

## BMPC SOUTH AGREEMENT

THIS BMPC SOUTH AGREEMENT (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2010, by and between the **City of Lawrence**, a municipal corporation (hereinafter the "City") and **The Bowersock Mills and Power Company**, a Kansas corporation (hereinafter "Bowersock").

WHEREAS, by that certain agreement titled "Agreement" and dated April 5, 1977 (hereinafter the "Base Agreement"), the City granted Bowersock a ground lease to occupy, possess and use, for a period of 50 years, certain land used in connection with the operation of a hydroelectric power plant, including a maintenance shop building, together with turbines, generators, and all other improvements, fixtures, machinery, and equipment used in connection with the power plant, with Bowersock retaining ownership of buildings, turbines, generators, and all other improvements, fixtures, machinery, and equipment (the power plant and other property of Bowersock retained ownership being hereinafter collectively the "BMPC South"); and

WHEREAS, the Base Agreement provides that the dam spanning the Kansas River just east of and generally parallel with the Massachusetts Street bridge, commonly known and referred to as the Bowersock Dam (hereinafter the "Dam"), remains owned by Bowersock, and outlines the rights and obligations of the City and Bowersock with respect to the operation and maintenance of the Dam during the term of the ground lease and Bowersock's use and occupancy of the South Property; and

WHEREAS, in the Base Agreement, the City also granted to Kansas Fibreboard, Inc., a Kansas corporation, and to Justin D. Hill, Sr. and Stephen Higdon Hill, a ground lease to occupy, possess and use, for a period of 30 years, certain land under the building known as Bowersock Warehouse-Building 1A; and

WHEREAS, the rights of Kansas Fibreboard, Inc. and Justin D. Hill, Sr. and Stephen Higdon Hill were succeeded to by Bowersock, pursuant to assignments of all rights under the Base Agreement, which assignments the City approved by that certain agreement titled "Extension Agreement" and dated November 21, 2000 (hereinafter the "Extension Agreement"); and

WHEREAS, in the Extension Agreement, the term of the ground lease for possession and occupancy of the land originally leased to Kansas Fibreboard, Inc. was extended from an original term of 30 years to 50 years, to correspond with the term of Bowersock's ground lease to occupy, possess and use the land pursuant to the Base Agreement; and

WHEREAS, to facilitate the construction of the Lawrence Riverfront Mall, Bowersock subsequently relinquished its rights with respect to some of the land encumbered by the Base Agreement; and

WHEREAS, by that certain agreement titled, "Ground Lease" and dated November 11, 2002 (the "2002 Agreement"), the City and Bowersock entered into a lease pursuant to which Bowersock was given the right to occupy, possess and use, for a period expiring November 11, 2027, certain land more particularly described in said 2002 Agreement, for driveway purposes; and

WHEREAS, by that certain agreement titled, "Extension and Modification Agreement" and dated August 29, 2009 (hereinafter the "Extension and Modification Agreement"), the City and Bowersock amended the Base Agreement, as previously extended by the Extension Agreement, to refine and clarify their respective rights and obligations with respect to maintenance of the Dam and to extend the period for Bowersock's use, occupancy, and possession of the property subject to the Base Agreement and the 2002 Agreement an additional 50 years to April 5, 2077; and

WHEREAS, Bowersock has obtained Special Use Permit No. SUP-3-4-10 (approved by Ordinance No. 8529) to construct, maintain, and operate a hydroelectric powerhouse ("BMPC North") on

the north bank of the Kansas River immediately east of the Kansas River Bridge, at a site commonly known as 1000 Powerhouse North Road in the City of Lawrence, County of Douglas, Kansas; and

WHEREAS, the City and Bowersock enter into this Agreement to clarify the legal description of the real estate on the south bank of the Kansas River that is subject to the Base Agreement, the Extension Agreement, the 2002 Agreement, the Extension and Modification Agreement (all collectively referred to herein as the "Existing Agreements") and to expand such real estate to include the open area west of the west edge of Bowersock's warehouse and drive and east of the east edge of the Kansas River Bridge, and to facilitate Bowersock's obtaining of financing to construct, equip, and operate BMPC North.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements contained herein, the parties to this Agreement agree as follows:

1. Legal Description and Survey/Schematic. The legal description of the land on the south bank of the Kansas River that Bowersock has the exclusive right to occupy, possess and use pursuant to the Existing Agreements (to the extent owned by the City, hereinafter the "Leased Premises") is set forth on Exhibit A and incorporated herein by reference. A survey/schematic of said land is set forth in Exhibit B.

