

ABILENE CITY COMMISSION - REGULAR MEETING AGENDA
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET
January 25, 2016 - 4:00 pm

1. **Call to Order**
2. **Roll Call:** ___ Weishaar ___ Marshall ___ Payne ___ Shafer ___ Ray
3. **Pledge of Allegiance**

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

4. Agenda Approval for the January 25, 2016 City Commission Meeting
5. Meeting Minutes: January 11, 2016 Regular Meeting

Public Comments and Communications

6. **Public Comments.** Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.
7. **Declaration.** At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Proclamations and Recognition

8. **Catholic Schools Week Proclamation**

Public Hearings

9. **None**

Old Business

10. **None**

New Business

11. **Consideration of a Resolution of Support for a Housing Tax Credit Application to be submitted to the Kansas Housing Resources Corporation by Abilene Highlands I, LLC.**
12. **Consideration of a Resolution to approve a Lease Purchase Agreement with First Bank Kansas concerning the lease purchase of air packs for the Fire Department.**
13. **Consideration of a motion to recess into executive session for ten minutes to discuss non-elected personnel to include the City Manager.**
14. **Consideration of a motion to return from executive session with no action being taken.**

Reports

15. **City Manager's Report**
 - a. **Expenditures Report**

Adjournment

16. **Consideration of a motion to adjourn the January 25, 2015 City Commission meeting.**

NOTE: A Land Bank Board of Trustees Meeting will proceed the City Commission's regular meeting.

Future Meeting Reminders: *(All meetings at Abilene Public Library unless otherwise noted)*

- Convention and Visitor's Board, January 26 at 2 pm (Civic Center)
- Tree Board Committee, January 26 at 5:00 pm
- Library Board Meeting, February 1 at 4:00 pm
- Kid's Council Meeting, February 1 at 6:00 (Frontier Estates)
- Commission Study Session, February 2 at 7:00 pm (City Hall)
- City Commission Meeting, February 8 at 4:00 pm



**Abilene City Commission Minutes
Abilene Public Library
January 11, 2016 @ 4:00 p.m.
Abilene, Kansas**

1. Call to Order

2. Roll Call – City Commission Present: Mayor Weishaar, Commissioners Ray, Payne, Marshall and Shafer.

Staff Present: City Manager Dillner, Human Resources Director/City Clerk Soukup, City Attorney Martin, Finance Director Rothchild, Public Works Director Schrader, Parks & Recreation Director Foltz, Community Development Director Shea, Police Chief Heimer, and Fire Chief Sims.

Others Present: Mike Heronemus and James D. Holland.

3. Pledge of Allegiance - Mayor Weishaar led the Pledge of Allegiance.

Consent Agenda

4. Agenda Approval for January 11, 2016 the City Commission Meeting
5. Meeting Minutes: December 28, 2015, Regular Meeting

Motion by Commissioner Marshall, seconded by Commissioner Shafer to approve the Consent Agenda with the additions to the agenda of item 13a, purchase of water meters and item 13b, executive session to discuss personnel matters with the City Commission and City Manager. Motion carried unanimously 5-0.

Public Comments and Communications

6. Public Comments. Persons who wish to address the City Commission regarding items not on the agenda and that are under the jurisdiction of the City Commission may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court are not permitted. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.

Mayor Weishaar asked for any comments or communications from the public that are not on the agenda.

There were no public comments or communications.

7. Declaration. At this time City Commissioners may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

There were no declarations.

Proclamations and Recognition

8. There were no proclamations or recognitions.

Public Hearings

9. There were no public hearings.

Old Business

10. There was no old business.

New Business

11. Consideration of a motion to approve the acquisition of a used 2010 International Tandem Axle Dump Truck from Summit Truck Group, Inc. for \$55,332.00 and to declare as surplus a 1989 Dump Truck and authorizing its sale through Purple Wave, Inc.

Public Works Director Schrader presented information regarding the purchase of a 2010 International Tandem Axle Dump Truck in the amount of \$55,332.00 from Summit Truck Group, Inc. \$60,000.00 was budgeted in 2016 for this purchase. This replaces the 1989 dump truck the department currently has and authorizes its sale through Purple Wave, Inc.

Motion by Commissioner Ray, seconded by Commissioner Payne to approve the acquisition of a 2010 International Tandem Axle Dump Truck in the amount of \$55,332.00 from Summit Truck Group, Inc., and to declare as surplus a 1989 Dump Truck and authorizing its sale through Purple Wave, Inc. Motion carried unanimously 5-0.

12. Consideration of a motion to approve a bid of \$161,114.23 from Municipal Emergency Services, Inc. for air packs and related equipment for the Fire Department.

City Manager Dillner said in the 2015 budget the City Commission approved the acquisition of 26 air packs. The Fire Department went out for bids on those and received a bid from Municipal Emergency Services, Inc. for \$161,114.23. This purchase was approved with the condition that they would be financed. At this meeting we are approving the bid for the air packs and at the next meeting we will approve the financing.

Motion by Commissioner Payne, seconded by Commissioner Marshall to approve the bid from Municipal Emergency Services, Inc. in the amount of \$161,114.23 for the purchase of air packs and related equipment for the Fire Department. Motion carried unanimously 5-0.

13. Consideration of a Resolution establishing the 2016 Legislative Agenda for the City of Abilene, Kansas.

City Manager Dillner presented information regarding Resolution No. 011116-1 establishing the 2016 Legislative Agenda for the City of Abilene. In essence it is the Statement of Municipal Policy as prepared by the League of Kansas Municipalities although the City also supplements it with its own local agenda. We focus on the Chisholm Trail/Historic Trail Project, the Greyhound Industry, Water Reclamation, Base Realignment and Closure and the Eisenhower Presidential Library, Museum and Boyhood Home.

City Manager Dillner reported on a couple important issues which are anticipated to be large topics for municipalities in the 2016 Legislative Session. The first is City elections should remain non-partisan and separate from state and national elections. Local spending and taxing decisions are best left to local officials for the citizens they represent. The League and the Statement of Municipal Policy opposes any limits on local revenue sources, the idea behind that is that the property tax lid legislation is presumed up again in 2016 and the proposal will be to make it effective July 1, 2016 as opposed to July 1, 2018 and there may also be a look at the exemptions that currently exist in state law. There are a couple other of items with respect to fees that are directed out of state commercial vehicles; those fees are meant to go to the Special City/County Highway Fund however they have been directed to the State General Fund in the recent past so we are urging the Legislature to keep those funds in the City/County Highway Fund. In addition we support current law regarding the use of state and local public monies to provide information and advocate on behalf of our citizens and cities. One federal issue is the urging of Congress to implement an action plan to require the mandatory collection of sales and use taxes. There are numerous other items on the legislative agenda that we can address as they come up to best serve the City.

Motion by Commissioner Ray, seconded by Commissioner Marshall to approve Resolution No. 0111161 A **RESOLUTION ESTABLISHING THE 2016 LEGISLATIVE AGENDA FOR THE CITY OF ABILENE, KANSAS. MOTION CARRIED UNANIMOUSLY 5-0.**

13a. Consideration of a motion to approve the purchase water meters.

Public Works Director Schrader presented information regarding the purchase of new Sensus water meters. We can get a considerable price break if we purchase a large amount of meters all at once instead a few here and there. There is \$118,000.00 budgeted in 2016 for the purchase of water meters.

Motion by Commissioner Ray, seconded by Commissioner Payne to approve the purchase water meters. Motion carried unanimously 5-0.

13b. Consideration of a motion to adjourn into executive session for ten minutes to include the City Manger.

Motion by Commissioner Marshall, seconded by Commissioner Payne to adjourn into executive session at 4:20 p.m. for a period of ten minutes to include the City Manager. Motion carried unanimously 5-0.

Motion by Commissioner Marshall, seconded by Commissioner Payne to return to regular session at 4:31 p.m. Motion carried unanimously 5-0.

There was no action taken in executive session.

Reports

14. City Manager Reports

The Commission retreat is scheduled for January 22nd and 23rd. If you have not already done so, please email John Devine the times you might be available on January 14th for a brief one on one meeting, he said the shouldn't take more than 15-20 minutes.

The League of Kansas Municipalities Legislative Preview was last week. There wasn't allot we didn't expect. They talked about the property tax cap, abandoned and blighted housing and possible streamline processing for that. They talked about anticipated legislation that would look at insurance proceeds, specifically now if you house is damaged by fire for example more that 75%, the City can make a claim for a lien against the insurance proceeds until it is repaired, replaced or removed and once that is done you get your money back. They are anticipating the amending that law to include seismic activity, such as an earthquake. They talked little bit about body cameras for Police Officers, there might be some gun legislation and other issues regarding cities.

Tonight is the first meeting of the STAR Bond committee.

15. Expenditure Report

Adjournment

16. Consideration of a motion to adjourn the January 11, 2016 City Commission meeting.

Motion by Commissioner Marshall, seconded by Commissioner Ray to adjourn at 4:36 p.m. Motion carried unanimously 5-0.

(Seal)

Dennis P. Weishaar, Mayor

ATTEST:

Penny L. Soukup, CMC
City Clerk

Proclamation

Catholic School's Week 2016

January 31, 2016 through February 6, 2016

Whereas, St. Andrew's Catholic School, Abilene, Kansas has been an educational institution in our community for 56 years; and

Whereas, students and alumni of St. Andrew's Catholic School provide vital contributions to our community; and

Whereas, the staff, volunteers and families associated with St. Andrew's Catholic School and St. Andrew's Parish are committed to carrying on its tradition of excellence; and

Whereas, the on-going support of this community and its citizens contributes to St. Andrew's ability to achieve its mission;

Therefore, I, Dennis P. Weishaar, Mayor of the City of Abilene, Kansas do hereby proclaim January 31, 2016 through February 6, 2016 to be Catholic Schools Week.

I encourage all citizens of Abilene to recognize the many accomplishments and opportunities that this outstanding school provides to our community.

Executed this 25th day of January, 2016 and witness my hand:

Penny L. Soukup
City Clerk, City of Abilene

Dennis P. Weishaar
Mayor, City of Abilene

RESOLUTION NO. 012516-1

A RESOLUTION OF SUPPORT FOR A HOUSING TAX CREDIT APPLICATION TO BE SUBMITTED TO THE KANSAS HOUSING RESOURCES CORPORATION BY ABILENE HIGHLANDS I, LLC

WHEREAS, Abilene Highlands I, LLC (“Developer”) has requested a Resolution of Support from the City of Abilene, Kansas (“City”) concerning a housing tax credit application with the Kansas Housing Resources Corporation (“KHRC”) for the development of affordable rental housing to be located at property generally described as the Abilene Highlands in Abilene, Kansas, with a legal description as follows:

Lots 25, 26, 27, 28, 29, 30, 31 and 32, Block 2, West Highlands to the City of Abilene, Dickinson County, Kansas, and Lots 1, 2, 3, 4, 5 and 6, Block 3, West Highlands to the City of Abilene, Dickinson County, Kansas.

