

MARCH 28, 2006 AGENDA REPORTS

Agenda Item No. 4A.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0316

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Sanitary Sewer for Lots 1-11, Block 2, Rainbow Lakes West Addition (south of Central, east of 135th St. West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petition.

Background: The Petition has been signed by eighteen owners representing 100% of the improvement district.

Analysis: The project will serve an existing residential area located south of Central, east of 135th St. West. The area is currently served by private septic tank systems.

Financial Considerations: The Petition totals \$163,700. The funding source is special assessments.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of a majority of property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petition, adopt the Resolution and authorize the necessary signatures.

Agenda Item No. 4B.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0317

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Storm Water Drain for Falcon Falls 2nd, 3rd and Commercial Additions (north of 45th St. North, west of Hillside) (District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the new Petition.

Background: On August 16, 2005, the City Council approved a Petition to construct a Storm Water Drain for Falcon Falls 2nd, 3rd and Commercial Additions. An attempt to award a contract within the budget set by the Petition was not successful. The developer has submitted a new Petition with an increased budget. The signature on the new Petition represents 100% of the improvement district.

Analysis: The project will serve new residential and commercial developments located north of 45th St. North, west of Hillside.

Financial Considerations: The existing Petition totals \$724,000. The new Petition totals \$1,024,000. The funding source is special assessments.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the new Petition, adopt the Resolution and authorize the necessary signatures.

Agenda Item No. 7A.

CITY OF WICHITA
City Council Meeting
March 28, 2006

Agenda Report No. 06-0318

TO: Mayor and City Council Members

SUBJECT: Acquisition of Vacant Land for Right-of-Way in 11,000 Block of West 29th Street North for Roadway Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 8, 2005, the City Council approved the reconstruction of 29th Street North between Maize Road and 119th Street. The project consists of an upgrade from a two-lane roadway to a four-lane roadway with landscaped medians and left turn lanes into adjoining residential neighborhoods. A new storm water sewer system will be installed to eliminate ditches along the roadway. The project requires the partial acquisition of several tracts of land for right-of-way purposes.

Analysis: The project requires the acquisition of a 39,693.64 square foot strip along the existing road-right-of-way of the parcel located on the north side of the road in the 11,000 Block of West 29th Street North. The land was valued at \$40,000.00. This amount was offered to the property owner and accepted.

Financial Considerations: A budget of \$41,500 is requested for the acquisition. This amount includes \$40,000 for the acquisition and \$1,500 for closing costs and title insurance. The funding source is General Obligations Bonds and Federal Grants administrated by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the contact as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the Real Estate Purchase Contract and; 3) Authorize all necessary signatures.

Agenda Item No. 7B.

CITY OF WICHITA
City Council Meeting
March 28, 2006

Agenda Report No. 06-0319

TO: Mayor and City Council Members

SUBJECT: Acquisition of Vacant Land for Right-of-Way in 12,000 Block of West 29th Street North for Roadway Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 8, 2005, the City Council approved the reconstruction of 29th Street North between Maize Road and 119th Street. The project consists of an upgrade from a two-lane roadway to a four-lane roadway with landscaped medians and left turn lanes into adjoining residential neighborhoods. A new storm water sewer system will be installed to eliminate ditches along the roadway. The project requires the partial acquisition of several tracts of land for right-of-way purposes.

Analysis: The project requires the acquisition of a 41,670.27 square feet strip along the existing road-right-of-way of the parcel located at the southwest corner of West 29th Street and North 119th Street. The land was valued at \$41,675.00. This amount was offered to the property owner and accepted.

Financial Considerations: A budget of \$43,175 is requested for the acquisition. This amount includes \$41,675 for the acquisition and \$1,500 for closing costs and title insurance. The funding source is General Obligations Bonds and Federal Grants administered by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the Real Estate Purchase Contract and; 3) Authorize all necessary signatures.

Agenda Item No. 7C.

CITY OF WICHITA
City Council Meeting
March 28, 2006

Agenda Report No. 06-0320

TO: Mayor and City Council Members

SUBJECT: Acquisition of Three Parcels for the Bicycle/Pedestrian Path Along Gypsum Creek and George Washington Boulevard (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: April 5, 2005, the City Council approved the construction of a bicycle/pedestrian path along I-135, Gypsum Creek and George Washington Boulevard, from north of Pawnee to the Kansas Turnpike. The path is almost three miles and consists of a ten-foot wide, asphalt paved path with approximately 3,000 feet of fencing, signage and landscaping. The project requires the acquisition of several tracts of land. Three of the required parcels are corner clips off of the back of residential lots.

Analysis: The project requires the acquisition of three irregular shaped parcels located at 2769, 2777 South Vassar and 2748 South Holyoke. These tracts are held by the same owner. From the three parcels it is necessary to acquire a total of 4,692 square feet. The takings were valued at \$4,700.00. This amount was offered to the property owner and accepted.

Financial Considerations: A budget of \$6,200 is requested. This amount includes \$4,700 for the acquisition and \$1,500 for closing costs and title insurance. The funding source is approximately seventy percent Federal Grants administered by the Kansas Department of Transportation and approximately thirty percent City of Wichita General Obligation Bonds.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize all necessary signatures.

Agenda Item No. 7D.

CITY OF WICHITA
City Council Meeting
March 28, 2006

Agenda Report No. 06-0321

TO: Mayor and City Council Members

SUBJECT: Acquisition of Land in the 3100 Block of East South Fork Court for the Bicycle/Pedestrian Path Along Gypsum Creek and George Washington Boulevard (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: April 5, 2005, the City Council approved the construction of a bicycle/pedestrian path along I-135, Gypsum Creek and George Washington Boulevard, from north of Pawnee to the Kansas Turnpike. The path is almost three miles and consists of a ten-foot wide, asphalt paved path with approximately 3,000 feet of fencing, signage and landscaping. The project requires the acquisition of several tracts of land. One of the required parcels is a corner clip off of the back of an undeveloped residential lot.

Analysis: The project requires the acquisition of an irregular shaped, 956 square foot tract in the southeast portion of the vacant lot located in the 3100 Block of East South Fork Court. The taking was valued at \$1,000.00. This amount was offered to the property owner and accepted.

Financial Considerations: A budget of \$2,000 is requested. This amount includes \$1,000 for the acquisition and \$1,000 for closing costs and title insurance. The funding source is approximately seventy percent Federal Grants administered by the Kansas Department of Transportation and approximately thirty percent City of Wichita General Obligation Bonds.

Legal Considerations: The Law Department has approved the contact as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget; 2) Approve the Real Estate Purchase Contract and 3) Authorize all necessary signatures.

Agenda Item No. 7E.

CITY OF WICHITA
City Council Meeting
March 28, 2006

Agenda Report No. 06-0322

TO: Mayor and City Council Members

SUBJECT: Acquisition of Sanitary Water Sewer and Utility Easement in 7700 Block of West 37th Street North for Roadway Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 8, 2005, the City Council approved the reconstruction of 37th Street North between Tyler Road and Ridge Road. The project consists of an upgrade from a two-lane roadway to a four-lane roadway with landscaped medians and left turn lanes at intersecting side streets. The bridge will also be replaced with a four-lane structure. The project requires the partial acquisition of several tracts of land for right-of-way purposes.

Analysis: The project requires the acquisition of a 5,709 square foot strip of land for a sanitary water sewer system easement and utility easement along the south side of the existing road right-of-way line. A 12,008.7 square foot temporary construction easement at the bridge site and along the sanitary water sewer/utility easement is also required. The owner has offered to donate the easements to the City.

Financial Considerations: A budget of \$1,000 is requested for the acquisition. This amount is to pay for the closing costs and title insurance. The funding source is General Obligations Bonds and Federal Grants administered by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the easement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the budget and 2) Approve and Accept the Donation.

Agenda Item No. 8.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0323

TO: Mayor and City Council

SUBJECT: City of Wichita Taxable Industrial Revenue Bonds, Series IV, 2005
(Wichita Clinic Project) (District VI)

INITIATED BY: Law Department

AGENDA Consent

Recommendation: Adopt the attached Resolution approving and authorizing the execution and delivery of the Consent & Waiver for Siemens Medical Solutions USA, Inc., as requested by the Tenant.

Background: In 2005, the City of Wichita issued \$16,229,000 in Taxable Industrial Revenue Bonds, the proceeds of which were used to acquire, construct and equip a medical office building, ambulatory surgical center and imaging facility in the City, for lease to Integrated Healthcare Systems, Inc. (the "Tenant"). As part of the security for repayment of the Bonds, all of the financed facilities were subjected to the lien of the trust indenture, and to certain restrictions on encumbrances, easements and similar interests. However, under the terms of the Lease, property not financed with Bond proceeds is generally not deemed part of the Project, and it is possible for the City to consent to certain encumbrances, easements or similar interests under certain conditions, at the request of the Tenant. In connection with the financing of some MRI equipment, through Siemens Medical Solutions USA, Inc. ("Siemens"), the Tenant has requested the City to approve and execute Siemens's standard Consent & Waiver by Owner, Landlord or Mortgagee of Real Estate (the "Consent & Waiver").

Analysis: The main purpose of the Consent & Waiver is to document the City's acknowledgment of Siemens's property rights in the equipment, and the City's agreement that it claims no rights to the equipment. The Consent & Waiver also recognizes the continuing right of Siemens to have (and if need be, market) the equipment on the real estate. This could create potential inconvenience for the Bondholder if both the bonds and equipment lease were to default, as it could be difficult to market the facility until Siemens successfully sold and removed its equipment. However, the Bondholder, INTRUST Bank, is aware of the equipment lease and has indicated it does not object to the City granting consent thereto. Further, the Tenant has certified that the Consent & Waiver will not be detrimental to the proper conduct of the Tenant's business in any manner or degree, will not impair the effective use or interfere with the efficient and economical operation of the bond-financed facility, and will not materially adversely affect the security pledged to the payment of the Bonds.

Financial Considerations: The Consent & Waiver requested by the Tenant should further the Tenant's operations on the Project property, and should have no significant adverse impact on the security for the outstanding Bonds.

Legal Considerations: The City Attorney's Office has drafted an appropriate Resolution for Council action, and the Tenant has furnished the Consent & Waiver for review and approval, together with an appropriate certificate as to matters required to be certified by the Tenant. The City Attorney's Office has reviewed and approved the Consent & Waiver as to form.

Recommendations/Actions: Adopt the Resolution approving and authorizing the execution and delivery of the Consent & Waiver as requested by the Tenant.

Agenda Item No. 9.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0324

TO: Mayor and City Council

SUBJECT: Eaton Place Repayments

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the repayment.

Background: In 2001, the City of Wichita completed the Eaton Place project. The Eaton Place project was a \$15.3 million dollar public-private partnership between the City and MetroPlains Development, LLC, a Minneapolis, Minnesota based developer. The intent of the project was to restore the last complete historic block on Douglas Avenue and produce 115 units of mixed income apartments and 30,000 square feet of commercial space on the first floor. The development achieved the community goals of saving the historic Eaton Block and added substantial new residential development in downtown Wichita. The residential component has been relatively successful, but the commercial space has substantial debt that is not being covered by rental income due to a large amount of vacant space and lower rental rates.