2. Leasehold Mortgage.

A. Permitted Mortgage. "Permitted Mortgage(s)" means collectively (a) any deed(s) of trust, mortgages, financing leases or other collateral security instruments (including, without limitation, financing statements, security agreements and other documentation required pursuant to the Kansas Uniform Commercial Code, and any absolute or conditional assignments of rents and subleases) given to a Bona Fide Mortgagee (as defined below) and serving as security for one or more construction loans, permanent loans, mezzanine loans and/or other subordinate debt (otherwise permitted to be incurred hereunder) which Bowersock may grant that encumbers Bowersock's Estate (as defined in Section 2(B) or Bowersock's fixtures, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting otherwise permitted to be incurred hereunder) thereof and (b) any instruments required in connection with an assignment-subleaseback transaction involving Bowersock's Estate; provided, however, in no event shall any such Permitted Mortgage encumber City's fee simple title to the Leased Premises. "Bona Fide Mortgagee" shall be any governmental entity, bank, insurance company, pension fund or other individual, corporation, partnership or other entity which is making a bona fide loan, or acting as a trustee in connection with any such bona fide loan, take back purchase money mortgage, or an assignment sub-leaseback transaction but shall not include a mortgage or other encumbrance given solely with the intention of implementing a foreclosure to avoid any assignment restrictions contained in any of the Agreements. "Mortgagee" means any one or more holders of the beneficial interest and secured position under any Permitted Mortgage.

B. Encumbrance of Bowersock's Estate. Bowersock shall have the right to encumber Bowersock's interest in the BMPC South, the Agreements or any permitted sublease of the Agreements ("Bowersock's Estate") pursuant to one or more Permitted Mortgages. Bowersock shall, following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, promptly deliver a true and correct copy thereof to City.

C. Mortgagee Protections. Provided that any Mortgagee provides City with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance with the terms hereof, City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

(i) No Modification. Except as provided herein, no action by Bowersock or City to materially modify the terms of the Existing Agreements or the provisions of this Section shall be binding upon a Mortgagee without its prior written consent.

(ii) Notices. If City shall give any notice, demand, election or other communication which may adversely affect the security for a Permitted Mortgage, including without limitation a notice of a Bowersock default hereunder (hereinafter collectively "Notice(s)"), to Bowersock hereunder, City shall simultaneously give a copy of each such Notice to the Mortgagee at the address theretofore designated by it. Such copies of Notices shall be sent by City as provided in the Existing Agreements. No Notice given by City to Bowersock shall be binding upon or affect said Mortgagee unless a copy of said Notice shall be given to Mortgagee pursuant to this Section 2. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to City, may change the address to which such copies of Notices are to be sent. City shall not be bound to recognize any assignment of such Permitted Mortgage unless and until City shall be given written notice thereof that contains the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of the Existing Agreements requiring City to give Notices or copies thereof to said Mortgagee shall be binding upon City unless and until all of said holders shall designate in writing one of their number to receive all such Notices and copies thereof.

(iii) Performance of Covenants. The Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Bowersock hereunder within the time periods specified herein, and City shall accept such performance with the same force and effect as if furnished by Bowersock; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of City.

(iv) Delegation to Mortgagee. Bowersock may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Bowersock's rights hereunder, but no such delegation shall be binding upon City unless and until either Bowersock or the Mortgagee shall give to City a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon City of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Section 2, together with written notice specifying the provisions therein which delegate such authority to said Mortgagee, shall be sufficient to give City notice of such delegation.

