

**FRANKLIN COUNTY
COMMISSION AGENDA ITEM**

TO: BOARD OF FRANKLIN COUNTY COMMISSIONERS	Reviewed:
FROM: Lisa Johnson	Ext: 3485
DEPARTMENT: Administration	
DATE: Wednesday, April 15, 2009	No:

ITEM: Consider the approval of a Revised Lease Purchase Agreement for the refinance of the Franklin County Annex Building

Background: The Franklin County Commission approved a Resolution for refinancing the Franklin County Annex at their March 4, 2009 commission meeting. There was a 30 day waiting period before the lease could be signed.

Recommended Action: It is recommended that the commission approve Revised Lease Purchase Agreement for the refinance of the Franklin County Annex Building.

Attachments: Lease Purchase Agreement

REVISED LEASE PURCHASE AGREEMENT

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THIS LEASE PURCHASE AGREEMENT, dated and effective as of April 1, 2009 (the 'Lease'), by and between SHIRLEY, LLC, a Kansas Limited Liability Company, (the 'Lessor'), and THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY, KANSAS, on behalf of Franklin County, Kansas, organized and existing under and by the virtue of the Constitution and laws of the State of Kansas, (the 'Lessee').

WITNESSETH:

That for and in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1: Definitions of Words and Terms. In addition to the words and terms elsewhere defined in this Lease or in the Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following the meanings unless the context or use indicates another or different meaning or the intent and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

'Commencement Date' shall mean April 1, 2009.

'Property' shall mean the Property which is the subject of this Lease and which is described in Exhibit A, attached hereto and incorporated herein by this reference. The Property is sometimes referred to herein as the 'Demised Property.'

'Fiscal Year' shall mean the fiscal year of the Lease as established from time to time by the Lessee, currently being a period of twelve (12) calendar months, beginning each January 1 and ending each December 31.

'Governing Body' shall mean the Board of County Commissioners of Franklin County, Kansas.

'Lease' shall mean this Lease Purchase Agreement, dated as of April 1, 2009, by and between Shirley, LLC, of Topeka, Kansas, as the Lessor, and the Board of County Commissioners of Franklin County, Kansas, as the Lessee.

'Lease Term' shall mean the period from April 1, 2009, through and including October 31, 2014, or to such earlier date as the Lease may be terminated as provided by Section 4 hereof.

'Purchase Price Balance' shall mean the Purchase Price Balance set forth in Exhibit B, attached hereto and incorporated hereto by this reference, and which is payable by the Lessee upon exercising its Option to Purchase the Property as provided by Section 19 hereof.

'Rental' shall mean the total amount to be paid by the Lessee to the Lessor as consideration for the use of the Equipment during the Lease Term and includes both principal and interest.

'Rental Payments' shall mean the total payment of Rental due and payable under this Lease as described in Section 6 (A) hereof and as set forth on Exhibit B, attached hereto and incorporated herein by this reference.

Section 2: Demised Premises. The Lessor hereby demises, leases and lets to the Lessee, and the Lessee hereby rents, leases and hires from the Lessor, the Property, subject to and in accordance with the terms and conditions of this Lease, to have and to hold for the Lease Term.

Section 3: Lease Term. The term of this Lease, (the 'Lease Term') shall commence on April 1, 2009, (the 'Commencement Date') and shall continue through and including October 31, 2014, (the 'Termination Date') unless earlier terminated pursuant to Section 4 hereof.

Section 4: 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 on the Termination Date;
- B. The exercise by the Lessee of the Option to Purchase the Property granted under the provision of Section 19 hereof;
- C. A default by the Lessee under the provisions of this Lease, and the Lessor's election to terminate this Lease under Section 15 thereof;
- D. The payment by the Lessee of all Rental due hereunder, and the payment of any additional amounts for which the Lessee may become obligated hereunder.
- E. In the event sufficient funds shall not be budgeted and appropriated by the Lessee for any Fiscal Year of the Lessee sufficient in amount to provide for the Rental Payments required hereunder in order to continue the leasing of the Property, or for any other obligation of the Lessee under this Lease during the Lease Term, then the Lessee shall terminate this Lease pursuant to this subsection by so notifying the Lessor; and the Lessee shall not be obligated to make the Rental Payments required by this Lease beyond the end of the period for which the Lessee has budgeted therefore subsequent to the end of the then current Fiscal Year of the Lessee. The Lessee agrees to deliver notice to the Lessor of the termination under this subsection within Thirty (30) days after the Lessee's failure to budget and appropriate for said Rental Payments in the ordinary course of its business, and the Lessee shall surrender the Property to the Lessor on the last day of the last period for which Rental Payments have been appropriated and/or made. In the event the Lessee does not surrender the Property on such date, the Lessor shall have all of the rights and remedies with respect to the Property as are set out in Section 8 hereof.

Section 5: Transfer of Title. Upon the payment by Lessee of all of the Rental required by this Lease or the exercising of the Option to Purchase the Property as described in Section 19 hereof,

and the expiration or termination of the Lease Term, title to the Property shall be conveyed to and vested directly in the Lessee, and the Lessor shall execute and deliver a Warranty Deed for the Property in favor of the Lessee, and the Lessor shall execute and deliver any and all such further instruments and assurances as may reasonably be necessary or proper to consummate such transfer and the discharge of Lessor's lien on the Property.