The City of Wichita provided a total of \$1,174,000 in CDBG grants and loans and \$1,695,000 in HOME grants and loans for the Eaton Place project. Of these amounts, the City of Wichita provided a total of \$960,000 in CDBG and HOME funds in the form of loans for the residential portion of the project to fill an equity gap rather than downsize the scope of the project. These City loans are structured as debt on the residential component and are subordinate to the industrial revenue bonds and equity. The loans were approved November 3, 1999 and December 22, 1999 and were issued on September 15, 2000. The loans have a 5% interest rate and are payable from excess cash flow from the project. Any unpaid principal or interest is due upon sale of the property. The loans are secured by a mortgage and security agreement on the residential property. The residential loans were originally projected to pay off starting in 2029, taking several years thereafter to be fully paid. Any principal and interest repayments for the CDBG and HOME loans are program income and must be returned to the City of Wichita's CDBG and HOME programs.

In addition, for the commercial portion of the project, the City entered into a Lender Support Agreement with Bank of America (first mortgage holder) on May 4, 2000 to pay any shortfall in debt service for the commercial first mortgage. The City's obligation is capped at not more than \$165,000 per year for 7 years from the date of the term loan (2008), or not more than \$1,155,000 in total. To date, the City has paid Bank of America \$470,089 in Lender Support payments. The maximum additional liability of the City under the Lender Support Agreement is estimated at \$684,911. The Lender Support Agreement requires MetroPlains, LLC repay any amounts paid by the City under the Lender Support Agreement

MetroPlains Development, LLC has a one-time opportunity to buy out the investment of the limited partner, U.S. Bank, for the residential portion and the commercial first mortgage loan with Bank of America and replace them with private equity capital. MetroPlains cannot raise the replacement equity capital with the current City loans and City Lender Support payments outstanding. MetroPlains claims that it will not receive any payments under the refinancing.

MetroPlains Development, LLC proposes to end the City's Lender Support payments to Bank of America by refinancing the commercial first mortgage and pay the City an amount that equals the present value of the amounts previously paid under the Lender Support Agreement (\$470,089) and the CDBG/ HOME loans \$960,000 plus interest.

Analysis: After several rounds of negotiations, the City and MetroPlains have agreed to the following repayment terms:

City keeps tax rebate check of \$13,160

City receives present value of the CDBG and HOME loans with interest and the amounts paid by the City under the Lender Support agreement at 4% compounded yearly. The loans, payments and interest is as follows:

CDBG Loan	\$ 750,000.00
HOME Loan	210,000.00
Interest on CDBG and HOME Loans	256,150.63
Payments under the Lender Support Agreement	<u>470,089.81</u>
TOTAL	\$1,686,240.44

Present Value Payment to the City \$427,319.41

The present value of \$427,319.41 will be disbursed as follows: CDBG-\$238,871.55; HOME-\$69,225.74 and \$119,222.12 to the Self-Insurance Fund. There is no profit sharing with the City if Eaton Place is not sold. MetroPlains would end City Lender Support payments to Bank of America by refinancing the commercial first mortgage.

If Eaton Place property is sold during the next five years, City receives the following additional payment:

Year 1-100% \$1,200,000

Year 2-100% \$1,200,000

Year 3-75% \$ 900,0000

Year 4-50% \$ 600,000

Year 5-33% \$ 400,000

Financial Considerations: HUD has confirmed the City Council may accept the present value repayment for the CDBG and HOME loans, however the 26 HOME affordable rental units must continue to remain affordable for balance of the HOME affordability which is 16 years. The full HOME affordability standard is 20 years. If the units do not remain affordable for the remaining 16 years, the City is liable for payment of the face value of the \$210,000 HOME loan and the \$1,485,000 HOME grant to HUD from non-HUD sources.

The original HOME funding agreement and the formal deed restrictions/compliance agreement contain a requirement for MetroPlains to meet the HOME affordability standards. These 26 affordable units also carry a 30-year affordability (federal and state) requirement under State Housing Tax Credit program.

Legal Considerations: The Loan Prepayment and Termination Agreement, Lender Support Termination Agreement, and the Pledge of Partnership Interests Agreement, Home Regulatory Agreement forms have been approved as to form by the City Attorney's office. HOME restrictive covenants on the affordable units will remain in place until the full 20 year HOME affordability term expires. A separate UCC Financing statement shall be filed to perfect the City's security interest.

Recommendation/Action: It is recommended that the City Council accept the repayment terms and authorize the Mayor to sign the appropriate documents.

LOAN PREPAYMENT AND
TERMINATION AGREEMENT

This AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2006 by and among the CITY OF WICHITA, KANSAS, a municipal corporation duly organized and existing under the laws of the State of Kansas (the "City"), MDI LIMITED PARTNERSHIP #71, a Kansas limited partnership ("MDI 71") and MDI LIMITED PARTNERSHIP #72, a Kansas limited partnership ("MDI 72").

WHEREAS, MDI 71 and MDI 72 developed a mixed use development in downtown Wichita consisting of 115 units of rental housing owned by MDI 71 (the "Housing Space") and 30,000 square feet of commercial/retail space owned by MDI 72 (the "Commercial Space") (collectively the Housing Space and Commercial Space are referred to as "Eaton Place"); and

WHEREAS, the City made two loans to MDI 71 in the amounts of \$210,000 and \$750,000; and

WHEREAS, the City also made a forgivable loan to MDI 71 in the amount of \$424,000, most of which has been forgiven as of the date hereof.

WHEREAS, the City agreed to make payments to Bank of America, N.A. (the "Bank") pursuant to the Lender Support Agreement dated May 4, 2000, by and among the City, the Bank and MDI 72 (the "Lender Support Agreement"); and

WHEREAS, although Eaton Place has been successful in saving the historic Eaton Block and adding substantial new residential development to downtown Wichita, Eaton Place has not been a financial success; and

WHEREAS, in exchange for certain current payments and release of certain financial obligations the City has agreed to forgive the City Loans; and

WHEREAS, the City has determined that (i) receipt of current cash payments equal to the present value of the repayments due on the City Loans, and (ii) the release of the City's obligations under the Lender Support Agreement is in the best interest of the City.

NOW, THEREFORE for good and valuable consideration the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:
 - 1.1. Bank shall mean Bank of America, N.A.
 - 1.2. Bank Loan shall mean the loan from Bank of America, N.A. in the original principal amount of \$1,540,000.
 - 1.3. CDBG Loan shall mean the loan from the City to MDI 71 in the original principal amount of \$750,000.

1.4. CDBG Mortgage shall mean the Mortgage and Security Agreement securing the CDBG Loan.

1.5. City Loans shall collectively mean the CDBG Loan, the Contingent Loan and the Home Loan.

1.6. Commercial Space shall mean the 30,000 square feet of commercial/retail space owned by MDI 72.

1.7. Contingent Loan shall mean the loan from the City to MDI 71 in the original principal amount of \$424,000 which is forgiven 20% each year that certain conditions are satisfied.

1.8. Contingent Mortgage shall mean the Mortgage and Security Agreement securing the Contingent Loan.

1.9. Eaton Place shall mean the Housing Space and Commercial Space.

1.10. HOME Loan shall mean the loan from the City to MDI 71 in the original principal amount \$210,000.

1.11. HOME Mortgage shall mean the Mortgage and Security Agreement securing the HOME Loan.

1.12. HOME Regulations shall mean 24 CFR Part 92, as amended, supplemented or replaced.

1.13. Housing Space shall mean the 115 units of rental housing and related facilities owned by MDI 71.

1.14. Lender Support Agreement shall mean the agreement dated May 4, 2000, by and among MDI 72, Bank and the City.

1.15. Lender Support Termination Agreement shall mean the agreement terminating the Lender Support Agreement in the form attached hereto as Exhibit B.

1.16. Partnership Agreements shall collectively mean (i) the First Amended and Restated Agreement of Limited Partnership for MDI #72 between MetroPlains Properties, Inc. and U.S. Affordable Housing CDC, Inc. dated December 1, 1999 and the (ii) First Amended and Restated Agreement of Limited Partnership for MDI #71 between MetroPlains Properties, Inc. and U.S. Affordable Housing CDC, Inc. dated December 22, 1999.

1.17. Payment shall mean the payment to be made by MDI 71 and MDI 72 to the City under Section 2 below.

1.18. Pledge of Partnership Interests Agreement shall mean the document attached hereto as Exhibit C.

1.19. Recapture Payment shall mean the payment to be made to the City in the event of a Transfer occurring during the periods set forth below:

Transfer Occurring	
0-12 months from the date of this Agreement	\$1,200,000
13-24 months from the date of this Agreement	\$1,200,000
25-36 months from the date of this Agreement	\$ 900,000
37-48 months from the date of this Agreement	\$ 600,000
49-60 months from the date of this Agreement	\$ 400,000
After 60 months	\$ 0

1.20. Regulatory Agreement shall mean the HOME Investment Partnership Rental Housing Program Regulatory Agreement dated March 10, 2000, as amended by the Amendment to HOME Regulatory Agreement attached hereto as Exhibit D.

1.21. Releases of Mortgage shall mean the documents attached hereto as Exhibits A-1, A-2 and A-3.

1.22. Tax Rebate Payment shall mean the tax rebate payment related to the Commercial Space from Sedgwick County in the amount of \$13,160.

1.23. Transfer shall mean any total or partial sale, assignment or conveyance of Eaton Place but shall in no event include any transfers of limited partnership interests in either MDI 71 or MDI 72.

2. Payment by MDI 71 and MDI 72. MDI 71 and MDI 72 agree to pay \$427,319.41 (the "Payment") to the City in satisfaction of the obligations of MDI 71 and MDI 72 to make payments to the City pursuant to the City Loans and the Lender Support Agreement.

3. Release of Mortgage. The City agrees to release the CDBG Mortgage, the HOME Mortgage and the Contingent Mortgage in exchange for receipt of the Payment by executing the Releases of Mortgage in the forms attached hereto as Exhibits A-1, A-2 and A-3 (the "Releases of Mortgage").

4. Termination of Lender Support Agreement. The City and MDI 72 agree to terminate the Lender Support Agreement by executing a termination agreement in the form attached hereto as Exhibit B (the "Lender Support Termination Agreement"). MDI 72 agrees, by the Closing, to refinance the Bank Loan and obtain the Bank's signature on the Lender Support Termination Agreement.

5. Recapture Payment. MDI 71 and MDI 72 agree to pay the City the Recapture Payment in the event that Eaton Place is Transferred to a third party within sixty (60) months after the date of this Agreement. No Recapture Payment shall be due after sixty (60) months from the date of this Agreement.

6. Security for Recapture Payments. MDI 71 and MDI 72 agree to modify the Partnership Agreements to provide for a preferred return to the general partner in the amount of the Recapture Payment. Payments will be due first from MDI 71 and then, to the extent the Recapture Payment remains unpaid, from MDI 72. MDI 71 and MDI 72 shall grant the City a pledge of the partnership interests in MDI 71 and MDI 72 in the form attached hereto as Exhibit C to secure the obligation to make the Recapture Payment. A UCC financing statement shall be filed to perfect the City's security interest.