(v) Bowersock Default. In the event of a Bowersock default in the payment of any monetary obligation hereunder, City agrees not to terminate the Existing Agreements unless and until City provides written notice of such Bowersock default to any Mortgagee and such Mortgagee shall have failed to cure such Bowersock default in the payment of any monetary obligation within 30 days following delivery of such notice. In the event of a Bowersock default in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, City agrees not to terminate any of the Existing Agreements unless and until City provides written notice of such Bowersock default to any Mortgagee and such Mortgagee shall have failed to cure such Bowersock default within 60 days following the delivery of such notice; provided, however, if such Bowersock default cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises, or if such Bowersock default is not susceptible of being cured by the Mortgagee, then City shall not terminate any of the Existing Agreements if and as long as:

(a) In the case of a Bowersock default which cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises (it being understood that non payment of rent can be cured without taking possession), the Mortgagee has delivered to City within 60 days following the delivery of City's notice, a written undertaking wherein the Mortgagee agrees that it will cure such Bowersock default upon obtaining possession;

(b) In the case of a Bowersock default which cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises, said Mortgagee shall proceed diligently to obtain possession of the Leased Premises as Mortgagee (including possession by receiver), and, upon obtaining such possession (directly or through a receiver), shall proceed diligently to cure such Bowersock default in accordance with the undertaking delivered pursuant to Section 2(C)(v)(a) above but in no event later than 30 days after obtaining possession; and

(c) In the case of a Bowersock default which is not susceptible to being cured by the Mortgagee (for example, the insolvency of Bowersock), the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Bowersock's Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, unless the Bowersock default has been cured by such completion of foreclosure or acquisition, the Mortgagee commences to cure such Bowersock default within 30 days and prosecutes such cure to completion with diligence. The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Leased Premises pursuant to Section 2(C)(v)(b) above, or to continue to prosecute foreclosure proceedings pursuant to this Section 2(C)(v)(c), if and when such Bowersock default shall be cured. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other Bowersock default during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Bowersock's Estate hereunder and shall cure all Bowersock defaults which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior Bowersock defaults which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed Bowersock defaults hereunder.

(vi) Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any legally authorized power contained in the Permitted Mortgage, or any conveyance of Bowersock's Estate hereunder from Bowersock to any Mortgagee, its designee, any purchaser of Mortgagee's interest through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under the Existing Agreements, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee, such designee or any purchaser of Mortgagee's interest as Bowersock hereunder. If any Mortgagee, its designee, purchaser of Mortgagee's interest or other third party shall acquire Bowersock's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee, its designee, purchaser of Mortgagee's interest or such other third party purchaser shall thereafter have the right to further assign or transfer Bowersock's Estate to an assignee without obtaining City's consent with respect thereto, subject to all of the other provisions of this Section 2. Upon such acquisition of Bowersock's Estate as described in the preceding sentence by Mortgagee, its designee or purchaser of Mortgagee's interest, City shall immediately execute and deliver a new ground lease of the Leased Premises to such Mortgagee, designee or purchaser of Mortgagee's interest, upon the written request therefor by such party given not later than 120 days after such party's acquisition of Bowersock's Estate. Such new ground lease shall be substantially similar in form and content to the provisions of the Existing Agreements, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining Term hereof), an indemnity and hold harmless obligation by the new tenant for any loss, cost or expense, including reasonable attorneys' fees, respecting claims by Bowersock of any remaining rights asserted by Bowersock against City for providing such new ground lease, and the elimination of any requirements which have been fulfilled by City or Bowersock prior thereto, and such new ground lease shall have priority equal to the priority of the Existing Agreements.

(vii) Mortgagee Loss Payable. City agrees that the names of each Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Bowersock under the Existing Agreements on condition that the insurance proceeds are to be applied in the manner specified herein.

