

**PUBLIC INFRASTRUCTURE FINANCING PLAN**  
**Gardner Intermodal Facility/Logistics Park Kansas City**

This Public Infrastructure Financing Plan (this "Financing Plan") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among the City of Gardner, Kansas, a Kansas municipal corporation (the "City"), Johnson County, Kansas, a Kansas municipal corporation (the "County"), BNSF Railway Company, a Delaware corporation ("BNSF"), and The Allen Group – Kansas City, LLC, a Delaware limited liability company ("TAG-KC").

**RECITALS:**

A. BNSF is the owner of certain real property located in Johnson County, Kansas comprising approximately 1,000 gross acres depicted on **Exhibit "A-1"** attached hereto and legally described on **Exhibit "A-2"** attached hereto (the "Site").

B. BNSF desires and intends to develop and construct an intermodal facility adjacent to the BNSF rail line ("Intermodal Facility") upon approximately 440 acres of the Site as shown on **Exhibit "A-1"** ("Intermodal Site").

C. BNSF and TAG-KC have entered into an Option Agreement, dated as of April 13, 2007, as amended (the "Option") pursuant to which TAG-KC intends to purchase a portion of the Site comprising approximately 560 acres as depicted on **Exhibit "A-1"** for the development of an industrial park, including industrial warehouse, distribution, flex and storage facilities and for other supporting commercial uses (the "Logistics Park").

D. Significant public infrastructure improvements (the "Public Infrastructure Improvements") will be necessary to serve the Intermodal Facility and the Logistics Park, and the parties have agreed that the costs of the Public Infrastructure Improvements shall be funded through the public and private sources identified in this Financing Plan.

E. BNSF, TAG-KC and the City have, contemporaneously herewith, entered into a Project Agreement (the "Project Agreement") related to development of the Site and including construction of the Public Infrastructure Improvements.

F. The purpose of this Plan is to identify the Public Infrastructure Improvements which will be reasonably necessary to serve the Intermodal Facility and Logistics Park and to provide a safe and adequate transportation system for the public, as well as identifying the sources of funds and financing mechanisms that the parties agree to utilize to fund such Public Infrastructure Improvements. This Financing Plan is not intended to provide for any private improvements which constitute the development of the Intermodal Facility or Logistics Park, which improvements shall be paid for by BNSF and TAG-KC, respectively.

NOW THEREFORE, in consideration of the mutual assurances and agreements contained in this Financing Plan, and for other good and valuable consideration, the parties agree to the following terms and conditions :

1. The Public Infrastructure Improvements. The parties have identified the following projects as Public Infrastructure Improvements which are reasonably required for or as a result of the proposed development of the Intermodal Facility and the Logistics Park. The following costs associated with the corresponding Public Infrastructure Improvements include both hard and soft costs,<sup>1</sup> and are estimates in 2008 dollars<sup>2</sup> but are considered by the parties to be reliable estimates for purposes of this Financing Plan (the "Public Infrastructure Improvement Costs"), and to the extent necessary for this Financing Plan, each separate estimate will be referred to as the project cost for that particular improvement set forth herein. The Public Infrastructure Improvements shall be undertaken in three (3) separate stages, as set forth below, and shall be undertaken and funded as and when the thresholds specified in Section 4 of this Financing Plan are achieved.

a. Stage 1 Infrastructure Improvements: The following Public Infrastructure Improvements shall be deemed to be "Stage 1 Infrastructure Improvements", and the estimated project cost for each improvement (collectively, the "Stage 1 Infrastructure Costs") is stated below:

i.	191 <sup>st</sup> Street Improvements	
	(x) 191 <sup>st</sup> Street Improvements from Gardner Road to Four Corners	\$ 13,700,000
	(y) 191st Connector Preliminary Work	\$ 300,000
ii.	Center Street Bridge Lanes 1 & 2	\$ 3,900,000
iii.	Waste Water Improvements/Force Main	\$ 2,500,000
	<b><u>Total</u></b>	<b>\$ <u>20,400,000</u></b>

b. Stage 2 Infrastructure Improvements: The following Public Infrastructure Improvements shall be deemed to be "Stage 2 Infrastructure Improvements", the estimated project cost for each improvement (collectively, the "Stage 2 Infrastructure Costs") is stated below:

i.	Waverly Road Improvements <sup>3</sup>	
	(x) Waverly Road from 191 <sup>st</sup> to 56 Highway	\$ 6,500,000
	(y) S. Waverly Bridge	\$ 5,700,000
ii.	183 <sup>rd</sup> Street Extension	\$ 1,000,000

<sup>1</sup> The Public Infrastructure Improvement Costs set forth herein shall include both the actual costs of construction, including labor and materials, as well as "soft costs" including engineering fees, project management fees, contingency, right of way acquisition and other related costs directly related to the particular improvements.

<sup>2</sup> The cost estimates set forth in this Section 1 are made based upon the 2008 costs of materials, labor and other factors. The parties recognize and understand that many of these improvements will be made later and that the costs for labor, materials and other factors may increase over time and thereby increase the actual costs for the Public Infrastructure Improvement Costs beyond the estimates set forth herein.

<sup>3</sup> The North Waverly Bridge is included in Section 1.c.1.

iii.	Interchange Connector	\$ 4,200,000
	<b><u>Total</u></b>	<b><u>\$ 17,400,000</u></b>

c. Stage 3 Infrastructure Improvements: The following Public Infrastructure Improvements shall be deemed to be "Stage 3 Infrastructure Improvements", and the estimated project cost for each improvement (collectively, the "Stage 3 Infrastructure Costs") is stated below:

i.	North Waverly Bridge	\$ 4,400,000
ii.	191 <sup>st</sup> Connector <sup>4</sup>	\$ 7,000,000
	<b><u>Total</u></b>	<b><u>\$ 11,400,000</u></b>

2. Project Funding. The projects will be separately funded using a variety of funding sources (the "Sources of Funds"), including the following known or anticipated commitments:

a. Stage 1 Public Infrastructure Improvements Sources: The parties hereby agree that the Stage 1 Infrastructure Improvements will be funded in accordance with the following commitments, and the funding shall be provided by such parties as and when the funds are required in accordance with the Schedule set forth in Section 4 of this Financing Plan:

- i. The 191<sup>st</sup> Street Project: Subject to the receipt of designated funds from the State of Kansas, the County hereby agrees to provide adequate funding to pay for all of the project costs to complete the Stage 1 Infrastructure Improvements identified as 191<sup>st</sup> Street from Gardner Road to Four Corners, including the 191st Connector Preliminary Work (as set forth in Section 1.a.i), according to standards acceptable to the County, at a currently estimated project cost of \$14,000,000. The County has and will use one or more identified sources of funds to provide funding for the 191<sup>st</sup> Street project, but the County will not participate in funding for any other Stage 1 Infrastructure Costs.
- ii. The Center Street Bridge Project: BNSF hereby agrees to pay for all project costs necessary to complete the Center Street Bridge project (as set forth in Section 1.a.ii) according to standards acceptable to BNSF and to the City, at a currently estimated cost of \$3,900,000. BNSF will not participate in funding for any other Stage 1 Infrastructure Costs.
- iii. The Waste Water Improvements Project: The City hereby agrees to pay for all project costs necessary to complete the Waste Water improvements project (as set forth in Section 1.a.iii) in accordance

