

# LATHROP & GAGE<sub>LLP</sub>

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January 30, 2009

Mr. David Corliss, City Manager  
City of Lawrence, Kansas  
P.O. Box 708  
Lawrence, KS 66044-0708

Re: Former Farmland Nitrogen Facility

Dear Mr. Corliss:

This letter is an update on the status of the City of Lawrence's offer to purchase the former Farmland Lawrence Nitrogen Facility. In summary, the City has an offer pending to purchase the property and is awaiting a response from the trustee of the Remediation Trust which has the right to sell the property and from KDHE who must grant permission for any sale.

As you know, the former Farmland Lawrence Nitrogen Facility is owned by a Remediation Trust created under the Farmland bankruptcy plan. The trustee of that trust, SELS Administrative Services, Inc. ("SELS"), is the only entity that can sell or lease the property and SELS can only do so with the permission of the Kansas Department of Health and Environment ("KDHE"). The City of Lawrence has previously made offers to purchase the property from SELS. The most recent of these offers was made on January 2, 2009.

When created, the Remediation Trust that owns the former Farmland Lawrence Nitrogen Facility, also owned three other former Farmland properties, one each in Wichita, Topeka, and South Hutchinson. Substantial funds were put into the Remediation Trust to hopefully provide for the remediation and administrative costs associated with those four properties. Over time, the Remediation Trust has sold both the Topeka and the Wichita properties. The Remediation Trust still owns both the South Hutchinson and Lawrence properties, and the Remediation Trust still has trust funds in excess of \$12 Million which are separately designated in administrative and remedial funds for each of the original four properties. All four properties have ongoing environmental issues and costs that are being paid for by the trust funds.

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The Remediation Trust provides that KDHE is the "primary beneficiary" of the trust so that KDHE can work to make sure the trust funds are appropriately used to clean up the properties. The Remediation Trust was also set up with a "residual beneficiary" which may, under terms laid out in the trust, obtain any remaining or residual funds from the trust to the extent those funds are not needed for the individual properties. The original residual beneficiary was FILT which, through a separate obligation, was obligated to return any residual amounts from the trust to the creditors in the Farmland bankruptcy.

On January 16, 2009, FILT sold its residual beneficiary interest in the trust funds for all four properties (Lawrence, Topeka, Wichita, and South Hutchinson) to Capitana Redevelopment Group, LLC ("Capitana"). This purchase by Capitana was of the residual beneficiary interests only. Capitana does not own and can not sell or lease any of the four properties. Specifically, any purchase of the Lawrence property by the City must still be from SELS with KDHE approval. Capitana purchased the right to receive any residue of trust funds that may remain from the four properties.

Capitana's purchase of the residual interest in the four properties removes the need for bankruptcy court approval of any sale of the former Farmland Lawrence Nitrogen Facility. Therefore, the City has recently revised its offer to purchase from SELS so as to remove the necessity of any bankruptcy court auction or approval.

While Capitana can not sell or lease the former Farmland Lawrence Nitrogen Facility, Capitana as residual beneficiary has some rights in the trust funds which the City and KDHE desire to use to clean up the property. Therefore, the City is working with KDHE, and hopes to work with Capitana, to make sure the Lawrence designated trust funds are used appropriately within the trust purpose while protecting both the primary and residual beneficiary interests.

To summarize again, the City has an outstanding offer to purchase the former Farmland Lawrence Nitrogen Facility from SELS. We are awaiting a response to that offer from SELS and from KDHE who must grant permission for such a sale. Presuming that such a sale is approved, the City hopes to be able to work with KDHE and Capitana to assure that the sale can be closed and maximum appropriate use can be made of the trust funds for the property.

If you have any questions, please let me know.

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Very truly yours,

LATHROP & GAGE LLP

  
By:

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