease:

1. The Project Additions have been completed in accordance with the plans and specifications prepared by Tenant.
2. The Project Additions have 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 Land (as defined in the Indenture); all bills for labor and materials furnished for the Project Additions which could form the basis of a mechanic's, materialmen's or other statutory lien against the Land 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 Project Additions are located or installed upon the Land.
5. All applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project Additions.
6. As required by the Indenture, all moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Debt Service Fund being held by the Trustee, to be applied as provided in the Indenture.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned Authorized Tenant Representative has signed this Certificate, and states, under penalty of perjury, that the statements of fact made in this Certificate are true and correct.

Authorized Tenant Representative

STATE OF KANSAS)
) SS:
COUNTY OF BUTLER)

Subscribed and sworn to or affirmed before me, a notary public, this ____ day of _____, 20__.

Notary Public

My Appointment Expires:

SCHEDULE I
DESCRIPTION OF PROPERTY

Section 1. (a) The following described real estate located in Butler County, Kansas:

Tract 1a

SURFACE ONLY:

All that part of the West half of Section 33, Township 25 South, Range 5 East of the 6th P.M., lying South of the Southeasterly right-of-way line of the Kansas Turnpike and North of the Northern right-of-way of the Union Pacific Railroad (formerly Missouri Pacific Railroad), further described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, a distance of 1654.64 feet to a point on the North right-of-way line of the Union Pacific Railroad; thence N 89°33' W, along said Railroad right-of-way, a distance of 1651.98 feet to an intersection with the Southeasterly right-of-way line of the Kansas Turnpike; thence N 43°52'01" E, along said Turnpike right-of-way, a distance of 1124.38 feet; thence N 43°11'32" E, along said Turnpike right-of-way, a distance of 1277.94 feet to a point on the East line of the Northwest Quarter of said Section 33; thence S 00°03'47" W, a distance of 100.66 feet to the Point of Beginning,

LESS AND EXCEPT the two tracts set forth below:

(1) Beginning 150 feet Southeasterly at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence Northeasterly and parallel with said centerline a distance of 350 feet; thence Southeasterly at right angles to said centerline a distance of 503.83 feet; thence Westerly 508.69 feet, more or less; thence Northwesterly normal to said centerline, a distance of 134.68 feet to the Point of Beginning.
AND

(2) Beginning at the intersection of the Southeasterly Kansas Turnpike right-of-way line and the Northern right-of-way line of the Union Pacific Railroad; thence Northeasterly along said Kansas Turnpike right-of-way, a distance of 124.83 feet to a point which is 150 feet at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence continuing Southeasterly at right angles to said centerline, a distance of 134.68 feet to a point on said North Railroad right-of-way; thence West along said Railroad right-of-way; a distance of 180.97 feet to the Point of Beginning.

AND LESS AND EXCEPT the tract set forth below:

Commencing at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, along the East line of said Southwest Quarter a distance of 649.64 feet to the Point of Beginning; thence continuing S 00°03'47" W, a distance of 1005 feet to a point on the Northern Railroad right-of-way; thence N 89°33' W, along said Railroad right-of-way, a distance of 962.25 feet; thence N 46°05'44" W, a distance of 501.01 feet to a point on the Southeasterly right-of-way of the Kansas Turnpike; thence N 43°52'01" E, along said Kansas Turnpike right-of-way, a distance of 650 feet; thence N 43°11'32" E, along said Kansas Turnpike right-of-way, a distance of 249.87 feet; thence S 89°56'13" E, a distance of 702.84 feet to the Point of Beginning, Butler County, Kansas.

AND ALSO

Tract 1b

SURFACE ONLY:

That part of Lot 9 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, also described as follows: A tract in the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M. describes as: Commencing at the Northwest corner of said Southeast Quarter; thence on an assumed bearing of S 00°03'47" W along the West line of said Southeast Quarter, a distance of 182.46 feet to the Point of Beginning; thence S 89°58'38" E, a distance of 490.22 feet; thence S 00°01'37" W a distance of 210 feet; thence S 89°58'38" E, a distance of 86 feet to a point on the West line of the City designated Lot Eleven of the El Dorado Industrial Park; thence S 00°01'25" W, a distance of 566.82 feet to the

Northwest corner of the City designated Lot Ten of the El Dorado Industrial Park; thence S 00°05'50" W, a distance of 700 feet to the Southwest corner of said Lot Ten and on the North right-of-way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad); thence West along said Railroad right-of-way line, a distance of 576.35 feet to the West line of said Southeast Quarter; thence N 00°03'47" E, a distance of 1472.18 feet to the point of beginning, Butler County, Kansas.

Tract 2

SURFACE ONLY

That part of Lot 11 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, further described as follows: Beginning at a point 1682.29 feet North and 579.98 feet East of the Southwest Corner of the East Half of Section 33, Township 25 South, Range 5 East of the 6th P.M.; thence on an assumed bearing of N 00°01'25" E along the West line of said Lot 11 a distance of 566.82 feet; thence S 89°58'38" E a distance of 114 feet; thence N 00°01'37" E a distance of 210 feet to a point on the South right of way line of Pioneer Road, as designated by the City of El Dorado, said point being a point of curve, said curve having a radius of 440 feet, a chord bearing of S 78°02'51" E and a chord of 147.94 feet; thence S 68°42'17" E a distance of 605.20 feet along the North line of said Lot 11 to a point of curve, said curve having a radius of 1266.23 feet, a chord bearing of S 08°33'31" W and a chord of 481.41 feet; thence S 02°16'11" E a distance of 3.47 feet; thence N 87°43'49" E a distance of 10 feet; thence S 02°16'11" E a distance of 51.32 feet to the Southeast Corner of said Lot 11; thence N 89°41'43" W a distance of 763.51 feet to the point of beginning, Butler County, Kansas

Tract 3

SURFACE ONLY

Beginning at a point that is 319.30 feet North and 513.40 feet West of the Southeast Corner of the Northeast Quarter of Section numbered 33, Township 25 South, Range 5 East of the 6th P.M.; thence North on an assumed bearing of N 21°56'46" W a distance of 644.85 feet; thence S 31°09'41" W a distance of 144.15 feet; thence S 25°26'59" E a distance of 562.02 feet; thence North and East along a curve whose central angle is 3°39'46" and whose radius is 1266.23 feet a distance of 80.94 feet to the point of beginning, Butler County, Kansas.

Tract 4

SURFACE ONLY

Beginning at a point that bears S 90°00'00" W a distance of 40 feet from a point on the East line of the Northeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., that bears N 0°00'00" E a distance of 411.06 feet from the Southeast Corner thereof; thence N 0°00'00" E, a distance of 35.94 feet to the point of curvature of a curve to the left whose central angle is 25°36'59" and whose radius is 1106.28 feet; thence North and West on said curve 494.61 feet to the point of tangency; thence N 25°36'59" W a distance of 139.00 feet to the point of curvature of a curve to the left whose central angle is 33°15'51" and whose radius is 1099.08 feet; thence North and West on said curve, 443.66 feet; thence South 29°57'19" W a distance of 558.96 feet; thence S 21°56'46" E a distance of 644.85 feet to a point on a curve whose central angle is 92°27'30" and radius is 1266.23 feet; thence North and East on said curve 485.01 feet to the point of beginning, Butler County, Kansas.

Tract 5a

SURFACE ONLY

Beginning 63.89 feet South and 869.40 feet West of the Northeast Corner of the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., said point being on the Southerly right-of-way line of Haverhill Road; thence S 46°20'15" E a distance of 433.70 feet; thence S 36°38'10" W a distance of 1050.11 feet, more or less, to a point on the East right-of-way line of Haverhill Road; thence N 02°29'10" W a distance of 300.85 feet to the point of curvature of a curve with a radius of 1156.23 feet to

the right and a central angle of 92°27'30"; thence along said curve an arc distance of 327.64 feet; thence S 73°39'00" E a distance of 10.00 feet to the point of curvature of a curve, concentric with the previous curve and with a radius of 1146.23 feet to the right; thence along said curve an arc distance of 598.43 feet, more or less, to the point of beginning,

EXCEPT for and excluding the following:

Beginning 1182.3 feet West and 1206.0 feet South at the Northeast Corner of the Southeast Quarter of Section 33, said point being the South point of Lot 14 as designated by the City of El Dorado, Kansas in the El Dorado Industrial Park; thence N 2°29'10" W a distance of 300.85 feet, more or less; thence East a distance of 236.5 feet, more or less; thence S 36°38'10" W a distance of 375 feet, more or less to the point of beginning of excepted tract, Butler County, Kansas.

AND ALSO

Tract 5b

SURFACE ONLY

Commencing at the Southeast Corner of said Section 33; thence North 1269.79 feet along the East line of said Section 33 on an assumed bearing of N 00° E; thence West perpendicular to said East line a distance of 397.87 feet to the Point of Beginning; thence continuing West a distance of 235.46 feet; thence South a distance of 300.45 feet to a point on the Northern Railroad right of way; thence West along said right of way a distance of 540.00 feet to a point on the East right of way line of Haverhill Road; thence North a distance of 292.40 feet to a point on a curve, said curve having a radius of 5729.578 feet and a central angle of 2°20'; thence on a chord of N 02°12'30" W a distance of 38.56 feet to a point of tangency; thence N 02°23'58" W a distance of 436.88 feet; thence N 89°23'17" E a distance of 236.50 feet; thence N 36°05'44" E a distance of 675.20 feet along the West line of an existing easement line; thence S 88°00'47" E a distance of 205.32 feet to a point on the East line of said easement; thence S 36°05'44" W a distance of 443.36 feet; thence N 53°54'16" W a distance of 60 feet; thence S 36°05'44" W a distance of 481.29 feet along the East line of said easement; thence S 89°24'19" E a distance of 552.42 feet to a point which is 397.76 feet West of the East line of said Section 33; thence S 00° W a distance of 290 feet to the point of beginning, Butler County, Kansas

said real property constituting the "Land" as referred to in the Lease dated March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019, between the City of El Dorado, Kansas and BG Real Estate, Inc.

(b) All buildings, improvements, machinery and equipment acquired, constructed, located or installed on the Land and financed or refinanced with the proceeds of the City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2011 (Taxable Industrial Revenue Bonds).

Section 2. All buildings, improvements, machinery and equipment acquired, constructed, located or installed on the Land and financed or refinanced with the proceeds of the City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project).

Section 3. The real estate described in Section 1 shall constitute the "Land" and all the property (Land, buildings, machinery and equipment) described in Sections 1 and 2 of this Schedule I together with all replacements or substitutions therefor shall now be considered to constitute the "Project," as referred to in said Lease dated March 30, 2011, as supplemented and amended by Supplemental Lease No. 1 dated December 11, 2019, all by and between the City of El Dorado, Kansas and BG Real Estate, Inc..

CITY OF EL DORADO, KANSAS

AS ISSUER

AND

COMMERCE BANK
KANSAS CITY, MISSOURI

AS TRUSTEE

SUPPLEMENTAL TRUST INDENTURE NO. 1

DATED AS OF DECEMBER 11, 2019

\$24,220,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)

SUPPLEMENTAL TRUST INDENTURE NO. 1

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SUPPLEMENTAL TRUST INDENTURE NO. 1

THIS SUPPLEMENTAL TRUST INDENTURE NO. 1 dated as of December 11, 2019 (the "Supplemental Indenture"), between the City of El Dorado, Kansas and Commerce Bank, Kansas City, Missouri (the "Trustee"), which amends and supplements a Trust Indenture dated as of March 30, 2011, between the same parties (the "Original Indenture"), incorporated herein by reference;

WITNESSETH:

WHEREAS, the Issuer has previously issued its Taxable Industrial Revenue Bonds, Series 2011 (BG Products) in the principal amount of \$64,000,000 (the "Series 2011 Bonds") pursuant to the Original Indenture; and the Original Indenture specifically authorizes the issuance of Additional Bonds to be secured on a parity of lien basis with the Series 2011 Bonds; and

WHEREAS, pursuant to such authorization, the Issuer's governing body has passed an Ordinance authorizing the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project), in the principal amount of \$24,220,000 (the "Series 2019 Bonds"), for the purposes of paying the costs of acquiring, constructing and equipping of a manufacturing and distribution facility and acquiring, constructing, renovating and equipping additions to the Project purchased with the proceeds of the Series 2011 Bonds (collectively, the "Project Additions"), and authorizing the Issuer to continue to lease the Project, as augmented by the Project Additions, to BG Real Estate, Inc., a Kansas corporation (the "Tenant"); and

WHEREAS, pursuant to such Ordinance, the Issuer is authorized (i) to execute and deliver this Supplemental Indenture for the purpose of issuing and securing the Series 2019 Bonds as well as the Series 2011 Bonds and any Additional Bonds issued and secured under the Indenture (collectively the "Bonds"), as hereinafter provided, and (ii) to enter into a Supplemental Lease (the "Supplemental Lease"), between the Issuer and the Tenant, under which the proceeds of the Series 2019 Bonds shall be used to acquire, construct, renovate and equip the Project Additions, and pursuant to which Issuer shall lease the Project Additions to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Series 2019 Bonds as the same become due (as well as all other Bonds Outstanding under the Indenture); and

WHEREAS, all things necessary to make the Series 2019 Bonds, when authenticated by the Trustee and issued as provided in this Supplemental Indenture and in the Original Indenture, the valid and legally binding limited obligations of the Issuer, and to constitute this Supplemental Indenture a valid and legally binding pledge and assignment of the Project Additions as additional security for the payment of the principal of, premium, if any, and interest on the Bonds, have been done and performed, and the execution and delivery of this Supplemental Indenture and the execution and issuance of the Series 2019 Bonds, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, the Issuer has found that all requirements of the Original Indenture have been or will preceding their issuance be met for the issuance of the Series 2019 Bonds as Additional Bonds equal in priority to and on a parity of lien basis with the Series 2011 Bonds;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

GRANTING CLAUSES

The Issuer, in order to secure the payment of the principal of, premium, if any, and interest on all Bonds issued and Outstanding under the Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee, its successors and assigns, the property described below (said property being herein referred to as the "Trust Estate Additions"):

- (a) All right, title and interest of the Issuer in, to and under the Supplemental Lease, and all rents, revenues and receipts to be received by the Issuer from the Project, including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Supplemental Lease; provided that the pledge and assignment hereby made shall not impair or diminish the obligations of the Issuer under the provisions of the Lease; and
- (b) Except as otherwise provided herein, all moneys and securities from time to time held by the Trustee under the terms of the Original Indenture and this Supplemental Indenture;

TO HAVE AND TO HOLD, together with all rights appertaining to such property, to the Trustee and its successors in trust and assigns;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the proportionate benefit, protection and security of all Bondowners from time to time of Bonds issued and Outstanding under the Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Supplemental Indenture;

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on all the Bonds, at the times and in the manner mentioned in the Bonds, or shall provide for the payment thereof (as provided in **Article XIII** of the Original Indenture), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Supplemental Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Supplemental Indenture shall be and remain in full force and effect.