WHEREAS, the Developer desires to exchange real estate with property owned by the Land Bank of the City of Abilene, Kansas, and use such property for the development of affordable rental housing as defined by KHRC;

WHEREAS, the Project would assist in the development of a subdivision that is delinquent in the payment of special assessments and property taxes, thus creating a financial burden on the taxpayers of the City;

WHEREAS, the exchange of such real estate is conditioned upon the successful application by Developer for KHRC housing tax credits;

WHEREAS, the Developer has requested an amendment to the City’s Neighborhood Revitalization Program (“Program”) that would provide a rebate of ad valorem property taxes on eligible residential development for ten years; and

WHEREAS, the Development is anticipated to include the new construction of twenty-eight units planned to be marketed as affordable housing.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Finding. The governing body makes a finding that the proposed Development is in the best interests of the City and that it will help the City provide affordable housing to eligible individuals and families and will facilitate the development of the Abilene Highlands subdivision.

SECTION TWO. Support. The City supports the Developer’s application for the Housing Tax Credit Program administered by the KHRC for the aforementioned Development. The Developer has provided the City with information necessary for the governing body to conduct a thorough evaluation of the Project. The City acknowledges that the Development has met the necessary regulatory approvals required by City ordinances and policies. The Developer will be able to commence construction in a timely manner if tax credits are awarded to the Project.

SECTION THREE. Rent Rates. The Developer acknowledges that the rental rates for the Housing Development shall not exceed the Fair Market Rent, as defined by the KHRC, and as otherwise amended.

SECTION FOUR. Local Incentives. The governing body will consider the Developer's request to amend the Neighborhood Revitalization Program ("Program") to allow the Program to apply to the Development. The Economic Development Council has recommended approval of an amendment to the Program to allow it to apply to properties zoned with the "HO-O, Housing Opportunities Overlay District" and/or the "EH-O, Elderly Housing Overlay District," as set forth by the Zoning Regulations of the City. The governing body may also consider such other incentives as may be appropriate to make the Development feasible.

SECTION FOUR. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of January, 2016.

CITY OF ABILENE, KANSAS

By: _____
Dennis P. Weishaar, Mayor

ATTEST:

Penny Soukup, CMC
City Clerk

Memo

To: City Manager
 From: Marcus Rothchild, Finance Director
 Date: January 22, 2016
 Re: Fire Fighter Air-Pak Financing

In the 2016 Budget a purchase of 26 new Firefighter Air-Paks was approved with the understanding that the City of Abilene would secure a four year lease purchase option. We requested bids from five local area banks as well as a leasing partner that was recommended by the vendor. The 2016 budgeted amount was \$43,134. The lease purchase option will have the 2016 budget number of \$43,134 as a down payment followed by three additional payments starting in 2017 with the final payment made in 2019.

The City received three bids in response to our request:

- | | Interest Rate |
|--------------------------------|---------------|
| 1. Community Leasing Partners: | 3.12% |
| 2. Astra Bank | 3.25-3.5% |
| 3. First Bank Kansas | 2.75% |

After reviewing all proposals First Bank Kansas provided the most competitive bid with the following amortization schedule:

3/1/2016		Advanced	\$117,980.23	Interest Rate	2.75%	
Pmt No	Payment Date	Beginning Balance	Scheduled Payment	Principal	Interest	Ending Balance
1	1/15/2017	\$ 117,980.23	\$ 40,380.32	\$ 37,496.35	\$ 2,883.97	\$ 80,483.88
2	1/15/2018	\$ 80,483.88	\$ 40,380.32	\$ 40,189.73	\$ 190.59	\$ 40,294.15
3	1/15/2019	\$ 40,294.15	\$ 40,380.33	\$ 40,294.15	\$ 86.18	\$ -

I suggest that we move forward with the lease-purchase agreement from First Bank Kansas to finance the purchase of 26 Firefighter Air-Paks from Municipal Emergency Services, Inc.

CLARK, MIZE & LINVILLE

CHARTERED

PETER L. PETERSON
JOHN W. MIZE
GREG A. BENGTON
PAULA J. WRIGHT
ERIC N. ANDERSON
DUSTIN J. DENNING
PETER S. JOHNSTON
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C.L. CLARK (1908 - 2004)
JAMES P. MIZE (1910 - 1988)

AUBREY G. LINVILLE
L.O. BENGTON
MICKEY W. MOSIER
RETIRED

January 25, 2016

Mr. Ryan Peschka
Chief Financial Officer
First Bank Kansas
P.O. Box 1337
Salina, Kansas 67402-1337

Re: Lease Purchase Agreement by and between First Bank Kansas ("Lessor") and City of Abilene, Kansas ("Lessee")

Dear Mr. Peschka:

I have acted as counsel to Lessee with respect to the Lease Purchase Agreement described above and various related matters, and in this capacity have reviewed a duplicate original or certified copy thereof, the Exhibits attached and executed pursuant thereto (together, the "Lease") with an effective date of March 1, 2016 between Lessor and Lessee. Based upon the examination of these and such other documents as I deem relevant, it is my opinion that:

1. Lessee is a political subdivision of the State of Kansas ("State"), duly organized, existing, and operating under the Constitution and laws of the State.
2. Lessee is authorized and has power under applicable law to enter into the Lease, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Lease has been duly authorized, approved, executed, and delivered by and on behalf of Lessee, and is the legal, valid, and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal laws affecting remedies against Lessee as the State or as a political subdivision on the State and by bankruptcy, reorganization, or other laws of general application relating to or affecting the enforcement of creditors' rights.
4. The authorization, approval, and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.

Mr. Ryan Peschka
January 25, 2016
Page 2 of 2

5. The execution, delivery and performance of the Lease do not and will not result in the violation of any constitutional, statutory, or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. To the best of the undersigned's knowledge, there is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator, or governmental body that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease; the proper authorization, approval and/or execution of the Lease, and other documents contemplated thereby; the appropriation of moneys to make Lease Payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease, and the transactions contemplated thereby and, to the best of my knowledge, no such litigation or actions are threatened.

7. The equipment financed by the Lease is personal property, and when used by the Lessee will not be or become fixtures under the laws of the State.

8. Resolution No. _____ of the governing body of Lessee was duly and validly adopted by such governing body on January 25, 2016, and such resolution has not been amended, modified, supplemented, or repealed and remains in full force and effect.

Very truly yours,

CLARK, MIZE & LINVILLE, CHARTERED

Aaron O. Martin
aomartin@cml-law.com

cc: Marcus Rothchild, Finance Director

LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT is made and entered into by and between the Lessor and Lessee, with the Effective Date set forth below.

1. **Definitions.** For purposes of this Lease-Purchase Agreement, the following terms shall have the respective meanings set forth below:

LEASE: This Lease-Purchase Agreement dated as of the Effective Date, by and between the Lessor and Lessee.

EFFECTIVE DATE: 3/1/16.

TERMINATION DATE: 1/15/19.

LESSOR: First Bank Kansas, a Kansas state-chartered bank.

LESSEE: City of Abilene, KS.

PROPERTY: The property that is the subject of this Lease and that is described on Exhibit "A" which is attached hereto and by reference made a part hereof.

LEASE TERM: The period beginning on the Effective Date and ending on the Termination Date, unless earlier terminated pursuant to the terms of the Lease.

RENTAL PAYMENTS: The payments due in the amounts and upon the dates set forth on Exhibit "B" which is attached hereto and by reference made a part hereof.

OPTION PRICE: One Dollar (\$1.00), which is payable upon the Lessee exercising its Purchase Option pursuant to the terms of the Lease.

PURCHASE PRICE: The sum of the Option Price plus all remaining Rental Payments due to be paid on the date that Lessee exercises its option to purchase the Property.

INTEREST RATE: 2.75 % per annum, which shall be the interest rate component of the Rental Payments and the interest rate assessed on any unpaid Rental Payments or other or additional advances made by Lessor and owed by Lessee.

PROPERTY INSURANCE DEDUCTIBLE: \$5,000.

PUBLIC LIABILITY COVERAGE: \$1,000,000.

PUBLIC LIABILITY DEDUCTIBLE: \$1,000.

2. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property for the Lease Term in exchange for the Rental Payments.

3. **Rental Payments.** A portion of each Rental Payment is paid as and represents payment of interest, and the balance of each Rental Payment is paid as and represents payment of principal, as set forth on Exhibit "B". Each Rental Payment and any additional amounts for which Lessee becomes obligated hereunder, which are not paid when due, shall bear interest at the Interest Rate from the date on which the Rental Payment or additional other payment becomes due until the same is paid. Lessee may prepay the Rental Payments or any portion thereof at any time, and any such prepayment shall be credited against the next Rental Payment.

4. **Rent as Current Expense.** Lessee's obligation to pay the Rental Payments in the amounts and on the due dates set forth on Exhibit "B" shall constitute a current expense of Lessee and shall not be construed to be a debt of Lessee in violation of any constitutional or statutory limitations concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of Lessee.

5. **Purchase Option.** Lessee shall have the option to purchase the Property, but only if Lessee is not in default under the Lease. Lessee may exercise its option to purchase the Property on any Rental Payment due date by paying the Purchase Price, provided that Lessee shall give Lessor not less than thirty (30) days advance written notice of its intention to exercise its option to purchase.

6. **Transfer of Title.** During the Lease Term, title to the Property shall be vested in Lessor. Upon Lessee's exercise of the option to purchase and the payment of the Purchase Price, title to the Property shall be conveyed to and vested directly in Lessee, and Lessor shall execute and deliver to Lessee a Bill of Sale for the Property and such other and further instruments and assurances as may be reasonably necessary to transfer the Property to Lessee.

7. **Maintenance and Operation:** During the Lease Term, Lessee shall, at its own expense, maintain or cause to be maintained the Property in good order, condition and repair, and Lessor shall have no obligation to incur any of said expenses; provided, however, that if Lessee fails to keep the Property in good repair and operating condition, Lessor may, but shall be under no obligation to, make such repairs as are necessary and to provide for the payment thereof, and all such amounts so advanced by Lessor shall be repaid by Lessee as an additional amount for which Lessee becomes obligated hereunder, and Lessee hereby agrees to pay any such additional amount, plus interest at the Interest Rate, for which it may become obligated hereunder. Lessor, at its option, may request that Lessee enter into a maintenance contract for the Property with the vendor of the Property or otherwise.

8. **Use of the Property.** The parties mutually agree that Lessee, by performing the covenants and agreements herein contained, shall during the Lease Term, peaceably and quietly have, hold and enjoy the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law, or in any manner contrary to that

contemplated by this Lease and the nature of the property. The Property will be used only for governmental or proprietary purposes of Lessee; therefore, the parties contemplate that the Property will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Property is found to be subject to taxation in any form, Lessee will pay during the Lease Term all taxes and governmental charges whatsoever that may be lawfully assessed or levied against or with respect to the Property. Lessee shall keep the Property free and clear of all liens, charges and encumbrances, except as may be approved in advance in writing by Lessor; provided, however, that nothing in this Lease shall preclude Lessee from pledging its full faith and credit to the repayment of any legally authorized general obligation bond issue of Lessee.