Section 6: Rental. The Lessee and the Lessor understand and intend that the obligation of the Lessee to make the Rental Payments under this Lease shall constitute a current expense of the Lessee and shall not in any way be construed to be a debt of the Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Lessee, nor shall anything contained herein constitute a pledge of the general foregoing, the Lessee shall make the Rental Payments directly to the Lessor, in the amounts, at the times, and in the manner set forth herein, and said amounts shall constitute in the aggregate the total of the Rental payable under this Lease as follows:

- A. Rental Payments – The Lessee agrees to pay to the Lessor, exclusively from legally available funds, the total Rental due hereunder amortized over the Lease Term and due and payable at the times and in the amounts as are specified in Exhibit B which is attached hereto and incorporated herein by this reference. Payment of the Rental shall cease in the event of the termination of the Lease Term by reason of the non-appropriation of funds as provided by Section 4 (E) hereof. The nonpayment of the Rental under this Lease in the event the Lessee terminates this Lease under the provisions of Section 4 (E) hereof will not constitute a default under this Lease as provided by Section 16 hereof. 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.
- B. Consideration – Payment of each twelve monthly Rental Payment hereunder shall constitute the total Rental Payments for each Fiscal Year and shall be paid by the Lessee for and in consideration of the right of use and the continued quiet use and enjoyment of the Property for and during the Lease Term. The parties hereto have agreed and determined that the total Rental hereunder represents the fair rental value of the Property. In making such determination, consideration has been given to the costs of acquiring and financing the Property, the uses and purposes which will be served by the Property, and the benefits therefrom which will accrue to the parties to this Lease and the general public by reason of the Property.
- C. Budget – The Lessee hereby covenants and agrees to take such action as may be necessary to include and maintain the portion of the Rental due hereunder in each Fiscal Year in its budget for such Fiscal Year, and further shall make the necessary appropriations for all such Rental. Each year during the Lease Term, the Lessee shall furnish to the Lessor, copies of Lessee's budget or such other evidence of its having taken formal action with respect to the appropriations of money to pay the Rental hereunder at least fifteen (15) days before the final adoption of such budget or other formal action with respect to the appropriation of money. The covenants on the part of the Lessee herein contained shall be deemed

to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the Lessee to take such action and to do such things as are required by law in the performance of the official duty of such officials to enable the Lessee to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the Lessee.

- D. Payment – Each Rental Payment, and the payment of any other or additional amounts for which the Lessee becomes obligated hereunder, shall be paid in lawful money of the United States of America, by warrant or check drawn against funds of the Lessee, and delivered to Fidelity Bank as Escrow Agent. Any Rental Payment, or portion thereof, which is not paid when due shall remain due and payable until received by the Lessor. Each Rental Payment and the payment of any other or additional amounts for which the Lessee becomes obligated hereunder, not paid when due shall bear interest at the contract rate hereof (*i.e.* The average rate of interest on the unpaid portion of the total Rental as of the date of nonpayment) from the date on which the Rental Payment or other payment, as the case may be, becomes due until the same is paid. Notwithstanding any dispute between the Lessor and the Lessee hereunder, the Lessee shall make all Rental Payments and payments of any other or additional amounts for which it may become obligated hereunder when due and shall not withhold any dispute in connection therewith, which dispute shall be resolved in accordance with Section 20 hereof. In the event of a determination that the Lessee was not liable for said Rental Payment or other payment, or any portion thereof, said payments or excess or payment as the case may be, shall be credited against subsequent Rental Payments due hereunder.
- E. Prepayment of Rental; Credits to Rental Payments – Nothing herein contained shall prevent the Lessee from making from time to time contributions or advances to the Lessor for the Rental due hereunder or any portion thereof; and any such contributions or advances shall be credited against the next succeeding Rental Payment.

Section 7: Maintenance and Operation Warranties. Lessee shall, at its own expense, maintain or cause to be maintained, the Property in good order, condition, and repair. It is understood and agreed that in consideration of the making of the Rental Payments herein provided for by the Lessee, the Lessor is only obligated to provide the Property and the Lessor shall have no obligation to incur any expenses of any kind or character in connection with the management, operation, or maintenance of the Property during the Lease Term; except that, in the event the Lessee shall fail to keep the Property in good repair and operating condition, the Lessor may, (but shall be under no obligation to), make such repairs or replacements as are necessary and to provide for the payment thereof; and all such amounts, if any, so advanced by the Lessor shall be repaid to the Lessor by the Lessee as an other or additional amount for which the Lessee becomes obligated hereunder, together with interest thereon at the highest lawful rate, and the Lessee hereby agrees to pay any such other or additional amount for which it may become obligated under this Lease.

Section 8: Right of Entry. The Lessor and its designated representatives shall have the right at all reasonable times during the Lessee's regular business hours, (and in emergencies at all times), to enter into and upon the premises of the Lessee: (i) to inspect the Property, (ii) for any purpose connected with the Lessor's right of obligations under the Lease, or (iii) for all other lawful purposes.

Section 9: Use of the Property. The Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease and the nature of the Property. The Lessee shall provide all permits and licenses, if any, necessary for the operation of the Property. In addition, the Lessee agree to comply in all respects, (including, without limitation, with respect to the use, maintenance, and operation of each item or component of the Property) with all of the laws of the jurisdiction in administrative or judicial body exercising any power or jurisdiction over the items or components of the Property; provided, however, that the Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the estate of the Lessor in and to any of the items or components of the Property or its interest in or rights under this Lease.

Section 10: Quiet Enjoyment. The parties hereto mutually covenant and agrees that the Lessee, by keeping and performing the covenants and agreements herein contained, shall at all times during the Lease Term, peacefully and quietly, have, hold and enjoy the Property.