THIS SUPPLEMENTAL INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Series 2019 Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate Additions are to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed and as expressed in the Indenture, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Series 2019 Bonds, as follows:

ARTICLE I

DEFINITIONS

Section 101. **Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in the Indenture and the Lease, the capitalized words and terms in this Supplemental Indenture shall have the following meanings, unless some other meaning is plainly intended:

"Indenture" means the Trust Indenture dated as of March 30, 2011 between the Issuer and the Trustee, as amended and supplemented by Supplemental Indenture No. 1.

"Lease" means the Lease dated as of March 30, 2011 between the Issuer and the Tenant, as amended and supplemented by Supplemental Lease No. 1.

"Original Indenture" means the Trust Indenture dated as of March 30, 2011 between the Issuer and the Trustee.

"Original Lease" means the Lease dated as of March 30, 2011 entered into between the Issuer and the Tenant.

"Original Proceeds" means with respect to the Series 2019 Bonds, the proceeds of the sale of the Series 2019 Bonds.

"Original Purchaser" with respect to the Series 2019 Bonds means BG Real Estate, Inc., Wichita, Kansas.

"Series 2011 Bonds" means the City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2011 (Taxable Industrial Revenue Bonds) dated as of March 30, 2011 in the aggregate amount of \$64,000,000.

"Series 2019 Bonds" means the City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) dated as of December 11, 2019, in the aggregate amount of \$24,220,000.

"Supplemental Indenture" means Supplemental Trust Indenture No. 1 dated as of December 11, 2019 between the Issuer and the Trustee.

"Supplemental Lease" means Supplemental Lease No. 1 dated as of December 11, 2019 between the Issuer and the Tenant.

ARTICLE II

THE SERIES 2019 BONDS

Section 201. **Authorization of Series 2019 Bonds.**

(a) There shall be issued and secured pursuant to the Indenture a series of bonds in the aggregate principal amount of \$24,220,000, which series of bonds shall be designated "City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project)." The Series 2019 Bonds shall be dated as of December 11, 2019, shall become due as set forth in *Appendix A* hereto.

(b) The Trustee is hereby designated as the Issuer's Paying Agent for the payment of the principal of, premium, if any, and interest on the Series 2019 Bonds.

(c) The Series 2019 Bonds shall bear interest from their effective date of registration, which date shall be set forth on each such bond. Upon the original issuance and delivery of the Series 2019 Bonds, the effective date of registration thereof shall be the Issue Date of the Bonds. Principal and Interest on the Series 2019 Bonds shall be payable in the manner stated in **Article II** of the Original Indenture on December 31, 2029.

(d) The Series 2019 Bonds shall be substantially in the form and executed in the manner set forth in *Article IV* of this Supplemental Indenture and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the Ordinance enacted by Issuer's governing body authorizing the issuance of the Series 2019 Bonds and the execution of this Supplemental Indenture and the Supplemental Lease.

(2) An original executed counterpart of this Supplemental Indenture.

(3) An original executed counterpart of the Supplemental Lease.

(4) An opinion of Bond Counsel to the effect that the Series 2019 Bonds constitute valid and legally binding obligations of the Issuer.

(5) Such other opinions, certificates, statements, receipts and documents as are required by **Section 2.09** of the Original Indenture or as the Trustee may reasonably require for the delivery of the Series 2019 Bonds.

(e) When the documents specified in subsection (d) of this Section and in **Section 2.09** of the Original Indenture shall have been filed with the Trustee, and when certificates representing all the Series 2019 Bonds shall have been executed and authenticated as required by the Indenture, the Trustee shall deliver the Series 2019 Bonds to or upon the order of their Original Purchaser, but upon receipt of a Payment Order in the form of *Exhibit A* to the Supplemental Lease in the amount of the purchase price of the Series 2019 Bonds.

Section 202. Security for Bonds; Terms and Provisions. Except as to differences in the maturities thereof and in the rates of interest and the provisions for redemption, and except as otherwise stated in this Supplemental Indenture, the Series 2019 Bonds authorized herein shall be on a parity with and shall be entitled to the same benefit and security as the Series 2011 Bonds issued under the Original Indenture. Except as specifically provided herein and to the extent permitted by the Original Indenture, the Series 2019 Bonds herein authorized are and shall be governed by all of the provisions of the Original Indenture with respect to authorized denominations, the payment of principal, redemption premium, if any, and interest of such Bonds, the collection and disposition of revenues, the covenants of the Issuer, the nature and extent of the security for Bonds, the Issuer's right to issue Additional Bonds, the rights, duties and obligations of the Issuer, the rights of the Bondowners, and the provisions relating to registration, transfer, amendments, events of default, enforcement, acceleration in the event of default and defeasance, and all other provisions of the Original Indenture. In case any provision, covenant, stipulation, obligation or agreement contained in the Series 2019 Bonds or in this Supplemental Indenture shall for any reason be held to be in violation of, or contrary to or conflict with the provisions of the Original Indenture, as heretofore amended and supplemented then the provisions of this Supplemental Indenture shall be deemed to control to the extent applicable.

ARTICLE III

REDEMPTION OF SERIES 2019 BONDS

Section 301. **Redemption of Series 2019 Bonds.** The Series 2019 Bonds shall be subject to redemption and payment prior to Stated Maturity, at the option of the Issuer, upon instructions from the Tenant, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption and payment.

Section 302. **Other Redemption Provisions.**

Except as otherwise specifically provided in *Section 301* hereof, all the provisions of **Article III** of the Original Indenture relating to redemption of Bonds shall apply to the Series 2019 Bonds.

ARTICLE IV

FORM OF BONDS

Section 401. **Form of Series 2019 Bonds.**

The Series 2019 Bonds shall be in substantially the form attached as *Appendix A*.

Section 402. **Form of Bond Counsel's Approving Opinion** If printed on the Series 2019 Bond certificates, Bond Counsel's approving opinion with respect to the authorization and issuance of the Series 2019 Bonds shall be preceded by the following certificate:

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

(facsimile signature)

City Clerk of the
City of El Dorado, Kansas

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. **Fund and Accounts.** The following Funds and Accounts are established or ratified in the custody of the Trustee:

- (a) "City of El Dorado, Kansas Project Fund (BG Products Project)"
- (b) "City of El Dorado, Kansas Debt Service Fund (BG Products Project)"

The Trustee is authorized to create separate subaccounts in any Fund or Account for the Series 2019 Bonds issued pursuant to this Supplemental Indenture.

Section 502. **Deposit of Bond Proceeds.** The net proceeds received from the sale of the Series 2019 Bonds shall be deposited simultaneously with the delivery of the Series 2019 Bonds as follows:

(a) All accrued interest and premium, if any, received from the sale of the Series 2019 Bonds shall be deposited in the Debt Service Fund.

(b) The remaining balance of proceeds derived from the sale of the Series 2019 Bonds shall be deposited in the Project Fund.

ARTICLE VI

REVENUES AND FUNDS

Section 601. **Disbursements from the Project Fund.**

The moneys in the Project Fund shall be disbursed by the Trustee for the payment of Project Costs (exclusive of Costs of Issuance) associated with the Project Additions in accordance with the provisions of **Article V** of the Original Indenture and *Article V* of the Original Lease and the Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project Additions have been completed the Trustee, if requested, shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Tenant.

The completion of the Project Additions and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee by the Tenant of the Certificate of Completion required by the Lease.

Section 602. **Application of Moneys in the Debt Service Fund.** Moneys in the Debt Service Fund shall be applied as set out in **Section 6.03** of the Original Indenture.

ARTICLE VII

MISCELLANEOUS

Section 701. **Investment of Moneys in Funds.** Moneys held in the funds and accounts established pursuant to this Supplemental Indenture shall be invested and reinvested by the Trustee in Investment Securities in accordance with the provisions of the Original Indenture.

Section 702. **Manner of Investment.** All investments made pursuant to this Article shall be made as provided in the Original Indenture.

Section 703. **Ratification and Confirmation of Original Indenture.** Except as expressly modified in this Supplemental Indenture, the Original Indenture and the covenants therein contained are hereby ratified and confirmed by the parties as of the date of this Supplemental Indenture, and except as otherwise provided herein, shall apply to the Series 2019 Bonds, the Original Proceeds thereof, and the Project Additions.

(THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the Issuer has caused this Supplemental Indenture to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied.

CITY OF EL DORADO, KANSAS
as Issuer

[SEAL]

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS.
COUNTY OF BUTLER)

This instrument was acknowledged before me on the ____ day of _____, 2019, by Bill Young as Mayor of the City of El Dorado, Kansas, a municipal corporation of the State of Kansas.

[SEAL]

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Supplemental Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

COMMERCE BANK
Kansas City, Missouri
as Trustee

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2019, by _____, _____ of Commerce Bank, a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

Notary Public

My Appointment Expires:

APPENDIX A

FORM OF BONDS

FACE OF THE BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. NO TRANSFER, SALE, ASSIGNMENT OR HYPOTHECATION OF THIS SECURITY SHALL BE MADE. THE TRUSTEE SHALL BE CONSIDERED UNDER "STOP TRANSFER" ORDERS FOR ALL TRANSFERS OF BONDS UNLESS: (1) THERE SHALL HAVE BEEN DELIVERED TO THE ISSUER, THE TENANT AND THE TRUSTEE PRIOR TO THE TRANSFER, SALE ASSIGNMENT OR HYPOTHECATION AN OPINION OF NATIONALLY RECOGNIZED BOND OR SECURITIES COUNSEL, SATISFACTORY TO THE ISSUER, THE TENANT AND THE BANK, TO THE EFFECT THAT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND REGISTRATION UNDER ANY APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED; OR (2) THERE SHALL BE A REGISTRATION STATEMENT IN EFFECT UNDER THE SECURITIES ACT OF 1933 AND UNDER ANY APPLICABLE STATE SECURITIES LAWS REQUIRING A STATE-LEVEL REGISTRATION STATEMENT WITH RESPECT TO THE TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION, AND, IN THE CASE OF BOTH (1) AND (2), THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER. THE TRUSTEE SHALL NOT TRANSFER THIS BOND EXCEPT IN ACCORDANCE WITH THIS LEGEND AND THE CORRELATIVE PROVISIONS OF THE INDENTURE.

No. _____

\$ _____

**UNITED STATES OF AMERICA
STATE OF KANSAS
COUNTY OF BUTLER
CITY OF EL DORADO, KANSAS
TAXABLE INDUSTRIAL REVENUE BOND
SERIES 2019
(BG PRODUCTS PROJECT)**

Rate of
Interest: _____

Maturity
Date: _____

Dated
Date: _____

Registered Owner: _____

Principal Amount: _____ Dollars

The City of El Dorado, Kansas, a municipal corporation of the State of Kansas (the "Issuer"), for value received, promises to pay, but solely from the sources hereinafter referred to, to the registered owner identified above, or registered assigns, upon the presentation and surrender of this Certificate, the principal sum identified above on the maturity date shown, in lawful money of the United States of America at the principal offices of Commerce Bank, in the city of Kansas City, Missouri (the "Paying Agent" and "Trustee"), and in like manner to pay to the registered owner ("Owner") hereof, by check or draft mailed to the Owner principal and interest on said principal sum from the date hereof at the rate of interest set forth above (computed on the basis of a 360-day year of twelve 30-day months), unless the Bonds represented by this certificate shall have been previously called for redemption and payment as hereinafter set forth.

Reference is hereby made to the further provisions of the Series 2019 Bonds set forth on the reverse side hereof and such further provisions shall for all purposes have the same effect as if set forth on the face hereof.

It is hereby certified and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

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

CITY OF EL DORADO, KANSAS

(Facsimile Seal)

By: _____
Mayor

ATTEST:

City Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond certificate evidences ownership of the City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project), as described herein and in the within-mentioned Trust Indenture. The date of authentication of this Bond is _____.

Commerce Bank
Kansas City, Missouri,
Trustee

By: _____
Authorized Signature

REVERSE OF THE BOND

This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated " City of El Dorado, Kansas Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project)," issued in the aggregate principal amount of \$24,220,000 (the "Series 2019 Bonds"), for the purpose of certain improvements thereto (the "Project Additions"), and authorizing the Issuer to continue to lease the Project, which term includes both the Original Project and the Project Additions, to BG Real Estate, Inc., a Kansas corporation (the "Tenant"), under the terms of a Lease dated as of March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 between the Issuer and the Tenant (said Lease and Supplemental Lease, as further amended and supplemented from time to time in accordance with the provisions thereof, being herein collectively called the "Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 *et seq.*, and pursuant to proceedings duly had by the governing body of the Issuer.

Except as specifically provided otherwise in Supplemental Indenture No. 1, the Series 2019 Bonds are on a parity with and equal in priority in all respects with the Taxable Industrial Revenue Bonds, Series 2011, dated as of March 30, 2011 (the "Series 2011 Bonds"). The Series 2019 Bonds are issued and secured under and entitled to the protection of the Trust Indenture dated as of March 30, 2011 and Supplemental Trust Indenture No. 1 dated as of December 11, 2019 between the Issuer and the Trustee (said Trust Indenture, as amended and supplemented by Supplemental Trust Indenture No. 1, as further amended and supplemented from time to time in accordance with the provisions thereof, being herein collectively called the "Indenture"). Subject to the terms and conditions set forth therein, the Original Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture ratably and on a parity with the Series 2011 Bonds and Series 2019 Bonds (the Series 2011 Bonds and Series 2019 Bonds together with such Additional Bonds being herein referred to collectively as the "Bonds"). Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Bondowners, and the terms upon which the Bonds are issued and secured.

The Series 2019 Bonds are subject to redemption and payment prior to Stated Maturity, at the option of the Issuer, upon instructions from the Tenant, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium.

When any Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. If less than all of the Outstanding Bonds of this series are called for redemption, Bonds shall be redeemed as directed in writing by the Tenant. Bonds of less than a full maturity shall be selected by the Trustee in such equitable manner as it may determine. All Bonds so called for redemption will cease to bear interest on the specified Redemption Date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Project (including any Project Additions) as described in the Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Tenant will sublease the Project to BG Products, Inc., a Kansas corporation (the "Subtenant"). The Bonds and the interest thereon do not constitute

a debt or general obligation of the Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds do not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Lease, Basic Rent is to be paid by the Tenant directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated "City of El Dorado, Kansas Debt Service Fund (BG Products Project)."