7. HOME Regulatory Agreement. MDI 71 hereby acknowledges receipt of the \$1,695,000 subsidy referenced in the HOME Investment Partnership Rental Housing Program Regulatory Agreement dated March 10, 2000, recorded with the Sedgwick County Register of Deeds on May 12, 2000 (the "Regulatory Agreement"). MDI 71 shall execute the Amendment to HOME Regulatory Agreement attached hereto as Exhibit D to reflect the Partnership's obligation to repay the \$1,695,000 in the event MDI 71 fails to comply with the requirements of the Regulatory Agreement.

8. Tax Rebate Payment. The City may retain the Tax Rebate Payment. Any other tax rebates received from Sedgwick County shall be the property of MDI 71 and MDI 72 as appropriate.

9. Closing. Upon refinancing of the Bank Loan and the Bank's execution of the Lender Support Termination Agreement, the parties shall exchange the following closing documents:

- (a) Owner's Closing Obligation. Owner shall deliver to the City:
 - (1) The Payment by check or wire transfer;
 - (2) The signed Regulatory Agreement;
 - (3) The Pledge of Partnership Interests Agreement;

- (4) A UCC Financing Statement covering the security interest granted in the Pledge of Partnership Interests Agreement;
 - (5) Copies of the amendments to the Partnership Agreements creating the priority return for the Recapture Payment; and
 - (6) The signed Lender Support Termination Agreement.
- (b) City's Closing Obligation. City shall deliver to the Owner:
 - (1) The signed Regulatory Agreement;
 - (2) The signed Releases of Mortgage; and
 - (3) The signed Lender Support Termination Agreement.

The Closing shall occur on or before sixty (60) days from the date of this Agreement.

10. Assignment. Neither of the parties hereto shall assign, transfer or otherwise convey this Agreement or its rights, obligations or duties hereunder, whether in whole or in part, to any other person or entity, without the prior written consent of each other party hereto.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of Kansas.

12. Waiver, Modification or Amendment. This Agreement may not be waived, modified or amended unless pursuant to a signed writing executed by each of the parties hereto. Failure of either party hereto to enforce any provision of this Agreement shall not be construed to be a waiver of such provision or its right thereafter to enforce such provision or any other provision contained herein.

13. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain unimpaired and shall continue in full force and effect.

14. Headings. Headings used in this Agreement are for purposes of convenience of reference only and shall in no way limit or affect the meaning or interpretation of any of the terms hereof.

15. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter as of the date hereof and supersedes all prior understandings, representations, proposals, discussions, and negotiations whatsoever, whether oral or written, between the parties hereto.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, City, MDI 71 and MDI 72 have caused this Lender Support Termination Agreement to be duly executed on or as of the day and year first above written.
CITY OF WICHITA, KANSAS

By:
Its: Mayor

ATTEST:

Karen Sublett, City Clerk

Date MDI LIMITED PARTNERSHIP #71

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

By: MetroPlains Properties, Inc., as general partner

Date

By: Its:

MDI LIMITED PARTNERSHIP #72

By: MetroPlains Properties, Inc., as
general partner

By:

Its:

RELEASE OF CDBG MORTGAGE

The space above is reserved for REGISTER OF DEEDS

RELEASE OF MORTGAGE - (CORPORATE)

In consideration of the payment of the debt secured by the Mortgage and Security Agreement dated December 22, 1999, executed by MDI Limited Partnership #71, a Kansas limited partnership as Mortgagor/Borrower, and recorded on December 27, 1999, in Book/Film 1999, Page 1873, in the office of the Register of Deeds of Sedgwick County, Kansas, the undersigned hereby releases said Mortgage and Security Agreement which formerly encumbered the described real property:

See Exhibit A attached hereto.

STREET ADDRESS: 517 East Douglas, Wichita, Kansas

Dated _____, 2006

THE CITY OF WICHITA, KANSAS,
a Kansas municipal corporation

By

SIGNATURE/TITLE

TYPE OR PRINT NAME / TITLE

STATE OF

COUNTY OF

On this ____ day of _____, 2006, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of the City of Wichita, Kansas, a Kansas municipal corporation, to me personally known to be the same who executed the within instrument as _____ of said municipal corporation, and such for and on behalf of, and as the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal the day and year written above.

SEAL Notary Public
 My appointment expires:

The space below is reserved for REGISTER OF DEEDS

EXHIBIT A-2

RELEASE OF HOME MORTGAGE

(see attached)

The space above is reserved for REGISTER OF DEEDS

RELEASE OF MORTGAGE - (CORPORATE)

In consideration of the payment of the debt secured by the Mortgage and Security Agreement dated December 22, 1999, executed by MDI Limited Partnership #71, a Kansas limited partnership as Mortgagor/Borrower, and recorded on December 27, 1999, in Book/Film 1999, Page 1889, in the office of the Register of Deeds of Sedgwick County, Kansas, the undersigned hereby releases said Mortgage and Security Agreement which formerly encumbered the described real property:

See Exhibit A attached hereto.

STREET ADDRESS: 517 East Douglas, Wichita, Kansas

Dated _____, 2006

THE CITY OF WICHITA, KANSAS,
a Kansas municipal corporation

By

SIGNATURE/TITLE

TYPE OR PRINT NAME / TITLE

STATE OF

COUNTY OF

On this ____ day of _____, 2006, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of the City of Wichita, Kansas, a Kansas municipal corporation, to me personally known to be the same who executed the within instrument as _____ of said municipal corporation, and such for and on behalf of, and as the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal the day and year written above.

SEAL

Notary Public

My appointment expires:

The space below is reserved for REGISTER OF DEEDS

RELEASE OF CONTINGENT MORTGAGE

(see attached)

The space above is reserved for REGISTER OF DEEDS

RELEASE OF MORTGAGE - (CORPORATE)

In consideration of the payment of the debt secured by the Mortgage and Security Agreement dated December 22, 1999, executed by MDI Limited Partnership #71, a Kansas limited partnership as Mortgagor/Borrower, and recorded on December 27, 1999 in Book/Film 1999, Page 1905, in the office of the Register of Deeds of Sedgwick County, Kansas, the undersigned hereby releases said Mortgage and Security Agreement which formerly encumbered the described real property:

See Exhibit A attached hereto.

STREET ADDRESS: 517 East Douglas, Wichita, Kansas

Dated _____, 2006

THE CITY OF WICHITA, KANSAS,
a Kansas municipal corporation

By

SIGNATURE/TITLE

TYPE OR PRINT NAME / TITLE

STATE OF

COUNTY OF

On this _____ day of _____, 2006, before me the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of the City of Wichita, Kansas, a Kansas municipal corporation, to me personally known to be the same who executed the within instrument as _____ of said municipal corporation, and such for and on behalf of, and as the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal the day and year written above.

SEAL

Notary Public

My appointment expires:

The space below is reserved for REGISTER OF DEEDS

EXHIBIT B

LENDER SUPPORT TERMINATION AGREEMENT

(see attached)

LENDER SUPPORT TERMINATION AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2006 by and among BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, "Lender"); MDI LIMITED PARTNERSHIP #72, a Kansas limited partnership ("Borrower") and the CITY OF WICHITA, KANSAS, a Kansas municipal corporation ("City").

WHEREAS, Lender, Borrower and the City entered into a Lender Support Agreement dated May 4, 2000 (the "Lender Support Agreement");

WHEREAS, Lender made a loan to Borrower in the principal amount of \$1,540,000 (the "Loan") pursuant to the Lender Support Agreement;

WHEREAS, as a condition to making the Loan, Lender required the City to make certain advances to Lender as security for the Loan; and

WHEREAS, Lender and Borrower have agreed to refinance the Loan.

NOW, THEREFORE, the parties agree as follows:

1. Termination of Lender Support Agreement. The Lender Support Agreement is hereby terminated as of the date set forth above.
2. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which will constitute one and the same agreement.

[Signature Page Follows]

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

Lender:

BANK OF AMERICA, N.A.

By:

Its:

Borrower:

MDI LIMITED PARTNERSHIP #72

By: MetroPlains Properties, Inc., as
general partner

By:

Its: _____

City:

ATTEST:

CITY OF WICHITA, KANSAS

By:

Its:

APPROVED AS TO FORM:

EXHIBIT C

PLEDGE OF PARTNERSHIP INTERESTS AGREEMENT

(see attached)

PLEDGE OF PARTNERSHIP INTERESTS AGREEMENT

This PLEDGE OF PARTNERSHIP INTERESTS AGREEMENT (this “Agreement”) is made as of the ____ day of _____, 2006 by METROPLAINS PROPERTIES, INC., a Minnesota corporation (“MetroPlains”) whose address is Suite 212, 1600 University Avenue, St. Paul, Minnesota 55104-3825 in favor of the CITY OF WICHITA, KANSAS, a municipal corporation duly organized and existing under the laws of the State of Kansas (“City”) whose address is 455 N. Main Street, Wichita, Kansas 67202.

WHEREAS, MetroPlains is the sole general partner in MDI Limited Partnership #71, a Kansas limited partnership (“MDI 71”) and the sole general partner in MDI Limited Partnership #72, a Kansas limited partnership (“MDI 72”) (MDI 71 and MDI 72 are sometimes collectively referred to herein as the “Partnerships”); and

WHEREAS, MDI 71 and MDI 72 developed a mixed use development in downtown Wichita consisting of 115 units of rental housing owned by MDI 71 (the “Housing Space”) and 30,000 square feet of commercial/retail space owned by MDI 72 (the “Commercial Space”) (collectively the Housing Space and Commercial Space are referred to as “Eaton Place”); and

WHEREAS, City made three loans to MDI 71 in the amounts of \$210,000, \$424,000 and \$750,000 (the “City Loans”); and

WHEREAS, City agreed to make payments to Bank of America, N.A. pursuant to a Lender Support Agreement dated May 4, 2000, by and among the City, Bank of America, N.A. and MDI 72 (the “Lender Support Agreement”); and

WHEREAS, although Eaton Place has been successful in saving the historic Eaton Block and adding substantial new residential development to downtown Wichita, Eaton Place has not been a financial success; and

WHEREAS, MDI 71, MDI 72 and City entered into a Loan Prepayment and Termination Agreement dated as of the same date set forth above (the “Termination Agreement”), whereby City agreed to forgive the City Loans and release MDI 72’s obligations under the Lender Support Agreement in exchange for certain current payments by the Partnerships and further on the condition that if there is a Transfer of Eaton Place during the first sixty (60) months following the date of the Termination Agreement that the Partnerships would pay City an amount equal to the Recapture Payment (as defined below); and

WHEREAS, in order to secure the full payment by the Partnerships of the Recapture Payment, in the event that the Recapture Payment becomes due, MetroPlains is entering into this Agreement for the benefit of City.