Section 11: Taxes, Other Governmental Charges and Utility Chares; Other Liens.

- A. Except for income taxes of the Lessor, the Lessee will pay during the Lease Term, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property and any Property or other property acquired by the Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to, the Property, as well as all other charges incurred in the operation, maintenance, use and upkeep of the Property; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as have or will accrue during the time this Lease is in effect.
- B. The Lessee shall keep the Property free and clear of all liens, charges, and encumbrances, except as may be approved in writing by the Lessor; provided however, nothing in this Lease shall preclude the Lessee from pledging its full faith and credit to the repayment of any legally authorized general obligation bond issue of the Lessee. The Lessee shall pay or cause to be paid, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, the Property and which may be secured by any lien against the Property and the Lessee's and/or the Lessor's interest therein, and shall cause each such

lien to be fully discharged and released; provided; however, that this if the Lessee and/or the Lessor desire(s) to contest any such lien, this may be done, and if such lien shall be reduced to final judgment and such judgment, or such process as may be issued for the enforcement thereof, is not promptly stayed, or if so stayed and said stay thereafter expires, then, and in any such event, the Lessee shall forthwith pay and discharge such judgment.

Section 12: Insurance. The 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, lighting, vandalism, malicious mischief and such perils ordinarily defined as "extended coverage" and other perils as the Lessor and the Lessee may agree would be insured against, if such insurance is available from reputable insurers. Such insurance shall be maintained at all times and from time to time in an amount not less than: (i) the full insurable value of the Property, OR (ii) the Purchase Price Balance, whichever is less, subject to a "deductible clause" in an amount not greater than ten thousand dollars (\$10,000.00); and shall contain an inflation guard endorsement. The term "full insurable value" as used in this Section shall mean the actual replacement cost "new" of the Property.
- B. Liability insurance against claims for bodily injury or death, or damage to property occurring upon, in, or about the Property, such insurance to afford protection to a limit of not less than one million dollars (\$1,000,000.00), combined single limit bodily injury and property damage with such deductible provisions as the Lessee provided on like coverage but not to exceed ten thousand dollars (\$10,000.00).
- C. Notwithstanding the generality of foregoing, the Lessee shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above or any insurance unless the same is insurance which is available from reputable insurers on the open market. The phrase "insurance which is available from reputable insurers on the open market" means standard policies of insurance with standard deductibles offered by reputable insurers in a competitive market.
- D. In the event the Lessee fails to maintain the insurance required to be maintained hereunder, the Lessor shall have the right to procure and maintain such insurance and charge the Lessee for the cost thereof as an other or additional amount for which the Lessee becomes obligated hereunder.
- E. The Lessee may provide such insurance required hereunder as part of "blanket" coverage maintained on all the assets of the Lessee, and with the written consent of the Lessor, be a self-insurer of such risks.

Section 13: Damage to Property. In the event of destruction or damage to the Property by any casualty or event so that it becomes wholly or partly unusable, the Lessor, at its option, may do either of the following:

- A. Rebuild and repair the Property so that it shall be restored completely to its state and condition prior to such casualty or event, and suitable for full use, in which case this Lease shall remain and continue uninterrupted and in full force and effect, (the Lessee shall have no right to abate the Rental Payments during said period of repairing or rebuilding and shall continue to make the Rental Payments required by and in the manner specified in Section 6 hereof), and any excess of insurance proceeds resulting from such destruction or damage over the amount expended for such repairing or rebuilding, shall be paid to Lessor and shall be treated as a credit to Rental as provided by Section 6 (E) hereof; OR
- B. Declare this Lease to be terminated and pay or direct the payment of such money collected from insurance for the destruction of or damage to the Property, to the Lessor as a credit to the Rental due hereunder as provided by Section 6 (E) hereof; provided that any amount collected from insurance which exceeds the Purchase Price Balance existing at the time of payment shall be paid over to the Lessee.

Section 14: Assignment of Sublease. Neither this Lease nor any interest of the Lessee herein shall, at any time after the date hereof, without the prior written consent of the Lessor, be mortgaged, pledged, assigned or transferred by the Lessee by voluntary act or by operation of law, or otherwise, except as specifically provided herein. The Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed hereunder, notwithstanding any assigning, transferring or subletting which may be made. Even though Lessee may sublease the use of all or any part of the Property, nothing herein contained shall be construed to relieve the Lessee from any obligation contained herein.

Section 15: Assignment of Lease. The Lessor shall have the right to assign its interest in this Lease to another party or parties. In the event of such assignment, anything required or permitted to be done or performed by the Lessor under this Lease shall be done or performed by such assignee of the Lessor. Further, neither the Lessor nor its assignees or successors shall at any time mortgage, pledge, or otherwise encumber the Property without the specific, written consent of the Lessee.

Section 16: Default by Lessee.

- A. If: (i) the Lessee shall fail to make any Rental Payment due hereunder within fifteen (15) days from the date it is due and payable; or (ii) the Lessee shall fail to keep any other terms, covenants or conditions contained herein for a period of sixty (60) days after written notice thereof from the Lessor to the Lessee; or (iii) the Lessee shall abandon the Property; or (iv) the Lessee's interest in this Lease or any part thereof shall be assigned or transferred without the written consent of the

Lessor, either voluntarily or by operation of law, except as set forth herein in Section 16, then and in any of such events, the Lessee shall be deemed to be in default hereunder.