9. **Insurance.** During the Lease Term, Lessee shall maintain or cause to be maintained, at its own expense, the following policies of insurance:

(a) Insurance against loss or damage to the Property resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and other perils as Lessor and Lessee may agree. Such insurance shall during the Lease Term be in an amount not less than: (1) the full insurable value (i.e., the actual replacement cost "new") of the Property, or (2) the then current Purchase Price, whichever is more, subject to the Property Insurance Deductible, and shall contain an inflation guard endorsement.

(b) Public liability insurance against claims for bodily injury, death, or damage to property occurring upon, in, or about the Property, such insurance to provide coverage in an amount not less than the Public Liability Coverage, subject to the Public Liability Deductible.

All insurance policies shall be issued by insurers of recognized responsibility, licensed or admitted to do business in the state of Kansas. All policies or certificates of insurance shall name Lessee and Lessor as named insureds. Such policies and certificates shall not be cancelled or materially changed without at least thirty (30) days prior written notice to Lessor, and shall carry loss payable endorsements in favor of Lessor where applicable. Evidence of coverage satisfactory to Lessor shall be deposited with Lessor by Lessee. All premiums and charges shall be paid by Lessee, and evidence of payment of the premiums shall be delivered by Lessee to Lessor. In the event Lessee fails to maintain the insurance required, Lessor shall have the right to procure and maintain such insurance and shall charge Lessee for the cost thereof as an additional amount for which Lessee becomes obligated hereunder. Lessee may provide such insurance as part of "blanket" coverage maintained on all assets of Lessee, and with the written consent of Lessor may be a self-insurer of such risks. If the insurance proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement, Lessee shall complete the work and pay any cost in excess of the insurance proceeds.

10. **Indemnification.** To the extent permitted by applicable law, Lessee shall indemnify, protect, and hold harmless Lessor from and against any and all liabilities, obligations,

losses, claims, and damages whatsoever, including without limitation, attorney fees and expenses, arising out of or as the result of Lessee's default under this Lease, the ownership of the Property, or any accident in connection with the operation, use, condition, possession, storage or return of the Property.

11. **Right of Inspection.** Lessor and its designated representative shall have the right during regular business hours to enter into and upon the premises of Lessee to inspect the Property or for any purpose connected with Lessor's rights under this Lease.

12. **Triple Net Lease.** This Lease shall be deemed and construed to be a "triple net lease" in that Lessee hereby agrees that the Rental Payments provided for herein shall be an absolute net return to Lessor, and that Lessor shall not be responsible for any expenses, charges or set-offs whatsoever related to the operation, maintenance and repair of the Property.

13. **Termination of Lease Term.** The Lease Term will terminate upon the earliest occurrence of any of the following events:

- (a) The expiration of the Lease Term;
- (b) The exercise by Lessee of the option to purchase granted under Paragraph 5;
- (c) A default by Lessee and Lessor's election to terminate this Lease;
- (d) The payment by Lessee of all Rental Payments and all additional amounts for which Lessee may become obligated under this Lease;
- (e) Upon notice of election to terminate the Lease due to an event of taxability pursuant to Paragraph 15 hereof, and the failure of Lessee to exercise its option to purchase at the next regular Rental Payment due date.

14. **Non-appropriation.** Lessee shall use its best efforts to include the Rental Payments for each fiscal year and any other financial obligations hereunder in its budget for such fiscal year. In the event sufficient funds are not budgeted and appropriated by Lessee for any fiscal year to provide for the Rental Payments or any other obligation of Lessee required hereunder, then Lessee shall terminate this Lease by providing thirty (30) days written notice to Lessor of Lessee's intent to terminate. In such event, the Lessee shall not be obligated to make the Rental Payments beyond the end of the period for which Lessee has budgeted. Lessee shall surrender the Property to Lessor on the last day for which Rental Payments have been made. Upon such early cancellation, Lessee may not thereafter acquire functionally similar property for the full original Lease Term. If funds are made available to Lessee after such early cancellation for property which will perform services and function in full or in part the same as the Property, Lessee agrees to purchase, lease or otherwise acquire such property from Lessor. The non-payment of any Rental Payment pursuant to this paragraph shall not constitute a default under this Lease.

15. **Occurrence of an Event of Taxability.** Lessor and Lessee contemplate that the interest component of the Rental Payments paid by Lessee will not be included in Lessor's gross income for purposes of federal income taxation. In the event that Lessee or Lessor are advised that the interest component of the Rental Payments is or has become includable in gross income for purposes of federal income taxation, Lessor (or its assigns) may elect in writing to terminate this Lease at the next regular Rental Payment due date, subject only to Lessee's option to purchase as granted in Paragraph 5 of this Lease.

16. **Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY. In no event shall Lessor be liable for incidental, indirect, special or consequential damages in connection with or arising out of this Lease or the existence, furnishing, functioning of Lessee's use of any item or products or services provided for in this Lease. Lessor hereby irrevocably appoints Lessee as its agent and attorney-in-fact during the Lease Term, and so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Property, which Lessor may have against the vendor of the Property. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the vendor of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease and its right to receive full and timely Rental Payments hereunder. Lessee expressly acknowledges that Lessor makes and has made no representation or warranties whatsoever as to the existence or availability of such warranties by the vendor of the Property.

17. **Assignment.** Neither this Lease nor any interest of Lessee herein shall be mortgaged, pledged, assigned or transferred by Lessee, without the prior written consent of Lessor. Lessee shall at all times remain liable for the performance of the Lease, notwithstanding any assigning, transferring or subletting which may be made. In no event shall Lessee sublease or permit the use of all or any part of the Property so as to cause the interest component of the Rental Payments to become includable in Lessor's gross income for computation of federal income taxation. Lessor shall have the right to assign its interest in this Lease and the Rental Payments to another party, and Lessee agrees to execute any and all documents necessary and proper in connection therewith.

18. **Default by Lessee.** If: (i) Lessee fails to pay any Rental Payment or other payment within fifteen (15) days from the date it is due and payable; (ii) Lessee fails to observe and perform any other term, covenant or condition contained herein for a period of thirty (30) days after written notice thereof from Lessor to Lessee; (iii) Lessee abandons the Property; or (iv) Lessee's interest in this Lease or any part thereof is assigned or transferred without the written consent of the Lessor, then Lessee shall be deemed to be in default hereunder. If Lessee is in default, Lessor shall have the right, at its option, and without any further demand or notice:

- (i) to terminate this Lease and to take possession of the Property, using all necessary force to do so, and sell the Property;

(ii) to take possession of the Property and without terminating this Lease re-let the Property upon such terms and conditions as Lessor may deem advisable, in which event the rents received on such re-letting shall be applied first to the expense of re-letting and collection, including any necessary renovation and alteration of the Property, reasonable attorney's fees and costs of suit in equity or action at law to enforce the terms and conditions of this Lease, and thereafter toward payment of all sums due or to become due Lessor hereunder. If a sufficient sum shall not be thus realized to pay such sums and other charges, Lessee shall remain liable for and will pay Lessor any cumulative net deficiency.

The foregoing remedies of Lessor are in addition to and not exclusive of any other remedy of Lessor. Any repossession of the Property shall be allowed by Lessee without hindrance.

19. **Miscellaneous.** This Agreement may be amended, modified or supplemented only by the written agreement of all parties hereto. The waiver or failure to insist upon strict compliance with any obligation, representation, warranty, agreement or condition hereunder shall not operate as a waiver of any subsequent non-compliance. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. This Agreement embodies the entire agreement and understanding of the parties. This Agreement supersedes all prior discussions, negotiations, agreements and understandings between the parties. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one original.

20. **Statutory Disclosures.** Pursuant to K.S.A. 10-1116c, the parties acknowledge and agree as follows:

(a) The capital cost to purchase the Equipment, if paid for by cash, is \$117,980.23_____.

(b) The annual average effective interest cost under the Payment Schedule is _____2.75%.

(c) The amount included in payments for service, maintenance, insurance or other charges, exclusive of capital cost and interest cost, is as follows:

(i)	Service:	<u>\$0.00</u>
(ii)	Maintenance:	<u>\$0.00</u>

(iii) Insurance: \$0.00
(iv) Other Charges: \$0.00

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

“LESSEE”

City of Abilene, KS

BY: _____
Dennis Weishaar, Mayor

(Seal)

ATTEST:

BY: _____
Name: _____
Title: _____

“LESSOR”

FIRST BANK KANSAS,
A Kansas state-chartered bank

BY: _____
Name: David Walters
Title: Vice President

STATE OF KANSAS)
) ss:
COUNTY OF SALINE)

The foregoing instrument was acknowledged before me on _____,
20____, by _____, on behalf of Lessor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal
on the day and year last above written.

Notary Public

My Appointment Expires:

STATE OF KANSAS)
) ss:
COUNTY OF DICKINSON)

The foregoing instrument was acknowledged before me on January 25, 2016, by Dennis
Weishaar, Mayor of the City of Abilene, Kansas, on behalf of Lessee.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal
on the day and year last above written.

Notary Public

My Appointment Expires:

LAND BANK BOARD OF TRUSTEES AGENDA
ABILENE PUBLIC LIBRARY, 209 NW FOURTH STREET
January 25, 2016
(Proceeding City Commission Meeting)

1. **Call to Order**

2. **Roll Call:** ___ Weishaar ___ Marshall ___ Payne ___ Shafer ___ Ray

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a majority of the Land Bank Board votes to remove an item for discussion and separate action.)*

3. Agenda Approval for the January 25, 2016 Land Bank Board of Trustees Meeting

Public Comments and Communications

4. **Public Comments.** Persons who wish to address the Land Bank Board of Trustees regarding items not on the agenda and that are under the jurisdiction of the Board may do so when called upon by the Chair. Comments on matters pending before court are not permitted. Speakers are limited to three minutes. Any presentation is for informational purposes only. No action will be taken.

5. **Declaration.** At this time Trustees may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Old Business

6. **None**

New Business

7. **Consideration of a Resolution approving a Land Exchange Agreement with Abilene Highlands I, LLC concerning the exchange of real property.**

Reports

8. **None**

Adjournment

9. **Consideration of a motion to adjourn the January 25, 2015 Land Bank Board of Trustees Meeting.**

TO: Land Bank Board of Trustees
FROM: David Dillner, City Manager
SUBJ: Land Exchange Agreement (Abilene Highlands I, LLC)
DATE: January 22, 2016

The City Manager has been working on a proposal to exchange land located in the Abilene Highlands subdivision with the partners who presently own the Cedar Ridge Estates development. The transaction would exchange approximately fourteen lots at the Abilene Highlands with about eighteen acres commonly known as Cedar Ridge Estates, Phase II.