NOW, THEREFORE for good and valuable consideration the parties agree as follows:

17. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.24. City Loans shall collectively mean the three loans made by the City to MDI 71 in the original principal amounts of \$210,000, \$424,000 and \$750,000 respectively.

1.25. Collateral shall mean all of MetroPlains' right to receive distributions, allocations and payments under the Partnership Agreements, as the same may be modified from time to time with the consent of City.

1.26. Commercial Space shall mean the 30,000 square feet of commercial/retail space owned by MDI 72.

1.27. MetroPlains' Liabilities shall have such meaning as is provided in Section 4 below.

1.28. Eaton Place shall mean the Housing Space and Commercial Space.

1.29. Event of Default shall mean an event of default described in Section 7 herein.

1.30. Housing Space shall mean the 115 units of rental housing and related facilities owned by MDI 71.

1.31. Lender Support Agreement shall mean the agreement dated May 4, 2000, by and among MDI 72, Bank and the City.

1.32. Partnership Agreements shall collectively mean (i) the First Amended and Restated Agreement of Limited Partnership for MDI #72 between MetroPlains Properties, Inc. and U.S. Affordable Housing CDC, Inc. dated December 1, 1999, as amended and (ii) First Amended and Restated Agreement of Limited Partnership between MetroPlains Properties, Inc. and U.S. Affordable Housing CDC, Inc. dated December 22, 1999 as amended.

1.33. Recapture Payment shall mean the payment to be made to the City by the Partnership under the Debt Termination Agreement in the event of a Transfer occurring during the periods set forth below:

Transfer Occurring

0-12 months from the date of this Agreement	\$1,200,000
13-24 months from the date of this Agreement	\$1,200,000
25-36 months from the date of this Agreement	\$ 900,000
37-48 months from the date of this Agreement	\$ 600,000
49-60 months from the date of this Agreement	\$ 400,000
After 60 months	\$ 0

1.34. Termination Agreement shall mean the Loan Prepayment and Termination Agreement by and among City, MDI 72 and MDI 72.

1.35. Transfer shall mean any total or partial sale, assignment or conveyance of Eaton Place but shall in no event include any transfers of limited partnership interests in either MDI 71 or MDI 71.

2. Pledge of Collateral and Grant of Security Interest. MetroPlains does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto City, its successors and assigns, as security for the Partnerships' complete and timely payment of the Recapture Payment, a continuing first priority security interest under the Uniform Commercial Code of the State of Kansas in the Collateral. MetroPlains hereby further agrees, upon request, to deliver any other documents which City may reasonably request with respect thereto. MetroPlains acknowledges that City will be filing UCC-1 Financing Statements in the appropriate jurisdiction(s) with respect to the security interest granted hereby and consents to such filing.

3. Delivery to City. Upon City's request, MetroPlains shall cause the limited partners of each Partnership to execute a Consent evidencing the consent of the limited partners to the collateral assignment of the Collateral.

4. Proceeds and Products of the Collateral.

(a) Unless and until there occurs an Event of Default, City agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral, and MetroPlains shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of MetroPlains pertaining to the Collateral, payments due under, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same, provided, however, that MetroPlains shall not cast any vote or give any approval, consent, waiver or ratification or take any action which would be inconsistent with or violate any provision of this Agreement.

(b) MetroPlains acknowledges and agrees with City, that unless City otherwise consents, in City's sole discretion, MetroPlains shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after an Event of Default, and (ii) delivery of notice from City instructing MetroPlains not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that MetroPlains shall exercise any such right it may have under the Partnership Agreements with respect to the business affairs of the Partnerships as is reasonably necessary to protect and preserve the Collateral.

5. No Assumption. Notwithstanding any of the foregoing, whether or not an Event of Default has occurred, and whether or not City elects to foreclose on its security interest in the Collateral as set forth herein, neither the execution of this Agreement, receipt by City of any of MetroPlains' right, title and interest in and to the Collateral and the payments, proceeds and products of the Collateral, now or hereafter due to MetroPlains from any obligor of the Collateral, nor City's foreclosure of its security interest in the Collateral, shall in any way be deemed to obligate City to assume any of MetroPlains' obligations, duties, expenses or liabilities under the Collateral or any agreements constituting the Collateral, as presently existing or as hereafter amended, or under any and all other agreements now existing or hereafter drafted or executed (collectively, the "MetroPlains' Liabilities"), unless City otherwise agrees to assume any or all of MetroPlains' Liabilities in writing. In the event of foreclosure by City of its security interest in the Collateral, MetroPlains shall remain bound and obligated to perform MetroPlains' Liabilities and City shall not be deemed to have assumed any of MetroPlains' Liabilities, except as provided in the preceding sentence. If the entity or person acquiring the Collateral at a foreclosure sale elects to assume MetroPlains'

Liabilities, such assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. Representations, Warranties and Covenants. MetroPlains makes the following representations and warranties, which shall be deemed to be continuing representations and warranties in favor of City, and covenants and agrees to perform all acts necessary to maintain the truth and correctness, in all material respects, of the following:

(a) MetroPlains owns the Collateral free and clear of any claim, lien or encumbrance, other than the interest granted herein to City.

(b) MetroPlains has delivered to City true and complete copies of the Partnership Agreements and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to City in writing.

(c) MetroPlains has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character, or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. MetroPlains shall not, without the prior written consent of City, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. MetroPlains agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement against all claims of all persons (other than City and persons claiming through City), and (ii) maintain and preserve the Collateral and such security interests.

(d) MetroPlains' Employer Identification Number is 41-1675290, and its principal place of business is located at Suite 212, 1600 University Avenue, St. Paul, Minnesota 55104-3825.

(e) MetroPlains agrees that it shall not, without at least thirty (30) days' prior written notification to City, move or otherwise change its principal place of business or state of formation.

(f) MetroPlains shall not exercise any voting rights, or give any approvals, consents waiver or other ratifications in respect to the Collateral which would violate or contravene, or which would cause or otherwise authorize MetroPlains to violate or contravene, any provision of this Agreement.

7. Event of Default. Each of the following shall constitute an Event of Default hereunder:

(a) The failure by the Partnerships to pay the Recapture Payment within thirty (30) days following a Transfer.

(b) A material breach or violation of any covenant or agreement contained herein, which is not cured within thirty (30) days after notice has been given to MetroPlains by City.

8. Remedies.

(a) Upon an Event of Default, City may by giving notice of such Event of Default, at its option, do any one or more of the following:

(i) Declare all of the Recapture Payment secured hereby to be immediately due and payable, without presentment, demand, protest or notice of any kind; and

(ii) Take possession of all or any of the Collateral, collect, and apply against the Recapture Payment, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to MetroPlains; and

(iii) Obtaining a charging order directing the Partnership to make all payments with respect to the Collateral to the City; and

(iv) Without notice to or demand upon MetroPlains, make such payments and do such acts as City may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require MetroPlains to take all actions necessary to deliver such Collateral to City, or an agent or representative designated by it; and

(vi) Exercise any remedies of a City under the Uniform Commercial Code of the State of Kansas or any other applicable law.

(b) City shall give MetroPlains at least thirty (30) days' prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made. Such notice shall be conclusively deemed to have been delivered to MetroPlains at the address set forth in Section 6(d) of this Agreement, unless MetroPlains shall notify City in writing of its change of its principal place of business and provide City with the address of its new principal place of business.

(c) The proceeds of any sale under Section 8(a) above shall be applied as follows:

(i) To the repayment of the costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including actual legal expenses and attorneys' fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale has been made);

(ii) To the payment of the whole amount then due and unpaid of the Recapture Payment; and

(iii) The aggregate surplus, if any, shall be paid to MetroPlains in a lump sum, without recourse to City, or as a court or competent jurisdiction may direct.

(d) City shall have the right to enforce one or more remedies hereunder under this Agreement, successively or concurrently, and such action shall not operate to estop or prevent City from pursuing any further remedy which it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release MetroPlains until full payment of any deficiency has been made in cash.

9. Right to Pay Dividends. Except upon the occurrence and during the continuance of an Event of Default, MetroPlains shall have the right without the consent of City to make distributions to its Partners, excluding cash received as a result of a transfer (“Permitted Distributions”). Any such Permitted Distributions shall be free and clear of the lien created by this Agreement.

10. No Continuing Waiver. No delay or failure on the part of City in the exercise of any right or remedy against MetroPlains or any other party against whom City may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by City of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether contained in this Agreement or in any of the other documents regarding the Recapture Payment. No waiver of the rights of City hereunder or in connection herewith and no release of MetroPlains shall be effective unless in writing executed by City. No actions of City permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

11. Independent Obligations. The obligations of MetroPlains are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Recapture Payment, and a separate action or actions for payment, damages or performance may be brought and prosecuted by City against MetroPlains, for the full amount of the Recapture Payment then due and payable, whether or not an action is brought against any other party, whether or not City is involved in any proceedings and whether or not City or MetroPlains or other person is joined in any action or proceedings.

12. No Offset Rights of MetroPlains. No lawful act of commission or omission of any kind or at any time upon the part of MetroPlains shall in any way affect or impair the rights of City to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which MetroPlains has or may have against City or against any other party shall be available against City in any suit or action brought by City to enforce any right, power or benefit under this Agreement.

13. Power of Attorney. MetroPlains hereby appoints City as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full.

14. Non-Recourse. Notwithstanding anything to the contrary contained herein, the City’s recovery against MetroPlains following an Event of Default shall be limited solely to, and the City shall only proceed against, the Collateral as security for MetroPlains’ performance hereunder, and in no event shall (a) MetroPlains be personally liable for the payment of the

Recapture Payment or (b) any property or assets of MetroPlains, other than the Collateral, be subject to levy, execution or other enforcement procedure in connection with any Event of Default.

15. Successors and Assigns. All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

16. Notices. Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express service) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent by facsimile to the parties at the addresses and facsimile numbers shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith. Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

17. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

18. Amendment. This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

19. Termination. This Agreement shall terminate, and shall be of no further force or effect, upon the earlier to occur of (a) the repayment in full of the Recapture Payment, (b) sixty (60) months following the date of the Debt Termination Agreement and (c) upon the mutual consent of MetroPlains and City.

20. Assignment. Neither of the parties hereto shall assign, transfer or otherwise convey this Agreement or its rights, obligations or duties hereunder, whether in whole or in part, to any other person or entity, without the prior written consent of each other party hereto.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of Kansas.

22. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain unimpaired and shall continue in full force and effect.

23. Headings. Headings used in this Agreement are for purposes of convenience of reference only and shall in no way limit or affect the meaning or interpretation of any of the terms hereof.

24. Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the subject matter as of the date hereof and supersedes all prior understandings, representations, proposals, discussions, and negotiations whatsoever, whether oral or written, between the parties hereto.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, City and MetroPlains have caused this Pledge of Partnership Interests Agreement to be duly executed on or as of the day and year first above written.

CITY:

CITY OF WICHITA, KANSAS

By:

Its:

METROPLAINS:

METROPLAINS PROPERTIES, INC.

By:

Its:

STATE OF KANSAS)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006 by _____, the _____ of the City of Wichita, a municipal corporation duly organized and existing under the laws of the State of Kansas, on behalf of the corporation.