- B. If the Lessee should, after notice of such default, fail to remedy any default, then the 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 and eject all parties in possession thereof therefrom, using all necessary force to do so, and sell the Property; or (ii) to take possession of the property, or any part thereof, and without terminating this Lease, re-let the Property, or any part thereof, as the agent and for the account of the Lessee upon such terms and conditions as the Lessor may deem advisable, in which event the rents received on such reletting shall be applied first to the expense or reletting 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 which may be statutorily recoverable at the time of such default, and thereafter toward payment of all sums due or to become due the Lessor hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, the Lessee shall remain liable for and will pay the Lessor any cumulative net deficiency. The foregoing remedies of the Lessor are in addition to and not exclusive of any other remedy of the Lessor. Any such taking of possession of the Property shall be allowed by the Lessee without hindrance and the Lessor shall not be liable in damages for any such taking or be guilty of trespass.

Section 17: Waiver. The waiver by the Lessor of any breach by thy Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 18: Net-Net-Net Lease. This Lease shall be deemed and construed to be a "net-net-net lease" in that the Lessee hereby agrees that the Rental Payments provided for herein shall be an absolute net return to the Lessor, free and clear of any expenses, charges or set-offs whatsoever related to the operation, maintenance and repair of the Property.

Section 19: Option to Purchase.

- A. The Lessee shall have the option to purchase the Property, but only if it is not in default as to any of the terms, provisions, or covenants of the Lease and only in the manner provided in Section 19 herein. The Lessee may exercise its Option to Purchase the Property on any Rental Payment date by paying the then applicable Purchase Price Balance for the Property as shown in Exhibit B attached hereto and incorporated herein, together with the then currently due Rental Payment required to be paid on such date as shown in Exhibit B attached hereto and incorporated herein, (the total of the Purchase Price Balance and the then due Rental Payment being herein referred to as the "Purchase Price").

- B. The Lessee shall give the Lessor notice of its intention to exercise its Option to Purchase not less than sixty (60) days in advance of the date of purchase, and at that time, shall deposit with the Lessor the Purchase Price Balance, together with the Interest Component of the Rental Payments, which will be required to be paid on the purchase date. If the Lessee then exercises its Option to Purchase the Property on the Rental Payment Date, the Lessee shall then pay to the Lessor the Principal Component of the Rental due on such Rental Payment Date, if any, less any credits to Rental which may have been paid to the Lessor by Lessee subsequent to the last previous Rental Payment date. Upon the exercise of the Option to Purchase and the payment of the Purchase Price Balance as aforesaid, all right, title, and interest of the Lessor in and to the Property shall be transferred to the Lessee.

Section 20: Arbitration.

- A. Any claim or dispute concerning questions of fact arising out of or relating to this Lease in connection with which this Lease is to be construed, or the performance or alleged breach thereof, or the performance or right to perform or either party in connection herewith, or the right of either party to receive compensation which is not disposed of by agreement of the parties, shall be submitted to arbitration pursuant to the provision of the *Kansas Uniform Arbitration Act*, K.S.A. 5-401, *et seq.*, as from time to time amended.
- B. Either party may demand such arbitration in writing within fifteen (15) days after any controversy has arisen, which demand shall include the name of the arbitrator appointed by the demanding party, together with a statement of the matter in controversy. Within ten (10) days after such demand the other party shall name its arbitrator, and the two arbitrators so selected shall name a third arbitrator within five (5) days, or in the event that third arbitrator shall not be agreed upon within the prescribed time period by the two arbitrators so appointed by the Chief Judge of the Judicial District in which Franklin County is located.
- C. The arbitration hearing shall be conducted in Franklin County, Kansas; governed by the laws of the State of Kansas; and concluded within sixty (60) days, unless otherwise ordered by the arbitrators. The award thereon shall be made within thirty (30) days after the close of the submission of evidence. Each party shall bear its own arbitration costs and expenses.
- D. The parties stipulate that the provision hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, State, or local court, or before any administrative agency or tribunal with respect to any controversy or dispute arising as herein contemplated and which is arbitrable as herein set forth. The award of the majority of the arbitrators shall be binding on the parties hereto, although each party shall retain its right to appeal any questions of law arising at

the hearing, or otherwise in accordance with the Kansas Uniform Arbitration Act, and judgment may be entered thereon in any court having jurisdiction.

- E. Either herein contained shall be deemed to give the arbitrators any authority power, or right to alter change, amend, modify, add to, or subtract from any provision of this Lease.

Section 21: Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

To the Lessee: Franklin County Board of County Commissioners
1428 S. Main Suite 2
Ottawa, Kansas 66067

To the Lessor: Shirley, LLC
2139 S.W. Westport Dr.
Topeka, Kansas 66614

Section 22: Laws Governing Lease & Certification of Compliance.

- A. This Lease is made in the State of Kansas under the Constitution and laws of such State and is to be so construed.
- B. Both parties acknowledge that this Lease Purchase Agreement is subject to the provisions of K.S.A. 10-1101 *et seq.* and further acknowledge that the terms of the Agreement are in compliance with those statues, *i.e.* Cash-Basis Law of Kansas.
- C. Further, Lessee, by signing this Agreement, specifically certifies that the Lessee has complied with the provisions of K.S.A. 1999 Supp. 10-1116c, to-wit:
1. By Resolution 09-14, adopted by unanimous vote of the Lessee Board of County Commissioners, in regular session, on the 4th day of March 2009, the Lessee identified its intent to enter into this Lease Purchase Agreement. (See Exhibit C)
 2. Public notice of the afore-mentioned Resolution, identifying the total of all payments and specifying the purpose of such payments, including debt service, was published in the official County newspaper each week for two consecutive weeks. (See Exhibit D)

3. Pursuant to K.S.A. 10-1116c(d)
 - i. The amount required to purchase the realty, if paid for by cash, is \$715,251.96.
 - ii. The annual average effective interest cost is Five percent (5.00%).
 - iii. Payments under the Agreement include principal and interest only. Maintenance, service, and insurance for the realty are not included in the payments and are the responsibility of the Lessee.