Rather than extending public infrastructure to the undeveloped Phase II of Cedar Ridge Estates, the partners have approached the City with a concept of exchanging the aforementioned land. The transaction is contingent upon the partnership receiving housing tax credits from the Kansas Housing Resources Corporation ("KHRC"). If tax credits are awarded to the Project, the partnership would develop twenty-eight affordable housing units on the fourteen lots at the Abilene Highlands. The Land Bank would own the eighteen acres of Cedar Ridge.

Cedar Ridge Estates, LLC has already donated a portion of the undeveloped acreage to the Land Bank. The donation was approved by the City Commission with the approval of Resolution No. 122815-1.

The main points of the Land Exchange Agreement are summarized as follows:

- Both parties will provide title insurance of \$40,000 for the properties to be exchanged in the transaction. This is based on an agreed figure because both properties were appraised as having little to no value given several factors analyzed in the appraisal. The Simmons Company of Manhattan, Kansas appraised both properties. A copy of the appraisals have been included with the Land Exchange Agreement.
- The City will require the Developer to provide a letter of credit equal to two years of special assessments, which will be held by the City for four years or until the Project is constructed and the final certificate of occupancy is issued for the units. The City will also release the letter of credit in the event the agreement is assigned to a third-party approved by the City. The letter of credit will be available in the event the Developer does not pay special assessments during the construction period. It is anticipated that following the award of tax credits, the Project will be conveyed to a third party with experience in developing affordable housing projects using tax credits. The City will have an opportunity to review the qualifications of the Developer, and may negotiate terms and conditions to ensure performance.
- Per the agreement, the Land Bank would defer the special assessments on the fourteen lots for two years as construction is progressing. The first installment of the special assessments will be due once construction is complete and payments will continue for twenty years. The City will reamortize the special assessments to allow for payment of the outstanding special assessments and also allow reimbursement of the delinquent special assessments that were not paid by the previous property owner.
- The City has several remedies in the event the Developer does not pay special assessments or property taxes, or otherwise breaches the agreement. The City will not issue any building permits will be issued and the City may draw on the letter of credit. The Land Bank may also seek damages to expenses related to the land exchange transaction, and may pursue any available remedy in court.

- The properties being exchanged will have nearly the same annual special assessment payment, which is presently estimated at about \$22,000. As you know, the City is presently paying the debt service for the Highlands development. The property at Cedar Ridge Estates that is being donated also has special assessments that will need to be paid. The City will not have to increase the mill levy to cover the special assessments at Cedar Ridge Estates because transaction will closely align with the amount both properties pay in specials. The amortization schedule has not been finalized, and so is not included in the packet. The final amortization schedule will be approved with an ordinance at a future date.
- The City will consider a request by the Developer to include the property in the Neighborhood Revitalization Program. Last year, the Economic Development Council recommended approval of a policy that would allow the Program to be applied to properties successfully requesting either the "EH-O, Elderly Housing Overlay District" or the "HO-O, Housing Opportunity Overlay District" included in the City's Zoning Regulations.

The City Commission would have to amend the Neighborhood Revitalization Program in order to allow this incentive within these overlay districts. In addition, the Developer would have to request and successful receive application of one or both of the overlay districts on the exchanged property. The Developer understands that neither of these actions may be guaranteed in the Land Exchange Agreement; the City is merely agreeing that it will process each request as provided by state law and local ordinances and policies.

- The Developer agrees to pay the following costs related to the transaction: a) 100% of the title insurance for the transfer of the Deposited Property; b) 100% of the escrow and closing fee; c) cost of recording the deeds; d) the cost of obtaining an appraisal or other required due diligence; e) any attorney fees and expenses incurred by Developer.
- The Land Bank agrees to pay the title insurance for the transfer of the Received Property and any attorney fees and expenses incurred by the Land Bank.

LAND BANK RESOLUTION NO. 012516-1

A RESOLUTION APPROVING A LAND EXCHANGE AGREEMENT WITH ABILENE HIGHLANDS I, LLC CONCERNING THE EXCHANGE OF CERTAIN REAL PROPERTY

WHEREAS, the governing body of the City of Abilene, Kansas (“City”) established a Land Bank for the City with the adoption of Ordinance No. 3265;

WHEREAS, the governing body serves as the Board of Trustees (“Trustees”) for said Land Bank;

WHEREAS, the Trustees have the authority to accept donations of real estate and to convey real estate as provided by K.S.A. 9-1401 et seq., and amendments thereto, and Ordinance No. 3265; and

WHEREAS, the Trustees desire to approve a Land Exchange Agreement with Abilene Highlands I, LLC.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

SECTION ONE. Agreement. That a Land Exchange Agreement is hereby adopted as attached hereto as **Exhibit A**.

SECTION TWO. Implementation. The Chair is hereby authorized to execute the aforementioned Agreement, and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

SECTION THREE. Effective Date. That the effects of this Resolution shall be in full force after its approval by the Board of Trustees.

PASSED AND APPROVED by the Board of Trustees of the Land Bank of the City of Abilene, Kansas this 25th day of January, 2016.

**LAND BANK OF THE
CITY OF ABILENE, KANSAS**

By: _____
Dennis P. Weishaar, Chair

ATTEST:

Penny Soukup, CMC
City Clerk

APPROVED AS TO FORM:

Aaron O. Martin, City Attorney

EXHIBIT A

Land Exchange Agreement

Abilene Highlands I, LLC

January 25, 2016

LAND EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT (the "**Agreement**") is made effective this 25th day of January, 2016 (the "**Effective Date**"), by and between the City of Abilene Land Bank, a land bank established by the City of Abilene, Kansas pursuant to City Ordinance No. 3265 (the "**Land Bank**") and Abilene Highlands I, LLC, a Kansas limited liability company ("**Developer**"). The Land Bank and Developer are collectively referred to as the "**Parties**" and individually as a "**Party**."

RECITALS

- A. The Land Bank is the record owner of certain real estate in the City of Abilene, Kansas legally described on Exhibit A, attached to and, by reference, incorporated herein (the "**Received Property**").
- B. Developer is the record owner of certain real estate in the City of Abilene, Kansas legally described on Exhibit B, attached to and, by reference, incorporated herein (the "**Deposited Property**").
- C. The Received Property and the Deposited Property are of equal fair market value, as set forth in appraisals of the Received Property and the Deposited Property, a summary of which are attached to and, by reference, incorporated herein as Exhibit C.
- D. Developer desires to convey the Deposited Property to the Land Bank, and the Land Bank desires to simultaneously convey the Received Property to Developer, all in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made, the Parties agree as follows:

1. **Recitals**. The recitals set forth above are part of this Agreement.
2. **Agreement of the Land Bank**. The Land Bank agrees to convey the Received Property to Developer, by special warranty deed.
3. **Agreement of Developer**. Developer agrees to convey the Deposited Property to the Land Bank, by general warranty deed.
4. **Closing Date**. The "**Closing Date**" shall be no later than ninety (90) days following the satisfaction or waiver of all conditions described in paragraph 9, below, unless both parties agree in writing to advance or delay the closing. "**Closing**" means the settlement of the obligations of the Parties to each other under this Agreement, including the payment of all amounts then required to be paid, and the delivery of deeds in proper form to the respective premises, free of all encumbrances, except as expressly provided in this Agreement. Possession to the respective premises shall be given to the respective parties upon Closing. The above-described deeds shall be recorded immediately following the Closing.

5. **Escrow Agent; Title Insurance.**

- a) First American Title Insurance Company, 315 Broadway, Abilene, Kansas, is designated as the Escrow Agent of the parties and shall hold this Agreement, the deed, the title insurance policy, and all other papers of transfer pending the complete fulfillment of this Agreement. The Escrow Agent shall receive and disburse all amounts to be paid under this Agreement.
- b) Within ten (10) days after the Effective Date of this Agreement, each party shall furnish the other party with a commitment for an owner's title insurance policy (the "**Commitment**") with respect to the property such party will convey under this Agreement. The amount of the policy for the Received Property shall be \$40,000, and the amount of the policy for the Deposited Property shall be \$40,000. Each Commitment shall insure title subject only to liens, encumbrances, exceptions, or qualifications set forth in this Agreement, and those which shall be discharged at or before Closing. Each party shall have ten (10) days after receipt to examine the Commitment and to notify the other party in writing of any requirements to make the title marketable. If defects precluding marketability are not removed by Closing, the party objecting to marketability may either accept title or cancel this Agreement, or extend the Closing Date for a reasonable time to enable title to be made marketable. Each party shall diligently attempt before Closing to correct any defects to marketability of which the other party has given written notice of, and shall file and pursue any legal proceedings reasonably necessary to correct such defects. In case of dispute between the parties as to marketability of title, the Title Standards adopted from time to time by the Bar Association of the State of Kansas, and the Kansas Marketable Title Act, as amended, shall control. All costs of recording any corrective instruments with respect to the Received Property shall be paid by the Land Bank. All costs of recording any corrective instruments with respect to the Deposited Property shall be paid by Developer.

6. **Title Exceptions.** Title to the respective properties shall be subject to the following exceptions: (a) easements, rights of way, and restrictions of record that each respective party shall determine do not unreasonably interfere with such party's intended use and enjoyment of the property to be conveyed to such party; (b) the printed or standard exceptions set forth on Schedule B of the Commitment; and (c) full performance of this Agreement by each party.

7. **Condition of Property.** No representations or warranties have been made by either Party, or anyone in such Party's behalf, to the other Party as to the condition of the Received Property or the Deposited Property (as the case may be). Each Party has had a full and complete opportunity to inspect the premises being conveyed to such Party under this Agreement, to observe its physical characteristics and existing conditions, and to have conducted such investigations and studies on such premises as it deems necessary. Each Party acknowledges and agrees that the Received Property or the Deposited Property (as the case may be) is sold "As Is," and that each Party waives, from and after closing, any all obligations to or complaints about physical characteristics and existing conditions of the Received Property or the Deposited Property (as the case may be). This paragraph shall survive the transfer of title and the Closing of this Agreement. Notwithstanding the foregoing, however, each Party represents to the other Party, that the Received Property or the Deposited Property (as the case may be), to the best of the representing Party's actual knowledge: (i) no waste or hazardous materials have been deposited on the premises; (ii) no portion of the premises has been used as a landfill, dump, or depository for hazardous

materials; (iii) no portion of the premises has been used for the storage, use, manufacture, treatment, or disposal of toxic waste or hazardous materials; and (iv) such Party has neither filed nor been required to file with any local, state, federal, or regional governmental agency any reports of hazardous materials, toxic wastes or hazardous substances found or disposed of on the premises. As used in herein, the terms ("**hazardous materials**"), ("**toxic waste**"), and ("**hazardous substances**"), shall include, without limitation, any substance, the presence of which on the premises is prohibited by any federal, state, or local law, order or regulation. Notwithstanding anything herein to the contrary, it is hereby understood and agreed that the representing Party shall not be required hereby to make any investigation or obtain a Phase I Environmental Assessment, and that the term "to the best of the representing Party's actual knowledge" shall not include any fact or circumstance that would be discovered as a result of any such Phase I Environmental Assessment, unless the representing Party already has actual knowledge of such fact or circumstance.