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<sup>4</sup> Notwithstanding the reference to this improvement as the "191st Connector," the parties agree that this improvement and the funds could be, more generally, for a grade separation or "through pass" in the vicinity of 191<sup>st</sup> Street and Four Corners Road as mutually agreed to by the parties.

with standards acceptable to the City and to TAG-KC, at a current estimated cost of \$2,500,000. The City has identified various sources of funds which may be used to pay the project costs for the Waste Water Improvements (or the City may use the Funding Mechanisms), and the City may use whatever sources it shall select in its sole discretion, provided that such funds are available in accordance with the Schedule set forth below. The City will not participate in funding for any other Stage 1 Infrastructure Costs.

- iv. The TAG-KC Contribution – \$1,000,000 Waste Water Improvements: TAG-KC hereby agrees to pay an amount equal to \$1,000,000 into an interest bearing, federally-insured escrow account (the "TAG-KC Escrow"), and the proceeds of such TAG-KC Escrow shall be distributed either to the City as set forth in the following sentence or to TAG-KC as set forth in Section 6 hereof. Subject to the terms of Section 6.b.ii below, the parties hereby agree that the City shall receive the funds in the TAG-KC Escrow as follows: (x) commencing on the that date which is the earlier of (1) the date that TAG-KC commences construction on no less than 4,680,000 of space in the Logistics Park, or (2) the date that is the eleventh (11<sup>th</sup>) anniversary of the opening of the TAG-KC Escrow, an amount equal to \$100,000 shall be disbursed from the TAG-KC Escrow to the City, (y) thereafter, on each such anniversary (of the date set forth in (1) or (2) above) thereafter until the twentieth (20<sup>th</sup>) anniversary, an amount equal to \$100,000 shall be disbursed from the TAG-KC Escrow to the City, and (z) on the earlier of (1) the date of approval of Abatements for the building(s) on the last developable site in the Logistics Park, or (2) the twentieth (20<sup>th</sup>) anniversary, the balance of the proceeds, including any interest thereon, shall be disbursed from the TAG-KC Escrow to the City; provided however that during the Term of the Project Agreement, the City has not (A) denied or reduced any of the Abatements pursuant to Section 6 hereof, or (B) failed to perform on its pledge of any of the Sources of Funds as set forth in Section 2.d of this Financing Plan.

TAG-KC will not participate in funding for any other Stage 1 Infrastructure Costs.

- b. Stage 2 Infrastructure Improvements Sources: The parties hereby agree to fund a portion of the Stage 2 Infrastructure Costs as follows:
- i. The Additional BNSF Contribution: BNSF hereby agrees to pay, upon the Stage 2 Design Date (as defined in Section 4.b below), an amount equal to \$3,100,000 for payment of project costs related to the S. Waverly Bridge project (at a current estimated cost of \$5,700,000 as set forth in Section 1.b.i(y)) into a federally-insured,

interest bearing escrow account (the "BNSF Escrow") and the proceeds of such BNSF Escrow shall be distributed as set forth in the following sentence or as set forth in Section 6 below. Said payment of \$3,100,000 by BNSF shall be in lieu of Excise Taxes (or any successor tax) and BNSF and the Intermodal Site shall be exempt from the payment of any such Excise Taxes. Subject to the terms of Section 6.c.i below, the parties hereby agree that the City shall receive the funds in the BNSF Escrow as follows: (x) commencing on the that date which is the earlier of (1) the date that TAG-KC commences construction on no less than 4,680,000 of space in the Logistics Park, or (2) the date that is the eleventh (11<sup>th</sup>) anniversary of the opening of the BNSF Escrow, an amount equal to \$310,000 shall be disbursed from the BNSF Escrow to the City, (y) thereafter, on each such anniversary (of the date set forth in (1) or (2) above) thereafter until the twentieth (20<sup>th</sup>) anniversary, an amount equal to \$310,000 shall be disbursed from the BNSF Escrow to the City, and (z) on the earlier of (1) the date of approval of Abatements for the building(s) on the last developable site in the Logistics Park, or (2) the twentieth (20<sup>th</sup>) anniversary, the balance of the proceeds, including any interest thereon, shall be disbursed from the BNSF Escrow to the City; provided however that during the Term of the Project Agreement, the City has not (A) denied or reduced any of the Abatements pursuant to Section 6 hereof, or (B) failed to perform on its pledge of any of the Sources of Funds as set forth in Section 2.d of this Financing Plan.

- ii. State of Kansas Funding Assistance: The parties hereby agree that during the 2009 legislative session, they will, individually and collectively, use diligent and concerted efforts<sup>5</sup> to obtain funding assistance from the State of Kansas, whether through an appropriation from the Legislature, through grant funding, or through debt financing assistance, as a means to fund the Stage 2 Infrastructure Improvement projects. After the 2009 legislative session, the City and the County may continue their efforts to obtain such funding assistance from the State of Kansas, with the cooperation of BNSF and TAG-KC, but after the 2009 legislative session, the parties hereby agree that the Stage 2 Infrastructure Costs shall be paid as set forth in Section 2.b.iii through v below.
- iii. The Waverly Road Project. The City hereby agrees to provide adequate funding to complete the Public Infrastructure Improvements identified as the Waverly Road project (in Section 1.b.i), including the South Waverly Bridge, with a current

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<sup>5</sup> The parties hereby agree that "diligent and concerted efforts" shall not require any of the parties to retain lobbyists or otherwise invest significant resources into obtaining such State assistance.

estimated project cost of \$12,200,000. In funding the costs of the Waverly Road project, the City shall first use whatever funding assistance is made available by and through the State of Kansas pursuant to Section 2.b.ii above. If such State sources do not provide adequate financing to complete the Waverly Road project as necessary, and the City does not then have available financing through the Funding Mechanisms in Section 3 hereof or the Public Infrastructure Fund, then the County shall provide sufficient funds to the City to ensure that the improvements are completed as required by this Financing Plan; provided however, that such assistance from the County shall be limited to funding available to that project under the County's CARS program, and more specifically, the use of the City's allocable portion of CARS funding for one or multiple years, unless the County otherwise specifically authorizes the use of other funds.