No Owner of Bonds shall have the right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond certificate is transferable, as provided in the Indenture, only upon the registration books of the Issuer kept for that purpose at the above mentioned office of the Bond Registrar and Paying Agent by the Owner hereof in person or by duly authorized attorney, upon surrender of this Certificate together with a written instrument of transfer satisfactory to the Bond Registrar and Paying Agent duly executed by the Owner or such Owner's duly authorized attorney, and thereupon a new Bond certificate in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Tenant has agreed to pay as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of Bond certificates mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

(FORM OF ASSIGNMENT)

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

Print or Type Name and Address of Transferee

the Bond represented by this certificate and all rights thereunder, and hereby authorizes the transfer of such Bonds on the books kept by the Bond Registrar and Paying Agent for the registration and transfer of Bonds.

Dated: _____

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

Signature Guaranteed By:

[Seal of Bank]

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.

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

(facsimile signature)

City Clerk of the
City of El Dorado, Kansas

**BG REAL ESTATE, INC.
AS TENANT**

**CITY OF EL DORADO, KANSAS
AS ISSUER**

**BG REAL ESTATE, INC.
AS PURCHASER**

BOND PURCHASE AGREEMENT

**\$24,220,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)**

BOND PURCHASE AGREEMENT

\$24,220,000
CITY OF EL DORADO, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)

THIS AGREEMENT is entered into as of December 11, 2019 (the "Sale Date"), between BG Real Estate, Inc., a Kansas corporation (the "Company"), the City of El Dorado, Kansas (the "Issuer") and BG Real Estate, Inc., Wichita, Kansas (the "Purchaser"), collectively referred to herein as the "Parties." All capitalized terms not specifically defined herein shall have the same meaning as defined in the hereinafter referenced Indenture and Lease, unless some other meaning is plainly indicated.

SECTION 1. RECITALS.

(a) The Issuer proposes to issue and sell the Bonds identified above (the "Bonds") to provide funds to pay the costs of the acquisition, construction and equipping of improvements to a manufacturing and distribution facility (the "Project Additions") located within the corporate limits of the Issuer, to be leased by the Issuer to the Company pursuant to a Lease dated as of March 30, 2011, as amended and supplemented by Supplemental Lease No. 1, dated as of December 11, 2019 (collectively, the "Lease"). The Project Additions will be subleased by the Company to BG Products, Inc. pursuant to a Sublease dated as of March 30, 2011 (the "Sublease").

(b) Pursuant to the constitution and laws of the State of Kansas, including K.S.A. 12-1740 *et seq.* (the "Act"), the Bonds are limited obligations of the Issuer payable solely from the Trust Estate under the Indenture (hereinafter defined), including payments derived by the Issuer from the Lease. The Bonds will be dated December 11, 2019, will contain such other terms and provisions as are set forth in an ordinance duly passed by the governing body of the Issuer on December 3, 2019 (the "Ordinance"), and other proceedings and determinations related thereto as authorized and governed by the provisions of a Trust Indenture dated March 30, 2011, as amended and supplemented by Supplemental Indenture No. 1 dated December 11, 2019 (collectively, the "Indenture") between the Issuer and Commerce Bank, Kansas City, Missouri, as trustee (the "Trustee").

(c) In order to induce the Purchaser to enter into this Bond Purchase Agreement and to purchase the Bonds at a price and bearing interest at the rate or rates set forth in the Indenture, the Issuer and the Company have joined in this Bond Purchase Agreement.

(d) The proceeds of the sale of the Bonds are to be applied to payment of Project Costs (as defined in the Indenture), all as set forth in the Lease, Ordinance and Indenture.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS.

(a) On the basis of the representations, warranties and covenants contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, the Purchaser agrees to purchase from the Issuer and the Issuer agrees to sell to the Purchaser the Bonds not later than 12:00 Noon, applicable Central time on December 11, 2019, or such other place, time or date as shall be mutually agreed upon by the Issuer and the Purchaser, at the purchase price equal to the par amount of the Bonds issued (the "Purchase Price"). The Purchaser acknowledges and agrees that it will be receiving the Bonds in compensation for the expenditures it made, as Tenant under the Lease, to acquire,

construct and equip the Project Additions, as fully set forth in the Payment Schedules submitted pursuant to the terms of the Lease, and that the Bonds will constitute full payment for these costs. The date of such delivery and payment is herein called the "Closing Date," the hour and date of such delivery and payment is herein called the "Closing Time" and the transactions to be accomplished for delivery of the Bonds on the Closing Date shall be herein called the "Closing." The Bonds shall be issued under and secured as provided in the Indenture and the Bonds shall have the maturities and interest rates as set forth therein. The Bonds shall contain such other provisions as are described in the Indenture.

(b) The Parties acknowledge and agree that: (1) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm's-length commercial transaction between the Issuer and the Purchaser; (2) in connection with such transaction, the Purchaser is acting solely as a principal and not as an agent or a fiduciary of the Issuer; (3) the Purchaser has not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer with respect to the offering of the Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Issuer on other matters) or any other obligation to the Issuer except with respect to the obligations expressly set forth in this Bond Purchase Agreement; and (4) the Issuer and the Company have consulted with their own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

(c) The Bonds are purchased by Purchaser under the following conditions: (i) the Bonds are not being registered or otherwise qualified for sale under the "Blue Sky" laws; (ii) Purchaser will hold the Bonds as one single debt instrument, (iii) no CUSIP numbers will be obtained for the Bonds, (iv) no official statement or other similar offering document has been prepared in connection with the private placement of the Bonds, and (v) the Bonds will not close through the DTC or any similar repository and will not be in book entry form.

(d) The delivery of the Bonds shall be made in definitive form, as fully registered bonds (in such denominations as the Purchaser shall specify in writing at least 48 hours prior to the Closing Time) duly executed and authenticated; provided, however, that the Bonds may be delivered in temporary form. The Bonds shall be available for examination by the Purchaser at least 24 hours prior to the Closing Time.

SECTION 3. REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF THE PURCHASER

By the execution hereof the Purchaser hereby represents, warrants and agrees with the Issuer and the Company that as of the date hereof and at the Closing Time:

(a) Purchaser, pursuant to all necessary corporate action, is authorized to purchase the Bonds and to execute and perform this Bond Purchase Agreement.

(b) Purchaser is knowledgeable and experienced in financial and business matters and is capable of evaluating investment merit and risks associated with its purchase of the Bonds. The Purchaser has been furnished and has reviewed the provisions of the Ordinance, Indenture and Lease relating to the authorization of and security for payment of the Bonds. Purchaser specifically acknowledges and agrees to the provisions and limitations set forth in *Article VIII* of the Indenture. Prior to the execution hereof Purchaser also obtained and examined such financial records and information necessary in order to enable itself to fully evaluate the terms and provisions of the Bonds and of the Indenture and Lease authorizing their issuance and providing for the payment thereof and the financial and investment merits and risks associated with the purchase of the Bonds. On the basis of such information materials and Purchaser's investigation, Purchaser has made the decision to purchase the Bonds and has not relied upon any

representations of the Issuer or any of its officers or employees with respect to the Project Additions, the Company, or security for payment of the Bonds.

(c) Purchaser is purchasing the Bonds as an investment for its own account and not with a view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended. Purchaser acknowledges that (1) the Bonds will not be registered under the Securities Act of 1933, as amended or any applicable state securities law, (2) the Bonds may not be transferred unless, in the opinion of counsel acceptable to the Issuer and the Trustee, such transfer will not cause a violation of the Securities Act of 1933, as amended, or any applicable state securities law and that (3) language consistent with the foregoing restrictions will appear in the registration and transfer provisions of the Indenture.

(d) The Purchaser will indemnify and hold harmless the Issuer and its officials, and each person, if any, who controls the Issuer within the meaning of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, against any losses, claims, damages, or liabilities to which the Issuer may become subject under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Trust Indenture Act of 1939, as amended, the blue sky or securities laws of any state, or otherwise, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon the sale, redistribution or other disposition of the Bonds in a transaction which amounts to a public offering and is in violation of the Purchaser's covenants in subsection (c) above, and it will reimburse the Issuer for any legal or other expenses reasonably incurred by it in connection with investigating, defending, or preparing to defend any such action or claim.

SECTION 4. ISSUER'S REPRESENTATIONS.

The Issuer represents, covenants and warrants, to the best of its knowledge and belief, as follows, all of which will continue in effect subsequent to the Closing:

(a) The Issuer is a municipal corporation incorporated as a city of the second class under the laws of the State of Kansas.

(b) The governing body of the Issuer did enact the Ordinance; it has been signed by a duly authorized official of the Issuer, it has been published once in the official city newspaper as required by law, and it is presently in full force and effect and has not been amended or modified.

(c) The Issuer has full power and authority to execute and deliver the Indenture, the Lease, the Bond Purchase Agreement and any and all other documents reasonably necessary in connection with the Indenture, the Lease and the Bond Purchase Agreement (the "Issuer Documents"); the Issuer Documents have been duly executed and delivered by the Issuer in the manner authorized and constitute legal, valid and binding obligations of the Issuer in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principles of equity or the exercise of judicial discretion.

(d) The execution, delivery and performance of the Issuer Documents will not conflict with or constitute on the part of the Issuer a material breach or default under any agreement, indenture or instrument known to it to which the Issuer is a party or by which it is bound.

(e) The Issuer has duly and validly authorized the taking on its behalf of any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Ordinance and the Issuer Documents.

(f) There is not now pending or, to the knowledge of the officials of the Issuer, threatened any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning (i) the validity of the Bonds, (ii) the proceedings or authority under which they are issued, (iii) the existence of the Issuer, (iv) the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or (v) the Issuer's pledge of the Project Additions, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds.

(g) Any certificate signed by an official of the Issuer and delivered to the Purchaser shall be deemed a representation by the Issuer to the Purchaser as to the truth of the statements made in such certificate.

SECTION 5. REPRESENTATIONS OF THE COMPANY.

The Company makes the following representations as of the Closing, all of which will continue in effect subsequent to the Closing:

(a) The Company is a duly formed Kansas corporation, duly authorized to do business under the laws of the State of Kansas.

(b) The Company has full power and authority to enter into, execute and deliver the Lease and this Bond Purchase Agreement (the "Company Documents"), and to perform its obligations thereunder, all of which have been duly authorized by all proper and necessary corporate action, and no consent or approval of parties not signatories to this Bond Purchase Agreement or of any public authority other than the Issuer is necessary to carry out the same.

(c) The execution, delivery and performance by the Company of the Company Documents will not conflict with or constitute a material violation or breach of or a default under its articles of incorporation or bylaws, or any mortgage, indenture, deed of trust, contract, instrument or agreement binding on it or affecting its property, or any provision of law or order, rule, regulation, ordinance or decree of any court, government or governmental body having jurisdiction over the Company or any of its property.

SECTION 6. REPRESENTATIONS TO SURVIVE CLOSING.

The representations, warranties, agreements, and indemnities of the Issuer, the Company and the Purchaser contained herein will survive the Closing and any investigation made by or on behalf of the Issuer, the Purchaser, the Company of any matters described in, or related to, the transactions contemplated hereby and by the Lease.

SECTION 7. CONDITIONS OF CLOSING.

The Purchaser's obligations to purchase the Bonds are subject to fulfillment of the following conditions at or before Closing:

(a) The representations of the Issuer and the Company hereunder must be true on and as of the Closing date and must be confirmed by certificates dated as of the Closing;

(b) Neither the Issuer nor the Company has defaulted in the performance of any of their respective covenants hereunder;

- (c) The Purchaser must receive at the Closing:
- (i) an opinion of Bond Counsel, dated as of the Closing, in form and substance satisfactory to the Purchaser and its counsel;
 - (ii) an opinion of counsel for the Company, dated as of the Closing, in form and substance satisfactory to Bond Counsel;
 - (iii) an opinion of counsel for the Issuer, dated as of the Closing, in form and substance satisfactory to Bond Counsel and to the Purchaser and its counsel, confirming the Issuer's representations set forth in paragraphs (a) through (f) inclusive of *Section 4* of this Bond Purchase Agreement;
 - (iv) a certificate or certificates, satisfactory in form and substance to Bond Counsel and the Purchaser and its counsel, of an authorized official of the Issuer dated the date of the Closing to the effect that, to the best knowledge of the official executing such certificate or certificates, (A) each of the representations of the Issuer set forth in *Section 4* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Issuer set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with; and (B) no litigation is pending, or to such official's knowledge, threatened, to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, the proceedings or authority under which they are issued, the existence of the Issuer, the authority of the Issuer to enact the Ordinance or enter into the Indenture, the Lease or the Bond Purchase Agreement, or the Issuer's pledge of the Project Additions, the revenues therefrom and the Trust Estate under the Indenture as security for the payment of the Bonds, and (C) that none of the proceedings authorizing issuance of the Bonds or execution and delivery of the bond documents has been repealed, revoked or rescinded.
 - (v) a certificate or certificates, satisfactory in form and substance to Bond Counsel and to the Purchaser and its counsel, of the authorized officers of the Company, dated the date of Closing to the effect that each of the representations of the Company set forth in *Section 5* hereof is true, accurate and complete in all material respects as of the Closing, and each of the agreements of the Company set forth in this Bond Purchase Agreement to be complied with at or prior to the Closing has been complied with as of such time;
 - (vi) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Indenture and Lease, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

SECTION 8. PAYMENT OF EXPENSES

If the Bonds are sold by the Issuer to the Purchaser, except as hereinafter set forth, all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds shall be paid by the Company out of the proceeds of the Bonds or other Company funds. Such expenses and

costs shall include, but not be limited to: (1) the fees and disbursements of Bond Counsel; (2) the fees and disbursements of the Issuer's legal counsel; (3) fees and disbursements of the Company's legal counsel; (4) fees of the Trustee and Trustee's Counsel; and (5) all costs and expenses of the Issuer relating to the issuance of the Bonds.

SECTION 9. NOTICES AND OTHER ACTIONS.

All notices, demands and formal actions hereunder will be in writing mailed, faxed or delivered to:

The Issuer:	City of El Dorado, Kansas 220 E First Avenue El Dorado, Kansas 67042 Attention: City Clerk
The Company	BG Real Estate, Inc. 740 S. Wichita Wichita, Kansas 67213 Attn: Chief Financial Officer
The Purchaser:	BG Real Estate, Inc. 740 S. Wichita Wichita, Kansas 67213 Attn: Chief Financial Officer

SECTION 10. MISCELLANEOUS

(a) This Bond Purchase Agreement shall be binding upon the Parties and their respective successors. This Bond Purchase Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that the representations, warranties, indemnities and agreements of the Issuer and the Company contained in this Bond Purchase Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control the Purchaser (within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act). Nothing in this Bond Purchase Agreement is intended or shall be construed to give any person, other than the persons referred to in this Paragraph, any legal or equitable right, remedy or claim under or in respect of this Bond Purchase Agreement or any provision contained herein. All of the representations, warranties and agreements of the Issuer contained herein shall remain in full force and effect, regardless of: (1) any investigation made by or on behalf of the Purchaser, (2) delivery of and payment for the Bonds; or (3) any termination of this Bond Purchase Agreement.