8. **Prorations at Closing.** Developer shall pay all taxes and assessments that accrue on or before the Closing Date, provided, however, that taxes and assessments for the tax year in which Closing occurs shall be prorated between the Parties as of the Closing Date. The parties acknowledge and agree that, by operation of K.S.A. 12-5909, the Land Bank shall convey the Received Property free and clear of any real estate taxes (other than special assessments) that accrue on or before the Closing Date, and the Land Bank shall have no obligation to pay any taxes, assessments, or installments of special assessments on the Received Property, or any prorated portion thereof. Developer shall have no obligation to pay any assessments or installments of special assessments that can be paid, but which are not due, on the Deposited Property before the Closing Date, other than assessments that are due for the year in which Closing occurs, which shall be prorated as of the Closing Date. In the event taxes and assessments for the tax year in which Closing occurs are not available on the Closing Date, then the amount will be presumed to be the same amount as that for the last preceding tax period for which the amount of taxes and assessments is known.
9. **Developer Closing Contingencies.** The Developer's obligations to Close this Agreement are specifically contingent upon the satisfaction of the following:
 - a) Developer shall receive notice of award of tax credits from the Kansas Housing Resources Commission, in a form acceptable to Developer in Developer's sole discretion.
 - b) The Governing Body of the City of Abilene, Kansas (the "**City**") shall have adopted an ordinance abating the delinquent installments of special assessments against the Received Property, and deferring and re-amortizing all of the special assessments, including those delinquent assessments that are abated, in such amounts and for such periods as are mutually agreeable between the Parties. Developer acknowledges that the preceding sentence does not require the City to adopt such an ordinance, and such adoption is discretionary and subject to the approval of the governing body of the City and applicable law. The City and the Land Bank provide no guarantee, written or implied, regarding any such decision to be considered by the governing body.
 - c) The Received Property shall be in the same condition as in existence on the Effective Date, ordinary wear and tear excepted.

If any of the contingencies have not been satisfied or waived in writing by Developer on or before August 1, 2016, Developer may terminate its obligations under this Agreement and cancel this Agreement by giving written notice of cancellation to the Land Bank. Following such cancellation, neither Party shall have any further obligation or liability to any other Party under this Agreement. Alternatively, Developer may waive such contingencies at any time, in Developer's sole and absolute discretion.

10. **Letter of Credit.** For a period of four (4) years following the Closing Date, Developer agrees to deliver to and maintain for the benefit of, or cause to be delivered to and maintained for the benefit of, the Land Bank and the City a financial guarantee in the form of an irrevocable letter of credit, in an amount equal to two (2) years' special assessments levied on the Received Property. In the event of non-payment of either special assessments or property taxes, or both, the Land Bank or the City shall be entitled to the remedy set forth in paragraph 14(b), below. The letter of credit shall be released as set forth in paragraph 12, below. This paragraph shall survive the execution and delivery of this Agreement and the delivery of the deeds and transfer of titles.
11. **Assignment.** The rights, duties and obligations of Developer contained herein may not be assigned, in whole or in part, without the prior written approval of the City following verification by the City Attorney that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City Manager, necessary and adequate to fulfill the obligations of Developer with respect to the portion of the Property being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject. Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release Developer. Developer agrees to record all assignments in the office of the Register of Deeds of Dickinson County, Kansas, in a timely manner following the execution of such agreements. Notwithstanding anything herein to the contrary, however, Developer may, with notice to the City, assign all or a portion of its interest under this Agreement to an entity owned or controlled by Developer or Developer's owners, or to a Kansas limited partnership wherein Developer or an entity owned or controlled by Developer or Developer's owners is the general partner, in connection with a low income housing tax credit project approved by the Kansas Housing Resources Commission.
12. **Post-Closing Conveyances of the Received Property.** The letter of credit obligation set forth in paragraph 10, above, shall cease automatically upon the earlier of the following: (a) the Property is sold, transferred, or conveyed for value in connection with and to facilitate Developer's involvement with a low income housing tax credit project approved by the Kansas Housing Resources, following written verification by the Land Bank that the grantee has qualifications and financial responsibility necessary and adequate to fulfill the obligations of Developer hereunder; or (b) the issuance of a certificate of occupancy or equivalent for the final unit within the development to be constructed on the Received Property, provided in every case that special assessments are current on the portion of the Received Property so conveyed or improved. Developer shall have no further obligation to the Land Bank or the City under this Agreement with respect to the Received Property upon the fulfillment of either such condition, and the Land Bank shall, upon written request, record a release with respect to the Received Property in a form reasonably acceptable to Developer. If any portion of the Received Property is sold, transferred, or conveyed to any

person or entity other than as set forth in this paragraph 12, the Developer's letter of credit maintenance obligations set forth in paragraph 10 shall continue with respect to such portions of the Received property so conveyed, unless the transferee delivers to and maintains for the benefit of the Land Bank and the City a replacement letter of credit in compliance with paragraph 10, in an amount equal to two (2) years' special assessments levied on the Received Property so conveyed.

13. **Default.** The occurrence of any one or more of the following shall constitute an event of default under this Agreement ("**Event of Default**"):

- a) Delinquency on the payment of special assessments or property taxes on the Received Property at any time during the four (4) year term set forth in paragraph 10, above, except with respect to those portions conveyed under paragraph 12, above.
- b) A default in the performance or breach of any other term, covenant, condition, or obligation contained in this Agreement, and continuance of such default or breach for a period of 30 days after the Land Bank has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied.

14. **Remedies.** Upon the occurrence of an Event of Default, and upon at least thirty (30) days prior notice to Developer (during which time Developer shall have the opportunity to cure such default or, if such default cannot, despite reasonable diligence, be cured within such period, commence to cure such default (provided Developer diligently pursues such cure to completion thereafter)), the Land Bank shall have the following rights and remedies, in addition to any other legal or equitable rights and remedies:

- a) No building permits or other applicable permits will be issued for any Received Property, except with respect to those portions conveyed under paragraph 12 above prior to the occurrence of an Event of Default.
- b) The Land Bank may draw upon the irrevocable letter of credit to pay delinquent special assessments or real estate taxes, except with respect to those portions conveyed under paragraph 12 above prior to the occurrence of an Event of Default.
- c) The Land Bank may seek damages for expenses realized in the land exchange transaction.
- d) The Land Bank may pursue any available remedy at law or in equity (including specific performance) by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the Land Bank under the agreement or otherwise existing at law or in equity and to recover any damages incurred by the Land Bank resulting from such Event(s) of Default.

15. **Closing Deliveries.** At the Closing, Developer shall: execute and deliver a general warranty deed in recordable form, conveying the Deposited Property to the Land Bank; deliver to the title company and to the Land Bank evidence of Developer's authority to execute the documents reasonably necessary to consummate this transaction; deliver such affidavits as may be reasonably required by the title company to permit the issuance of a title policy in accordance with this Agreement; and deliver evidence of Developer's performance of its obligations set forth in paragraph 10, above. At the Closing, the Land

Bank shall: execute and deliver a special warranty deed in recordable form, conveying the Received Property to Developer; deliver to the title company and to Developer evidence of the Land Bank's authority to execute the documents reasonably necessary to consummate this transaction; and deliver such affidavits as may be reasonably required by the title company to permit the issuance of a title policy in accordance with this Agreement.

16. **Binding Effect; Covenant Running with the Received Property.** This Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and authorized assigns and shall be construed as a covenant running with the Received Property, enforceable against the purchasers or other transferees as if such purchaser or transferee were originally a party and bound by this Agreement. This Agreement, or a memorandum thereof evidencing the covenants, conditions, and restrictions contained herein, may be recorded in the office of the Dickinson County Register of Deeds.
17. **Neighborhood Revitalization.** The parties acknowledge that applicable law permits the City to extend its Neighborhood Revitalization Program incentive to real property located within an Elderly Housing Overlay District (EH-O) or a Housing Opportunities Overlay District (HO-O) as established by the Zoning Regulations of the City. Nothing in this Agreement shall prevent Developer from petitioning the City for such an extension and/or to amend the City's Neighborhood Revitalization Program, and nothing herein shall be construed as the City's obligation to grant such petition.
18. **Notices.** All notices given by a party under this Agreement shall be in writing and sent by registered or certified mail to the other Party. Until notice of change is given in writing, notices shall be addressed to the parties as follows:

Developer: Abilene Highlands I, LLC
Attn: Ryan B. Wedel
4105 Wimbledon Drive
Lawrence, Kansas 66047

Land Bank: City of Abilene Land Bank
Attn: City Manager
PO Box 519
Abilene, KS 67410
19. **Time.** Time is of the essence of this Agreement. No extension will be granted unless in writing and signed by all parties to this Agreement. Any reference to a time period of less than six (6) days shall include Saturday and Sunday. Should the end of a time period fall on a legal holiday, that termination time shall extend to 5:00 p.m. of the next full business day.
20. **Amendment.** This Agreement may be amended or modified only in writing, signed by all Parties to this Agreement.
21. **Brokerage.** The Parties acknowledge and agree that no real estate broker or other person entitled to any commission or fee with respect to the transactions contemplated by this Agreement has been involved in procuring the exchange under this Agreement, and no real estate broker or other person entitled to a commission or fee with respect to the exchange of the premises described in this Agreement has been involved in negotiation or execution of this Agreement. Each party to this Agreement shall indemnify and hold harmless the other

party with respect to any claimed brokerage commission pertaining to the exchange of the Deposited Property and the Received Property.

22. **Further Acts**. Each Party, upon the request of the other Party, agrees to perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the transactions contemplated by this Agreement.
23. **Kansas Law Applies**. This Agreement and its validity, construction and performance shall be governed by the laws of Kansas
24. **Merger Clause**. These terms are intended by the Parties as a complete, conclusive and final expression of all of the conditions of their agreement. No other promises, statements, warranties, agreements or understandings, oral or written, made prior to or at the signing of this Agreement, shall be binding unless in writing and signed by all parties and attached to this Agreement. This Agreement is the product of negotiations between the Parties, and no preference shall be applied against the drafting Party; rather, this Agreement shall be construed in accordance with its plain meaning.
25. **Waiver of Statutory Disclosures**. The Parties to this Agreement hereby acknowledge and agree that the Kansas statutory disclosure obligations pertaining to the sale and purchase of residential real property including, without limitation, the disclosure of sexual offenders, radon gas, special assessments and benefit improvement districts, shall be and are hereby waived by the parties to the fullest extent allowed by law, and shall not apply to this Agreement. The parties shall rely solely upon the title commitments and their own due diligence with respect to such matters. Each party hereby releases the other party, and waives any further disclosure obligations on the part of the other party, with respect to sexual offenders, radon gas, special assessments and benefit improvement districts.
26. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute together one and the same agreement.
27. **Legal and Tax Counseling**. The Parties acknowledge the opportunity to obtain legal and tax counseling to review this Agreement, and agree that each Party shall pay its respective fees for such legal and tax counseling. Developer acknowledges and agrees that (1) neither the City nor the Land Bank, or any of their respective officials, employees, consultants, attorneys or other agents have provided to Developer any legal advice or advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated thereby, and (2) Developer is relying solely upon its own tax advisors and legal counsel in this regard.
28. **Developer's Costs**. Developer will pay the following costs associated with the transaction: 1) 100% of the title insurance premium for the transfer of the Deposited Property; 2) 100% of the escrow and closing fee, if any; 3) the cost of recording the deeds; 4) the cost of obtaining an appraisal or the cost of any additional preparatory information for due diligence purposes, as may be required by the Land Bank or Developer, if any; and 5) any attorneys' fees and expenses incurred by the Developer in the preparation and performance of the exchange.