- iv. The 183<sup>rd</sup> Street Extension Project. The City hereby agrees to pay for the project costs necessary to complete the public infrastructure improvements identified as the 183<sup>rd</sup> Street Extension (in Section 1.b.ii), with a current estimated project cost of \$1,000,000. In funding the costs of the 183<sup>rd</sup> Street Extension project, the City shall first use whatever funding assistance is made available by and through the State of Kansas pursuant to Section 2.b.ii above, and if such funding is not available, the City shall use the Funding Mechanisms in Section 3 hereof or the Public Infrastructure Fund to pay such costs.
- v. The Interchange Connector Project. The City hereby agrees to provide adequate funding to complete the Stage 2 Infrastructure Improvements identified as the Interchange Connector (in Section 1.b.iii, with a current estimated project cost of \$4,200,000. In funding the costs of the Interchange Connector project, the City shall first use whatever funding assistance is made available by and through the State of Kansas pursuant to Section 2.b.ii above, and if such funding is not available, the City shall use the Funding Mechanisms in Section 3 hereof or the Public Infrastructure Fund to pay such costs.
- c. Stage 3 Infrastructure Improvement Sources: The City hereby agrees to provide adequate funding to complete the Stage 3 Infrastructure Improvements identified as the North Waverly Bridge project (in Section 1.c.i), at a current estimated cost of \$4,400,000, and the 191st Connector (in Section 1.c.ii), at a current estimated cost of \$7,000,000. In funding the costs of the Stage 3 Infrastructure Improvements, the City shall use the Funding Mechanisms in Section 3 hereof or the Public Infrastructure Fund to pay such costs.

- d. Stage 2 and Stage 3 Public Improvement Sources – the Public Infrastructure Fund: The City hereby agrees to create a special, independent project fund called the "Public Infrastructure Fund" which shall be funded with moneys derived from the following sources, all of which shall be collected or received by the City and placed in the Public Infrastructure Fund and then used to pay for or reimburse Public Infrastructure Improvement Costs:
- i. Utility Sales Taxes and Franchise Fees: The City shall pledge<sup>6</sup> an amount equal to 100% of the City's revenue derived from City retailers' sales taxes on utilities and franchise fees generated in connection with utility services on the Site (the "Utility Fees and Taxes") during the Term of this Financing Plan, and shall deposit those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
  - ii. Excise Taxes: The City shall pledge an amount equal to 100% of the revenue received from excise taxes (or payments made in lieu of excise taxes) paid in connection with the Site (the "Excise Taxes") during the Term of this Financing Plan, and the City shall deposit those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
  - iii. Intermodal Site Property Taxes: The City hereby agrees to pledge an amount equal to 100% of the City's share of the ad valorem property taxes received by the City in connection with the Intermodal Site (the "Intermodal Site Property Taxes") during the Term of this Financing Plan, and the City shall deposit those monies to the credit of the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.
  - iv. Origination Fee Payments: The City shall adopt a resolution of intent in the form attached as **Exhibit C** hereto, indicating its intention to grant to TAG-KC an abatement of up to fifteen percent (15%) of ad valorem property taxes (the "Infrastructure Abatements") for each building or project developed on the Logistics Park Site during the Term of the Financing Plan and such Infrastructure Abatements shall run for a period of ten (10) years from the date each such Abatement is commenced. For each Infrastructure Abatement that is granted, the City hereby agrees to assess and collect, and TAG-KC hereby agrees to pay an annual origination fee, which origination fee shall be in amounts

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<sup>6</sup> The term "pledge" as used herein is not intended to refer to any specific mechanism for contributing the various sources to the Public Infrastructure Fund. Rather, the parties understand and agree that the City shall have the right to use whatever mechanism(s) it deems appropriate and legally permissible to fund the Public Infrastructure Fund with amounts equivalent to the sources identified in this Section 2.d.

necessary to pay for or reimburse Public Infrastructure Improvement Costs<sup>7</sup> (each, an "Origination Fee" and collectively, the "Origination Fees"). Pursuant to the Project Agreement, TAG-KC has agreed to remit such Origination Fees to the City and the City hereby agrees to pledge an amount equal to 100% of any such Origination Fees during the Term of this Financing Plan, and the City shall deposit those monies in the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs.

- v. Adjacent Parcel Taxes: The City hereby agrees to pledge (x) 100% of the revenue received from excise taxes, and (y) up to 100% of the revenue received by the City from the utility sales taxes, franchise fees and ad valorem property taxes, if needed (collectively, the "Adjacent Parcel Taxes") paid from or as a result of development activity occurring on or in connection with the Adjacent Parcels (as defined below), as necessary to fund the Stage 2 and Stage 3 Infrastructure Costs during the Term of this Financing Plan, and the City shall deposit those monies to the Public Infrastructure Fund for payment or reimbursement of Public Infrastructure Improvement Costs. The term "Adjacent Parcels" as used herein shall be deemed to mean those properties and/or developments which are adjacent to the Site and certain of the Public Infrastructure Improvements as shown on Exhibit B attached, if and to the extent that the same are now or are subsequently annexed into the City.
- vi. Other Sources: The funds from other programs, grants or appropriations which are pledged or deposited in the Public Infrastructure Fund.

Notwithstanding the pledge of all of the various Stage 2 and 3 Public Improvement Sources set forth in this Section 2.d, the parties hereby agree that if, during the Term, the Public Infrastructure Improvements Costs are paid for or otherwise adequately funded with the Funding Mechanisms and/or the Stage 2 and 3 Public Improvement Sources, then the City shall no longer be obligated to pledge 100% of such sources and thereafter the City shall only be required to pledge the amounts, if any, which are necessary to fund the remaining Public Infrastructure Improvements.

3. Funding Mechanisms. The parties hereby understand and agree that the various sources of funding, including the funds in the Public Infrastructure Fund set forth in Section 2 above, may be used to pay for the Public Infrastructure Improvement Costs directly, or to reimburse or amortize funds advanced pursuant to any financing mechanisms (the "Funding

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<sup>7</sup> The parties agree that the amount of any Origination Fees assessed in connection with an Infrastructure Abatement shall in no event exceed the amount of the Infrastructure Abatement.

Mechanisms") which may be utilized by the parties to provide funding for the Public Infrastructure Improvement Costs as and when the Public Infrastructure Improvements need to be completed and paid for in connection with the Projects. Such Funding Mechanisms may include bonds issued by the City, bonds issued by the County, and/or the Kansas Department of Transportation's so-called Transportation Revolving Fund ("TRF"), among other mechanisms. The parties further agree as follows:

- a. City Obligations. The City may (i) issue general obligation bonds, (ii) borrow funds from the TRF, (iii) annually appropriate funds, or (iv) use any other appropriate funding mechanism available to the City (the "City Obligations"), in order to pay for certain of the Stage 2 Infrastructure Costs and/or Stage 3 Infrastructure Costs. In the event that the City shall issue any City Obligations to fund any such Public Infrastructure Improvement Costs, the parties hereby agree that the moneys collected in the Public Infrastructure Fund shall be pledged to amortize any such City Obligations, as and when such moneys are available.
- b. County Funds. In the event that the County shall issue bonds or otherwise incur debt obligations for or on behalf of the City to fund any of the Stage 2 or Stage 3 Infrastructure Improvements, then the parties hereby agree that the moneys collected in the Public Infrastructure Fund shall be pledged to pay or to amortize any such bonds or other debt obligations, as and when such moneys are available and, with concurrence of the County, are not then necessary to fund the other required Public Infrastructure Improvements.