(viii) New Lease. City agrees that in the event of termination of any of the Existing Agreements by reason of any Bowersock default, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Bowersock or its property, City will enter into a new lease of the Leased Premises with the most senior Mortgagee requesting a new lease for the remainder of the Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Leased Premises, provided:

(a) The senior Mortgagee shall make written request upon City for the new lease within 60 days after the date of termination;

(b) The senior Mortgagee shall pay to City at the time of the execution and delivery of the new lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to any of the Existing Agreements but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of the Bowersock default;

(c) The senior Mortgagee shall perform and observe all covenants herein contained on Bowersock's part to be performed which are susceptible to being performed by the senior Mortgagee, and shall further remedy any other conditions which Bowersock under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Mortgagee;

(d) The tenant under the new lease shall have the same right, title and interest in and to BMPC South located on the Leased Premises as Bowersock had under the terminated Lease immediately prior to its termination;

(e) The tenant under the new lease shall indemnify and hold harmless City from any loss, cost and expense, including reasonable attorneys' fees, against claims by Bowersock of any remaining rights asserted by Bowersock against City for providing such new lease;

(f) Notwithstanding anything to the contrary expressed or implied in the Existing Agreements, any new lease made pursuant to this Section 2(C)(viii), shall be prior to any Permitted Mortgage or other lien, charge or encumbrance on the Leased Premises, to the same extent as the terminated Lease, and shall include the then existing BMPC South, subject to the reversion of the Leased Premises in favor of City upon expiration or sooner termination of the new lease. The rights granted any Mortgagee to a new lease shall survive any termination of any of the Existing Agreements; and

(g) Unless and until City has received notice from all Mortgagees that the Mortgagees elect not to demand a new lease as provided in Section 2(C)(viii), or until the period therefor has expired, City shall not cancel or agree to the termination or surrender of any existing subleases or enter into any new subleases hereunder without the prior written consent of the Mortgagee.

(ix) No Obligation to Cure. Nothing herein contained shall require any Mortgagee to enter into a new lease pursuant to Section 2(C)(viii) above, or to cure any Bowersock default referred to above.

(x) Limited Liability. In the event any Mortgagee or its designee becomes the tenant under the Existing Agreements or under any new lease obtained pursuant to either Section 2(C)(vi) or Section 2(C)(viii) above, the Mortgagee or its designee shall be personally liable for the obligations of Bowersock under any of the Existing Agreements or a new lease only for the period of time that the Mortgagee or its designee remains the actual beneficial holder of Bowersock's Estate, and only to the extent provided in the Existing Agreements or such new lease.

(xi) Insurance Proceeds. The proceeds from any insurance policies or arising from a condemnation shall be paid and distributed as provided in the Existing Agreements, if so provided.

(xii) Material Notices. The parties hereto shall give all Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Leased Premises, and any Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Mortgagee shall not elect to intervene or become a party to the proceedings, such Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(xiii) Separate Agreement. City shall, upon request, execute, acknowledge and deliver to each Mortgagee, an agreement prepared at the sole cost and expense of Bowersock, in form satisfactory to each Mortgagee, between City, Bowersock and the Mortgagees, agreeing to all of the provisions hereof of this Section 2.

(xiv) Further Amendments. City and Bowersock hereby agree to cooperate in including in the Agreements by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Section and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage. City and Bowersock each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment as well as such other documents containing terms and provisions customarily required by lenders in connection with any such financing; provided, however, that any such amendment shall not in any way affect the Term or rent under the Agreements, nor otherwise in any material respect adversely affect any rights of City under the Agreements.

3. Added Land. As noted in the Recitals, this Agreement adds additional land to the land that Bowersock has and to exclusive right to occupy, possess and use to now include the open area west of the west edge of Bowersock's warehouse and drive and east of the east edge of the Kansas River Bridge (hereinafter the "Added Land"). Subject to compliance with applicable laws, Bowersock shall have the right to use the Added Land in connection with the operation of its power plants and generation of electricity. The Added land shall be deemed added to the legal description included in the 2002 Agreement and subject to all terms, conditions, and provisions contained in the 2002 Agreement. As a result, and without limiting Bowersock's rights and obligations, Bowersock shall (i) pay all real estate taxes and other impositions assessed with respect to the Added Land and improvements on the Added Land; (ii) not permit mechanics liens to attach to City's fee interest in the Added land; (iii) maintain and repair the Added Land and improvements thereto, including the wall between the land and the BMPC South flume; (iv) indemnify, protect, defend, and hold the City harmless from and against claims, demands, liabilities, and costs, including attorney fees, arising from damage or injury, actual or claimed, on or about the Added Land, caused by or attributable to the negligence, omission, or intentional acts of Bowersock; and (v) at Bowersock's sole cost and expense, stabilize the Added Land from potential collapse into the subterranean room in accordance with plans, designs and recommendations of Bowersock's engineering professionals. City shall have the right to enter onto the Added Land for purposes of maintenance, repair, and reconstruction of the stairway leading to the deck of the Kansas River Bridge.