EXHIBIT A

RECEIVED PROPERTY LEGAL DESCRIPTION

Lots 25, 26, 27, 28, 29, 30, 31 and 32, Block 2, West Highlands to the City of Abilene, Dickinson County, Kansas.

Lots 1, 2, 3, 4, 5 and 6, Block 3, West Highlands to the City of Abilene, Dickinson County, Kansas.

EXHIBIT B

DEPOSITED PROPERTY LEGAL DESCRIPTION

Lots 1, 5 and 8, Block 4, Cedar Ridge Estates No. 1 to the City of Abilene, Dickinson County, Kansas.

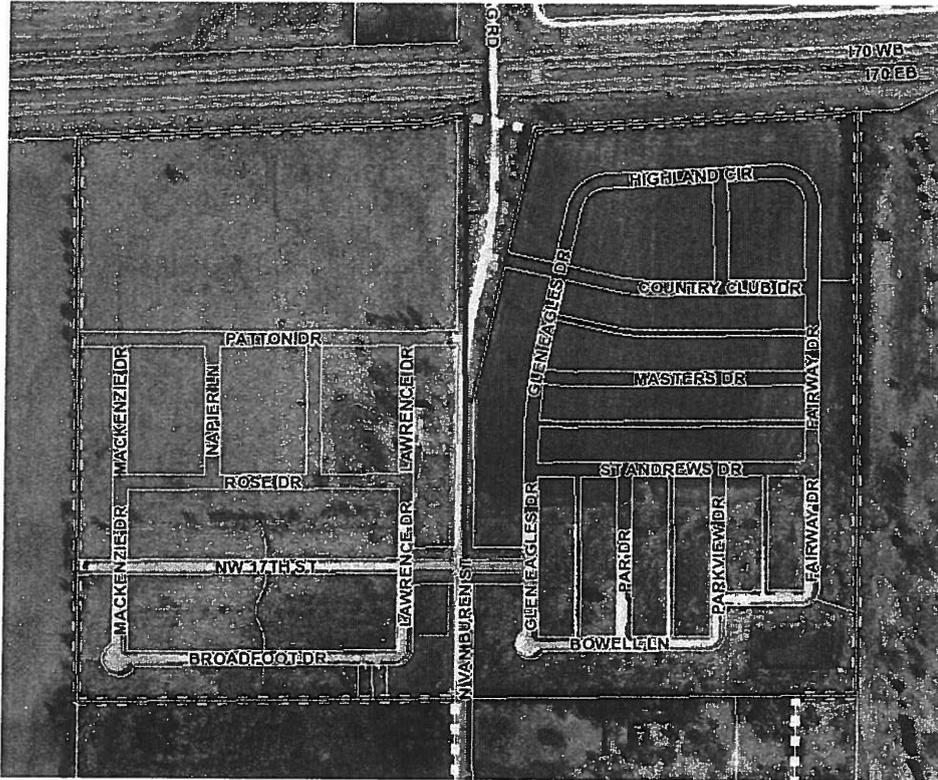
Lots 1, 2 and 5, Cedar Ridge Estates No. 1 to the City of Abilene, Dickinson County, Kansas.

EXHIBIT C

APPRAISED VALUES OF PROPERTIES

Appraisal Report of Real Property:

West and East Highlands Subdivision
Various Addresses
Abilene, Kansas 67410



Effective Date of Valuation: October 30, 2015
Date of Report: November 13, 2015

Prepared For:
David Dillner
City of Abilene
Abilene, KS

Prepared By:
Bill Lansdowne, MAI



THE SIMMONS COMPANY
Real Estate Appraisal & Consulting



THE SIMMONS COMPANY
Real Estate Appraisal & Consulting

3244 Gary Avenue Suite #150
Manhattan, Kansas 66503
Phone (785) 539 6531
Fax (785) 539 1433
www.simmonscompany.net

November 13, 2015

Mr. David Dillner
City of Abilene
419 North Broadway
Abilene, Kansas 67410

Re: Appraisal report of real property known as West and East Highlands
subdivision, Abilene, Kansas 67410

Dear Mr. Dillner:

As requested, I have made an inspection and analysis of the above referenced property for the purpose of developing an opinion of market value of the subject property fee simple, and the function of the assignment is to assist the Client in governmental financial decisions related to the transfer of the property to the City of Abilene land bank.

The attached appraisal report is intended to comply with the scope of work and requirements agreed upon by the client and The Simmons Company. This appraisal is presented in an Appraisal Report format as defined by USPAP Standards Rule 2-2(a). This format provides a brief description of the pertinent data gathered and analyzed, techniques employed, and the reasoning leading to the value opinions.

The analyses, opinions and conclusions communicated within this appraisal report were developed based upon our interpretation of the requirements and guidelines of the current Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. This appraisal report sets forth the identification of the property, the assumptions and limiting conditions, and the results of the investigation. Please pay particular attention to the Extraordinary Assumptions and Hypothetical Conditions identified in this report, as the value opinions expressed could be different without these assumptions and conditions.

The opinion of market value of the fee simple interest for the subject real property, as of October 30, 2015, is:

Zero Dollars
(\$0)

Extraordinary Assumptions

- None

Hypothetical Conditions

- None

This appraisal report should be read in its entirety, including all attachments, addendums, and cover pages. Lastly, you are specifically referred to sections entitled Environmental Hazards and ADA (Americans with Disabilities Act) identified in this report.

Respectfully Submitted,



Bill Lansdowne, MAI
Certified General Appraiser
State of Kansas
Cert. No. G-2496

BL/bw

USPAP 2014-2015 Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement with this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant business and/or intangible asset appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program of the Appraisal Institute for Associate Members.



Bill Lansdowne, MAI
Certified General Appraiser
State of Kansas
Cert. No. G-2496

November 13, 2015

Date

EXECUTIVE SUMMARY

The subject property is a partially completed residential subdivision, consisting of 292 platted lots, which as of the effective date of the appraisal, included 117 developed lots, meaning they have installed infrastructure including roads, sewer, water, electricity and gas utilities. To date, two lots have been absorbed, or developed with residential units.

Research and analysis of market data, and completion of the subdivision analysis for the subject, results in a overall negative value, when future cash flows are discounted to a net present value. The resulting negative value indicates a residential subdivision with the subjects current condition and circumstances is not financially feasible, and there would be no reasonable buyers, resulting in an opinion of market value of \$0. The two key items which had a significant negative impact on value within the subdivision analysis were the current absorption rate of residential units in the market, and the substantial amount of special assessments the property is burdened with.

As discussed in the appraisal, the subdivision was developed at a time when it was speculated significant residential growth would occur as a result of announced growth at Fort Riley. When this growth never materialized as expected, the absorption of the subdivision stopped. Furthermore, as discussed in the appraisal there are additional reasons why the subject subdivision has not been well-accepted by the market. In summary, as the subdivisions past capture of new residential housing has been poor, while the overall Abilene housing market has slowed, there is no supportable data to support an absorption rate greater than 5 units per year, and any projected absorption rate between 3-5 units per year could be considered reasonable. In addition, the subject would likely not capture the entire absorption of housing in the Abilene market, as there are presently 47 competing lots available on the market in other subdivisions. Discounting the subject lot prices substantially could potentially improve the subject capture rate.

In regard to the current special assessments, based on data provided by the City of Abilene, there are presently \$660,232 in delinquent special assessments, and a remaining balance of \$4,529,838, for a total outstanding obligation of \$5,190,070. Of this total, \$4,417,089 are assessed to currently developed lots, while \$772,980 are assessed to undeveloped and vacant land. These special assessments are a substantial burden on the potential of the subject to maintain positive cash flow over the course of ownership for a potential investor.

The appraiser considered numerous scenarios, adjusting variables such as lot price, absorption rate, and discount rate in the process of completing the subdivision approach. Every variation of the scenario yielded a negative net present value. Included in the appraisal is a reasonable scenario, although it is recognized the capture rate of the subject may remain overly optimistic.

PURPOSE OF THE APPRAISAL:

The purpose of the appraisal is to develop an opinion of market value of the subject property, as of the effective date of the appraisal. Market value is defined as follows:

"Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *buyer and seller are typically motivated;*
- *both parties are well informed or well advised and acting in what they consider their own best interests;*
- *a reasonable time is allowed for exposure in the open market;*
- *payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- *the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."*¹

CLIENT AND INTENDED USER:

The client and intended users are the addressee of this appraisal report and officials with City of Abilene. The Appraiser does not authorize, and is not responsible for use of this appraisal by any party other than the Client or intended user.

INTENDED USE:

The function and intended use is to assist the client in governmental financial decisions related to the transfer of the property to the City of Abilene land bank. Any other use is prohibited. The acceptance of this assignment, by the Appraiser, is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

PERTINENT DATES:

Date of valuation:	October 30, 2015
Date of site visit:	October 30, 2015
Date of report:	November 13, 2015

¹ Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition, Appraisal Foundation, Statement 22, A-75

PROPERTY RIGHTS APPRAISED:

The property rights appraised are the fee simple interest, defined as follows:

*"An absolute ownership unencumbered by any other interest; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."*²

MARKET EXPOSURE TIME:

The market exposure time is presumed to precede the effective date of the appraisal. Exposure time may be defined as follows:

*"The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market"*³

Exposure time is a function of price, time, and use. It must be noted that the concept of reasonable exposure time encompasses not only adequate, sufficient, and reasonable time, but adequate, sufficient, and reasonable effort.

The estimated exposure time presented herein is based on analysis of the following factors:

- statistical information about days on market
- information gathered through sales verification
- interviews with market participants
- anticipated changes in market conditions

Based on the data presented in this report, and the fact that the market value estimated herein is representative of a price based on current acceptable returns indicated by market participants, I am of the opinion that presently there is no market for the subject property.

² The Dictionary of Real Estate Appraisal Sixth Edition, Appraisal Institute, 2015

³ USPAP 2014-2015 Edition, Appraisal Foundation, Statement 6, U-79

SCOPE OF WORK:

Based on conversations with the client and intended users, the data researched and the type and extent of analysis, along with the detail of this appraisal report are adequate for intended use. The completed appraisal report discusses comparable sales and applies a subdivision analysis, and was considered appropriate to produce a credible report.