Notary Public

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006 by _____, the _____ of MetroPlains Properties, Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

CONSENT

MDI Limited Partnership #71, a Kansas limited partnership and MDI Limited Partnership #72, a Kansas limited partnership, hereby consent to the above Pledge and upon a transfer agree to distribute payments constituting the Collateral directly to the City up to the amount of Recapture Payments.

MDI LIMITED PARTNERSHIP #71

By: MetroPlains Properties, Inc.
General Partner

By:
Its:

MDI LIMITED PARTNERSHIP #72

By: MetroPlains Properties, Inc.
General Partner

By:
Its:

EXHIBIT D

AMENDMENT TO HOME INVESTMENT
PARTNERSHIP RENTAL HOUSING
PROGRAM REGULATORY AGREEMENT

This Amendment is made as of the ____ day of March, 2006 by and between MDI Limited Partnership #71, a Kansas limited partnership (the “Developer”) and the City of Wichita, Kansas (the “City”).

WHEREAS, the Developer and the City entered into the HOME Investment Partnership Rental Housing Program Regulatory Agreement dated March 10, 2000, filed with the Sedgwick County Register of Deeds on May 12, 2000 (the “Regulatory Agreement”); and

WHEREAS, the Developer, the City and MDI Limited Partnership #72 have entered into a Loan Prepayment and Termination Agreement to restructure certain debt related to the property (the “Loan Prepayment Agreement”); and

NOW, THEREFORE, for good and valuable consideration, the parties agree to amend the Regulatory Agreement as follows:

1. Article 12 of the Regulatory Agreement is hereby amended as follows:

12. Default; Remedies. Upon violation of any provision of this Agreement by the Developer, the City may give written notice thereof to the Developer, by registered or certified mail, addressed to the Developer’s address as stated in this Agreement, or to such other address(es) as may subsequently be designated by the Developer. If such violation is not corrected to the satisfaction of the City within 30 days after the date such notice is mailed, or within such further time as the City reasonably determines is necessary to correct the violation, without further notice the City may declare a default under this Agreement and may proceed to initiate any or all remedies at law or in equity available in the event of a default. In addition, if as a result of a default by the Developer under the Regulatory Agreement the U.S. Department of Housing and Urban Development (“HUD”) requires repayment of all or a portion of the subsidy in the amount of \$1,695,000 provided to the Developer, then the Developer shall immediately pay to the City the portion of the subsidy to be paid to HUD. In addition, the City may advise the tenants in the Property of the violation.

2. Article 17 of the Regulatory Agreement is hereby amended as follows:

17. This Regulatory Agreement shall automatically terminate on December 31, 2020, which is twenty (20) calendar years after the date of completion of the rehabilitation of the Property.

3. All other terms of the Regulatory Agreement shall remain in full force and effect.

Agenda Item No. 10.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0325

TO: Mayor and City Council Members

SUBJECT: Facility Improvements at Fire Training Grounds
(All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Project.

Background: The original facility constructed in 1965, consisted of steel and concrete burn buildings for simulating actual firefighting activities as follows:

- § A two-story masonry structure for simulating search and rescue activities
- § A five story open steel tower for simulating firefighting and rescue activities from an upper floor
- § An 800 ft² building for classroom, and minor maintenance of specialty equipment (self contained breathing apparatus and nozzles)
- § Approximately 80,000 ft² of concrete surface for driver and apparatus training
- § A pump test pit for performing annual testing of fire pumps on all major apparatus.

Since its origination, there have been two significant improvements made to the facility. In 1969 another 47,500 ft² of concrete flatwork was added to support improved driver training activities, and in 1987 a classroom was added to the building, which provided a total of 1600 ft² of space.

In the mid to late 80's efforts to market the property were explored. In 1990 the live fire building and the two-story rescue building were demolished. The training tower is beyond repair and structurally unsafe, therefore, the Fire Department took it out of service in the fall of 2004.

No significant improvements have been made to the facility in over 20 years. As a result the facility is in poor condition.

Analysis: Approximately 60% (78,000 ft²) of the concrete flatwork is cracked, broken, and/or chipped, exposing structural rebar. Staff is therefore advising that 78,000 ft² of concrete be torn out and replaced. This will permit the Department to continue providing driver training.

A second test pit needs to be built to accommodate the larger fire pumps. The fire pumps on the apparatus are tested on an annual basis to certify they meet national certification criteria. The size of new pumps moves the water within the test pit so rapidly that it heats up the water to an undesirable temperature directly impacting the performance of the pump. A second pit would provide sufficient amount of water to preclude this from happening.

The existing condemned tower needs to be demolished and a new pre-engineered 5 story burn tower be erected in its place. The new burn tower would allow fire fighting / rescue training to resume per the NFPA Standards.

In addition to the renovated facility, a two bay apparatus storage facility will be constructed. The current storage facility is not capable of accommodating the newer and larger apparatus and a savings could be realized if a facility was built in conjunction with the Tower and Burn Building.

Financial Considerations: Funding for the project is budgeted in the 2006 Capital Improvement Program and \$750,000 for concrete repair, and \$950,000 for replacing the burn tower for a combined total of \$1.7 million. This funding will cover design, construction, and construction administration of the project. Funding is provided by General Obligation Bonds (Project No. 435419; OCA No. 792487)

Legal Considerations: The Law Department has approved the Bonding Resolution as to form.

Recommendation/Action: It is recommended that the City Council adopt the Resolution, authorize initiation of the project, authorize staff to select a design consultant and authorize the necessary signatures.

Agenda Item No. 11.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0326

TO: Mayor and City Council

SUBJECT: 2006 Coventry Health Care Group Policy

INITIATED BY: Human Resources and Department of Finance

AGENDA: Consent

Recommendation: Approve the Addenda.

Background: Coventry Health of Kansas Inc. has submitted an Addendum to the Group Health Insurance Policy Agreement and a revised Rate Addendum reflecting the 2006 health insurance premium rates agreed to by the City.

Analysis: The Coventry Health Insurance Group Policy Addendum adds more detailed terms to be incorporated into the contract previously approved by the City Council in 2005. The Rate Addendum contains the 2006 premium rates previously approved by the City Council.

Financial Considerations: The Group Policy Rate Addendum formalizes the total monthly premiums of \$916.16/single and \$306.42/family (including Vision Services), which is the rate previously approved by the City Council.

Legal Considerations: The Department of Law has reviewed and approved as to form the 2006 Coventry Health Care Group Policy Addendum and the Rate Addendum.

Recommendation/Action: It is recommended that the City Council approve the 2006 Coventry Health Care Group Policy Addendum and Rate Addendum and authorize the Mayor to sign.

Agenda Item No. 12.

March 28, 2006

Agenda Report No. 06-0327

TO: Mayor and City Council Members

SUBJECT: Purchase of Access to Jobs Van

INITIATED BY Wichita Transit

AGENDA: Consent

Recommendations: Approve the purchase of one van.

Background: Using 50% FTA funds and 50% non-profit agencies' funds, Wichita Transit will purchase a passenger van for the Access to Jobs Program. This van will then be leased by the non-profit agency, which pays for half of the purchase price of the van. The Access to Jobs Van lease program will not cost the City any funding. In case the non-profit cancels their lease, the van will already be paid for and the van will return to the City. All operating costs incurred by the agency will be paid by the agency. Wichita Transit expects to complete the van purchase by May 30, 2006. The van will be used by the agency to provide rides to and from work for low-income individuals.

Analysis: KDOT selected Mid America Coach of KS City, MO to supply the Ford Eclipse. Wichita Transit is qualified to purchase a van at the bid price. The van will be leased by Goodwill Industries, Easter Seals of KS, Inc.

Financial Considerations: The Access to Jobs van will be purchased with grants from FTA (50%) and Goodwill Industries, Easer Seals of KS, Inc. (50%). The cost of the Eclipse is \$29,898.00.

Legal Considerations: City of Wichita Purchasing Ordinance No. 38-122 Section 2.64(J) provides for purchase of supplies, services and equipment from contracts and agreements of other governmental entities which have been awarded, subject to public bidding and approved by the proper governmental entity. Lease agreement was drafted by the Legal Department.

Recommendations/Actions: It is recommended that the City Council approve the purchase and authorize the necessary signatures.

LEASE AGREEMENT FOR WICHITA TRANSIT ACCESS TO JOBS VEHICLE (S)

This lease is made and entered into this 23rd day of March 2006, between the City of Wichita, Wichita Transit, with offices at 777 E. Waterman, Wichita, Kansas 67202, hereinafter referred to as LESSOR, and the Goodwill Industries, Easter Seals of KS, Inc. with offices at 3636 N. Oliver, Wichita, Kansas hereinafter referred to as LESSEE.

1. Lessor hereby leases to the Lessee, upon the terms and conditions of this Lease, upon the terms and conditions of this Lease and of the Master Agreement FTA-MA-4 dated October, 1997 as hereafter amended and the Federal Transit Administration (FTA) capital grant project No. KS-90-X061 and the Kansas Department of Transportation (KDOT) capital grant project No. PT-0779-95, the following described vehicle (s):

YEAR	MAKE	MODEL	VEHICLE ID
2006	Ford	Eclipse	

2. The term of this lease shall be a period of one (1) year, commencing May 2006 and ending April 2007, with the option to renew for up to four (4) additional, successive one (1) year terms. At the end of such term or renewals, or upon termination of this lease agreement as provided by Item 12 of Appendix A, General Provisions, attached hereto and which is incorporated herein by this reference, the Lessee shall promptly return said vehicle (s) to the Lessor in the condition in which it (they) was (were) received, ordinary wear and tear excepted

As part consideration for the lease of the above described vehicle (s), the Lessee agrees to pay the Lessor 1) a non-refundable front end payment equal to one half of the Lessor's total cost for the vehicle, including purchase price, taxes, delivery, dealer preparation fees, and all other costs incurred for acquisition 2) a rental fee of \$250.00 per year per vehicle, payable herewith and on each anniversary of the commencement date hereof.

3. Lessee shall use the vehicle (s) to meet the need in its service area for specialized transportation of individuals who have incomes of no more than 150% above poverty level who are going to work or back home from work.

Lessee shall not utilize the vehicle (s) for the purpose of providing charter services for the general public or any other organization, and shall utilize the vehicle (s) so that they do not compete with public or private transit carriers.

Lessee may utilize the use the vehicle(s) to serve other transit related needs so long as the usage is strictly incidental to, and does not interfere with, the intended transit service for low-income clients to and from work and the incidental use is consistent with the statutory and administrative requirements of the Federal Transit Administration.

4. At the termination of the term of this lease, the Lessee may, within thirty (30) days thereof, purchase any or all of the vehicles leased hereunder. The purchase price shall be the fair market value of said vehicles. Payment of the purchase price, less full credit for the front-end payment made at lease commencement, shall be due at the time Lessee exercises this option. Upon receipt of written notice of Lessee's exercise of this option and payment, Lessor shall deliver proof of ownership documents for the purchased vehicles to Lessee.