(b) For purposes of this Bond Purchase Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

(c) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(d) This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

(e) This Bond Purchase Agreement may not be assigned by either party without the express written consent of the other party.

SECTION 11. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the Issuer.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement and returning it to the undersigned.

BG REAL ESTATE, INC.

By: _____
Chief Operating Officer/Chief Financial Officer

Accepted and agreed to as of
the date first above written.

BG REAL ESTATE, INC.

By: _____
Title: Chief Operating Officer/Chief Financial Officer

CITY OF EL DORADO, KANSAS

By: _____
Mayor

ATTEST: (Seal)

By: _____
City Clerk

TRANSCRIPT OF PROCEEDINGS

AUTHORIZING THE ISSUANCE

OF

\$24,220,000

CITY OF EL DORADO, KANSAS

**TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)**

Dated December 11, 2019

\$24,220,000
CITY OF EL DORADO, KANSAS
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES 2019
(BG PRODUCTS PROJECT)

Closing: December 11, 2019

The documents described in the Closing List are to be delivered and taken as a condition precedent to the issuance and delivery of the above-described Bonds by the City of El Dorado, Kansas. Such delivery of documents shall be deemed to have taken place simultaneously at the closing, and no delivery of documents, payments of moneys or other actions with respect to this transaction will be considered completed until all such deliveries, payments or other actions have been made or taken.

Closing is scheduled for December 11, 2019 at the office of Gilmore & Bell, P.C., in El Dorado, Kansas. The items set forth on the Closing List will be examined, assembled and incorporated in the transcripts evidencing the authorization and issuance of the Bonds. Bond transcripts will be prepared and distributed to the following:

1. City of El Dorado, Kansas ("Issuer")
2. BG Real Estate, Inc. ("Tenant" and "Purchaser")
3. Commerce Bank ("Trustee")
4. Gilmore & Bell, P.C. ("Bond Counsel")
5. Ashlyn Lindskog, Esq. ("Issuer's Counsel")
6. Connell & Connell ("Tenant's Counsel")

Of the parties listed above, the Tenant will receive an original, paper copy of the transcript. All other parties will receive copies of the transcript of proceedings in electronic format, unless a paper copy or CD-ROM is requested before closing.

* * *

CLOSING LIST

**Document
Number**

BASIC BOND DOCUMENTS:

1. Trust Indenture
2. Supplemental Indenture No. 1
3. Real Estate Lease Agreement
4. Supplemental Lease No. 1
5. Bond Purchase Agreement
6. Sublease (2011)

ADDITIONAL ISSUER DOCUMENTS:

7. Abstract of Minutes
 - a. Relating to Public Hearing and Resolution of Intent
 - b. Relating to Passage of Bond Ordinance No. _____
8. Affidavit of Mailing and Publication regarding Notice of Public Hearing
 - a. Publisher's Affidavit of Publication
9. Affidavit of Publication regarding Notice of Public Hearing on Issuance
10. Bond Ordinance
11. Affidavit of Publication of Bond Ordinance
12. Specimen Series 2019 Bond
 - a. Certificate of Bond Printer
13. Certificates of Manual Signature
 - a. Mayor
 - b. City Clerk
14. Issuer's Closing Certificate
 - a. Analysis of Costs and Benefits
15. Information Statement filed with the Kansas Board of Tax Appeals

16. Letter of Complete and Timely Filing with Kansas Board of Tax Appeals
17. Certificate of Issuance filed with the Kansas Board of Tax Appeals
18. Notice of Supplemental Lease
19. Assignment of Supplemental Lease

DOCUMENTS RELATING TO AND DELIVERED BY THE TENANT AND RELATED PARTIES:

20. Tenant's Closing Certificate with Exhibits
 - a. Articles of Incorporation
 - b. Bylaws
 - c. Authorizing Resolution
 - d. Expected Use of Bond Proceeds
 - e. Certificate of Good Standing for Tenant from Kansas Secretary of State
21. Title Evidence

MISCELLANEOUS DOCUMENTS:

22. Trustee's Receipt and Closing Certificate
23. Purchaser's Receipt and Closing Certificate
24. Closing Memorandum

LEGAL OPINIONS:

25. Bond Counsel Opinion
26. Opinion of Counsel for the Issuer
27. Opinion of Counsel for the Tenant

* * *

ISSUER'S CLOSING CERTIFICATE

\$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)

We, the undersigned, hereby certify that we are the duly elected or appointed, qualified or acting Mayor and City Clerk of the City of El Dorado, Kansas (the "Issuer") and, as such officers, we are familiar with the official books and records of the Issuer and, in connection with the issuance by the Issuer of the above-described bonds (the "Bonds"), hereby certify as of December 11, 2019, as follows:

1. ORGANIZATION AND AUTHORITY

1.1 **Due Organization.** The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.

1.2 **Meetings.** The meetings of the City Commission at which action was taken as shown in the Transcript (as hereinafter defined) were either regular meetings or duly adjourned regular meetings or special meetings duly called and, to the best of our knowledge and belief, held in accordance with the law and the rules of the Issuer.

1.3 **Incumbency of Officials.** The following named persons were and are the duly elected or appointed, qualified and acting officials of the Issuer during the proceedings relating to the authorization and issuance of the Bonds:

Name	Title	Term
Bill Young	Mayor	12/2019 to 12/2021
Vince Haines	Mayor	04/2015 to 12/2019
Matt Guthrie	Commissioner	01/2018 to 01/2022
Gregg Lewis	Commissioner	04/2015 to 01/2020
Nick Badwey	Commissioner	04/2009 to 01/2022
Kendra Wilkinson	Commissioner	04/2015 to 01/2020
Chase Locke	Commissioner	04/2013 to 01/2018
Tabitha Sharp	Clerk	N/A

1.4 **Official Newspaper.** The *Butler County Times-Gazette* is the Issuer's official newspaper and was the official newspaper on the date of publication of (1) the Ordinance, and (2) the Notices required pursuant to K.S.A. 12-1740 *et seq.* (the "Act").

2. ISSUER DOCUMENTS

2.1 **Transcript of Proceedings.** The transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds to be furnished to BG Real Estate, Inc., the original purchaser of the Bonds (the "Purchaser"), and the other parties to the transactions entered into by the Issuer in connection with issuance of the Bonds, is to the best of our knowledge, information and belief full, true and complete; none of such proceedings has been modified, amended or repealed; and such facts as are stated in the transcript still exist.

2.2. **Execution of Bonds and Bond Documents.** We have duly signed and executed, manually or by facsimile, the Bonds in an aggregate principal amount \$24,220,000, consisting of a fully registered bond certificate in an aggregate principal amount of all Bonds presently outstanding, and the following described documents (collectively, the "Issuer Documents") authorized by Ordinance No. _____ (the "Ordinance"):

(i) Supplemental Indenture No. 1, dated as of December 11, 2019, amending and supplementing a Trust Indenture dated as of March 30, 2011 (collectively, the "Indenture"), with Commerce Bank, Kansas City, Missouri, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Bonds;

(ii) Supplemental Lease No. 1, dated as of December 11, 2019, amending and supplementing a Real Estate Lease dated as of March 30, 2011 (collectively, the "Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments; and

(iii) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series 2019 Bonds by the Issuer to BG Real Estate, Inc., Wichita, Kansas (the "Purchaser").

On the date when the Bonds and the Issuer Documents were executed by us, we were and, at the date hereof, we are the officials indicated by our signatures on the Bonds and the Issuer Documents, and by our signatures on this certificate, respectively. The signatures of us and each of us, as such officials, respectively, on the Bonds and the Issuer Documents, are our true and genuine signatures, and the seal applied to or imprinted on the Bonds and the Bond Documents at the time of their execution was and is the official seal of the Issuer and was thereto applied to or imprinted by the authority and direction of the governing body of the Issuer, and is the seal applied to this certificate.

We hereby ratify, confirm and adopt the facsimile signatures on the Bonds as a proper execution of said Bonds. Each signature has been duly filed in the office of the Secretary of State of Kansas pursuant to K.S.A. 75-4001 to 75-4007.

2.3. **Enforceability of Documents.** To the best of our knowledge and belief, the Issuer has, by all necessary action, duly authorized the execution, issuance and delivery of the Bonds and the Issuer Documents and all such other agreements and documents as may be required to be executed and delivered by the Issuer in order to carry out, give effect to and consummate the transactions contemplated by the Issuer Documents and the Ordinance. To the best of our knowledge and belief, the Bonds and the Issuer Documents, as executed and delivered, constitute legal, valid and binding obligations of the Issuer in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties, and except as rights to indemnity, if any, may be limited by principles of public policy).

2.4. **Representations and Warranties.** To the best of our knowledge and belief, each of the representations and warranties of the Issuer in the Issuer Documents is true and accurate as if made on and as of this date and that all agreements to be complied with and obligations to be performed by the Issuer under the Ordinance and the Issuer Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. **No Event of Default.** To the best of our knowledge and belief, at the date hereof, no Event of Default of the Issuer specified in the Issuer Documents, and no event which, with the giving of notice or lapse of time or both, would become such an Event of Default of the Issuer thereunder, has occurred.

3. LEGAL MATTERS; PROJECT

3.1. **Location of Project.** The property to be acquired and constructed out of the proceeds of the Bonds is located within the corporate limits of the Issuer.

3.2. **Non-Litigation.** There is not now pending or, to the knowledge of the undersigned officials of the Issuer, threatened, any litigation seeking to restrain or enjoin the issuance or delivery of the Bonds, or contesting or questioning the validity of the Bonds, or the proceedings or authority under which they are to be issued, or the existence of the Issuer, or the authority of the Issuer to enact the Ordinance or enter into the Issuer Documents, or the Issuer's pledge of the Project, the revenues therefrom and the Trust Estate under the Indenture as security for payment of the Bonds.

3.3 **Required Governmental Approvals.** The Issuer has received all approvals of State and other appropriate governmental officials required by the Act.

3.4 **Compliance with Statutes Governing Property Tax Exemptions.** Written notices intended to comply with the provisions of K.S.A. 12-1749c and K.S.A. Supp. 12-1749d (relating to ad valorem property tax exemptions) were given in a timely manner to the Board of County Commissioners of Butler County, Kansas and to each unified school district in which the Project is located. Prior to the granting of the property tax exemption, an analysis of the costs and benefits of such exemption was prepared for the Issuer's governing body which included the effect of the exemption on state revenues, and a public hearing on the granting of the exemption was held by the governing body of the Issuer. A copy of the Analysis of Costs and Benefits is attached to this Certificate as **Exhibit A**. Notice of the public hearing was published once at least seven days prior to the hearing in the official newspaper of the Issuer, and indicated the purpose, time and place of the hearing.

4. MISCELLANEOUS

4.1. **Request to Authenticate and Deliver Bonds.** Pursuant to the Indenture, the Trustee is hereby authorized to execute the Certificate of Authentication on the Bonds and to deliver the Bonds to the Purchaser upon payment of the purchase price for the Bonds and compliance with the other terms and provisions of the Indenture.

4.2. **Deposit of Bond Proceeds.** The Trustee, in accordance with the requirements of the Indenture, is hereby directed to deposit the proceeds of the Bonds into the funds and accounts established under and in accordance with the provisions of the Indenture; subject, however, to the provisions of the Lease.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, we have signed this Certificate and applied the official seal of the Issuer for delivery concurrently with the issuance and delivery of the Bonds on the date stated above.

CITY OF EL DORADO, KANSAS

[SEAL]

Bill Young, Mayor

ATTEST:

Tabitha Sharp, City Clerk

EXHIBIT A
ANALYSIS OF COSTS AND BENEFITS

When Recorded Return to:
Sarah O. Steele, Esq.
Gilmore & Bell, P.C.
100 N. Main, Suite 800
Wichita, Kansas 67202

NOTICE OF SUPPLEMENTAL LEASE

Public notice is hereby given as of December 11, 2019, that the City of El Dorado, Kansas, an incorporated city of the second class duly organized and existing under the laws of the State of Kansas (the "Issuer"), has amended and supplemented its lease to BG Real Estate, Inc., a Kansas corporation (the "Tenant"), the property located in Butler County, Kansas, described in ***Schedule I*** attached hereto (the "Project") by Supplemental Lease No. 1 dated as of December 11, 2019, amending and supplementing the Real Estate Lease, dated as of March 30, 2011 (collectively, the "Lease"). Notice of the Real Estate Lease was recorded in the Office of the Register of Deeds of Butler County, Kansas at Book 2012, Page 5523.

The Lease now expires December 31, 2029, provides for an extension of the term, and for early termination in the event of the happening of certain contingencies, provides an option to purchase the Project for prices and on terms set forth therein, and contains various other covenants, terms and conditions. A copy of the Lease is on file in the office of the clerk of the Issuer.

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IN WITNESS WHEREOF, this Notice of Supplemental Lease is executed by authority of the Governing Body of the City of El Dorado, Kansas as of the day and year first above written.

CITY OF EL DORADO, KANSAS

Bill Young, Mayor

[SEAL]

Tabitha Sharp, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF BUTLER)

This instrument was acknowledged before me on _____, 2019 by Bill Young as Mayor and by Tabitha Sharp as City Clerk of the City of El Dorado, Kansas, a municipal corporation.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

SCHEDULE I

PROPERTY SUBJECT TO LEASE

(A) The following described real estate located in Butler County, Kansas, to wit:

Tract 1a

SURFACE ONLY:

All that part of the West half of Section 33, Township 25 South, Range 5 East of the 6th P.M., lying South of the Southeasterly right-of-way line of the Kansas Turnpike and North of the Northern right-of-way of the Union Pacific Railroad (formerly Missouri Pacific Railroad), further described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, a distance of 1654.64 feet to a point on the North right-of-way line of the Union Pacific Railroad; thence N 89°33' W, along said Railroad right-of-way, a distance of 1651.98 feet to an intersection with the Southeasterly right-of-way line of the Kansas Turnpike; thence N 43°52'01" E, along said Turnpike right-of-way, a distance of 1124.38 feet; thence N 43°11'32" E, along said Turnpike right-of-way, a distance of 1277.94 feet to a point on the East line of the Northwest Quarter of said Section 33; thence S 00°03'47" W, a distance of 100.66 feet to the Point of Beginning,

LESS AND EXCEPT the two tracts set forth below:

(1) Beginning 150 feet Southeasterly at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence Northeasterly and parallel with said centerline a distance of 350 feet; thence Southeasterly at right angles to said centerline a distance of 503.83 feet; thence Westerly 508.69 feet, more or less; thence Northwesterly normal to said centerline, a distance of 134.68 feet to the Point of Beginning.
AND

(2) Beginning at the intersection of the Southeasterly Kansas Turnpike right-of-way line and the Northern right-of-way line of the Union Pacific Railroad; thence Northeasterly along said Kansas Turnpike right-of-way, a distance of 124.83 feet to a point which is 150 feet at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence continuing Southeasterly at right angles to said centerline, a distance of 134.68 feet to a point on said North Railroad right-of-way; thence West along said Railroad right-of-way; a distance of 180.97 feet to the Point of Beginning.