4. That thirty days have transpired since the publishing of the Public Notice and no protest petition, as set forth in K.S.A. 1999 Supp. 10-1116c(c) has been received by the Board of County Commissioners.

Section 23: Validity. If any one or more of the terms, provisions, promises, covenants or conditions of this Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 24: Headings. Any headings preceding the texts of the several Sections hereof shall be solely for convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

Section 25: Execution. This Lease may be simultaneously executed in any number of counterparts, each of which when so executed, shall be deemed to be an original, but all together shall constitute but one and the same Lease, and it is also understood and agreed that separate counterparts of this Lease may be separately executed by the Lessor and the Lessee, all with the same full force and effect as though the same counterpart has been executed simultaneously by both the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, all as of the day and year first above written.

The Board of County Commissioners of Franklin County, Kansas

John E. Taylor, Chairman

Donald R. Stottlemire, Vice-Chairman

Karen S. Farrell, Commissioner

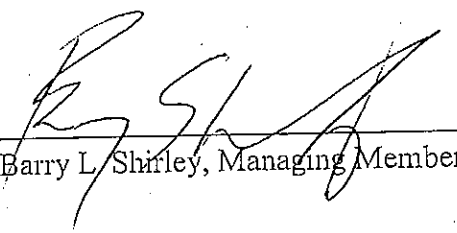
David J. Hood, Commissioner

Donald C. Hay, Commissioner

Attest:

Shari Perry, Franklin County Clerk

SHIRLEY, L.L.C.



Barry L. Shirley, Managing Member

ACKNOWLEDGEMENTS

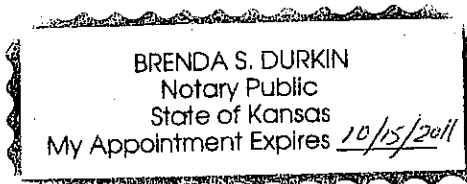
STATE OF KANSAS }
 }
COUNTY OF FRANKLIN } ss:

On this ____ day of April, 2009, before me, a Notary Public, in and for the County and State aforesaid, duly sworn, personally appeared, John E. Taylor, Donald R. Stottlemire, Karen S. Farrell, David J. Hood, and Donald C. Hay, in the City of Ottawa, Franklin County, Kansas, who executed the within instrument on behalf of the Franklin County Board of County Commissioners named therein as the Lessee under the foregoing instrument.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed my official seal on the day and year first above written.

Notary Public

STATE OF KANSAS }
 }
COUNTY OF SHAWNEE } ss:



On this 13th day of March, 2009, before me, a Notary Public, in and for the County and State aforesaid, duly sworn, personally appeared, Barry L. Shirley, in the City of Topeka, Shawnee County, Kansas, who executed the within instrument on behalf of the SHIRLEY, L.L.C., named therein as the Lessor under the foregoing instrument.

IN WITNESS WHEREOF, I have hereto subscribed my name and affixed my official seal on the day and year first above written.

Brenda Durkin
Notary Public

Exhibit "A": Description of the Property

Commencing at a point six hundred fifty five (665) feet south of the SE corner of Block 24, University Addition #2 to the City of Ottawa, Kansas; thence south five hundred eighty five (585) feet along the west line of Main Street, City of Ottawa, thence west four hundred feet (400) to the right of way of the A.T. & S.F. railway; thence north along the east line of said right of way five hundred eighty five (585) feet to a point due west of the point of beginning; thence east four hundred (400) feet to the place of beginning, excepting therefrom the following described tracts:

- A. Commencing at the S.W. corner thereof, thence east one hundred (100) feet; thence north one hundred (100) feet; thence west one hundred (100) feet more or less, to the east line of the rail road right of way; thence south along the said right of way to the place of beginning.
- B. Excepting therefrom commencing at the SE corner of the first above described tract of land; thence; west one hundred fifty (150) feet; thence north one hundred forty (140) feet; thence east one hundred fifty (150) feet to the west line of Main Street, City of Ottawa, thence south one hundred forty (140) feet to the place of beginning.
- C. Excepting therefrom commencing at the NE corner of the first above described tract; thence south fifty seven (57) feet along the west line of Main Street, City of Ottawa; thence west one hundred seventy (170) feet to a point of beginning.