4. Schedule. The parties hereby understand and agree that the Public Infrastructure Improvements are to be designed and constructed in accordance with the following general schedule (the "Schedule"), and the respective funding for the Public Infrastructure Improvements shall be made available by the parties as and when required by the following Schedule:

- a. Stage 1 Public Infrastructure Improvements Schedule: The design and construction of each of the Stage 1 Public Infrastructure Improvements shall be commenced as soon as reasonably practical after receipt by each of the parties of written notice from the BNSF that it has issued a "notice to proceed" to its general contractor to commence construction of the Intermodal Facility (the "Stage 1 Commencement Date"). Each of the parties shall take whatever action is necessary or advisable to timely authorize and to have available the funds needed to satisfy the financing commitments specified in Section 2.a of this Financing Plan as and when needed.
- b. Stage 2 Infrastructure Improvements Schedule: Design of the Stage 2 Infrastructure Improvements, other than the Interchange Connector, shall be commenced as soon as practicable (but not later than sixty (60) days) after receipt by each of the parties of written notice by TAG-KC (the "Stage 2 Design Notice") that it has obtained signed leases for no less than

1,500,000 square feet of space in the Logistics Park (the "Stage 2 Design Date"). Construction of the Stage 2 Infrastructure Improvements, other than the Interchange Connector, shall be commenced<sup>8</sup> as soon as practicable (but not later than sixty (60) days) after receipt by each of the parties of written notice from TAG-KC (the "Stage 2 Notice") that it has commenced construction on no less than 1,500,000 square feet of space in the Logistics Park (the "Stage 2 Commencement Date"). The respective parties shall take whatever action is necessary or advisable to timely authorize and to have available the funds needed to meet the financing commitments required by Section 2.b and 2.c of this Financing Plan as and when needed.

- c. Interchange Connector Schedule: Design and construction of the Stage 2 Infrastructure Improvement identified as the Interchange Connector shall be commenced as soon as practicable after KDOT's commencement of design and construction on the new Interstate 35 interchange, provided that the Interchange Connector shall be designed and completed on a schedule that is substantially coterminous with the new Interstate 35 interchange.
- d. Stage 3 Infrastructure Improvements Schedule: Design and construction of the Stage 3 Infrastructure Improvements shall be as follows:
  - i. Design and construction of the Stage 3 Infrastructure Improvement identified as the 191st Connector project (in Section 1.c.ii) shall be commenced as soon as practicable (but not later than sixty (60) days) after receipt by the parties of written notice from TAG-KC (the "191st Connector Notice") that it has obtained signed leases for, and/or commenced construction for, no less than 3,000,000 square feet of space in the Logistics Park, of which no less than 1,500,000 shall be located in the rail-served portion of the Logistics Park. The City shall take whatever action is necessary and advisable to timely authorize and have available the funds required to finance the 191st Connector improvements as and when needed.
  - ii. Design and construction of the Stage 3 Infrastructure Improvement identified as the North Waverly Bridge (in Section 1.c.i) shall be commenced as soon as practicable after the "North Bridge Commencement Date," which shall be the date upon which the City, in consultation with the parties and the City's financial advisor, determines that there are sufficient funds, which are not otherwise needed to meet the funding commitments for the other Stage 2 and Stage 3 Infrastructure Improvements under this

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<sup>8</sup> If the Stage 2 Design Notice has not been delivered and the design for the Stage 2 Infrastructure Improvements has not been commenced prior to the Stage 2 Commencement Date, then the Stage 2 Notice shall commence both design and construction of the Stage 2 Infrastructure Improvements.

Financing Plan, and acceptable cash flow available in the Public Infrastructure Fund to pay for the then estimated project costs for the North Waverly Bridge improvements.

- iii. The parties hereby understand that, the Public Infrastructure Improvements will be completed consistent with the timeline attached hereto as **Exhibit D**.

5. **Project Erle**. The parties hereby understand and acknowledge that TAG-KC has responded to a request for proposals for an approximately 1,100,000 square foot user who is actively looking to relocate and consolidate its industrial operations and warehousing in the Kansas City metropolitan area ("**Project Erle**") and that TAG-KC is diligently pursuing the opportunity to lease space within the Logistics Park Site to Project Erle. Accordingly, BNSF, the City and the County hereby agree with TAG-KC that if TAG-KC is successful in obtaining a lease for Project Erle within the Logistics Park, the parties shall reasonably cooperate to accommodate the schedule for Project Erle and consider potential adjustments to the Schedule to provide certain Stage 1 Public Infrastructure Improvements in a time frame that makes Project Erle feasible.

6. **City Denial of Abatements**. The parties hereby understand and agree that the development of the Logistics Park is likely to evolve on a building-by-building basis as and when third parties agree to lease or purchase portions of the Logistics Park Site. Accordingly, the parties hereby contemplate that TAG-KC will be requesting approval of the 50% "**LPKC Abatements**" (as more particularly defined in Section 7.2 of the Project Agreement) and Infrastructure Abatements on a building-by-building basis. Collectively, the LPKC Abatements and the Infrastructure Abatements shall be referred to herein as the "**Abatements**." The parties hereby acknowledge that the financial structure contemplated by this Financing Plan is necessarily reliant on the approval of such Abatements, as well as the City's pledge of the Sources of Funds to the Public Infrastructure Fund as set forth in Section 2.d, when future buildings are presented by TAG-KC to the City. Accordingly, during the Term of the Project Agreement, the City hereby understands and agrees with the parties that if the City denies or reduces any of the Abatements proposed by TAG-KC on the Logistics Park Site which otherwise satisfy the terms and criteria set forth on **Exhibit M** of the Project Agreement, or if the City fails to perform on its pledge of any of the Sources of Funds in Section 2.d contemplated herein, that the parties shall have the following rights and obligations:

- a. If such denial or failure occurs prior to the Stage 1 Commencement Date, the parties shall have the following rights and obligations:
  - i. TAG-KC, BNSF and/or the City shall have the right to terminate the Project Agreement and this Financing Plan; and/or
  - ii. TAG-KC, BNSF and/or the owner of any portions of the Site which are subject to such a request, may request deannexation from the City, and the City hereby agrees to deannex any such portions of the Site which are not subject to Abatements pursuant to K.S.A. 12-504 *et. seq.*, or amendments thereto.