AND LESS AND EXCEPT the tract set forth below:

Commencing at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, along the East line of said Southwest Quarter a distance of 649.64 feet to the Point of Beginning; thence continuing S 00°03'47" W, a distance of 1005 feet to a point on the Northern Railroad right-of-way; thence N 89°33' W, along said Railroad right-of-way, a distance of 962.25 feet; thence N 46°05'44" W, a distance of 501.01 feet to a point on the Southeasterly right-of-way of the Kansas Turnpike; thence N 43°52'01" E, along said Kansas Turnpike right-of-way, a distance of 650 feet; thence N 43°11'32" E, along said Kansas Turnpike right-of-way, a distance of 249.87 feet; thence S 89°56'13" E, a distance of 702.84 feet to the Point of Beginning, Butler County, Kansas.

AND ALSO

Tract 1b

SURFACE ONLY:

That part of Lot 9 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, also described as follows: A tract in the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M. describes as: Commencing at the Northwest corner of said Southeast Quarter; thence on an assumed bearing of S 00°03'47" W along the West line of said Southeast Quarter, a distance of 182.46 feet to the Point of Beginning; thence S 89°58'38" E, a distance of 490.22 feet; thence S 00°01'37" W a distance of 210 feet; thence S 89°58'38" E, a distance of 86 feet to a point on the West line of the City designated Lot Eleven of the El Dorado Industrial Park; thence S 00°01'25" W, a distance of 566.82 feet to the Northwest corner of the City designated Lot Ten of the El Dorado Industrial Park; thence S 00°05'50" W,

a distance of 700 feet to the Southwest corner of said Lot Ten and on the North right-of-way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad); thence West along said Railroad right-of-way line, a distance of 576.35 feet to the West line of said Southeast Quarter; thence N 00°03'47" E, a distance of 1472.18 feet to the point of beginning, Butler County, Kansas.

Tract 2

SURFACE ONLY

That part of Lot 11 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, further described as follows: Beginning at a point 1682.29 feet North and 579.98 feet East of the Southwest Corner of the East Half of Section 33, Township 25 South, Range 5 East of the 6th P.M.; thence on an assumed bearing of N 00°01'25" E along the West line of said Lot 11 a distance of 566.82 feet; thence S 89°58'38" E a distance of 114 feet; thence N 00°01'37" E a distance of 210 feet to a point on the South right of way line of Pioneer Road, as designated by the City of El Dorado, said point being a point of curve, said curve having a radius of 440 feet, a chord bearing of S 78°02'51" E and a chord of 147.94 feet; thence S 68°42'17" E a distance of 605.20 feet along the North line of said Lot 11 to a point of curve, said curve having a radius of 1266.23 feet, a chord bearing of S 08°33'31" W and a chord of 481.41 feet; thence S 02°16'11" E a distance of 3.47 feet; thence N 87°43'49" E a distance of 10 feet; thence S 02°16'11" E a distance of 51.32 feet to the Southeast Corner of said Lot 11; thence N 89°41'43" W a distance of 763.51 feet to the point of beginning, Butler County, Kansas

Tract 3

SURFACE ONLY

Beginning at a point that is 319.30 feet North and 513.40 feet West of the Southeast Corner of the Northeast Quarter of Section numbered 33, Township 25 South, Range 5 East of the 6th P.M.; thence North on an assumed bearing of N 21°56'46" W a distance of 644.85 feet; thence S 31°09'41" W a distance of 144.15 feet; thence S 25°26'59" E a distance of 562.02 feet; thence North and East along a curve whose central angle is 3°39'46" and whose radius is 1266.23 feet a distance of 80.94 feet to the point of beginning, Butler County, Kansas.

Tract 4

SURFACE ONLY

Beginning at a point that bears S 90°00'00" W a distance of 40 feet from a point on the East line of the Northeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., that bears N 0°00'00" E a distance of 411.06 feet from the Southeast Corner thereof; thence N 0°00'00" E, a distance of 35.94 feet to the point of curvature of a curve to the left whose central angle is 25°36'59" and whose radius is 1106.28 feet; thence North and West on said curve 494.61 feet to the point of tangency; thence N 25°36'59" W a distance of 139.00 feet to the point of curvature of a curve to the left whose central angle is 33°15'51" and whose radius is 1099.08 feet; thence North and West on said curve, 443.66 feet; thence South 29°57'19" W a distance of 558.96 feet; thence S 21°56'46" E a distance of 644.85 feet to a point on a curve whose central angle is 92°27'30" and radius is 1266.23 feet; thence North and East on said curve 485.01 feet to the point of beginning, Butler County, Kansas.

Tract 5a

SURFACE ONLY

Beginning 63.89 feet South and 869.40 feet West of the Northeast Corner of the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., said point being on the Southerly right-of-way line of Haverhill Road; thence S 46°20'15" E a distance of 433.70 feet; thence S 36°38'10" W a distance of 1050.11 feet, more or less, to a point on the East right-of-way line of Haverhill Road; thence N 02°29'10" W a distance of 300.85 feet to the point of curvature of a curve with a radius of 1156.23 feet to the right and a central angle of 92°27'30"; thence along said curve an arc distance of 327.64 feet; thence S 73°39'00" E a distance of 10.00 feet to the point of curvature of a curve, concentric with the previous curve

and with a radius of 1146.23 feet to the right; thence along said curve an arc distance of 598.43 feet, more or less, to the point of beginning,

EXCEPT for and excluding the following:

Beginning 1182.3 feet West and 1206.0 feet South at the Northeast Corner of the Southeast Quarter of Section 33, said point being the South point of Lot 14 as designated by the City of El Dorado, Kansas in the El Dorado Industrial Park; thence N 2°29'10" W a distance of 300.85 feet, more or less; thence East a distance of 236.5 feet, more or less; thence S 36°38'10" W a distance of 375 feet, more or less to the point of beginning of excepted tract, Butler County, Kansas.

AND ALSO

Tract 5b

SURFACE ONLY

Commencing at the Southeast Corner of said Section 33; thence North 1269.79 feet along the East line of said Section 33 on an assumed bearing of N 00° E; thence West perpendicular to said East line a distance of 397.87 feet to the Point of Beginning; thence continuing West a distance of 235.46 feet; thence South a distance of 300.45 feet to a point on the Northern Railroad right of way; thence West along said right of way a distance of 540.00 feet to a point on the East right of way line of Haverhill Road; thence North a distance of 292.40 feet to a point on a curve, said curve having a radius of 5729.578 feet and a central angle of 2°20'; thence on a chord of N 02°12'30" W a distance of 38.56 feet to a point of tangency; thence N 02°23'58" W a distance of 436.88 feet; thence N 89°23'17" E a distance of 236.50 feet; thence N 36°05'44" E a distance of 675.20 feet along the West line of an existing easement line; thence S 88°00'47" E a distance of 205.32 feet to a point on the East line of said easement; thence S 36°05'44" W a distance of 443.36 feet; thence N 53°54'16" W a distance of 60 feet; thence S 36°05'44" W a distance of 481.29 feet along the East line of said easement; thence S 89°24'19" E a distance of 552.42 feet to a point which is 397.76 feet West of the East line of said Section 33; thence S 00° W a distance of 290 feet to the point of beginning, Butler County, Kansas

said real property constituting the "Land" as referred to in the Lease dated March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 between the City of El Dorado, Kansas and BG Real Estate, Inc., subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Land and financed or refinanced with proceeds of the Series 2019 Bonds.

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of *Sections 10.3 and 10.4* of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.

When Recorded Return to:
Sarah O. Steele, Esq.
Gilmore & Bell, P.C.
100 N. Main, Suite 800
Wichita, Kansas 67202

ASSIGNMENT OF SUPPLEMENTAL LEASE

WHEREAS, the City of El Dorado, Kansas, an incorporated city of the second class, duly organized and existing under the laws of the State of Kansas (the "Issuer"), has entered into a Supplemental Lease dated as of December 11, 2019, amending and supplementing a Real Estate Lease dated as of March 30, 2011, between the Issuer, and BG Real Estate, Inc., a Kansas corporation, as Tenant (collectively, the "Lease"); and

WHEREAS, the Lease covers the property described in ***Schedule I*** attached hereto (the "Project"); and

WHEREAS, the Lease is for a term beginning as of March 20, 2011 and now expiring December 31, 2029; and

WHEREAS, the Issuer has issued its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) (the "Bonds"), payable from the revenue to be received by the Issuer under the Lease of the Project, and the Project and the revenue from it have been pledged by the Issuer to payment of the Bonds; and

WHEREAS, Commerce Bank, Kansas City, Missouri, has been designated as trustee (the "Trustee") pursuant to the terms of a Trust Indenture dated as of March 30, 2011, as amended and supplemented by Supplemental Indenture No. 1 dated as of December 11, 2019 (collectively, the "Indenture") between the Issuer and the Trustee, and under the Indenture the Trustee is authorized, empowered and directed to perform the duties of the Issuer as lessor under the Lease, including collection of rentals for disbursement to the owners of the Bonds as provided in the Indenture, and to perform, insofar as it legally can, all acts otherwise required of the Issuer under the Lease;

NOW, THEREFORE, in consideration of the acceptance by the Trustee of all of the duties of the Issuer under the Lease, the Issuer, by authority of its governing body, does assign to the Trustee all of its right, title and interest in the Lease for the purposes of (i) exercising the rights of the Issuer under the Lease to the extent that such rights may be lawfully assigned by the Issuer and excepting only such rights which, in the context in which they appear in the Lease, are capable of being exercised or performed only by the Issuer and (ii) performing and carrying out to the extent directed to do so in the Indenture the duties and obligations of the Issuer thereunder, to such extent, and subject to such exception.

This instrument and the rights and obligations created hereby are for the benefit of the owners from time to time of the Bonds. This instrument shall be null and void upon full payment of the Bonds and the expiration of the duties of the Trustee under the Indenture.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, the City of El Dorado, Kansas, has set its hand by its Mayor and attested by the City Clerk and has caused the corporate seal of the Issuer to be affixed hereto as of the day and year first above written.

CITY OF EL DORADO, KANSAS

Bill Young, Mayor

[SEAL]

Tabitha Sharp, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF BUTLER)

This instrument was acknowledged before me on _____, 2019 by Bill Young as Mayor and by Tabitha Sharp as City Clerk of the City of El Dorado, Kansas, a municipal corporation.

[SEAL]

Notary Public

Typed or Printed Name of Notary Public

My Appointment Expires:

ACKNOWLEDGMENT AND ACCEPTANCE

I, the undersigned, a duly authorized, qualified and acting trust officer of Commerce Bank, hereby acknowledge and accept, on behalf of the assignee, the above and foregoing Assignment of Lease by the City of El Dorado, Kansas (the "Issuer") of all of its right, title and interest, as lessor, in and to a certain Supplemental Lease No. 1 dated as of December 11, 2019, between the Issuer, and BG Real Estate, Inc., as Tenant.

COMMERCE BANK

Kansas City, Missouri,
as Trustee

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

This instrument was acknowledged before me on the ____ day of _____ 2019, by _____, _____ and Trust Officer of Commerce Bank, a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

Notary Public

My Appointment Expires:

SCHEDULE I

PROPERTY SUBJECT TO LEASE

(A) The following described real estate located in Butler County, Kansas, to wit:

Tract 1a

SURFACE ONLY:

All that part of the West half of Section 33, Township 25 South, Range 5 East of the 6th P.M., lying South of the Southeasterly right-of-way line of the Kansas Turnpike and North of the Northern right-of-way of the Union Pacific Railroad (formerly Missouri Pacific Railroad), further described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, a distance of 1654.64 feet to a point on the North right-of-way line of the Union Pacific Railroad; thence N 89°33' W, along said Railroad right-of-way, a distance of 1651.98 feet to an intersection with the Southeasterly right-of-way line of the Kansas Turnpike; thence N 43°52'01" E, along said Turnpike right-of-way, a distance of 1124.38 feet; thence N 43°11'32" E, along said Turnpike right-of-way, a distance of 1277.94 feet to a point on the East line of the Northwest Quarter of said Section 33; thence S 00°03'47" W, a distance of 100.66 feet to the Point of Beginning,

LESS AND EXCEPT the two tracts set forth below:

(1) Beginning 150 feet Southeasterly at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence Northeasterly and parallel with said centerline a distance of 350 feet; thence Southeasterly at right angles to said centerline a distance of 503.83 feet; thence Westerly 508.69 feet, more or less; thence Northwesterly normal to said centerline, a distance of 134.68 feet to the Point of Beginning.
AND

(2) Beginning at the intersection of the Southeasterly Kansas Turnpike right-of-way line and the Northern right-of-way line of the Union Pacific Railroad; thence Northeasterly along said Kansas Turnpike right-of-way, a distance of 124.83 feet to a point which is 150 feet at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence continuing Southeasterly at right angles to said centerline, a distance of 134.68 feet to a point on said North Railroad right-of-way; thence West along said Railroad right-of-way; a distance of 180.97 feet to the Point of Beginning.

AND LESS AND EXCEPT the tract set forth below:

Commencing at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, along the East line of said Southwest Quarter a distance of 649.64 feet to the Point of Beginning; thence continuing S 00°03'47" W, a distance of 1005 feet to a point on the Northern Railroad right-of-way; thence N 89°33' W, along said Railroad right-of-way, a distance of 962.25 feet; thence N 46°05'44" W, a distance of 501.01 feet to a point on the Southeasterly right-of-way of the Kansas Turnpike; thence N 43°52'01" E, along said Kansas Turnpike right-of-way, a distance of 650 feet; thence N 43°11'32" E, along said Kansas Turnpike right-of-way, a distance of 249.87 feet; thence S 89°56'13" E, a distance of 702.84 feet to the Point of Beginning, Butler County, Kansas.

AND ALSO

Tract 1b

SURFACE ONLY:

That part of Lot 9 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, also described as follows: A tract in the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M. describes as: Commencing at the Northwest corner of said Southeast Quarter; thence on an assumed bearing of S 00°03'47" W along the West line of said Southeast Quarter, a distance of 182.46 feet to the Point of Beginning; thence S 89°58'38" E, a distance of 490.22 feet; thence S 00°01'37" W a distance of 210 feet; thence S 89°58'38" E, a distance of 86 feet to a point on the West line of the City designated Lot Eleven of the El Dorado Industrial Park; thence S 00°01'25" W, a distance of 566.82 feet to the Northwest corner of the City designated Lot Ten of the El Dorado Industrial Park; thence S 00°05'50" W,

a distance of 700 feet to the Southwest corner of said Lot Ten and on the North right-of-way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad); thence West along said Railroad right-of-way line, a distance of 576.35 feet to the West line of said Southeast Quarter; thence N 00°03'47" E, a distance of 1472.18 feet to the point of beginning, Butler County, Kansas.