- Bill Lansdowne viewed the subject property on October 30, 2015. In addition, the subject neighborhood was viewed.
- The Appraiser researched and compiled market data for sales of comparable incomplete subdivisions, partially absorbed subdivisions, residential lot sales and other relevant comparable land sales.
- The Appraiser researched and analyzed residential lot sales and absorption rates in Abilene, including historical residential building permit numbers, and analyzed the information gathered in order to complete the subdivision analysis.
- The Appraiser considered the numerous absorption scenarios within the subdivision analysis to arrive at a final opinion of market value for the subject real estate, as of the effective date of this appraisal.

Sources of Information:

- The Simmons Company proprietary database
- Dickinson County Appraiser Records
- Subject plat maps
- City of Abilene - Special Assesment Information
- Interviews with local real estate professionals including realtors, brokers, builders
- Representatives from financial institutions
- Interflood.com for flood maps and flood plain information
- Tax information - Dickinson County Treasurer
- Zoning information - City of Abilene
- Legal description - Plat Map

In addition to the standard assumptions and limiting conditions, the following extraordinary assumptions and hypothetical conditions, may correspond to the concluded value opinions. If any of them are found to be false, it could alter the Appraiser's opinions or conclusions.

A hypothetical condition is defined as "that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."¹

¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute, 2010), 73

Hypothetical Conditions

- None

An extraordinary assumption is defined as "an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis."²

Extraordinary Assumptions

- None

² *Dictionary of Real Estate Appraisal*, 97

Appraisal Report of Real Property:

Cedar Ridge Subdivision
Various Addresses
Abilene, Kansas 67410



Effective Date of Valuation: November 11, 2015
Date of Report: December 30, 2015

Prepared For:
Ryan Wedel
4105 Wimbledon Drive
Lawrence, Kansas

Prepared By:
Bill Lansdowne, MAI

 **THE SIMMONS COMPANY**
Real Estate Appraisal & Consulting



THE SIMMONS COMPANY
Real Estate Appraisal & Consulting

3244 Gary Avenue Suite #150
Manhattan, Kansas 66503
Phone (785) 539 6531
Fax (785) 539 1433
www.simmonscompany.net

December 30, 2015

Mr. Ryan Wedel
4105 Wimbledon Drive
Lawrence, Kansas 66047

Re: Appraisal report of real property within Cedar Ridge subdivision, Abilene,
Kansas 67410

Dear Mr. Wedel:

As requested, I have made an inspection and analysis of the above referenced property for the purpose of developing an opinion of market value of the subject property fee simple, and the function of the assignment is for accounting and tax purposes.

The attached appraisal report is intended to comply with the scope of work and requirements agreed upon by the Client and The Simmons Company. This appraisal is presented in an Appraisal Report format as defined by USPAP Standards Rule 2-2(a). This format provides a brief description of the pertinent data gathered and analyzed, techniques employed, and the reasoning leading to the value opinions.

The analyses, opinions and conclusions communicated within this appraisal report were developed based upon our interpretation of the requirements and guidelines of the current Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. This appraisal report sets forth the identification of the property, the assumptions and limiting conditions, and the results of the investigation. Please pay particular attention to the Extraordinary Assumptions and Hypothetical Conditions identified in this report, as the value opinions expressed could be different without these assumptions and conditions.

The opinion of market value of the fee simple interest for the subject real property, as of November 11, 2015, is:

Zero Dollars
(\$0)

Extraordinary Assumptions

- None

Hypothetical Conditions

- None

This appraisal report should be read in its entirety, including all attachments, addendums, and cover pages. Lastly, you are specifically referred to sections entitled Environmental Hazards and ADA (Americans with Disabilities Act) identified in this report.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bill Lansdowne". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Bill Lansdowne, MAI
Certified General Appraiser
State of Kansas
Cert. No. G-2496

BL/bw

USPAP 2014-2015 Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement with this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant business and/or intangible asset appraisal assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program of the Appraisal Institute for Associate Members.



Bill Lansdowne, MAI
Certified General Appraiser
State of Kansas
Cert. No. G-2496

December 30, 2015

Date

Executive Summary

The subject property is a partially completed residential subdivision, consisting of 6 developed residential lots, 17.3 acres of raw ground, and one 1.68 acre lot which was originally zoned commercial, but is now zoned R-3 Residential.

Research and analysis of market data, and completion of the subdivision analysis for the subject, results in a overall negative value, when future cash flows are discounted to a net present value. The resulting negative value indicates a residential subdivision with the subject's current condition and circumstances is not financially feasible, and there would be no reasonable buyers, resulting in an opinion of market value of \$0. The two key items which had a significant negative impact on value within the subdivision analysis were the current absorption rate of residential units in the market, and the substantial amount of special assessments the property is burdened with.

As discussed in the appraisal, the subdivision was developed at a time when it was speculated that significant residential growth would occur as a result of announced growth at Fort Riley. When this growth didn't materialize as expected, and when the national economy slowed, absorption within Abilene slowed, affecting the subject subdivision. The subject subdivision's past capture of new residential housing has been adequate; however, the overall Abilene housing market has slowed significantly, there is no supportable data to support an absorption rate greater than 5 units per year, and any projected absorption rate between 4-5 units per year could be considered reasonable. In addition, the subject would likely not capture the entire absorption of housing in the Abilene market, as there are presently 47 competing lots available on the market in other subdivisions; however, it is likely it could continue capturing approximately 30 percent of the lots absorbed in the market. It is noted that, discounting the subject lot prices substantially could potentially improve the subject capture rate.

In regard to the current special assessments, based on data provided by the owner, there are presently \$319,173 in outstanding special assessments. These special assessments are a substantial burden on the potential of the subject to maintain positive cash flow over the course of ownership for a potential investor.

The Appraiser considered numerous scenarios, adjusting variables such as lot price, absorption rate, and discount rate in the process of completing the subdivision approach. Most reasonable variations of the scenario yielded a negative net present value.

Appraisal Details

PURPOSE OF THE APPRAISAL:

The purpose of the appraisal is to develop an opinion of market value of the subject property, as of the effective date of the appraisal. Market value is defined as follows:

"Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated;*
- both parties are well informed or well advised and acting in what they consider their own best interests;*
- a reasonable time is allowed for exposure in the open market;*
- payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."¹*

CLIENT AND INTENDED USER:

The Client is the addressee of this appraisal report and additional intended users are members of the Cedar Ridge Estates, LLC. The Appraiser does not authorize, and is not responsible for use of this appraisal by any party other than the Client or intended user.

INTENDED USE:

The function and intended use is for accounting and tax purposes for the Client and intended users. Any other use is prohibited. The acceptance of this assignment, by the Appraiser, is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the Client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

PERTINENT DATES:

Date of valuation:	November 11, 2015
Date of site visit:	November 11, 2015
Date of report:	December 30, 2015

¹ Uniform Standards of Professional Appraisal Practice (USPAP) 2014-2015 Edition, Appraisal Foundation, Statement 22, A-75

PROPERTY RIGHTS APPRAISED:

The property rights appraised are the fee simple interest, defined as follows:

“An absolute ownership unencumbered by any other interest; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”²

MARKET EXPOSURE TIME:

The market exposure time is presumed to precede the effective date of the appraisal. Exposure time may be defined as follows:

“The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective opinion based on an analysis of past events assuming a competitive and open market”³

Exposure time is a function of price, time, and use. It must be noted that the concept of reasonable exposure time encompasses not only adequate, sufficient, and reasonable time, but adequate, sufficient, and reasonable effort.

The estimated exposure time presented herein is based on analysis of the following factors:

- statistical information about days on market
- information gathered through sales verification
- interviews with market participants
- anticipated changes in market conditions

Based on the data presented in this report, and the fact that the market value estimated herein is representative of a price based on current acceptable returns indicated by market participants, I am of the opinion that presently there is a very limited to no market for the subject property.

² The Dictionary of Real Estate Appraisal Sixth Edition, Appraisal Institute, 2015

³ USPAP 2014-2015 Edition, Appraisal Foundation, Statement 6, U-79

SCOPE OF WORK:

Based on conversations with the client and intended users, the data researched and the type and extent of analysis, along with the detail of this appraisal report are adequate for intended use. The completed appraisal report discusses comparable sales and applies a subdivision analysis, and was considered appropriate to produce a credible report.

- Bill Lansdowne viewed the subject property on November 11, 2015. In addition, the subject neighborhood was viewed.
- The Appraiser researched and compiled market data for sales of comparable incomplete subdivisions, partially absorbed subdivisions, residential lot sales, agricultural land and other relevant comparable land sales.
- The Appraiser researched and analyzed residential lot sales and absorption rates in Abilene, including historical residential building permit numbers, and analyzed the information gathered in order to complete the subdivision analysis.
- The Appraiser considered the numerous absorption scenarios within the subdivision analysis to arrive at a final opinion of market value for the subject real estate, as of the effective date of this appraisal.

Sources of Information:

- The Simmons Company proprietary database
- Dickinson County Appraiser Records
- Subject plat maps
- Infrastructure Costs - Loan information from ownership
- Interviews with local real estate professionals including realtors, brokers, builders
- Representatives from financial institutions
- Interflood.com for flood maps and flood plain information
- Tax information - Dickinson County Treasurer
- Zoning information - City of Abilene
- Legal description - Plat Map

In addition to the standard assumptions and limiting conditions, the following extraordinary assumptions and hypothetical conditions, may correspond to the concluded value opinions. If any of them are found to be false, it could alter the Appraiser's opinions or conclusions.