- b. If such denial or failure occurs after the Stage 1 Commencement Date but prior to the Stage 2 Commencement Date, the parties shall have the rights and obligations set forth in Section 6.a above and all of following rights and obligations:
  - i. BNSF shall not be obligated to pay the Additional BNSF Contribution as otherwise set forth in Section 2.b.i;
  - ii. The City hereby agrees that the funds in the TAG-KC Escrow, including any interest accrued thereon, shall be returned to TAG-KC and the City shall have no rights thereto;
  - iii. TAG-KC shall not be obligated to pay any additional Origination Fees for any new project in the Logistics Park thereafter and shall have no liability or responsibility therefor; and
  - iv. The County shall not be obligated to pay the County's Stage 2 Funding as set forth in Section 2.b.iii(x).
- c. If such denial or failure occurs after the Stage 2 Commencement Date, the parties shall have the rights and obligations set forth in Sections 6.a and 6.b above and the following rights and obligations:
  - i. The City hereby agrees that the funds in the BNSF Escrow, including any interest accrued thereon, shall be returned to BNSF and the City shall have no rights thereto.

The parties hereby agree that the provisions of this Section 6 shall survive the expiration or earlier termination of this Financing Plan.

7. Term. The term of this Financing Plan, and the agreements set forth herein (the "Term") shall commence on the date hereof and end upon the date that all of the Public Infrastructure Improvements have been substantially completed.

8. Costs of Issuance, Reserves and Capitalized Interest. The parties agree that the actual bond issues or loans contemplated by Section 3 hereof may be more than the amounts stated herein to cover other costs and expenses related to the loan or bond issue, including but not limited to costs of issuance, debt service reserve funds and capitalized interest.

9. Statutory Public Funding Requirements. The parties hereby agree that they will comply with all reasonable requirements including any statutory requirements, associated with the finalizing, issuance, sale, purchase and delivery, if any, of the funds for the Public Infrastructure Improvements and shall cooperate with one another to fully effectuate the terms, distributions, abatements, and payments as detailed herein.

10. Termination. The parties hereby understand and agree that this Financing Plan shall be automatically terminated if the Project Agreement is terminated pursuant to the conditions set forth in Article 8 thereof at any time prior to the Stage 1 Commencement Date. Notwithstanding the foregoing, after the Stage 1 Commencement Date, the parties hereby agree that this Financing Plan shall not be automatically terminated if the Project Agreement is terminated pursuant to the conditions set forth in Article 8 thereof.

11. Assigns. During the Term of this Financing Plan, the terms and conditions hereof shall be binding upon the parties and their respective successors and assigns. Nothing in this section shall in any way prevent the lease, alienation or sale of the property in the Site, or any portion thereof, by TAG-KC or BNSF, nor shall anything in this Section be construed as limiting any rights of any lender or equity partner or investor. Anything contained in this Section to the contrary notwithstanding, (i) no consent shall be required for any pledge of all or any portion of the Site owned by TAG-KC or BNSF or this Financing Plan as collateral security, or for any foreclosure sale or deed in lieu thereof or subsequent transfers after such sale or deed in lieu; and (ii) no consent shall be required prior to selling, leasing or transferring any parcel of property within the Site to commercial and industrial users for development and use consistent with the applicable laws and requirements, nor shall consent be required in the event that (a) TAG-KC assigns its interests in this Financing Plan to any entity affiliated with TAG-KC or any entity in which TAG-KC, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, or (b) BNSF assigns its interests in this Financing Plan to any entity affiliated with BNSF or any entity in which BNSF, its affiliates or its principals owns 50 percent or more of the ownership interest, or to any lender for the purpose of mortgage financing, or (c) TAG-KC assigns its interests in this Financing Plan to BNSF (and any subsequent assignment by BNSF to a successor developer). Notwithstanding the foregoing, during the Term of this Financing Plan, in the event of any transfer permitted by this Section 11, the transferee shall demonstrate the financial ability to and shall assume the rights and obligations set forth in this Financing Plan in writing.

12. Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and received for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

To the City:                      City Administrator  
    City of Gardner  
    City Hall  
    120 E. Main  
    Gardner, KS 66030  
    Phone: (913) 856-0939  
    Fax: (913) 856-0997

With a copy to: Jim Hubbard, Esq.  
Norton, Hubbard, Ruzicka & Kreamer  
130 North Cherry  
P.O. Box 550  
Olathe, Kansas 66051  
Phone: (913) 782-2350  
Fax: (913) 782-2012

To TAG-KC: The Allen Group – Kansas City, LLC  
973 East Lincoln Lane  
Gardner, Kansas 66030  
Phone: (913) 660-9445  
Fax: (913) 660-9043  
Attention: William F. Crandall, President

With a copy to: The Allen Group  
11943 El Comino Real, Suite 200  
San Diego, California 92130  
Attention: Richard S. Allen, CEO  
Phone: (858) 764-6800  
Fax: (858) 764-6809

With a copy to: Todd A. LaSala, Esq.  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2600  
Kansas City, Missouri 64106  
Telephone: (816) 842-8600  
Facsimile: (816) 691-3495

To BNSF: BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131  
Attention: Mark Ude  
Phone: (817) 352-6470  
Fax: (817) 352-2398

With a copy to: David Rankin, Esq.  
Senior General Attorney  
BNSF Railway Company  
2500 Lou Menk Drive, AOB-3  
Fort Worth, Texas 76131  
Phone: (817) 352-2383  
Fax: (817) 352-2398

With a copy to: Lewis A. Heaven, Jr., Esq.  
Lathrop & Gage L.C.  
10851 Mastin Blvd., Suite 1000  
Overland Park, Kansas 66219  
Phone: (913) 451-5100  
Fax: (913) 451-0875

To the County:

With a copy to:

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

**CITY OF GARDNER, KANSAS,**  
a Kansas municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"CITY"

**JOHNSON COUNTY, KANSAS,**  
a \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"COUNTY"

**BNSF RAILWAY COMPANY,**  
a Delaware corporation

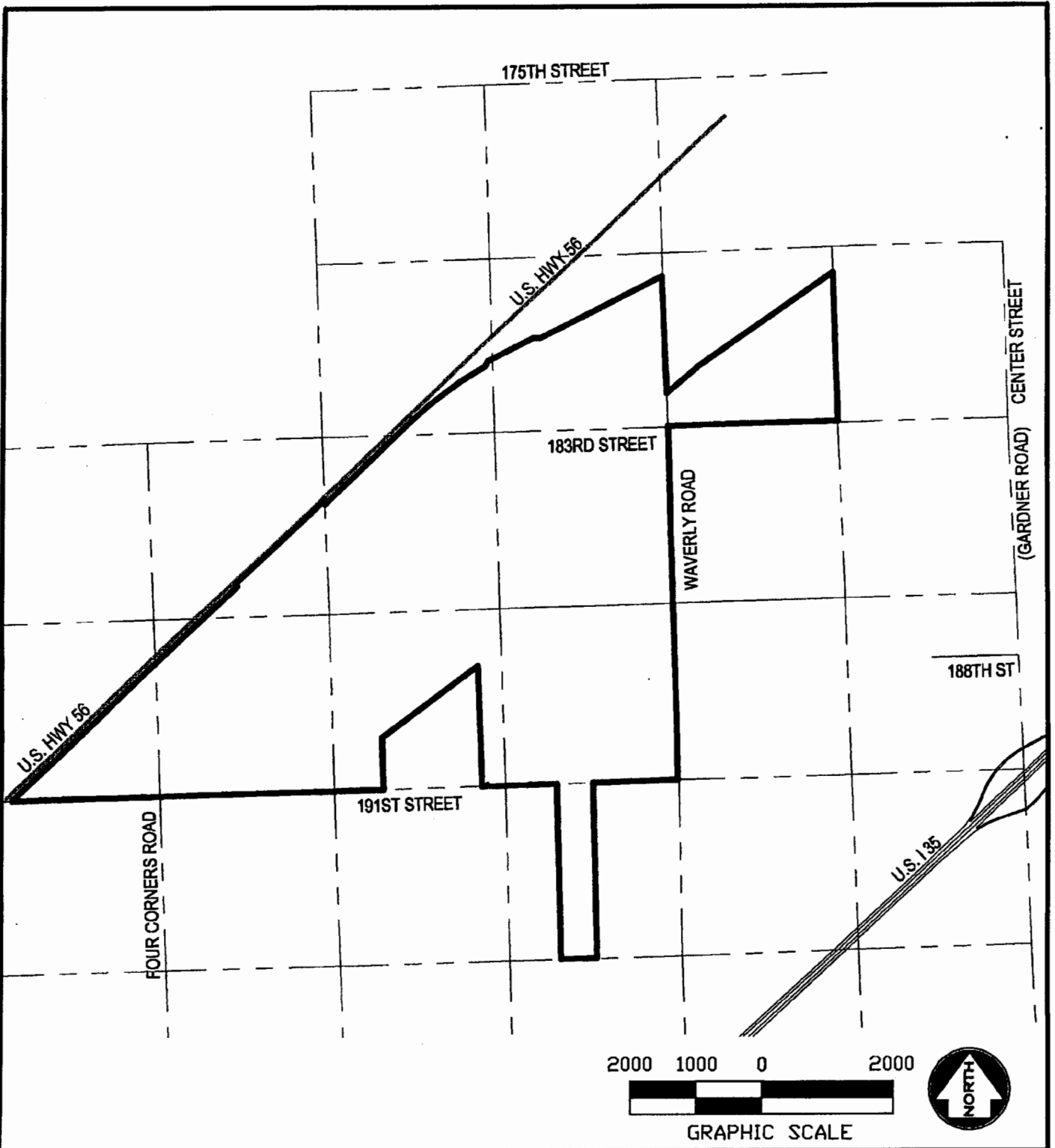
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"BNSF"

**THE ALLEN GROUP – KANSAS CITY, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"TAG-KC"



**PUBLIC INFRASTRUCTURE FINANCING PLAN  
THE SITE - MAP**

**EXHIBIT  
A-1**

Revised: September 11, 2008  
City/County: Johnson County, Kansas (West of Gardner)  
Section: Section 34, SW. 1/4 of Section 26, South 1/2 of Section 27, SW. 1/4 and East 1/2 of  
Section 33, All Being in being in Township 14 South, Range 22 East, ALSO the NE. 1/4 of Section 3,  
Township 15 South, Range 22 East  
General Area: Gardner Kansas - 191st Street and Four Corners Road  
Specific Purpose: TRACT 7 - Includes Tracts 1, 2, 3-Parcel 1, 4, 5 and 6, of Gardner, Kansas, BNSF  
Intermodal Site. Excludes the former Norman Tract 3-Parcel 2 acquired by The Allen  
Group.

All that part of Section 34, the Southwest Quarter of Section 26, the South Half of Section 27, the Southwest Quarter and East Half of Section 33, being in Township 14 South, Range 22 East, Johnson County, Kansas, together with a portion of the Northeast Quarter of Section 3, Township 15 South, Range 22 East in said County and State, all being more particularly described as follows:

Beginning at the Northeast corner of the Northeast Quarter of said Section 34; thence South 01 degree 56 minutes 21 seconds East along the East line of said Quarter Section, a distance of 2,652.11 feet to the Southeast corner of said Northeast Quarter, being also Northeast corner of the Southeast Quarter of said Section 34; thence South 01 degree 56 minutes 06 seconds East along the East line of said Quarter Section, a distance of 2,651.94 feet to the Southeast corner of said Southeast Quarter; thence South 88 degrees 09 minutes 02 seconds West along the South line of said Quarter Section, a distance of 1,316.87 feet to the Southwest corner of the East Half of the Southeast Quarter of said Section 34, being also the Northeast corner of the of the West Half of the Northeast Quarter of said Section 3; thence South 01 degrees 20 minutes 28 seconds East along the East line of the West Half of the Northeast Quarter of said Section 3, a distance of 2,666.23 feet to the Southeast Corner of the West Half of the Northeast Quarter of said Section 3; thence South 88 degrees 20 minutes 46 seconds West along the South line of the West Half of said Northeast Quarter, a distance of 540.09 feet to the Southeast Corner of the West 768.4 feet of the Northeast Quarter of said Section 3; thence North 01 degree 31 minutes 15 seconds West along the East line of the West 768.4 feet of said Northeast Quarter, a distance of 2,664.32 feet to the Northeast Corner of the West 768.4 feet of the Northeast Quarter of said Section 3, being also a point on the South line of the Southeast Quarter of said Section 34; thence South 88 degrees 09 minutes 02 seconds West along the South line of Southeast Quarter of said Section 34, a distance of 768.41 feet to the Southwest corner of the Southeast Quarter of said Section 34, being also the Southeast corner of the Southwest Quarter of said Section 34; thence South 88 degrees 10 minutes 27 seconds West along the South line of the Southwest Quarter of said Section 34, a distance of 360.36 feet to the Southeast corner of the tract of land described as the J. A. Pearce Tract in the 1892 Re-Survey of said Section 34; thence North 02 degrees 16 minutes 32 seconds West along East line of said J. A. Pearce Tract, a distance of 1,813.21 feet; thence South 53 degrees 52 minutes 24 seconds West, no longer along the East line of said J. A. Pearce Tract, a distance of 1,824.27 feet to a point on the West line of said J. A. Pearce Tract, said point being 785.11 feet North of the Southwest corner of said J. A. Pearce Tract, as measured along the West line thereof; thence South 01 degree 52 minutes 40 seconds East along the West line of said J. A. Pearce Tract, a distance of 785.11 feet to the Southwest corner thereof, being also a point on the South line of the Southwest Quarter of said Section 34; thence South 88 degrees 10 minutes 27 seconds West along the South line of the Southwest Quarter of said Section 34, a distance of 754.38 feet to



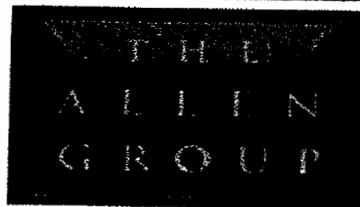
SHAPE, KLINE & WARREN, INC.