Tract 2

SURFACE ONLY

That part of Lot 11 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, further described as follows: Beginning at a point 1682.29 feet North and 579.98 feet East of the Southwest Corner of the East Half of Section 33, Township 25 South, Range 5 East of the 6th P.M.; thence on an assumed bearing of N 00°01'25" E along the West line of said Lot 11 a distance of 566.82 feet; thence S 89°58'38" E a distance of 114 feet; thence N 00°01'37" E a distance of 210 feet to a point on the South right of way line of Pioneer Road, as designated by the City of El Dorado, said point being a point of curve, said curve having a radius of 440 feet, a chord bearing of S 78°02'51" E and a chord of 147.94 feet; thence S 68°42'17" E a distance of 605.20 feet along the North line of said Lot 11 to a point of curve, said curve having a radius of 1266.23 feet, a chord bearing of S 08°33'31" W and a chord of 481.41 feet; thence S 02°16'11" E a distance of 3.47 feet; thence N 87°43'49" E a distance of 10 feet; thence S 02°16'11" E a distance of 51.32 feet to the Southeast Corner of said Lot 11; thence N 89°41'43" W a distance of 763.51 feet to the point of beginning, Butler County, Kansas

Tract 3

SURFACE ONLY

Beginning at a point that is 319.30 feet North and 513.40 feet West of the Southeast Corner of the Northeast Quarter of Section numbered 33, Township 25 South, Range 5 East of the 6th P.M.; thence North on an assumed bearing of N 21°56'46" W a distance of 644.85 feet; thence S 31°09'41" W a distance of 144.15 feet; thence S 25°26'59" E a distance of 562.02 feet; thence North and East along a curve whose central angle is 3°39'46" and whose radius is 1266.23 feet a distance of 80.94 feet to the point of beginning, Butler County, Kansas.

Tract 4

SURFACE ONLY

Beginning at a point that bears S 90°00'00" W a distance of 40 feet from a point on the East line of the Northeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., that bears N 0°00'00" E a distance of 411.06 feet from the Southeast Corner thereof; thence N 0°00'00" E, a distance of 35.94 feet to the point of curvature of a curve to the left whose central angle is 25°36'59" and whose radius is 1106.28 feet; thence North and West on said curve 494.61 feet to the point of tangency; thence N 25°36'59" W a distance of 139.00 feet to the point of curvature of a curve to the left whose central angle is 33°15'51" and whose radius is 1099.08 feet; thence North and West on said curve, 443.66 feet; thence South 29°57'19" W a distance of 558.96 feet; thence S 21°56'46" E a distance of 644.85 feet to a point on a curve whose central angle is 92°27'30" and radius is 1266.23 feet; thence North and East on said curve 485.01 feet to the point of beginning, Butler County, Kansas.

Tract 5a

SURFACE ONLY

Beginning 63.89 feet South and 869.40 feet West of the Northeast Corner of the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., said point being on the Southerly right-of-way line of Haverhill Road; thence S 46°20'15" E a distance of 433.70 feet; thence S 36°38'10" W a distance of 1050.11 feet, more or less, to a point on the East right-of-way line of Haverhill Road; thence N 02°29'10" W a distance of 300.85 feet to the point of curvature of a curve with a radius of 1156.23 feet to the right and a central angle of 92°27'30"; thence along said curve an arc distance of 327.64 feet; thence S 73°39'00" E a distance of 10.00 feet to the point of curvature of a curve, concentric with the previous curve

and with a radius of 1146.23 feet to the right; thence along said curve an arc distance of 598.43 feet, more or less, to the point of beginning,

EXCEPT for and excluding the following:

Beginning 1182.3 feet West and 1206.0 feet South at the Northeast Corner of the Southeast Quarter of Section 33, said point being the South point of Lot 14 as designated by the City of El Dorado, Kansas in the El Dorado Industrial Park; thence N 2°29'10" W a distance of 300.85 feet, more or less; thence East a distance of 236.5 feet, more or less; thence S 36°38'10" W a distance of 375 feet, more or less to the point of beginning of excepted tract, Butler County, Kansas.

AND ALSO

Tract 5b

SURFACE ONLY

Commencing at the Southeast Corner of said Section 33; thence North 1269.79 feet along the East line of said Section 33 on an assumed bearing of N 00° E; thence West perpendicular to said East line a distance of 397.87 feet to the Point of Beginning; thence continuing West a distance of 235.46 feet; thence South a distance of 300.45 feet to a point on the Northern Railroad right of way; thence West along said right of way a distance of 540.00 feet to a point on the East right of way line of Haverhill Road; thence North a distance of 292.40 feet to a point on a curve, said curve having a radius of 5729.578 feet and a central angle of 2°20'; thence on a chord of N 02°12'30" W a distance of 38.56 feet to a point of tangency; thence N 02°23'58" W a distance of 436.88 feet; thence N 89°23'17" E a distance of 236.50 feet; thence N 36°05'44" E a distance of 675.20 feet along the West line of an existing easement line; thence S 88°00'47" E a distance of 205.32 feet to a point on the East line of said easement; thence S 36°05'44" W a distance of 443.36 feet; thence N 53°54'16" W a distance of 60 feet; thence S 36°05'44" W a distance of 481.29 feet along the East line of said easement; thence S 89°24'19" E a distance of 552.42 feet to a point which is 397.76 feet West of the East line of said Section 33; thence S 00° W a distance of 290 feet to the point of beginning, Butler County, Kansas

said real property constituting the "Land" as referred to in the Lease dated March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 between the City of El Dorado, Kansas and BG Real Estate, Inc., subject to Permitted Encumbrances.

(B) The buildings, improvements, equipment, fixtures and personal property now or hereafter acquired, constructed, or installed on the Land and financed or refinanced with proceeds of the Series 2019 Bonds.

The property described in paragraphs (A) and (B) of this *Schedule I*, together with any alterations or additional improvements properly deemed a part of the Project pursuant to and in accordance with the provisions of *Sections 10.3 and 10.4* of the Lease, constitute the "Project" as referred to in both the Lease and the Indenture.

CERTIFICATE OF ISSUANCE OF INDUSTRIAL REVENUE BONDS

TRUSTEE'S RECEIPT AND CLOSING CERTIFICATE

\$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)

The undersigned, a duly authorized trust officer of Commerce Bank, Kansas City, Missouri (the "Trustee"), the trustee designated in a Trust Indenture dated as of March 30, 2011, as amended and supplemented by Supplemental Indenture No. 1 dated as of December 11, 2019 (collectively, the "Indenture") between the City of El Dorado, Kansas (the "Issuer") and the Trustee, which authorizes and secures the Issuer's Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) (the "Bonds"), hereby certifies on behalf of the Trustee:

(1) The Trustee hereby ratifies and confirms its acceptance of the duties specified for it in the Indenture and the Lease (the "Bond Documents") executed and delivered in connection with the issuance of the Bonds. Each of the Bond Documents to which the Trustee is a party have been duly executed and delivered on behalf of the Trustee by duly authorized officers of the Trustee and constitute valid and binding obligations of the Trustee, enforceable in accordance with their terms.

(2) The Trustee is a banking association or corporation duly organized under the banking laws of the United States of America or one of the states thereof, and has full power and authority to act as trustee, paying agent and bond registrar as provided in the Indenture and to discharge the duties imposed upon it by the Bond Documents.

(3) Pursuant to and in accordance with the provisions of the Indenture and the written request and authorization of the Issuer, prior to the delivery of the Bonds, the Certificate of Authentication on the Bonds was signed on behalf of the Trustee by a duly authorized officer or signatory of the Trustee, who was at the time of the authentication of the Bonds and is at the date hereof a duly elected or appointed, qualified and acting officer or signatory of the Trustee, authorized to perform the acts described herein.

(4) The Trustee has delivered certificates representing the entire principal amount of the Bonds presently being issued pursuant to the Indenture to or for the account of BG Real Estate, Inc., El Dorado, Kansas, the Original Purchaser, as of the delivery of this certificate.

(5) The Trustee acknowledges receipt on behalf of the Issuer of Payment Orders equal to the purchase price of the Bonds and conformed copies of the Bond Documents and bond certificates representing the entire principal amount of Bonds issued.

(6) The Trustee acknowledges receipt of each of the documents specified in the Indenture which are required to be filed with the Trustee prior to or simultaneously with the delivery of the Bonds.

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IN WITNESS WHEREOF, the Trustee has caused this certificate to be executed by a duly authorized trust officer this December 11, 2019.

COMMERCE BANK
Kansas City, Missouri
as Trustee

By: _____
Name:
Title:

TENANT'S CLOSING CERTIFICATE

\$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)

I, the undersigned, hereby certify that I am the duly elected, qualified and acting Chief Operating Officer/Chief Financial Officer of BG Real Estate, Inc., a Kansas corporation (the "Tenant"), and as such I am familiar with the books and records of the Tenant and have all authority necessary to execute this Certificate on behalf of the Tenant.

In connection with the issuance of \$24,220,000 principal amount of Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) (the "Bonds"), by the City of El Dorado, Kansas (the "Issuer"), I hereby further certify for and on behalf of the Tenant as follows:

1. CORPORATE ORGANIZATION AND AUTHORITY

1.1. **Due Organization.** The Tenant is a corporation duly incorporated, organized and in good standing under the laws of the State of Kansas.

1.2. **Articles of Incorporation and Bylaws.** The copy of the Articles of Incorporation of the Tenant attached hereto as *Exhibit A* is a true, complete and correct copy of said Articles of Incorporation, as amended to date, as certified by the Secretary of the State of Kansas, and said Articles of Incorporation have not been further amended and are in full force and effect as of the date hereof. The copy of the Bylaws of the Tenant attached hereto as *Exhibit B* is a true, complete and correct copy of said Bylaws, as amended to date, and said Bylaws have not been further amended and are in full force and effect as of the date hereof.

1.3. **Incumbency of Officer.** The person signing this certificate on the date hereof is a duly appointed, qualified and acting officer of the Tenant, is duly authorized to execute this certificate and the signature at the end of this certificate is his true and genuine signature.

2. CORPORATE PROCEEDINGS AND LEGAL DOCUMENTS

2.1. **Corporate Proceedings.** A true and correct copy of the resolution lawfully adopted by the Board of Directors of the Tenant in accordance with the laws of the Tenant's state of incorporation and its governing documents, attached hereto as *Exhibit C* (the "Resolution"), has been furnished to the Issuer to be included in the transcript of proceedings (the "Transcript") relating to the authorization and issuance of the Bonds; such proceedings of the Tenant have not been modified, amended or repealed and are in full force and effect as of the date hereof.

2.2. **Execution of Documents.** The following described documents (the "Tenant Documents") have been executed and delivered for and on behalf of the Tenant by its duly authorized officers pursuant to and in full compliance with the Resolution; the copies of the Tenant Documents to be included in the Transcript are true, complete and correct copies or counterparts as executed and delivered by the Tenant and are in substantially the same form and text as the copies of such documents which were presented before the Board of Directors of the Tenant and approved by the Resolution; the Tenant Documents have not been amended or modified except with the approval of an authorized officer of the Tenant and the other parties thereto, and are in full force and effect as of the date hereof:

- (a) Supplemental Lease No. 1 dated as of December 11, 2019 (the "Lease"), between the Issuer and the Tenant.
- (c) Bond Purchase Agreement (the "Bond Purchase Agreement"), among the Issuer, the Tenant and BG Real Estate, Inc., El Dorado, Kansas.

2.3. **Authorization of Documents.** The Tenant has duly authorized, by all necessary action, Tenant Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Tenant in order to carry out, give effect to and consummate the transactions contemplated by the Tenant Documents. The Tenant Documents, as executed and delivered, constitute legal, valid and binding obligations of the Tenant enforceable in accordance with their respective terms (except insofar as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or equitable principles of general application affecting the rights and remedies of creditors and secured parties).

2.4. **Representations in the Tenant Documents.** Each of the representations of the Tenant set forth in the Tenant Documents is true, accurate and correct in all material respects as of the date hereof, as if made on the date hereof, and all covenants and conditions to be complied with and obligations to be performed by the Tenant under the Tenant Documents preceding the issuance of the Bonds have been complied with and performed.

2.5. **No Event of Default.** At the date of this Certificate, no Event of Default under the Tenant Documents has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, would constitute an Event of Default under the Tenant Documents.

3. DESCRIPTION OF THE PROJECT AND USE OF BOND PROCEEDS

3.1. **Location and Description of Project.** The proceeds of the Bonds are being used to finance the costs of the Project (as defined in the Lease). The Project consists of the acquisition, construction and equipping of a company headquarters facility. The Project is located within the corporate limits of the Issuer.

3.2. **Sources and Uses of Funds.** The estimated sources of funds, including the proceeds of the Bonds and other available funds of the Tenant, and the expected application thereof, are as set forth on *Exhibit D* hereto.

4. LEGAL MATTERS

4.1. **No Litigation.** There is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Tenant, its officers or property, challenging the validity of the Tenant Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Tenant of its obligations thereunder, or challenging the acquisition or operation of the Project. Further, no litigation, proceeding, or investigation is pending or, to the knowledge of the officers of the Tenant signing this certificate, threatened, against the Tenant, its officers or property except (i) that arising in the normal course of the Tenant's business operations, and being defended by or on behalf of the Tenant, in which the probable ultimate recovery and estimated defense costs and expenses, in the opinion of the Tenant's management, will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Tenant, would not, in the opinion of the Tenant's management, materially adversely affect the Tenant's operations or condition, financial or otherwise.

4.2. **Title to the Project.** To the best of my knowledge, based on a certificate of title, there is at present no defect in the title to the land on which the Project is constructed, or any other property described in the Indenture or the Lease as part of the Project, other than Permitted Encumbrances, if any (as defined in the Lease), which may materially interfere with or impair the operation of, or materially adversely affect the value of, the Project or prevent or limit the carrying out of the purposes for which the same is being used by the Tenant.

4.3. **Approvals.** All currently necessary approvals, whether legal or administrative, have been obtained from any applicable federal, state or local entity or agency required in connection with the operation of the Project by Tenant, as defined in the Lease.

4.4. **Compliance with Existing Covenants.** The Tenant is not in material default under nor violating in any material respect (i) any material provision of its Articles of Incorporation or Bylaws or (ii) any indenture, mortgage, lien, agreement, contract, deed, lease, loan agreement, note, order, judgment, decree or other instrument or restriction of any kind or character to which it is a party or by which it is bound, or to which it or any of its assets is subject. Neither the execution and delivery of the Tenant Documents nor compliance with the terms, conditions and provisions thereof will conflict with or constitute a material default under, any of the foregoing.