Exhibit B: Rental Payment and Purchase Price Schedule

Payment Number	Payment Date	Payment Amount	Principal Paid	Interest Paid	Remaining Balance
1	03/17/2009	12,203.95	5,422.42	2,781.53	705,829.54
2	03/17/2009	12,203.95	5,164.96	2,036.99	695,661.58
3	03/17/2009	12,203.95	4,907.50	1,292.45	687,754.00
4	03/17/2009	12,203.95	4,650.04	577.91	678,118.53
5	03/17/2009	12,203.95	4,392.58	285.37	668,740.48
6	03/17/2009	12,203.95	4,135.12	152.83	659,605.83
7	03/17/2009	12,203.95	3,877.66	79.29	650,728.29
8	03/17/2009	12,203.95	3,620.20	45.75	642,107.63
9	03/17/2009	12,203.95	3,362.74	25.21	633,744.92
10	03/17/2009	12,203.95	3,105.28	13.67	625,639.25
11	03/17/2009	12,203.95	2,847.82	7.13	617,791.42
12	03/17/2009	12,203.95	2,590.36	3.59	610,191.03
13	03/17/2009	12,203.95	2,332.90	2.05	602,858.13
14	03/17/2009	12,203.95	2,075.44	1.51	595,782.68
15	03/17/2009	12,203.95	1,817.98	0.97	588,964.70
16	03/17/2009	12,203.95	1,560.52	0.43	582,404.27
17	03/17/2009	12,203.95	1,303.06	0.00	576,101.21
18	03/17/2009	12,203.95	1,045.60	0.00	570,045.61
19	03/17/2009	12,203.95	788.14	0.00	564,257.47
20	03/17/2009	12,203.95	530.68	0.00	558,726.79
21	03/17/2009	12,203.95	273.22	0.00	553,453.57
22	03/17/2009	12,203.95	15.76	0.00	549,437.81
23	03/17/2009	12,203.95	0.00	0.00	545,638.76
24	03/17/2009	12,203.95	0.00	0.00	542,035.81
25	03/17/2009	12,203.95	0.00	0.00	538,628.86
26	03/17/2009	12,203.95	0.00	0.00	535,417.91
27	03/17/2009	12,203.95	0.00	0.00	532,402.96
28	03/17/2009	12,203.95	0.00	0.00	529,583.01
29	03/17/2009	12,203.95	0.00	0.00	526,958.06
30	03/17/2009	12,203.95	0.00	0.00	524,528.11
31	03/17/2009	12,203.95	0.00	0.00	522,293.16
32	03/17/2009	12,203.95	0.00	0.00	520,253.21
33	03/17/2009	12,203.95	0.00	0.00	518,408.26
34	03/17/2009	12,203.95	0.00	0.00	516,758.31
35	03/17/2009	12,203.95	0.00	0.00	515,303.36
36	03/17/2009	12,203.95	0.00	0.00	514,043.41
37	03/17/2009	12,203.95	0.00	0.00	512,978.46
38	03/17/2009	12,203.95	0.00	0.00	512,108.51
39	03/17/2009	12,203.95	0.00	0.00	511,433.56
40	03/17/2009	12,203.95	0.00	0.00	510,953.61
41	03/17/2009	12,203.95	0.00	0.00	510,668.66
42	03/17/2009	12,203.95	0.00	0.00	510,468.71
43	03/17/2009	12,203.95	0.00	0.00	510,343.76
44	03/17/2009	12,203.95	0.00	0.00	510,283.81
45	03/17/2009	12,203.95	0.00	0.00	510,283.86
46	03/17/2009	12,203.95	0.00	0.00	510,343.91
47	03/17/2009	12,203.95	0.00	0.00	510,468.96
48	03/17/2009	12,203.95	0.00	0.00	510,668.01
49	03/17/2009	12,203.95	0.00	0.00	510,953.06
50	03/17/2009	12,203.95	0.00	0.00	511,343.11

AMORTIZATION SCHEDULE

REPORT DATE 03/03/2009 LARK03 PAGE 1
 RUN DATE 03/03/2009 TIME 10:43
 FIDELITY SECURE BANK & TRUST CO
 INVERNA, KS 65901

135 FIDELITY STATE BANK & TRUST CO
 TOPEKA, KS 66601

REPORT DATE 03/01/2009 UNR03 PAGE 2
 RUN DATE 03/01/2009 TIME 19:13

AMORTIZATION SCHEDULE

Principal Amount : 715,251.98
 Loan Date : 03/17/2003
 Interest Rate : 5.00000
 Term : 60
 Day Day Inc : 30
 Prepaid/Advanced : Prepaid
 First Payment Date : 03/17/2009
 Payment Day : 17
 Second Payment Day : 0
 Payment Freq/Period : 1/M
 Interest Method : ACTUAL/360
 Fee Amount : 0.00
 Nbr : 5.07135

Payment Number	Payment Date	Payment Amount	Principal Paid	Interest Paid	Remaining Balance
51	03/17/2011	12,203.95	11,349.34	854.61	131,756.60
52	06/17/2011	12,203.95	11,359.72	834.23	182,387.08
53	07/17/2011	12,203.95	11,444.00	759.95	170,942.08
54	08/17/2011	12,203.95	11,467.94	736.01	159,475.14
55	09/17/2011	12,203.95	11,517.32	686.63	147,957.82
56	10/17/2011	12,203.95	11,597.46	616.49	136,360.36
57	11/17/2011	12,203.95	11,684.14	527.81	124,676.22
58	12/17/2011	12,203.95	11,772.12	436.83	112,904.10
59	01/17/2012	12,203.95	11,859.57	344.67	101,044.53
60	02/17/2012	12,203.95	11,959.28	251.67	89,085.25
61	03/17/2012	12,203.95	12,001.95	188.38	77,083.30
62	04/17/2012	12,203.95	12,001.95	11,959.28	65,081.35
63	05/17/2012	12,203.95	12,001.95	274.42	53,079.40
64	06/17/2012	12,203.95	12,001.95	232.30	41,077.45
65	07/17/2012	12,203.95	12,001.95	174.89	29,075.50
66	08/17/2012	12,203.95	12,001.95	76.99	17,073.55
67	09/17/2012	12,203.95	12,137.08	23.87	5,936.47
68	10/17/2012	5,751.18	5,751.18	0.00	0.00