**PUBLIC INFRASTRUCTURE FINANCING PLAN**  
**THE SITE - LEGAL DESCRIPTION**

**EXHIBIT**

**A-2**

the Southwest corner of the Southwest Quarter of said Section 34, being also the Southeast corner of the Southeast Quarter of said Section 33; thence South 88 degrees 33 minutes 21 West along the South line of said Quarter Section, a distance of 2,634.02 to the Southwest corner of the Southeast Quarter of said Section 33, being also the Southeast corner of the Southwest Quarter of said Section 33; thence South 88 degrees 17 minutes 30 seconds West along the South line of said Quarter Section, a distance of 2,107.45 feet to a point on the Southeasterly right-of-way line of the most Northwesterly tracks of the B.N.S.F. Railroad (being the most Northwesterly of the two B.N.S.F. Railroad tracks as they now exist through said Sections 26, 27, 33 and 34 and formerly being the Atchison, Topeka and Santa Fe Railroad Company), said point being 65 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence Northeasterly along the Southeasterly right of way line of the most Northwesterly tracks of said B.N.S.F. Railroad, the following courses and distances; thence North 46 degrees 47 minutes 43 seconds East, 65 feet Southeasterly of and parallel with the centerline of said main track, a distance of 2,783.57 feet to a jog in said Southeasterly right of way line, being also a point on the East line of the Southwest Quarter of said Section 33; thence North 02 degrees 24 minutes 33 seconds West along the East line of the Southwest Quarter of said Section 33, being also along a jog in said Southeasterly right of way line, a distance of 19.81 feet to a point 50 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence North 46 degrees 47 minutes 43 seconds East, 50 feet Southeasterly of and parallel with the centerline of said main track, a distance of 1,791.25 feet to a jog in said Southeasterly right of way line; thence South 43 degrees 12 minutes 17 East, perpendicular to the last described course and being along a jog in said Southeasterly right of way line, a distance of 50 feet to a point 100 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence North 46 degrees 47 minutes 43 seconds East, 100 feet Southeasterly of and parallel with the centerline of said main track, a distance of 1,670.24 feet to a jog in said Southeasterly right of way line, being also a point on the East line of the Northeast Quarter of said Section 33; thence North 02 degrees 35 minutes 02 seconds West along the East line of the Northeast Quarter of said Section 33, being also along a jog in said Southeasterly right of way line, a distance of 65.87 feet to a point 50 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence North 46 degrees 47 minutes 43 seconds East, 50 feet Southeasterly of and parallel with the centerline of said main track, a distance of 1,851.68 feet; thence Northeasterly along a curve to the right, tangent to the last described course and 50 feet Southeasterly of and coincident with the centerline of said main track, having a radius of 5,776.69 feet and a central angle of 14 degrees 59 minutes 22 seconds, an arc length of 1,511.27 feet to a jog in said Southeasterly right of way line, being also a point on the East line of the Southwest Quarter of said Section 27; thence South 01 degree 56 minutes 18 seconds East along the East line of the Southwest Quarter of said Section 27, being also along a jog in said Southeasterly right of way line, a distance of 55.82 feet to a point 100 feet Southeasterly of the centerline of the main track of said railroad, as measured radially to the centerline thereof; thence Northeasterly along a curve to the right, said curve being 100 feet Southeasterly of and coincident with the centerline of said main track, having an initial tangent bearing of North 61 degrees 32 minutes 15 seconds East, a radius of 5,726.69 feet and a central angle of 01 degrees 37 minutes 04 seconds, an arc length of 161.70 feet; thence North 63 degrees 09 minutes 19 seconds East, tangent to the last described curve and being 100 feet Southeasterly of and parallel with the centerline of the main track of said railroad, a distance of 835.32 feet to a jog in said Southeasterly right of way line, being also a point on the North line of the South Half of the Southeast Quarter of said Section 27; thence South 88 degrees 25 minutes 01 seconds West along the North line of the South Half



SHAFER, KLINE & WARREN, INC.

**PUBLIC INFRASTRUCTURE FINANCING PLAN  
THE SITE - LEGAL DESCRIPTION**

EXHIBIT

**A-2**

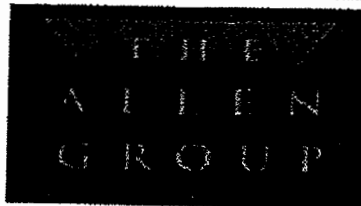
of the Southeast Quarter of said Section 27, being also along a jog in said Southeasterly right of way line, a distance of 117.16 feet to a point 50 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence North 63 degrees 09 minutes 19 seconds East, along a line 50 feet Southeasterly of and parallel with the centerline of the main track of said railroad, a distance of 2,035.09 feet to a point on the East line of the Southeast Quarter of said Section 27; thence South 02 degrees 08 minutes 36 seconds East along the East line of the Southeast Quarter of said Section 27, being no longer along the Southeasterly right of way line of the most Northwesterly tracks of said B.N.S.F. Railroad, a distance of 1,602.74 feet to a point on the Southeasterly right-of-way line of the most Southeasterly tracks of the B.N.S.F. Railroad (being the most Southeasterly of the two B.N.S.F. Railroad tracks as they now exist through said Sections 26, 27, 33 and 34 and formerly being the Atchison, Topeka and Santa Fe Railroad Company), said point being 50 feet Southeasterly of the centerline of the main track of said railroad, as measured perpendicular to the centerline thereof; thence North 55 degrees 20 minutes 16 seconds East along the Southerly right-of-way line of said railroad, 50 feet Southeasterly of and parallel with the centerline of the main track of said railroad, a distance of 3,086.04 feet to a point on the East line of the Southwest Quarter of said Section 26; thence South 02 degrees 00 minutes 12 seconds East along the East line of the Southwest Quarter of said Section 26, a distance of 2,273.43 feet, to the Southeast corner of the Southwest Quarter of said Section 26; thence South 88 degrees 32 minutes 09 seconds West along the South line of said Section 26, a distance of 2,596.81 to the Point of Beginning. Subject to all covenants, restrictions, reservations and easements now of record thereon.

**ALSO INCLUDING:**

All of the right-of-way as presently established for the most Northwesterly tracks of the B.N.S.F. Railroad (being the most Northwesterly of the two B.N.S.F. Railroad tracks (formerly being the Atchison, Topeka and Santa Fe Railroad Company), as said right-of-way now exists through the West Half of Section 26, the South Half of Section 27, the Northwest Quarter of Section 34, the Northeast Quarter and South Half of Section 33, ALSO, all of the right-of-way as presently established for the most Southeasterly tracks of the B.N.S.F. Railroad (being the most Southeasterly of the two B.N.S.F. Railroad tracks (formerly being the Atchison, Topeka and Santa Fe Railroad Company), as said right-of-way now exists through the Southwest Quarter of said Section 26, being in all Township 14 South, Range 22 East in Johnson County, Kansas.