4.5. **Legal Counsel.** For the purpose of rendering this Certificate, I have been counseled by the Tenant's legal counsel as to the purpose of the foregoing certifications and the meanings of the matters set forth in the foregoing certifications. I understand that the factual information and representations contained in this Certificate will be relied upon by the Issuer in the issuance of the Bonds.

5. ENVIRONMENTAL MATTERS.

5.1. **Permits.** All required federal, state and local permits concerning or related to environmental protection and regulation concerning the Tenant's operations have been secured and are current.

5.2. **Compliance with Applicable Permits, Laws and Regulations.** Tenant is and has been in full compliance with any such environmental permits, and any other requirements under all applicable Environmental Laws (as defined in the Lease).

5.3. **No Pending Actions.** There are no pending actions against Tenant under any Environmental Law (as defined in the Lease), and Tenant has not received notice in any form of such an action, or of a possible action.

5.4. **Releases of Hazardous Substances.** Tenant has exercised diligence to determine whether there have been any past or current releases of hazardous substances on, over, under, at, from, into or onto the Project; it has not been able to discover any such releases, and has concluded that there are none. The terms "release" and "hazardous substance" are as understood under CERCLA and other applicable Environmental Laws (as defined in the Lease).

5.5. **Present Conditions.** Tenant is not aware of any environmental condition, situation or incident on, at or concerning the Project which could give rise to an action against Tenant or to liability against Tenant under any Environmental Law (as defined in the Lease) or any common law theory of liability.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, I have signed this certificate for delivery concurrently with the issuance of the Bonds.

BG REAL ESTATE, INC.

By: _____

Name: Ron Garcia

Title: Chief Operating Officer/Chief Financial Officer

EXHIBIT A

ARTICLES OF INCORPORATION

EXHIBIT B

BYLAWS

EXHIBIT C

CORPORATE RESOLUTION

EXHIBIT D

SOURCES AND USES OF FUNDS

Sources of Funds:

Principal Amount of the Bonds	\$24,220,000
Total	\$24,220,000

Uses of Funds:

Construction	\$
Engineering/architectural fees	
Equipment	
Total	\$24,220,000

EXHIBIT E

CERTIFICATE OF GOOD STANDING

PURCHASER'S CERTIFICATE AND RECEIPT

\$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)

BG Real Estate, Inc., (the "Purchaser"), hereby certifies that the Purchaser received from Commerce Bank, Kansas City, Missouri, as Trustee on behalf of the City of El Dorado, Kansas (the "Issuer") the Issuer's Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project), in an aggregate principal amount of \$24,220,000, dated as of the Issue Date of the Bonds. Issued by the Issuer and received by the Purchaser was one Bond certificate in fully registered form, numbered R-1, initially registered as requested by the Purchaser. The Bonds will not be re-offered to the public.

Said Bond certificate has been signed by the facsimile signature of the Mayor of the Issuer, attested by the facsimile signature of the City Clerk with the corporate seal of the Issuer affixed thereon, and has been authenticated by an authorized officer of the Trustee.

DATED December 11, 2019.

BG REAL ESTATE, INC.

By: _____

Name: Ron Garcia

Title: Chief Operating Officer/Chief Financial Officer

December 11, 2019

City of El Dorado, Kansas
El Dorado, Kansas

BG Real Estate, Inc.
Wichita, Kansas

Commerce Bank Trust Department
Kansas City, Missouri

Gilmore & Bell, P.C.
Wichita, Kansas

Re:

\$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds, Series 2019
(BG Products Project)
(the "Bonds")

Ladies and Gentlemen:

I have acted as counsel for BG Real Estate, Inc. (the "Tenant") in connection with the issuance of the Bonds, and in that connection, I have examined the originals or copies certified or otherwise identified to my satisfaction of:

- (a) Articles of Incorporation of the Tenant and Bylaws of the Tenant, all as amended to date;
- (b) A certificate of recent date of the Secretary of the State of Kansas relating to the legal existence and good standing of the Tenant in Kansas;
- (c) Executed copies of the following documents (collectively, the "Tenant Documents"):

- (i) A Trust Indenture dated as of March 30, 2011, as amended and supplemented by Supplemental Indenture No. 1 dated as of December 11, 2019 (collectively, the “Indenture”) between the City of El Dorado, Kansas (the “Issuer”) and Commerce Bank, Kansas City, Missouri, as bond trustee (the “Trustee”);
- (ii) A Real Estate Lease dated as of March 30, 2011, as amended and supplemented by Supplemental Lease No. 1 dated as of December 11, 2019 (collectively, the “Lease”) between the Issuer, as lessor, and Tenant, as lessee;
- (iii) A Bond Purchase Agreement (the “Bond Purchase Agreement”) among the Issuer, the Tenant and BG Real Estate, Inc., as Original Purchase;
- (d) The proceedings of the Board of Directors of the Tenant, authorizing, among other things, the execution and delivery by the Tenant of the Tenant Documents; and
- (e) Such other documents, instruments, certificates and corporate records as I have considered necessary for the purposes of this opinion.

For purposes of this opinion, I have assumed that each of the other parties to the Tenant Documents have all requisite power and authority and have taken all necessary corporate action to execute and deliver the instruments to which it is a party and to effect the transactions contemplated thereby.

Based on the foregoing, I am of the opinion that:

1. The Tenant is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas with corporate powers adequate for carrying on the business now conducted by it, is qualified to do business and is in good standing under the laws of the State of Kansas.

2. The Tenant has full power and authority to execute and deliver the Tenant Documents and to perform its obligations thereunder; the Tenant Documents have been duly authorized, executed and delivered by the Tenant, and, subject to the qualification stated in the last paragraph of this opinion, each is a valid, legally binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

3. The execution and delivery of the Tenant Documents, and the performance by the Tenant of its obligations thereunder, do not and will not constitute a material default under, or conflict with or violate any material provisions of, the Tenant’s Articles of Incorporation or Bylaws, both as amended to date, or applicable corporation law, and do not and will not materially conflict with or violate or result in a material adverse effect on the Tenant under any indenture, mortgage, deed of trust, contract, agreement or other instrument to which it is a party, or any administrative regulation or court decree.

4. To my knowledge, there is no litigation, proceeding or investigation by or before any court, public board or body, pending, or threatened, against or affecting the Tenant, its officers

or property, challenging the validity of the Tenant Documents, or seeking to enjoin any of the transactions contemplated by such instruments or the performance by the Tenant of its obligations thereunder, or challenging the acquisition or operation of the Project. Further, to my knowledge, there is no litigation, proceeding, or investigation pending or threatened against the Tenant, its officers or property except (i) that arising in the normal course of the Tenant's business operations, and being defended by or on behalf of the Tenant, in which the probably ultimate recovery and estimated defense costs and expenses, in the opinion of the Tenant's management, will be entirely within applicable insurance policy limits (subject to applicable self-insurance, retentions and deductibles), or (ii) that which, if determined adversely to the Tenant, would not, in the opinion of the Tenant's management, materially adversely affect the Tenant's operations or condition, financial or otherwise.

My opinion that the Tenant Documents are enforceable in accordance with their terms is qualified to the extent that enforcement of the rights and remedies created by them is subject to bankruptcy, insolvency, reorganization and similar laws of general application affecting the rights and remedies of creditors and secured parties, and that the availability of the remedy of specific enforcement or of injunctive relief is subject to the discretion of the court before which any proceedings therefor may be brought.

This opinion is delivered to you by me as counsel for the Tenant and is solely for your use and reliance in connection with the issuance and sale of the Bonds and may not be used or relied upon by any other person for any purpose without my prior written consent.

I consent to the inclusion of this opinion in transcripts prepared in connection with the issuance of the Bonds.

Very truly yours,

Ray L. Connell

CORPORATE RESOLUTION

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BG REAL ESTATE, INC., a Kansas corporation, that the City of El Dorado, Kansas (the "Issuer") shall issue its Taxable Industrial Revenue Bonds, Series 2019 (BG Products Project) in the aggregate principal amount of \$24,220,000 (the "Bonds") for the purpose of paying the costs of the acquisition, construction and equipping of improvements to a manufacturing and distribution facility (the "Project"); and further

BE IT RESOLVED that the Bonds shall be issued pursuant to a Trust Indenture, as amended and supplemented by Supplemental Indenture No. 1 between the Issuer and Commerce Bank (the "Trustee"); and further

BE IT RESOLVED that this company shall execute, enter into and perform a certain Lease, as amended and supplemented by Supplemental Lease No. 1, (collectively, the "Lease") between Issuer, as lessor, and this company, as lessee, whereby upon the terms specified therein, this company shall lease the Project from the Issuer; and further,

BE IT RESOLVED, that this company shall execute, enter into and perform a certain Bond Purchase Agreement (the "Bond Purchase Agreement") between this company, the Issuer and BG Real Estate, Inc., as Purchaser, relating to the sale and purchase of the Bonds; and further

BE IT RESOLVED, that the Chief Operating Officer/Chief Financial Officer of this company be and is hereby authorized and directed to execute and deliver the documents referenced above to which the company is a party (the "Transaction Documents") for and on behalf and as the act and deed of this company; and further

BE IT RESOLVED, that the Chief Operating Officer/Chief Financial Officer of this company be and is hereby authorized and directed to execute and deliver such certificates, documents, deeds or other instruments of conveyance, notices and other papers as may be reasonably necessary in connection with the Transaction Documents and with the issuance by the Issuer of the Bonds; and further

BE IT RESOLVED, that the officers of this company and all of the employees and agents of the company, be and they are hereby authorized and directed to perform all such other acts and do such other things as may be reasonably required in connection with the Transaction Documents and the issuance of the Bonds, for and on behalf and as the act and deed of this company.

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CERTIFICATE

I, the undersigned Chief Operating Officer/Chief Financial Officer of BG Real Estate, Inc., hereby certify that the foregoing Resolutions are hereby lawfully adopted by the Board of Directors of BG Real Estate, Inc. and the same are presently in full force and effect as of _____, 2019.

BG REAL ESTATE, INC.

By: _____

Name: _____

Title: Chief Operating Officer/Chief Financial Officer

[FORM OF OPINION FOR COUNSEL TO ISSUER]

December 11, 2019

Gilmore & Bell, P.C.
Wichita, Kansas

BG Real Estate, Inc.
Wichita, Kansas

Governing Body
El Dorado, Kansas

Re: \$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)
(the "Bonds")

Ladies and Gentlemen:

I am City Attorney for the City of El Dorado, Kansas (the "Issuer"), and acting as its counsel I have advised the Issuer in connection with its Ordinance No. [] (the "Ordinance"); a Supplemental Lease No. 1 dated as of December 11, 2019, amending and supplementing a Lease dated as of March 30, 2011, between the Issuer and BG Real Estate, Inc. (the "Tenant"); a Supplemental Indenture No. 1 dated as of December 11, 2019, amending and supplementing a Trust Indenture dated as of March 30, 2011 between the Issuer, and Commerce Bank, Kansas City Missouri, as Trustee; a Bond Purchase Agreement among the Issuer, the Tenant and BG Real Estate, Inc., Wichita, Kansas, as Original Purchaser (collectively, the "Bond Documents") and certain other certificates and proceedings relating to the issuance by the Issuer of the Bonds and the execution and delivery by officials of the Issuer of the Bond Documents.

Acting as such City Attorney, I have become acquainted with the affairs of the Issuer pertaining to the Bonds, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary in order to give the opinions expressed herein.

You are advised that, in my opinion:

1. The Issuer is a municipal corporation incorporated as a city of the second class, duly organized and existing under the laws of the State of Kansas.
2. The Issuer, acting through a majority of its governing body, did pass the Ordinance on December 2, 2019; it has been signed and published as required by law, and is now in full force and effect.
3. The Issuer has full power and authority to issue the Bonds and to execute and deliver the Bond Documents and all other documents reasonably necessary in connection with the transactions

contemplated thereby, and the Bonds and the Bond Documents have been executed and delivered by the Issuer in the manner authorized by law and the Ordinance, enforceable in accordance with their terms, except to the extent limited by or subject to bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights, principal of equity or the exercise of judicial discretion.

4. To my actual knowledge, after reasonable investigation, the enactment of the Ordinance, and the execution, delivery and performance of the Bond Documents do not and will not conflict with or constitute on the part of the Issuer a breach or default under (i) any ordinance, agreement, indenture or instrument to which the Issuer is a party, or by which it or any of its property may be bound, or (ii) any regulation, decree or order of any court, agency or governmental body having jurisdiction over the Issuer or any of its property.

5. To my actual knowledge, after reasonable investigation, there is no litigation, proceeding or investigation pending in any court or before any administrative agency or body, or to the knowledge of the officials of the Issuer, threatened, (i) to restrain or enjoin the issuance or delivery of the Bonds, or the execution, delivery or performance by the Issuer of its obligations under the Bond Documents; (ii) in any way contesting or affecting the validity or enforceability of the Ordinance, the Bonds or the Bond Documents; (iii) contesting the powers of the Issuer to issue the Bonds or enter into the Bond Documents; (iv) challenging the acquisition, equipping or operation of the Project (as defined in the Bond Documents); or (v) affecting in any manner the organization of the Issuer or its status as an incorporated city of the State of Kansas.

No authority or proceeding for the issuance of the Bonds or the execution and delivery of the Bond Documents has been repealed, revoked or rescinded.

No opinion is expressed regarding the includability in gross income for Federal income tax purposes, or the exemption from taxation under the laws of the State of Kansas, present or future, of the interest on the Bonds.

Very truly yours,



One Main Place - 100 North Main, Suite 800
Wichita, Kansas 67202-1311

(316) 267-2091 / (316) 262-6523 FAX / gilmorebell.com

December 11, 2019

Governing Body
El Dorado, Kansas

BG Real Estate, Inc.
Wichita, Kansas

Commerce Bank
Kansas City, Missouri

Re: \$24,220,000
City of El Dorado, Kansas
Taxable Industrial Revenue Bonds
Series 2019
(BG Products Project)

Ladies and Gentlemen:

We have acted as Bond Counsel to the City of El Dorado, Kansas (the "Issuer") in connection with the issuance of the above-captioned bonds (the "Bonds"). In this capacity, we have examined the law and the certified proceedings, certifications and other documents that we deem necessary to render this opinion.

The Bonds have been issued under K.S.A. 12-1740 *et seq.*, as amended (the "Act") and a Trust Indenture dated as of March 30, 2011, as amended and supplemented by Supplemental Indenture No. 1 dated as of December 11, 2019 (collectively, the "Indenture") between the Issuer and Commerce Bank, Kansas City, Missouri, as trustee (the "Trustee"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

Regarding questions of fact material to our opinion, we have relied on representations of the Issuer and BG Real Estate, Inc. (the "Tenant") contained in the Lease and certified proceedings and other certifications of the Issuer, the Tenant and others furnished to us, without undertaking to verify them by independent investigation.