Totals: 823,415.83 715,251.98 109,163.97

*** END OF REPORT ***

BOARD OF COUNTY COMMISSIONERS
OF
FRANKLIN COUNTY, KANSAS
RESOLUTION NO. 09- 14

WHEREAS, the Board of Franklin County Commissioners desires to enter into a lease-purchase agreement with Shirley, LLC, a Kansas Limited Liability Company concerning the following described real property:

Commencing at a point six hundred fifty five (665) feet south of the SE corner of Block 24, University Addition #2 to the City of Ottawa, Kansas,; thence south five hundred eighty five (585) feet along the west line of Main Street City of Ottawa, thence west four hundred feet (400) to the right of way of the A.T. & S.F. Railway; thence north along the east four hundred (400) feet to the place of beginning, excepting therefrom the following de3scribed tracts:

- A. Commencing at the S.W. corner thereof, thence east one hundred (100) feet, thence north 100 hundred (100) feet; thence west one hundred feet more or less, to the eat line of the rail road right of way; thence south along the said right of way to the place of beginning.
- B. Excepting therefrom commencing at the S.E. corner of the first above described tract of land; thence west one hundred fifty (150) feet; thence north one hundred forty (140) feet; thence east one hundred fifty (150) feet to the west line of MAIN Street, City of Ottawa, thence south one hundred forty (140) feet; to the place of beginning.
- C. Excepting therefrom commencing at the NE corner of the first above described tract; thence south fifty seven (57) feet along the west line of Main Street, City of Ottawa; thence west one hundred seventy (170) feet to a point of beginning.

:and

WHEREAS, the proposed agreement is for a term exceeding the current fiscal year of the municipality (Franklin County) and therefore pursuant to K.S.A. 10-1116c requires the approval of a majority vote of all members of the governing body; and,

WHEREAS, the proposed agreement involved the acquisition of land, is for a term of three or more years, and provides for the payment in any year in excess of \$100,000.00, to K.S.A. 10-1116c requires the total of all payments shall be published once each week for two consecutive weeks in a newspaper of general circulation within said municipality;

Exhibit D: Certifications of Publication of Resolution 09- 14

Jeanny Sharp, of lawful age, being first duly sworn, deposeseth and saith that she is Publisher and Editor of the

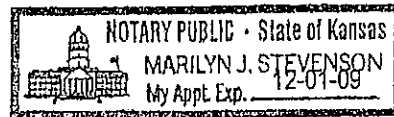
Ottawa Herald

a daily newspaper published in the City of Ottawa, Franklin County, Kansas, and of general circulation in Franklin County, Kansas, and is not a trade, religious or fraternal publication, and which newspaper has been admitted to the mails as second class matter in said County, and which newspaper has been continuously and uninterruptedly published in said County during the period of five full years immediately prior to the first publication of the notice hereinafter mentioned, and that a notice, of which is hereto attached, was published in the regular and entire Monday issue of said Ottawa Herald for 2 consecutive weeks, first publication being made on the 9th day of March, 2009 A.D., with final publication on the 16th day of March, 2009 A.D.

And affiant further says that she has personal knowledge of the statements above set forth, and they are true.

Jeanny Sharp

Subscribed and sworn to me before this 16th day of March, 2009 A.D.



Notary Public

Marilyn J. Stevenson

My Commission expires December 1, 2009

Printer fees \$316.68

(Published March 9, 2009)
(Last Published March 16, 2009)
BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, KANSAS
RESOLUTION NO. 09-14

WHEREAS, the Board of Franklin County Commissioners desires to enter into a lease-purchase agreement with Shirley, LLC, a Kansas Limited Liability Company concerning the following described real property:

Commencing at a point six hundred fifty five (655) feet south of the SE corner of Block 24, University Addition #2 to the City of Ottawa, Kansas; thence south five hundred eighty five (585) feet along the west line of Main Street City of Ottawa, thence west four hundred feet (400) to the right of way of the A.T. & S.F. Railway; thence north along the east four hundred (400) feet to the place of beginning, excepting therefrom the following described tracts:

A. Commencing at the S.W. corner thereof, thence east one hundred (100) feet, thence north 100 hundred (100) feet; thence west one hundred feet, more or less, to the east line of the rail road right of way; thence south along the said right of way to the place of beginning.

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C. Excepting therefrom commencing at the NE corner of the first above described tract; thence south fifty seven (57) feet along the west line of Main Street, City of Ottawa; thence west one hundred seventy (170) feet to a point of beginning.

and

WHEREAS, the proposed agreement is for a term exceeding the current fiscal year of the municipality (Franklin County) and therefore pursuant to K.S.A. 10-1116c requires the approval of a majority vote of all members of the governing body; and,

WHEREAS, the proposed agreement involved the acquisition of land, is for a term of three or more years and provides for the payment in any year in excess of \$100,000.00, to K.S.A. 10-1116c requires the total of all payments shall be published once each week for two consecutive weeks in a newspaper of general circulation within said municipality;

BE IT THEREFORE RESOLVE BY THE BOARD OF COUNTY COMMISSIONERS OF FRANKLIN COUNTY

THAT the Board of Franklin County Commissioners as the governing body for Franklin County hereby states:

1. Its intent to enter into said lease-purchase agreement;
2. That pursuant to this agreement the Board of Franklin County Commissioners shall pay 67 payments of \$12,203.95 and one payment of \$5,751.18;
3. That the total of all payments to be made pursuant to this agreement shall be \$823,415.18;
4. That of the above \$823,415.83; that \$108,163.87 shall be interest and \$715,251.96 shall be principal;
5. That the purpose of the agreement is to continue/acquire the use and eventually ownership of the above described real estate;
6. This resolution shall be published once each week for two consecutive weeks in a newspaper of general circulation in Franklin County;
7. That if a protest petition signed by not less than 5% of the qualified voters of Franklin County is filed with the appropriate election officer within 30 days following the last publication of this resolution, the agreement shall not take effect unless approved by a majority of qualified voters of Franklin County voting at an election thereon.