A hypothetical condition is defined as “that which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.”¹

Hypothetical Conditions

- None

An extraordinary assumption is defined as “an assumption directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis.”²

Extraordinary Assumptions

- None

¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. (Chicago: Appraisal Institute, 2010), 73

² *Dictionary of Real Estate Appraisal*, 97

City of Abilene
Payroll Expenditures Report
01/15/16

	TOTALS
NET SALARIES	\$ 67,240.66
OASDI - CITY/EMPLOYEE	\$ 12,082.92
MEDICARE - CITY/EMPLOYEE	\$ 2,825.86
FEDERAL WITHHOLDING - EMPLOYEE	\$ 9,465.89
KPERS - CITY/EMPLOYEE	\$ 9,997.89
KPF - CITY/EMPLOYEE	\$ 10,491.71
WADDELL & REED 457 - CITY/EMPLOYEE	\$ 1,836.00
WADDELL & REED SAVINGS - EMPLOYEE	\$ 315.00
STATE TAX - EMPLOYEE	\$ 2,983.43
AFLAC INSURANCE - EMPLOYEE	\$ 534.24
VISION PLANS - EMPLOYEE	\$ 268.68
HEALTH INSURANCE - CITY/EMPLOYEE	\$ 19,620.28
ATHLETIC CLUBS - CITY/EMPLOYEE	\$ 242.81
KS PAYMENT CENTER SUPPORT - EMPLOYEE	\$ 768.57
CALIFORNIA CHILD SUPPORT - EMPLOYEE	\$ 461.53
FLEXIBLE SPENDING ACCOUNT - EMPLOYEE	\$ 972.96
POLICE & FIREMENS INS. - EMPLOYEE	\$ 20.92
TOTAL PAYROLL EXPENDITURES	\$ 140,129.35

MANUAL PAYABLES**January 25, 2016**

Date	Check Number	Vendor	Line Item	Amount	Description
01/12/16	20962	Summit Truck Center	001-004-530330	\$55,332.00	2010 IHC Tandem axle dump truck
Total				\$55,332.00	

CITY OF ABILENE

01/19/16

*Check Summary Register©

January 2016

Name	Check Date	Check Amt	
002000 Astra Bank checking			
Paid Chk# 020998	ABILENE MUNICIPAL COURT	01/25/16	\$970.00 LINDSEY RIFFEL 15-0771 BOND AP
Paid Chk# 020999	ABILENE PUBLIC LIBRARY	01/25/16	\$207,284.22 JAN 2016 TAX DISBURSEMENTS
Paid Chk# 021000	ABILENE REFLECTOR-CHRONIC	01/25/16	\$198.00 YEARLY SUBSCRIPTION
Paid Chk# 021001	ARBOR DAY FOUNDATION	01/25/16	\$15.00 2016 TREE CITY USA DUES
Paid Chk# 021002	AT & T	01/25/16	\$75.91 INTERNET
Paid Chk# 021003	AUMA ACTUATORS, INC	01/25/16	\$1,036.69 MOTOR
Paid Chk# 021004	BAYER CONSTRUCTION CO, IN	01/25/16	\$1,886.16 HP COLD MIX
Paid Chk# 021005	BIG STUFF DETAILING	01/25/16	\$504.68 FILL DETAIL ON STREET SWEEPEF
Paid Chk# 021006	CLIFFORD M. BURT	01/25/16	\$550.00 TREE REMOVAL
Paid Chk# 021007	CENTRAL BROCHURE DISTRIBU	01/25/16	\$500.00 TOURISM BROCHURE
Paid Chk# 021008	CINTAS FIRST AID & SAFETY	01/25/16	\$274.02 1ST AID SUPPLIES
Paid Chk# 021009	CONSOLIDATED PRINTING	01/25/16	\$266.77 NOV & DEC COPY COUNTS
Paid Chk# 021010	CONSOLIDATED WATER SOLUTI	01/25/16	\$6,480.00 ANTI-SCALANT
Paid Chk# 021011	D S & O RURAL ELECTRIC COO	01/25/16	\$107.86 ELECTRICAL SERVICE FOR WATEF
Paid Chk# 021012	LINDA DAVIES	01/25/16	\$159.98 REIMB. DECORATIONS/LIGHTS FOI
Paid Chk# 021013	DENNY'S PLUMBING & HEATING	01/25/16	\$1,498.47 CIRCULATION PUMP - BOILER
Paid Chk# 021014	DK CTY ADMINISTRATION	01/25/16	\$120.00 BLDG MONITORING ALARMS
Paid Chk# 021015	DK CTY REGISTER OF DEEDS	01/25/16	\$1.50 COPY OF DEED
Paid Chk# 021016	DON'S TIRE & SUPPLY	01/25/16	\$51.50 FLAT REPAIR
Paid Chk# 021017	DPC INDUSTRIES, INC	01/25/16	\$375.00 CHLORINE
Paid Chk# 021018	MARCHE FLEMING-RANDLE	01/25/16	\$250.00 IN-SERVICE WORKSHOP SPEAKER
Paid Chk# 021019	FOLEY EQUIPMENT COMPANY	01/25/16	\$73.96 OPER & MAINT. CURRY N
Paid Chk# 021020	FOUR SEASONS INC	01/25/16	\$2,000.00 NEW HEATER
Paid Chk# 021021	HENDERSON, KEENAN	01/25/16	\$10.00 15-0546 BOND REFUND
Paid Chk# 021022	HICKMAN, EDWARD W.	01/25/16	\$400.00 PUMP STATION REPAIR
Paid Chk# 021023	HUMMERT INTERNATIONAL	01/25/16	\$1,625.87 LAWN & GARDEN SUPPLIES FOR 2
Paid Chk# 021024	HUTCHINSON COMMUNITY COL	01/25/16	\$590.00 FIREFIGHTER 1, 2 & HAZMAT -JON
Paid Chk# 021025	IMAGE QUEST	01/25/16	\$31.52 BASE SERVICE
Paid Chk# 021026	IPMA-HR	01/25/16	\$545.00 TESTING MATERIALS
Paid Chk# 021027	ISG TECHNOLOGY, INC	01/25/16	\$217.50 SERVER UPDATES
Paid Chk# 021028	JERRY A. MILLER	01/25/16	\$300.00 JAN 2016 AWOS
Paid Chk# 021029	JOHNSON, RICKY	01/25/16	\$155.00 BOND RETURN
Paid Chk# 021030	KACP	01/25/16	\$552.50 POST MATERIALS
Paid Chk# 021031	KANSAS GAS SERVICE	01/25/16	\$2,701.18 GAS SERVICE
Paid Chk# 021032	KS MUNICIPAL UTILITIES	01/25/16	\$1,111.00 2016 MEMBERSHIP DUES
Paid Chk# 021033	LA RUE DISTRIBUTING INC	01/25/16	\$106.82 COFFEE
Paid Chk# 021034	LITTLE MONSTERS CREATIVE, L	01/25/16	\$300.00 NEW CVB LOGO
Paid Chk# 021035	MID-CONTINENT SAFETY	01/25/16	\$260.00
Paid Chk# 021036	MIDWEST CONCRETE MATERIA	01/25/16	\$949.00 21 & BUCKEYE FLOWABLE FILL
Paid Chk# 021037	NORTH CENTRAL REGIONAL	01/25/16	\$500.00 2016 DUES
Paid Chk# 021038	PAT MCCARTHY PRODUCTIONS	01/25/16	\$399.00 TRAINING 210
Paid Chk# 021039	PRAIRIE FIRE COFFEE	01/25/16	\$134.70 COFFEE
Paid Chk# 021040	SAGE PRODUCTS, INC	01/25/16	\$273.00 SUPPLIES
Paid Chk# 021041	SMART INSURANCE	01/25/16	\$1,227.00 TROLLEY RENEWAL
Paid Chk# 021042	SUMMIT TRUCK CENTER	01/25/16	\$143.30 AIR CLEANER & BEZEL
Paid Chk# 021043	SUPERIOR SANITATION SERVIC	01/25/16	\$170.00 TRASH SERVICE # CC, PARKS & SF

CITY OF ABILENE

01/19/16

*Check Summary Register©

January 2016

	Name	Check Date	Check Amt	
Paid Chk# 021044	THE HUTCHINSON NEWS	01/25/16	\$268.18	RFP AD
Paid Chk# 021045	THOMAS OUTDOOR ADVERTISI	01/25/16	\$405.00	BILLBOARD
Paid Chk# 021046	TRAILS END CAR WASH	01/25/16	\$166.00	CAR WASHES
Paid Chk# 021047	UNIVERSITY OF KANSAS	01/25/16	\$90.00	TRAINING 208
Paid Chk# 021048	US BANK EQUIPMENT FINANCE	01/25/16	\$163.30	COPIER
Paid Chk# 021049	VISA - UMB MUNICIPAL COURT	01/25/16	\$9.98	ENCRYPTION
Paid Chk# 021050	VISA - UMB PARKS	01/25/16	\$3,394.67	SUPPLIES
Paid Chk# 021051	WAITT OUTDOOR	01/25/16	\$1,565.00	BILLBOARDS
Paid Chk# 021052	WESTAR ENERGY	01/25/16	\$44,817.06	ELECTRIC SERVICE
		Total Checks	\$288,261.30	

FILTER: None

CITY OF ABILENE

01/19/16

*Check Summary Register©

December 2015

Name	Check Date	Check Amt	
002000 Astra Bank checking			
Paid Chk# 020963	AMERICAN ELECTRIC CO	01/25/16	\$1,515.60 PERIOD LIGHT POLES FOR POST C
Paid Chk# 020964	CLARK, MIZE & LINVILLE CHART	01/25/16	\$5,250.00 LEGAL SERVICE DEC 2015
Paid Chk# 020965	DK CTY SHERIFF	01/25/16	\$2,590.00 DEC 2015 PRISONER CARE
Paid Chk# 020966	HAMM INC	01/25/16	\$4,772.32 RIP RAP
Paid Chk# 020967	HD SUPPLY WATERWORKS	01/25/16	\$2,848.00 METER LIDS/PITS/RINGS FOR WAT
Paid Chk# 020968	INDEPENDENT SALT COMPANY	01/25/16	\$495.75 ROAD SALT
Paid Chk# 020969	MARK KINDERKNECHT	01/25/16	\$260.00 NUISANCE ABATEMENT @ 1214 NV
Paid Chk# 020970	KS EMPLOYMENT SECURITY FU	01/25/16	\$4,867.88
Paid Chk# 020971	LAYNE INLINER, INC	01/25/16	\$49,671.30 RELINING 1602 FT OF SEWER MAIN
Paid Chk# 020972	MIDWEST CONCRETE MATERIA	01/25/16	\$210.01 CONCRETE FOR SE 7TH
Paid Chk# 020973	MONTGOMERY COMMUNICATIO	01/25/16	\$341.32 DEC ADS & LEGALS
Paid Chk# 020974	OCCK INC.	01/25/16	\$6,166.67 NOV 2015 SERVICE
Paid Chk# 020975	UNITED SCOPE	01/25/16	\$648.54 C-MOUNT CAMERA/LENS/HALOGEN
Paid Chk# 020976	VISA - UMB ADMINISTRATION	01/25/16	\$1,363.16 SUPPLIES
Paid Chk# 020977	VISA - UMB COMMUNITY DEVEL	01/25/16	\$165.04 SUPPLIES
Paid Chk# 020978	VISA - UMB CVB	01/25/16	\$944.84 SUPPLIES
Paid Chk# 020979	VISA - UMB FIRE DEPT	01/25/16	\$3,125.48 SUPPLIES
Paid Chk# 020980	VISA - UMB POLICE DEPT	01/25/16	\$1,141.68 SUPPLIES
Paid Chk# 020981	VISA - UMB PUBLIC WORKS	01/25/16	\$4,646.86 SUPPLIES
Paid Chk# 020982	WESTERN EXTRALITE COMPAN	01/25/16	\$1,037.50 24 V POWER SUPPLY/SOFT START
Paid Chk# 020983	WICHITA WINWATER WORKS C	01/25/16	\$12,461.60 HDPE 8" & 6" WATER MAIN PIPE
		Total Checks	\$104,523.55

FILTER: None