5. This Lease shall not be assignable, nor may the vehicle (s) described herein be subleased without the express written permission of the Lessor. If the Lessor gives its permission for such assignment or sublease, the terms of this Lease shall be incorporated into the assignment or sublease and binding on the parties thereto.

6. Lessee agrees to comply with the requirements of Appendix A, General Provisions attached to this Lease, as well as all standard assurances and one time submissions contained in FTA capital grant project KS-90-X061 incorporated by reference. The General Provisions require that the Lessee must comply with all rules and regulations applicable to the Lessee and the intended use of said vehicle (s), as listed in Volume 62, Page 53512 and following of the Federal Register entitled "FY 1998 Annual List of Certifications and Assurances" dated October 14, 1997 and as amended annually including complying with FTA's Final Rule 49 CFR Parts 29, 40, 653 and 654 establishing drug free workplace policies, drug and alcohol testing and anti-drug programs.

IN WITNESS WHEREOF, the parties have duly executed this Lease on the day and year above first written.

Goodwill Ind. Easter Seals of KS, Inc.
3636 N. Oliver
Wichita, Kansas 67220
Emily Compton
President & CEO

ATTEST

CITY COUNCIL WICHITA, KS

Karen Sublett
City Clerk

Carlos Mayans
Mayor

APPROVED AS TO FORM

Gary Rebenstorf
City of Wichita – Dept.of Law

APPENDIX A
GENERAL PROVISIONS

1. Lessee agrees to comply with any requirements set forth by the Kansas Department of Transportation (KDOT) which govern the use of state funded capital rolling stock and equipment to support transportation services for low-income clients.

2. Lessee further agrees to comply with the requirements of the Federal Transit Administration (FTA) and all standard assurances and one time submissions contained in FTA Access to Jobs grant project No. KS-90-X061, which are incorporated by this reference as though fully set forth herein, which are binding on the Lessor, where such terms, rules and regulations are applicable to the Lessee and its intended use of said vehicle (s) and equipment.

Lessee also agrees to be bound to the Federal Government by the same assurances made by the Lessor to the Federal Transit Administration with regard to compliance with statutes, regulations, administrative requirements, executive orders, Title VI of the Civil Rights Act of 1968, Section 223 of the Americans with Disabilities Act of 1990, all applicable federal regulations covering drug free workplace and drug/alcohol testing, all equal employment opportunity and affirmative action program requirements, laws and procedures. Other said assurances are listed in the FY1998 Annual List of Certifications and Assurances, and as amended annually in the Federal Register and are incorporated herein by this reference.

3. Lessee hereby assumes and shall bear risk of loss and damage to the vehicles (s) from any and every cause whatsoever. In the event of loss or damage of any kind to the vehicle (s), or any part thereof, which loss or damage is not covered by insurance proceeds as set forth in Item 5 (b) hereof, the Lessee, at the option of the Lessor, shall:

- A. Place the same in good repair, condition and working order; or
- B. Replace the same with vehicle(s) in good repair, condition, and working order, which vehicle (s) shall thereupon become subject to this Lease; or
- C. Pay Lessor in cash the Straight Line Per – Annum depreciated value of said vehicle (s) prior to the damage or loss, as mutually agreed by Lessor and Lessee. Upon such payment, this Lease shall terminate with respect to the said damaged vehicle (s) and Lessee thereupon shall become owner thereof.

4. Notwithstanding any other agreements, the Lessee agrees to indemnify and hold the Lessor harmless from all legal liability with respect to bodily injury, death and property damage arising from the negligence of the lessee in its use, maintenance and operation of each vehicle leased hereunder.

5. Lessee shall:

A. At its own expense, maintain and provide liability, collision and comprehensive insurance coverage with the following limits, or with higher limits if required by state law during the term of this agreement:

i. Liability:

Bodily Injury:	\$500,000	Each Accident
Property Damage:	\$500,000	Each Accident

OR

Bodily Injury & Property Damage Liability (Combined Single Limit)	\$500,000	Each Accident
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ii. Collision:

Actual Cash Value with a deductible of no more than \$1,000 to be paid by Lessee.

iii. Comprehensive:

Actual Cash Value with a deductible of no more than \$1,000 to be paid by Lessee.

B. The loss payable endorsement shall provide that all amounts payable by reason of loss for damage to the vehicle (s) and equipment shall be payable to the Lessor only. The Lessor agrees to apply all insurance proceeds to the repair of the vehicle. In the event that the vehicle is not repairable, this Lease will be terminated with respect to the vehicle and the Lessor shall retain the insurance proceeds.

The certificate of insurance shall state that the City of Wichita, Kansas-Wichita Transit shall be an additional insured under the policy of insurance and will be given a 30 –day notice prior to any material change or cancellation of any policy covered by the certificate of insurance. Such policy or certificate thereof, shall be delivered to the Lessor prior to the delivery of the vehicle (s) to the Lessee. Copies of all renewal policies and certificates shall be sent to the Lessor.

6. Lessee shall, at its own expense, pay all operating expenses necessary for the proper use and operation of each vehicle covered by this agreement. Lessee shall also be responsible for all maintenance of the vehicle (s) and related equipment. Such maintenance shall be performed at factory-authorized maintenance facilities, or facilities approved by Lessor, and in accordance with manufacturer’s recommended schedules and procedures. Lessee shall maintain maintenance records on each vehicle, which shall be subject to inspection by representatives of the Lessor during regular business hours. Representatives of the Lessor, FTA or KDOT shall also have the right to inspect the vehicle (s) from time-to-time during the term hereof to confirm that the vehicle (s) is (are) being properly maintained.

7. Lessee shall, at its own expense, pay all storage charges, parking charges, and fines, and shall also pay any fee imposed on each vehicle by any duly constituted governmental authority as a result of the use of intended use of the vehicle (s) by the Lessee.

8. No alterations, additions or improvements shall be made to the vehicle (s) without the prior written consent of the Lessor. All additions and improvements of whatsoever kind or nature made to the vehicle (s), shall immediately become the property of the Lessor and subject to the terms of this Lease.

9. Lessee shall inspect the vehicle (s) within 24 hours after receipt thereof. Unless the Lessee, within said period of time, gives written notice to the Lessor specifying any defect in, or other proper objection to, the vehicle (s), the Lessee agrees that it shall be conclusively presumed, as between the Lessor and the Lessee, that the Lessee has fully inspected and acknowledged, that the vehicle (s) is (are) in good condition and repair, and that the Lessee is satisfied with and has accepted the vehicle(s) in such good condition and repair. Lessee acknowledges that it is not relying on any promise as to the fitness of the vehicle(s) leased, and that none has been made by the Lessor. The Lessee hereby waives any claim against the Lessor for maintenance expenses or for other loss or damage to the Lessee as a result of the condition or performance of the vehicle (s) leased.

10. Lessee will not permit any person to operate the vehicle (s) unless such a person is a qualified, competent and careful licensed driver or chauffeur, and is otherwise permitted by law to operate the vehicle (s) described herein. An annual motor vehicle driver's record check, conducted by the Lessee, is required for each driver of the vehicle (s) and must be submitted to the Lessor within 30 days after completion.
11. Lessee shall mark said vehicle (s) with exterior decals, provided by the Lessor, for the purpose of identifying said vehicle (s) as being owned by the City of Wichita, Kansas – Wichita Transit. The Lessee may, in addition to the Lessor decal, place its own exterior identification decal on the vehicle (s) for the purpose of identifying the lessee sponsored operation of said vehicle(s). Any other interior or exterior advertisements, paid or otherwise, are prohibited and may not be placed on said vehicle (s).
12. Lessee shall keep satisfactory records with regard to the use of the vehicle (s) to assure compliance with FTA and KDOT regulations, and the terms and conditions of this Lease, and agrees to submit such records along with the maintenance records required by Item 6 of these General Provisions, on a monthly basis to the Lessor during the term hereof. In addition, Lessee shall permit authorized representatives of the city of Wichita – Wichita Transit, U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of Lessee relating to its performance under the Lease.
13. This Lease is irrevocable for the full term hereof and shall not be terminated or cancelled by Lessor or Lessee except as follows:
- A. Lessee will have the option to cancel this lease upon 30 days written notice should the Lessee become financially unable to provide funds for the operation of said vehicle (s).
 - B. Lessee shall be obligated to immediately return the vehicle (s) to the Lessor without notice, should the Lessee fail to provide transportation in compliance with FTA or KDOT regulations, or should the Lessee fail to fully comply with the terms and conditions of this Lease.
 - C. Lessor and the Lessee may agree to terminate this Lease for their mutual convenience.
14. This Lease is, and is intended, to lease said vehicle (s) and Lessee does not hereby acquire any right, title, or interest whatsoever, legal or equitable, in said vehicle (s) or equipment except as provided in this agreement. Lessor shall not be deemed a joint venturer with the Lessee in the operation of said vehicle (s), and Lessor and Lessee agree that Lessor shall not have right of control of the use of the vehicle (s) leased except as set out herein.
15. This Lease shall be governed by and construed under the laws of the State of Kansas.
16. Lessor's failure to strictly enforce any provisions of this Lease shall not be construed as a waiver thereof or as excusing the Lessee from future performance.
17. Notices provided for hereunder shall be deemed given when sent by certified mail to the signatories of this Lease at the addresses of the Lessee and the Lessor, as contained in this Lease, or to such person and address as either party shall notify the other in writing.
18. This Lease constitutes the entire agreement between the parties hereto, and any changes or modifications of this Lease must be in writing and signed by the parties hereto.

Agenda Item No. 13.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0328

TO: Mayor and City Council

SUBJECT: Cost-Share on Study for Runoff –Memorandum of Understanding

INITIATED BY: Water & Sewer Department

AGENDA: Consent

Recommendation: Approve the Memorandum of Understanding for professional services with members of the Groundwater Pits Task Force for a study of runoff.

Background: During the past few years, there has been significant interest about the impact of directing surface water runoff into groundwater pits. In 2005, the state legislature mandated a study to determine the impacts of storm water runoff into groundwater pits; however, the legislature provided no funding for the study.

Analysis: Groundwater pits are created when sand and gravel is mined from the earth, and the depth of the mining goes below the levels of groundwater. Groundwater then fills the space created by the mining. Regulations require untreated surface water runoff to be directed away from the pits, due to concerns that the surface water may contain pollutants that would contaminate the groundwater. The regulations especially impact residential developments adjacent to groundwater pits.

The U.S. Geological Survey is prepared to do a study to help determine whether surface water pollutants actually cause groundwater contamination. The Memorandum of Understanding (MOU) would commit the City to participate in the study, along with the Kansas Department of Agriculture, the Kansas Water Office, Sedgwick County, the Equus Beds Groundwater Management District, the Kansas Department of Health and Environment and the Wichita Area Builder’s Association. This phase of the study will last one year. It is hoped that additional phases will be done, with most of the funding coming from the state. Results of the study will be used to determine if current regulations are adequate to protect groundwater from pollution, or if they are too restrictive.

Financial Considerations: The cost for the study is \$123,000 with the contribution from the City being limited to \$10,000. Funding for the City’s share of the costs is available in CIP W-549, Water Supply Projects.