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 4th day of March 2009.

/s/John E Taylor
John E. Taylor
Chairman

Received and recorded this the 4th day of March 2009.

/s/Shari Perry
Shari Perry

Exhibit E: Escrow Agreement

This agreement is entered into this First Day of April 2009, between Shirley LLC, a Kansas Limited Liability Company, hereinafter referred to as "Lessor" and the Board of the County Commissioners of Franklin County, Kansas, a body politic on behalf of Franklin County, Kansas, hereinafter referred to as "Lessee" and Fidelity State Bank and Trust Co., a Kansas Corporation hereinafter referred to as "Escrow Agent".

WHEREAS, the Lessor and Lessee have entered into a Real Estate Lease Purchase Agreement (the "Agreement") dated the 1st day of April 2009, wherein Lessor has agreed to lease and Lessee has agreed to lease, with option to purchase, certain real estate located in Ottawa, Franklin County, Kansas, commonly known as 1416-1428 South Main Street, Ottawa, Kansas; and

WHEREAS, said Agreement calls for Lessee to deliver to Lessor payments to Lessor whose total shall be in the amount of Seven Hundred Fifteen Thousand Two Hundred Fifty-one Dollars and Ninety Six Cents (\$715,251.96), amortized over Sixty Six (68) months with the amortization period commencing April 1, 2009, and bearing an interest rate of Five Percent (5%) per annum on the unpaid principal balance of payments, commencing March 17, 2009. The Agreement shall require monthly payments of \$12,203.95, with the first payment to be due on March 17, 2009, and with successive payments due on or before the 1st day of each successive month. Lessee shall have the option of prepaying all or part of the payments of the Agreement without premium or penalty. All such payments shall be applied first to the payment of interest accrued to the date of such payment, and the balance, in any, shall be applied to the unpaid principal installments, in the inverse order of their maturity; and

WHEREAS, Lessor and Lessee have entered into a Lease Purchase Agreement on the 1st day of April 2009; and

WHEREAS, the Agreement requires all payments on the Lease-Purchase Agreement to be paid to Fidelity State Bank and Trust Co., 600 South Kansas Ave, PO Box 1737, Topeka, Kansas 66601 as Escrow Agent; and

NOW, THEREFORE, Lessee agrees to make payments under the Purchase Agreement to Escrow Agent, and Lessor agrees to accept payment under the Purchase Agreement through the Escrow Agent, and Escrow Agent agrees to accept payment under the Purchase Agreement and distribute payments as stated below.

Per the terms of the Purchase Agreement, the Escrow Agreement will receive the payments outlined in the Purchase Agreement. For each regular monthly payment from Lessee in the amount of \$12,203.95, Escrow Agent will distribute \$12,198.95 to the Lessor and said payment shall be distributed to the Lessor's deposit account #043672 at Fidelity State Bank and Trust Co.

Escrow Agent is only acting as an agent to receive and distribute payments under the Purchase Agreement. Escrow Agent accepts no liability to insure Lessee makes payments in a timely manner, nor the responsibility to insure prepayments are made in compliance with the terms of the Purchase Agreement. Escrow Agent accepts no liability to monitor compliance with the Purchase Agreement outside of the receipt and distribution of payments.

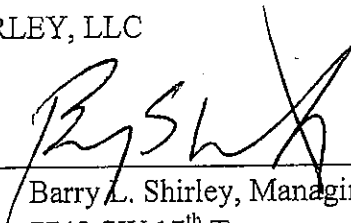
Lessee shall deliver an original copy of the Lease-Purchase Agreement to the Escrow Agent upon its execution by the parties thereto. Escrow Agreement will monitor the payments set forth in Exhibit B of the Lease-Purchase Agreement and credit such payments from Lessee to Lessor to the appropriate accounts as set forth in the Lease-Purchase Agreement and this Escrow Agreement, including the principal and interest credits to the unpaid balance of lease payments. When all lease payments, and the purchase payment is made by the Lessee to Lessor, as called for in Exhibit B of the Lease-Purchase Agreement, the Escrow Agent will mark the Lease-Purchase Agreement "Purchased and Paid in Full" and return it to the Lessee.

Escrow Agreement shall be compensated at the rate of \$10.00 for each payment received and distributed; one half of this fee is to be deducted from the payment from the Lessee. The Lessor is responsible for the remaining one half of this payment which shall be deducted from the Lessor's deposit account.

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

SHIRLEY, LLC

By: _____


Barry L. Shirley, Managing Member
7748 SW 17th Terrace
Topeka, Kansas 66614

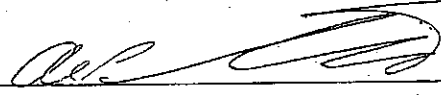
FRANKLIN COUNTY, KANSAS

By: _____

John E. Taylor, Chairman
Board of Franklin County
1428 S. Main, Suite 2
Ottawa, Kansas 66067

FIDELITY STATE BANK AND TRUST CO.

By: _____


Allan P. Towle, Executive Vice President
600 Kansas Avenue PO Box 1737
Topeka, Kansas 66601