4. Reaffirmation. Provisions in the Existing Agreement contrary to the provisions of this Agreement are amended and superseded. Except as clarified and amended by this Agreement, the Existing Agreements are reaffirmed.

5. Counterparts. This Agreement may be executed in any number of counterparts (delivered by U.S. mail, fax, overnight delivery service or electronic mail), each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is executed by the parties on dates set forth below, effective as of the date first above stated which is the date of the last party to sign this Agreement.

CITY:

City of Lawrence, Kansas,  
a municipal corporation

By: \_\_\_\_\_  
David L. Corliss, City Manager

Date of Execution: \_\_\_\_\_

BOWERSOCK:

The Bowersock Mills and Power Company, a  
Kansas corporation

By: \_\_\_\_\_  
Stephen H. Hill, President

Date of Execution: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF KANSAS            )  
                                      ) ss  
COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid came David L. Corliss, City Manager of the City of Lawrence, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same to be the free act and deed of such city.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF KANSAS            )  
                                      ) ss  
COUNTY OF DOUGLAS        )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen H. Hill, President of The Bowersock Mills and Power Company, a Kansas corporation, who is personally known to me to be the same person who executed the foregoing instrument of writing, and such person duly acknowledged the execution of the same to be the free act and deed of such company.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



Exhibit A

[Legal Description of Land on South Bank of Kansas River]

All that part of the Southwest Quarter of Section 30, Township 12 South, Range 20 East, in the City of Lawrence, Douglas County, Kansas, described as follows:

COMMENCING at the Southeast corner of Lot 2, Block 1, The World Company Addition No.1, a subdivision in the City of Lawrence, Douglas County, Kansas, said point further described as the point of intersection of the North right of way line of 7<sup>th</sup> Street and the West right of way line of New Hampshire Street; thence North 1 degree 49 minutes 33 seconds West along the West right of way line of New Hampshire Street and its Northerly prolongation a distance of 805.79 feet to a point on the South line of a lease description as filed in Book 428 at Page 822, said point also lying on the North right of way line of the Atchison, Topeka and Santa Fe Railroad as established by Case No. CV31910B; thence North 77 degrees 27 minutes 00 seconds West along the North right of way line of said Railroad and the South line of said Lease as filed in Book 428 at Page 822, a distance of 31.78 feet to the Southwest corner of said Lease, the POINT OF BEGINNING; thence continuing North 77 degrees 27 minutes 00 seconds West along the North right of way line of said Railroad a distance of 299.96 feet to a point; thence North 7 degrees 26 minutes 30 seconds East a distance of 61.11 feet to a point on the North line of Tract A, Survey Record No. 4317; thence South 75 degrees 22 minutes 45 seconds East along the North line of said Tract A, a distance of 52.64 feet to a point; thence South 80 degrees 14 minutes 56 seconds East along the North line of said Tract A, a distance of 139.78 feet to the Northeast corner thereof; thence South 77 degrees 37 minutes 26 seconds East a distance of 113.03 feet to a point on the West line of said Lease as filed in Book 428 at Page 822; thence South 12 degrees 25 minutes 11 seconds West along the West line of said Lease as filed in Book 428 at Page 822 a distance of 66.13 feet to the POINT OF BEGINNING and containing 19,155 Square Feet or 0.440 Acres, more or less; EXCEPT AND EXCLUDING any portion of the stairway on the western end of the foregoing land that leads to the deck of the Kansas River Bridge.

Exhibit B

[Survey/Schematic of Land on South Bank of Kansas River]