Legal Considerations: The MOU has been approved as to form by the Law Department.

Recommendations/Actions: Approve to the MOU and authorize the necessary signatures.

Agenda Item No. 14.

City of Wichita
City Council Meeting

March 28, 2006

Agenda Report No. 06-0329

TO: Mayor and City Council

SUBJECT: Amendment to Cross Lot Access Agreement-Central & Hillside
(District II)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Approve the First Amendment to Cross Lot Access and
Easement Agreement.

Background: In connection with the development of the southeast corner of Hillside and Central in 2002, the City agreed with the developer to permit cross lot access over the entire development, including parcels owned by the City. This Agreement was entered into in June 2002.

Analysis: The developer wishes to construct a parking lot to serve employees of Wesley Hospital that will be a restricted access lot through the use of electronic gates at the entrances and exits. The developer is requesting the City to consent to this arrangement by agreeing to permit this restriction on Lot 4 of the development and to amend the existing Cross Lot Access and Easement Agreement by removing Lot 4 from the property covered by that Agreement.

Financial Considerations: None.

Legal Considerations: The Law Department has approved the First Amendment to Cross Lot Access and Easement Agreement as to form.

Recommendations/Actions: Approve the First Amendment to Cross Lot Access and Easement Agreement and authorize the Mayor to sign.

Agenda Item No. 16.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0330

TO: Mayor and City Council Members

SUBJECT: SUB 2005-154 -- Replat of Rich's Addition, Located North of 13th Street North and East of Hood. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.
MAPC Recommendation: Approve the plat. (11-0)

Background: This site, consisting of two lots on .42 acres, is a replat of a portion of Rich's Addition. This replat also includes the vacation of 15th Street and a portion of Ferrell Street. The site has been approved for a Conditional Use (CON 2005-30) for a major utility to construct a sanitary sewer lift station.

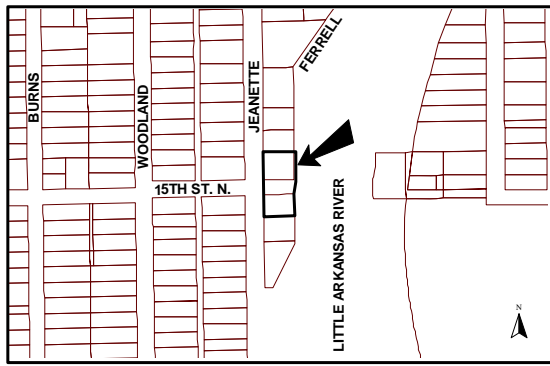
Analysis: Municipal services are available to serve the site. A Restrive Covenant was submitted to provide for the ownership and maintenance of the reserves being platted for drainage purposes. The City of Wichita has an interest in this property's ownership and is shown as one of the site's plattors.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within thirty (30) days.

Financial Considerations: None.

Legal Considerations: The Restrictive Covenant will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, and authorize the necessary signatures for both approval of the plat and as to the City's ownership interest.



Agenda Item 17.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0331

TO: Mayor and City Council Members

SUBJECT: SUB 2005-127 -- Plat of Weingartner Addition, Located West of Hydraulic and North of 63rd Street South. (District III)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.
MAPC Recommendation: Approve the plat. (9-0)

Background: This site, consisting of one lot on 1.87 acres, is located within Wichita's city limits and is zoned SF-5, Single-family Residential District.

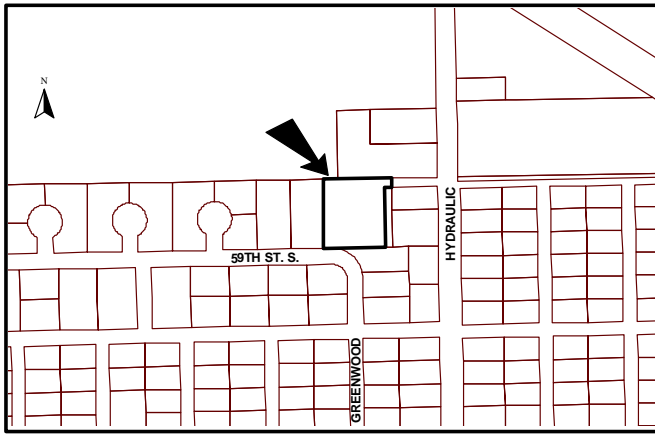
Analysis: Municipal water services are available to serve this site. A Petition, 100 percent, and a Certificate of Petition were submitted to guarantee the extension of future sanitary sewer main and lateral improvements. The site has been approved by the Department of Environmental Services for the use of on-site sanitary sewer facilities.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days.

Financial Considerations: None.

Legal Considerations: The Certificate of Petition will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the document and plat, authorize the necessary signatures and adopt the Resolution.



Agenda Item No. 18.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0332

TO: Mayor and City Council Members

SUBJECT: DED 2006-06 -- Dedication of a Utility Easement, Located North of 29th Street North and East of Hood. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.

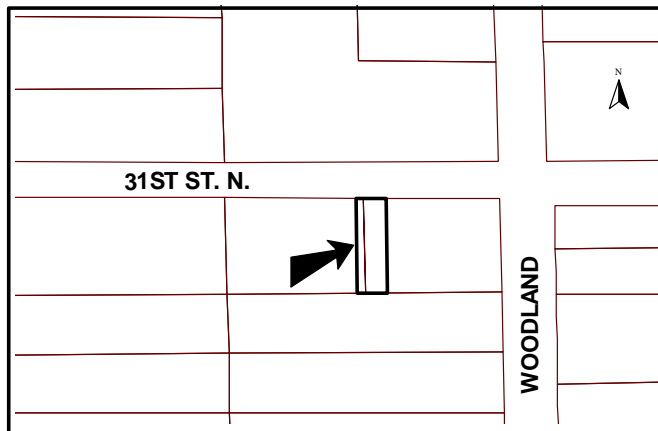
Background: This Dedication is associated with a lot split case (SUB 2006-13). The Dedication is for construction and maintenance of public utilities.

Analysis: None.

Financial Considerations: None.

Legal Considerations: The Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.



Agenda Item No. 19.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0333

TO: Mayor and City Council Members

SUBJECT: Street Improvement Agreement Associated With a Lot Split Case, Located East of Meridian and North of Harry. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION Planning (Consent)

Staff Recommendation: Approve the Agreement.

Background: This Agreement is associated with Lot Split Case No. SUB 2006-11 (Lots 17-23, odd, Stiles and Smith's Addition), and is for the future paving of Everett Avenue.

Analysis: The lot split will allow for the creation of four additional lots zoned TF-3, Two-family Residential District. This Agreement assures the City of Wichita that this property will be included in the paving improvements and that the owners have waived their right to protest said paving improvement.

Financial Considerations: None.

Legal Considerations: The Agreement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and authorize necessary signatures.

Agenda Item No. 20.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0334

TO: Mayor and City Council.

SUBJECT: VAC2006-00002 Request to vacate a platted drainage and utility easement, generally located southeast of the US Highway 54 and 151st Street West intersection. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.
MAPC Recommendation: Approve (unanimously).

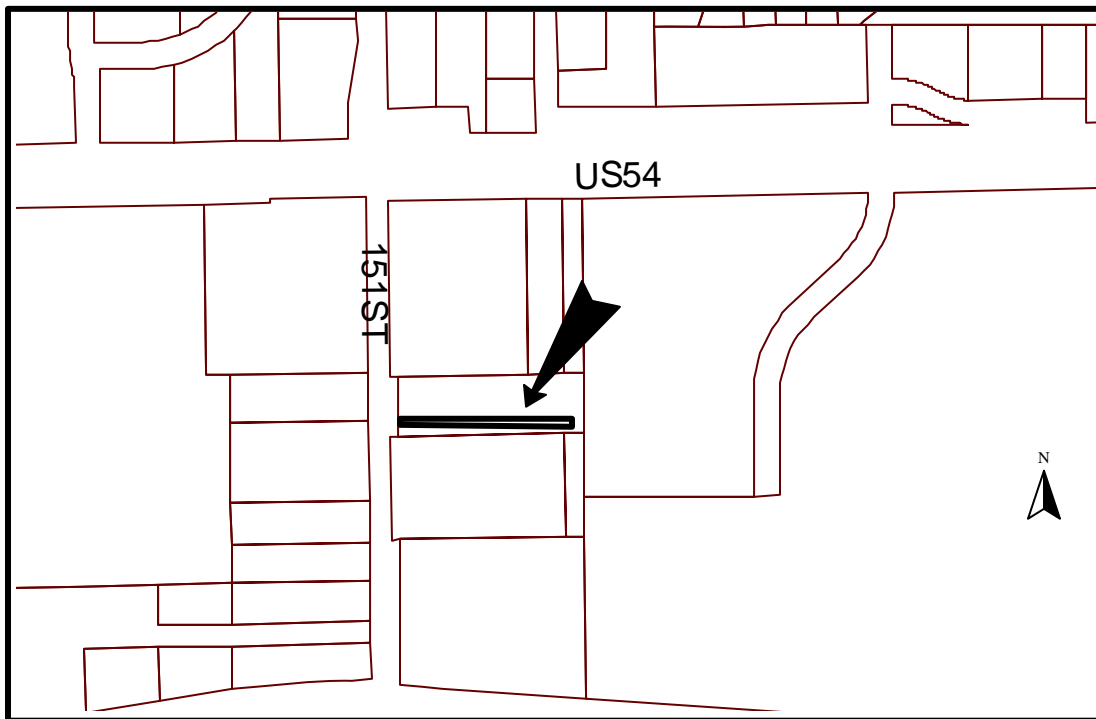
Background: The applicant is requesting consideration to vacate the platted 20-foot drainage and utility easement that runs parallel to the south lot line of the site in Lot 1, Block 1, Range Industrial Addition. There are no franchised utilities, manholes, sewer or water lines in the platted easement. The applicant has an approved drainage plan for the site, as required for obtaining a building permit. The Range Industrial Addition was recorded with the Register of Deeds on February 18, 1999.

Analysis: The MAPC voted (9-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Financial Considerations: None.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.



Agenda Item No. 21.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0335

TO: Mayor and City Council.

SUBJECT: VAC2006-00003 Request to vacate a portion of multiple platted utility easements, generally located at the southwest corner of Central Avenue and Rock Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.
MAPC Recommendation: Approve (unanimously).