We have also relied on the legal opinion of Connell & Connell, counsel to the Tenant, dated the date of this opinion, regarding certain matters, including (a) the corporate status and due organization of the Tenant, (b) the corporate power of the Tenant to enter into and perform its obligations under the Lease, and (c) the due authorization, execution and delivery of the Lease by the Tenant and the binding effect and enforceability of those documents against the Tenant.

Based on and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Issuer is an incorporated city of the second class duly organized and existing under the laws of the State of Kansas (the "State"), with lawful power and authority to issue the Bonds and to enter into and perform its obligations under the Indenture and the Lease.

2. The Bonds have been duly authorized, executed and delivered by the Issuer and are valid and legally binding special, limited obligations of the Issuer.

3. The Bonds are payable solely from the Trust Estate under the Indenture. The Bonds do not constitute an indebtedness of the State or of any political subdivision of the State within the meaning of any constitutional or statutory provision or limitation and do not constitute a pledge of the full faith and credit of the State or of any political subdivision of the State. The issuance of the Bonds will not, directly, indirectly or contingently, obligate the State or any political subdivision of the State to levy any form of taxation or to make any appropriation for the payment of the Bonds.

4. The Indenture and the Lease have been duly authorized, executed and delivered by the Issuer and are valid and legally binding agreements of the Issuer enforceable against the Issuer. The Indenture creates a valid lien on the Trust Estate pledged and assigned by the Issuer to the Trustee under the Indenture for the benefit and security of the owners of the Bonds, on a parity with other bonds, if any, issued or to be issued as Additional Bonds under the Indenture.

5. The interest on the Bonds is *not* excluded from gross income for federal income tax purposes under Section 103(a) of the Code. We express no other opinion as to any other federal tax law consequences pertaining to the Bonds.

6. The interest on the Bonds is exempt from income taxation by the State.

We express no opinion regarding (a) the accuracy, completeness or sufficiency of any offering material related to the Bonds, (b) the perfection or priority of the lien on the Trust Estate pledged under the Indenture, or (c) federal or state tax consequences arising with respect to the Bonds, other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture and the Lease may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

SOS:paj

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

Industrial Revenue Bond Informational Statement
(K.S.A. 12-1744a)

APPLICANT:

City of El Dorado, Kansas
City or County issuing I.R.B.s

Butler County
County in which City is located

Please answer all questions. If a question is not applicable, please indicate (N/A).

1. Proposed lessee name and address
for whom bonds issued:

BG Real Estate, Inc.
Wichita, Kansas

Guarantor for Bonds, if any:
None

Paying (Fiscal) Agent:
Commerce Bank
Kansas City, Missouri

Attorney(s) who issued opinion:

Bond Counsel:
Gilmore & Bell, P.C.
Wichita, Kansas

Tenant Counsel:
Connell & Connell
El Dorado, Kansas

Issuer's Attorney:
Ashlyn Lindskog, City Attorney
Wichita, Kansas

2. Will an exemption of the property be requested? Yes ☒ No ☐

If exemption will be sought:

- a. Provide the legal description of the property. (If legal description is lengthy, attach additional pages.) See *Exhibit A attached*

(For State of Kansas use only)

IRB Statement No. _____-IRB

Fee: _____ Amt Rec. _____

Rec. Date: _____ Ck # _____

- b. Provide the appraised valuation (not assessed) as listed by the county appraiser of property to be acquired, purchased, etc. as of next preceding January 1.

Land: N/A

Improvements: \$0

Equipment and Machinery N/A

3. Estimated TOTAL cost of the property:

Land: N/A

Improvements: \$24,220,000

Equipment and Machinery \$0

4. If facility financed is an addition or improvement to existing facility already financed by prior IRB issuance, supply following:

Date prior I.R.B.s issued: March 30, 2011 – Draw Down Bond

If existing facility exempted,
period of exemption:

1/1/2012 – 12/31/2021	(\$18,603,469.46)
1/1/2013 – 12/31/2022	(\$29,008,860.10)
1/1/2014 – 12/31/2023	(\$5,052,926.18)
1/1/2015 – 12/31/2024	(\$295,275.17)
1/1/2016 – 12/31/2025	(\$121,336)

Board of Tax Appeals #: 2012-876-IRBX

5. IRB principal amount to be issued: \$24,220,000

6. Please provide the following:

- Itemized list of any payments in lieu of taxes. None
- The amount of any service fee or charges with detailed description of services to be rendered by Issuer for same. None
- Detailed description of ultimate use of bond proceeds (e.g. acquisition of real estate, remodeling of physical plant) with the amount of IRB proceeds to be used for each purpose. See *Exhibit B* attached

7. What is the proposed date of issuance of these I.R.B.s? (Must be a least 7 days after receipt of preliminary filing with the Board of Tax Appeals.) December 11, 2019.

VERIFICATION

I, Tabitha Sharp, City Clerk, do solemnly swear or affirm that the information set forth herein is true and correct, to the best of my knowledge and belief. So help me God.

Signature of Applicant

Tabitha Sharp, City Clerk
Printed Name and Title

State of Kansas)
County of Butler)

This instrument was acknowledged before me on December ____, 2019 by Tabitha Sharp, City Clerk.

Seal

Signature of Notary Public

My appointment expires: _____

Send this statement along with the filing fee of \$500.00 to:

Kansas Board of Tax Appeals
Eisenhower State Office Building
700 SW Harrison, 10th Floor, Suite 1022
Topeka, KS 66603

EXHIBIT A

LEGAL DESCRIPTION

(A) The following described real estate located in Butler County, Kansas, to wit:

Tract 1a

SURFACE ONLY:

All that part of the West half of Section 33, Township 25 South, Range 5 East of the 6th P.M., lying South of the Southeasterly right-of-way line of the Kansas Turnpike and North of the Northern right-of-way of the Union Pacific Railroad (formerly Missouri Pacific Railroad), further described as follows: Beginning at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, a distance of 1654.64 feet to a point on the North right-of-way line of the Union Pacific Railroad; thence N 89°33' W, along said Railroad right-of-way, a distance of 1651.98 feet to an intersection with the Southeasterly right-of-way line of the Kansas Turnpike; thence N 43°52'01" E, along said Turnpike right-of-way, a distance of 1124.38 feet; thence N 43°11'32" E, along said Turnpike right-of-way, a distance of 1277.94 feet to a point on the East line of the Northwest Quarter of said Section 33; thence S 00°03'47" W, a distance of 100.66 feet to the Point of Beginning,

LESS AND EXCEPT the two tracts set forth below:

(1) Beginning 150 feet Southeasterly at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence Northeasterly and parallel with said centerline a distance of 350 feet; thence Southeasterly at right angles to said centerline a distance of 503.83 feet; thence Westerly 508.69 feet, more or less; thence Northwesterly normal to said centerline, a distance of 134.68 feet to the Point of Beginning.
AND

(2) Beginning at the intersection of the Southeasterly Kansas Turnpike right-of-way line and the Northern right-of-way line of the Union Pacific Railroad; thence Northeasterly along said Kansas Turnpike right-of-way, a distance of 124.83 feet to a point which is 150 feet at right angles to the centerline survey of the Kansas Turnpike at Station 6225-00; thence continuing Southeasterly at right angles to said centerline, a distance of 134.68 feet to a point on said North Railroad right-of-way; thence West along said Railroad right-of-way; a distance of 180.97 feet to the Point of Beginning.

AND LESS AND EXCEPT the tract set forth below:

Commencing at the Northeast corner of the Southwest Quarter of said Section 33; thence on an assumed bearing of S 00°03'47" W, along the East line of said Southwest Quarter a distance of 649.64 feet to the Point of Beginning; thence continuing S 00°03'47" W, a distance of 1005 feet to a point on the Northern Railroad right-of-way; thence N 89°33' W, along said Railroad right-of-way, a distance of 962.25 feet; thence N 46°05'44" W, a distance of 501.01 feet to a point on the Southeasterly right-of-way of the Kansas Turnpike; thence N 43°52'01" E, along said Kansas Turnpike right-of-way, a distance of 650 feet; thence N 43°11'32" E, along said Kansas Turnpike right-of-way, a distance of 249.87 feet; thence S 89°56'13" E, a distance of 702.84 feet to the Point of Beginning, Butler County, Kansas.

AND ALSO

Tract 1b

SURFACE ONLY:

That part of Lot 9 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, also described as follows: A tract in the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M. describes as: Commencing at the Northwest corner of said Southeast Quarter; thence on an assumed bearing of S 00°03'47" W along the West line of said Southeast Quarter, a distance of 182.46 feet to the Point of Beginning; thence S 89°58'38" E, a distance of 490.22 feet; thence S 00°01'37" W a distance of 210 feet; thence S 89°58'38" E, a distance of 86 feet to a point on the West line of the City designated Lot Eleven of the El Dorado Industrial Park; thence S 00°01'25" W, a distance of 566.82 feet to the Northwest corner of the City designated Lot Ten of the El Dorado Industrial Park; thence S 00°05'50" W, a distance of 700 feet to the Southwest corner of said Lot Ten and on the North right-of-way line of the

Union Pacific Railroad (formerly Missouri Pacific Railroad); thence West along said Railroad right-of-way line, a distance of 576.35 feet to the West line of said Southeast Quarter; thence N 00°03'47" E, a distance of 1472.18 feet to the point of beginning, Butler County, Kansas.

Tract 2

SURFACE ONLY

That part of Lot 11 designated by the City of El Dorado, Kansas, in the El Dorado Industrial Park, further described as follows: Beginning at a point 1682.29 feet North and 579.98 feet East of the Southwest Corner of the East Half of Section 33, Township 25 South, Range 5 East of the 6th P.M.; thence on an assumed bearing of N 00°01'25" E along the West line of said Lot 11 a distance of 566.82 feet; thence S 89°58'38" E a distance of 114 feet; thence N 00°01'37" E a distance of 210 feet to a point on the South right of way line of Pioneer Road, as designated by the City of El Dorado, said point being a point of curve, said curve having a radius of 440 feet, a chord bearing of S 78°02'51" E and a chord of 147.94 feet; thence S 68°42'17" E a distance of 605.20 feet along the North line of said Lot 11 to a point of curve, said curve having a radius of 1266.23 feet, a chord bearing of S 08°33'31" W and a chord of 481.41 feet; thence S 02°16'11" E a distance of 3.47 feet; thence N 87°43'49" E a distance of 10 feet; thence S 02°16'11" E a distance of 51.32 feet to the Southeast Corner of said Lot 11; thence N 89°41'43" W a distance of 763.51 feet to the point of beginning, Butler County, Kansas

Tract 3

SURFACE ONLY

Beginning at a point that is 319.30 feet North and 513.40 feet West of the Southeast Corner of the Northeast Quarter of Section numbered 33, Township 25 South, Range 5 East of the 6th P.M.; thence North on an assumed bearing of N 21°56'46" W a distance of 644.85 feet; thence S 31°09'41" W a distance of 144.15 feet; thence S 25°26'59" E a distance of 562.02 feet; thence North and East along a curve whose central angle is 3°39'46" and whose radius is 1266.23 feet a distance of 80.94 feet to the point of beginning, Butler County, Kansas.

Tract 4

SURFACE ONLY

Beginning at a point that bears S 90°00'00" W a distance of 40 feet from a point on the East line of the Northeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., that bears N 0°00'00" E a distance of 411.06 feet from the Southeast Corner thereof; thence N 0°00'00" E, a distance of 35.94 feet to the point of curvature of a curve to the left whose central angle is 25°36'59" and whose radius is 1106.28 feet; thence North and West on said curve 494.61 feet to the point of tangency; thence N 25°36'59" W a distance of 139.00 feet to the point of curvature of a curve to the left whose central angle is 33°15'51" and whose radius is 1099.08 feet; thence North and West on said curve, 443.66 feet; thence South 29°57'19" W a distance of 558.96 feet; thence S 21°56'46" E a distance of 644.85 feet to a point on a curve whose central angle is 92°27'30" and radius is 1266.23 feet; thence North and East on said curve 485.01 feet to the point of beginning, Butler County, Kansas.

Tract 5a

SURFACE ONLY

Beginning 63.89 feet South and 869.40 feet West of the Northeast Corner of the Southeast Quarter of Section 33, Township 25 South, Range 5 East of the 6th P.M., said point being on the Southerly right-of-way line of Haverhill Road; thence S 46°20'15" E a distance of 433.70 feet; thence S 36°38'10" W a distance of 1050.11 feet, more or less, to a point on the East right-of-way line of Haverhill Road; thence N 02°29'10" W a distance of 300.85 feet to the point of curvature of a curve with a radius of 1156.23 feet to the right and a central angle of 92°27'30"; thence along said curve an arc distance of 327.64 feet; thence S 73°39'00" E a distance of 10.00 feet to the point of curvature of a curve, concentric with the previous curve

and with a radius of 1146.23 feet to the right; thence along said curve an arc distance of 598.43 feet, more or less, to the point of beginning,

EXCEPT for and excluding the following:

Beginning 1182.3 feet West and 1206.0 feet South at the Northeast Corner of the Southeast Quarter of Section 33, said point being the South point of Lot 14 as designated by the City of El Dorado, Kansas in the El Dorado Industrial Park; thence N 2°29'10" W a distance of 300.85 feet, more or less; thence East a distance of 236.5 feet, more or less; thence S 36°38'10" W a distance of 375 feet, more or less to the point of beginning of excepted tract, Butler County, Kansas.

AND ALSO

Tract 5b

SURFACE ONLY

Commencing at the Southeast Corner of said Section 33; thence North 1269.79 feet along the East line of said Section 33 on an assumed bearing of N 00° E; thence West perpendicular to said East line a distance of 397.87 feet to the Point of Beginning; thence continuing West a distance of 235.46 feet; thence South a distance of 300.45 feet to a point on the Northern Railroad right of way; thence West along said right of way a distance of 540.00 feet to a point on the East right of way line of Haverhill Road; thence North a distance of 292.40 feet to a point on a curve, said curve having a radius of 5729.578 feet and a central angle of 2°20'; thence on a chord of N 02°12'30" W a distance of 38.56 feet to a point of tangency; thence N 02°23'58" W a distance of 436.88 feet; thence N 89°23'17" E a distance of 236.50 feet; thence N 36°05'44" E a distance of 675.20 feet along the West line of an existing easement line; thence S 88°00'47" E a distance of 205.32 feet to a point on the East line of said easement; thence S 36°05'44" W a distance of 443.36 feet; thence N 53°54'16" W a distance of 60 feet; thence S 36°05'44" W a distance of 481.29 feet along the East line of said easement; thence S 89°24'19" E a distance of 552.42 feet to a point which is 397.76 feet West of the East line of said Section 33; thence S 00° W a distance of 290 feet to the point of beginning, Butler County, Kansas

EXHIBIT B

USE OF BOND PROCEEDS

Land Acquisition	\$0.00
Construction Costs	<u>24,220,000.00</u>
 TOTAL	 \$24,220,000.00