Containing a net area of 43,733,159 square feet or 1,003.975 acres, more or less, said net area includes the existing right-of-way reserved for 183rd Street and Four Corners Road and also includes the aforesaid B.N.S.F. Railroad right-of-way EXCEPT that part of said most Southeasterly tracks in said Section 26 and EXCEPT that part of said most Northwesterly tracks in said Sections 26, 27, 33 and 34. Said net area also EXCLUDES the existing right-of-way reserved for Waverly Road and 191st Street.

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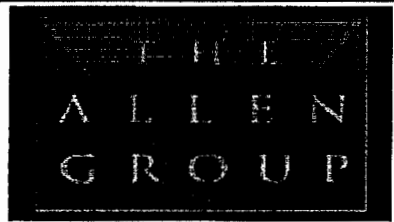
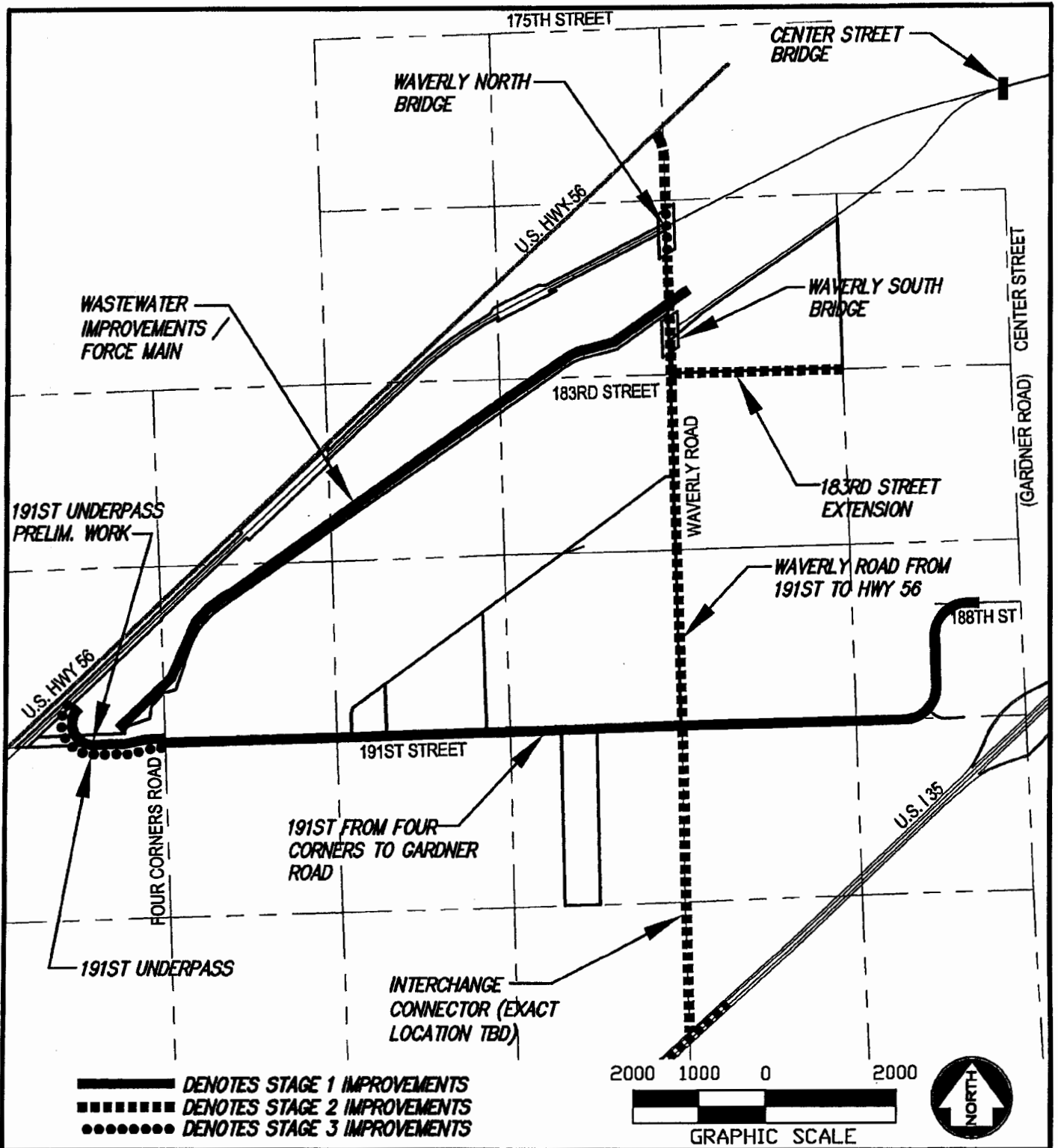


SHAFER, KLINE & WARREN, INC.

**PUBLIC INFRASTRUCTURE FINANCING PLAN  
THE SITE - LEGAL DESCRIPTION**

**EXHIBIT**

**A-2**



**PUBLIC INFRASTRUCTURE FINANCING PLAN**  
**INFRASTRUCTURE CONCEPT PLANS - STAGE 1, 2 & 3**

**EXHIBIT**  
**B**

**EXHIBIT C**

RESOLUTION OF INTENT

**Exhibit D  
Preliminary Improvements Schedule**

<b>DESCRIPTION</b>	<b>START</b>	<b>FINISH</b>
<b>191st STREET FROM FOUR CORNERS ROAD TO GARDNER ROAD</b>		
Preliminary Design/Review/Cost Estimating	02-Jan-08	03-Oct-08
Final Design & Preparation of Construction Documents	15-Jan-09	18-Apr-09
MILESTONE DATE - Infrastructure Permit/Licenses Acquired	18-Apr-09	18-Apr-09
Right-of-Way Acquisition	03-Oct-08	01-Apr-09
Public Bid and Award of Construction Contract	18-Apr-09	02-Jun-09
Road Construction (3-Lane Undivided Section)	02-Jun-09	10-Jan-10
MILESTONE DATE - Construction Complete	10-Jan-10	10-Jan-10
<b>CENTER STREET BRIDGE MODIFICATIONS AT BNSF RAIL LINE</b>		
Preliminary Design/Review/Cost Estimating	15-Dec-08	02-Aug-09
MILESTONE DATE - Infrastructure Permit/Licenses Acquired	02-Aug-09	02-Aug-09
Right-of-Way Acquisition	27-Apr-09	24-Oct-09
Public Bid and Award of Construction Contract	02-Aug-09	28-Aug-09
Procurement of Materials (Steel Beams)	28-Aug-09	26-Dec-09
Road Construction (2-Lane Undivided Section)	24-Oct-09	19-Sep-10
MILESTONE DATE - Construction Complete	19-Sep-10	19-Sep-10
<b>SANITARY SEWER MAIN &amp; LIFT STATION</b>		
Preliminary Design / Review / Cost Estimating	16-Sep-08	13-Feb-09
Public Bid and Award of Constructon Contract	13-Feb-09	30-Mar-09
Constructon	30-Mar-09	28-Jul-09
MILESTONE - Construction Completion	28-Jul-09	28-Jul-09