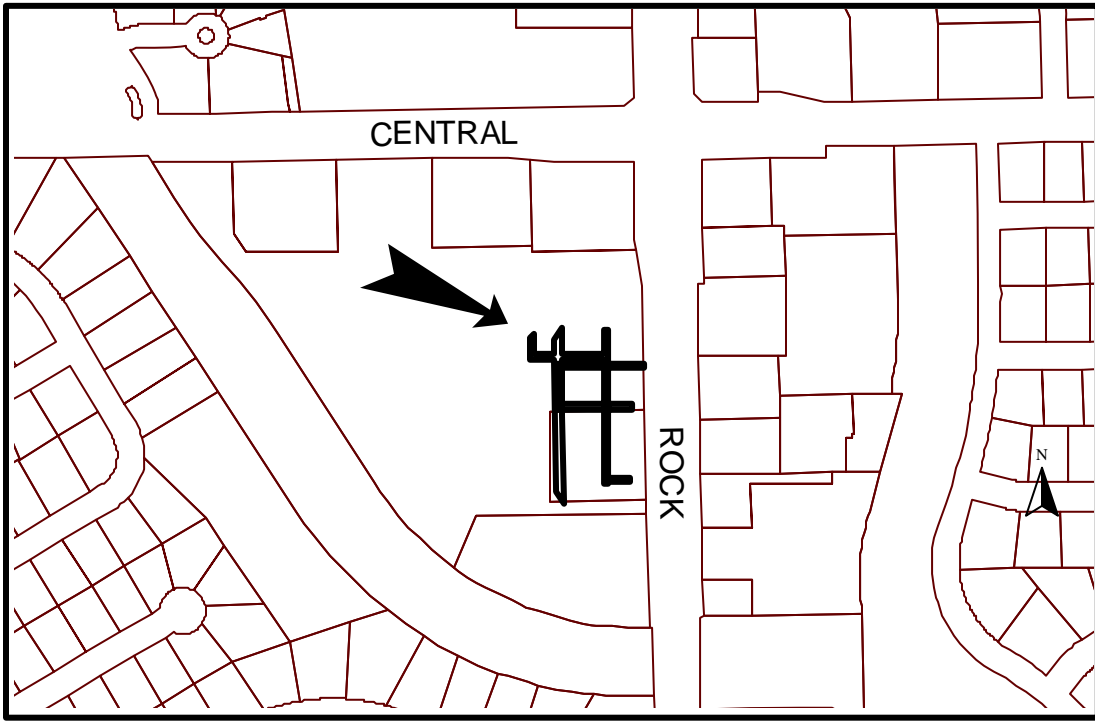
Background: The applicant proposes to vacate portions of platted 10-foot water easements and portions of platted 20-foot utility easements. There are manholes, sewer and water lines in most of the easements. The applicant proposes to relocate the utilities and protect them with easements dedicated by separate instrument(s). The platted 70-foot building setback line that appears to run parallel to one of the proposed vacated 10-foot water easements will remain in effect. The site is part of Community Unit Plan DP-41. The Rockwood Center 2nd Addition was recorded with the Register of Deeds on September 8, 2004.

Analysis: The MAPC voted (9-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Legal Considerations: A certified copy of the Vacation Order and easements dedicated by separate instrument will be recorded with the Register of Deeds.

Financial Considerations: Provide petitions guaranteeing the relocation of utilities.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.



Agenda Item No. 22.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0336

TO: Mayor and City Council.

SUBJECT: VAC2006-00004 Request to vacate a portion of a platted street right-of-way and a platted setback, generally located east of Seneca Street between 51st Street South and Hazel Avenue. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.
MAPC Recommendation: Approve (unanimously).

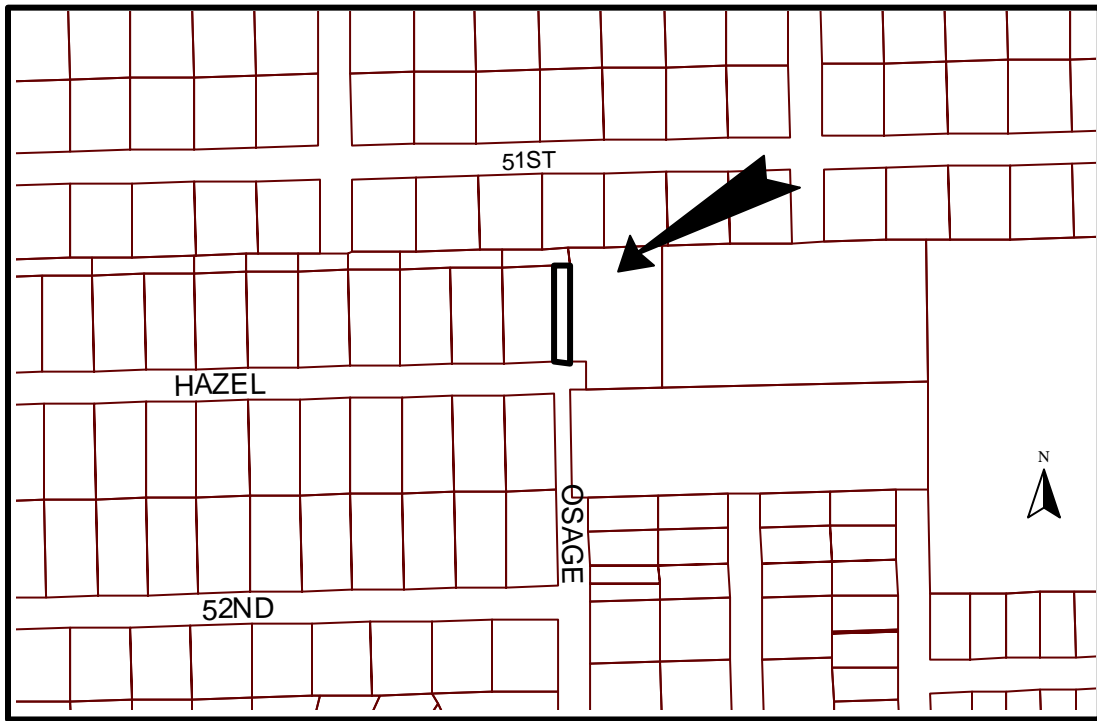
Background: The applicant is requesting vacation of the 178.6-foot long by 30-foot wide portion of the platted half-street right-of-way (ROW) of Osage Avenue, as dedicated in the Hankins 2nd Addition. Osage does not extend north of this site, ending against established single-family residences. There are no utilities, manholes, sewer or water lines in this portion of the platted Osage ROW. In comments taken from SUB2004-90 (the Belton Addition, recorded with the Register of Deeds on February 10, 2005) report, item “C” states that this portion of Osage should be vacated. There is a platted 30-foot street side setback that runs parallel to the proposed vacated ROW, located on Lot 11, Hankins 2nd Addition. This is the applicant’s lot, and he would also like to vacate this setback. This platted setback will be replaced with the Unified Zoning Code’s interior side yard setback for the site’s “SF-5” Single-family Residential zoning. The Hankins 2nd Addition was recorded with the Register of Deeds on April 5, 1951.

Analysis: The MAPC voted (13-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC’s advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Legal Considerations: A certified copy of the Vacation Order, a setback dedicated by separate instrument and a restrictive covenant will be recorded with the Register of Deeds

Financial Considerations: None.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.



Agenda Item No. 23.

City of Wichita
City Council Meeting
March 28, 2006

Agenda Report No. 06-0337

TO: Mayor and City Council Members

SUBJECT: A06-10R Request by Stephen G. Miller, of JBC Investments, Inc., to annex land generally located east of 127th Street East, between Harry and Kellogg. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Place the annexation ordinance on first reading.

Background: The City has received a request to annex 73.27 acres of land generally located east of 127th Street East, between Harry and Kellogg. The annexation area abuts the City of Wichita to the north, west and south. The property owner anticipates that the proposed property will be developed with approximately 36 single-family residential units. A plat is currently being reviewed, which is known as the Bellechase Addition.

Analysis:

Land Use and Zoning: The proposed annexation consists of approximately 73.27 acres of property currently zoned "SF-20" Single-Family Residential, which upon annexation will convert to "SF-5" Single-Family Residential. Property directly to the north and west is zoned "SF-5" Single-Family Residential. The property to the west is primarily vacant, with a few residential units and is known as the Woodland Lakes Estates 3rd Addition. The property to the north has recently been annexed and platted, of which the developer anticipates that the property (Country Hollow Estates) will be developed in stages over the next 10 years. Property to the east of the subject property is zoned "SF-20" Single-Family Residential and is currently vacant. Property to the south of the subject property is zoned "SF-5" and "SF-20" Single-Family Residential and currently has a few residential units and/or farmsteads.

Public Services: A 12" water line is in 127th Street East along the west side the of the subject property. The nearest sewer line is a 36" interceptor along the drainage way in the properties to the south of the subject property.

Street System: The subject property borders 127th Street East to the west, which is a paved, two-lane road. The 2006 Transportation Improvement Program and the City of Wichita Capital Improvement Program (CIP) 2005-2014 have scheduled Harry to be reconstructed and widened, between Greenwich and 143rd Street East, which is south of the subject property. The Sedgwick County Capital Improvement Program 2006-2010 does not call for improvements near the proposed annexation site.

Public Safety: Fire services to this site can be provided by the City of Wichita within a nine (9) to ten (10) minute approximate response time from City Station No. 15, located at 7923 E. Lincoln. Upon annexation, police protection will be provided to the area by the Patrol East Bureau of the Wichita Police Department, headquartered at 350 S. Edgemoor.

Parks: The WB Harrison Park, a 40.15-acre park, is located approximately 1 1/2 miles to the west of the subject property and contains 2 tennis courts, a softball diamond, a rugby field, a children's play area, a restroom, a paved jogging trail, a fishing pond, 2 benches and 12 picnic tables. According to the 1996 Parks and Open Space Master Plan, a potential future park site has been proposed at the site of the subject property. In addition, a pathway has been proposed that would run along the western edge of the subject property along 127th Street East.

School District: The annexation property is part of the Unified School District 259 (Wichita School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the 2030 Wichita Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is \$4,540 with a total assessed value of \$1,362. Using the current City levy ($\$31.828/\$1000 \times$ assessed valuation), this roughly yields \$43 in City annual tax revenues for the property. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner is anticipating that approximately 36 single-family residential units will be developed within the next two years. The total appraised value of this residential development after completion is estimated at \$7,200,000. Assuming the current City levy remains about the same, this would roughly yield a total of \$26,004 in City annual tax revenues.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, et seq.

Recommendations/Actions: Approve the annexation request and first reading of the Ordinance.

PUBLISHED IN THE WICHITA EAGLE ON _____

ORDINANCE NO. _____

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A06-10)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The governing body, under the authority of K.S.A. 12-519, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District II respectively:

That part of the N1/2 of the SW1/4 of Sec. 26, T27S, R2E of the 6th P.M., Sedgwick County, Kansas described as beginning at the N.W. corner of said SW1/4; thence N88°45'24"E along the north line of said SW1/4, 393.00 feet; thence S01°02'26"E, parallel with the west line of said SW1/4, 413.18 feet; thence S05°21'38"E, 64.18 feet; thence S43°03'34"E, 207.71 feet; thence N88°45'24"E, parallel with said north line, 213.37 feet; thence S03°08'58"E, 503.21 feet; thence S06°33'00"E, 64.27 feet; thence S01°17'44"E, 130.00 feet to the south line of said N1/2; thence S88°42'16"W along said south line, 775.52 feet to the S.W. corner of said N1/2; thence N01°02'26"W along the west line of said SW1/4, 1329.64 feet to the place of beginning, except that part designated as 127th Street East.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this _____.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

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