

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into on the ____ day of _____, 2007, by and among, Debra L. Miller, in her capacity as the Secretary of Transportation for the State of Kansas ("KDOT"), Northland Venture, L.C., a Kansas limited liability company ("Northland"), Domino, L.C., a Kansas limited liability company ("Domino"), and The City of Lawrence, Kansas, a municipal corporation ("City").

WHEREAS, KDOT instituted eminent domain action for improvement of U.S. 40/6th Street in Lawrence, Kansas in a case entitled *Debra L. Miller, in her capacity as the Secretary of Transportation for the State of Kansas v. Diamond Head Limited Partnership, et al.*, Case No. 03 C 311, in the District Court of Douglas County, Kansas; and

WHEREAS, Northland and Domino are the owners of real property located near Wakarusa Drive on U.S. 40/6th Street, Lawrence, Kansas, which is legally described as:

Lots 3 and 4 of Westgate Place No. 3 all in the City of Lawrence,
Douglas County, Kansas.

A portion of which was acquired by KDOT in the above-captioned condemnation case. Northland and Domino filed an appeal of the Court Appointed Appraisers award in Case No. 04 C 213, in the District Court of Douglas County, Kansas ("the Northland/Domino case"); and

WHEREAS, the Northland/Domino case involved questions of the condemnation by KDOT of a "permanent easement for public and utility purposes", its use and its impact on Northland's and Domino's building and parking setbacks under the Code of the City of Lawrence, Kansas; and

WHEREAS, the Northland/Domino case is currently set for trial; and

WHEREAS, KDOT and Northland and Domino each wish to settle all issues involved in the Northland/Domino case, including all appeals; and

WHEREAS, City is a participant with KDOT in the U.S.40/6th Street improvement project pursuant to a System Enhancement Agreement No. 23 K-6880-01, and City joins in this Settlement Agreement solely as it relates to (1) its formal ratification of Exhibit 1 hereto; (2) the revisions of the final development plans of Northland's and Domino's property located on the Southeast corner of U.S.40/6th Street and Wakarusa Drive; and (3) the representations contained in paragraph 11 of this Agreement.

NOW THEREFORE, KDOT, Northland and Domino and City each agree that it will act in good faith to implement the terms of this Agreement in a timely fashion and each acknowledges that time is of the essence of this Agreement and each further agrees as follows:

1. Prior to February 1, 2007 and upon approval of the revised final development plans described hereafter, KDOT will pay to Northland and Domino, collectively, a condemnation settlement payment in this case in the amount of \$50,000.00. Northland and Domino shall deliver an executed satisfaction of judgment to KDOT's counsel in exchange for payment of this amount.
2. Within fifteen (15) days after the last of the designated signatures appears on this Agreement, KDOT will submit for review by Northland and Domino two revised final development plans for each of the two lots owned by Northland and Domino within Westgate Place No. 3. The revised final development plans will conform to the following specifications:
 - (i) The revised final development plans shall show the repeal of the 50-foot green space easement along U.S. 40/6th Street and all adjustments

of the peripheral boundaries along U.S. 40/6th Street and Wakarusa Drive, pursuant to City Ordinances numbered 7948, 7949 and 8004;

- (ii) The revised final development plans shall indicate that KDOT's permanent easements for public and utility purposes do not allow any use for roadway purposes on the Northland and Domino property, except as set forth in paragraph 10 of this Agreement;
- (iii) The revised final development plans shall contain a note or notes indicating that the revised final development plans may be amended by the property owner under the Code of the City of Lawrence, Kansas;
- (iv) The revised final development plans shall contain a note or notes indicating that the Northland and Domino properties fully comply with all setback requirements as established by the Code of the City of Lawrence, Kansas;
- (v) The revised final development plans shall show all of KDOT's permanent easements for public and utility purposes, including those portions of the permanent easement that are currently used for roadway purposes along Wakarusa Drive and 6th Street. Only the portions of KDOT's permanent easements for public and utility purposes that are used for roadway purposes at the date of this Agreement shall be used for roadway purposes in the future, unless there is a subsequent agreement between KDOT and the landowners, or a subsequent eminent domain action by KDOT; and

- (vi) The revised final development plans shall show the existing signage that was excluded from the KDOT taking of its permanent easements on the Northland and Domino properties.
3. Northland and Domino may object to the revised final development plans only upon reasonable grounds related to the terms of this Agreement or the previously approved and filed final development plans for each lot. Northland and Domino shall have three (3) business days after receipt to approve or object to the revised final development plans.
4. Within three (3) days of the approval of the revised final development plans by Northland and Domino, KDOT will submit the revised final development plans, at its own expense, to the Lawrence-Douglas County Metropolitan Planning Department for approval by the City and for filing by the City at the Douglas County, Kansas Register of Deeds.
5. So long as the revised final development plans comply with the Code of the City of Lawrence, Kansas, the City shall approve and file the revised final development plans with the Douglas County, Kansas Register of Deeds. It shall be KDOT's exclusive responsibility to ensure that the revised final development plans comply with the Code of the City of Lawrence, Kansas. In the event the City fails to approve and file both of the revised final development plans for any reason other than failure to comply with the Code of the City of Lawrence, Kansas; then KDOT and Northland and Domino agree to stipulate that the City's failure to approve or file the revised final development plans shall be admissible into evidence in any subsequent court hearing.

6. Prior to February 1, 2007 and upon approval and filing of the Revised Final Development Plans, and receipt of the condemnation settlement payment, Northland and Domino will dismiss with prejudice their appeal in the case *Debra L. Miller, in her capacity as the Secretary of Transportation for the State of Kansas v. Northland and Domino, LC*, Case No. 04 C 213, in the District Court of Douglas County, Kansas.
7. KDOT agrees that if the use of its permanent easements require digging up or disturbing in any way Northland's and Domino's existing landscaping, trees, irrigation lines, utilities, traffic signals, sidewalks, signs, or anything else, that KDOT will repair or replace the landscaping, trees, irrigation lines, utilities, traffic signals, sidewalks, signs, or anything else.
8. KDOT hereby releases any right it may have acquired to use the permanent public and utility easements for roadways on the Northland and Domino property, except as described in paragraph 10 of this Agreement. Should KDOT need to construct additional roadway or use the released portion of the permanent easements for roadway purposes, KDOT acknowledges that it must acquire the necessary additional property rights by negotiation with the landowners or by eminent domain.
9. On or before February 1, 2007, KDOT shall file the fully executed partial release of easement in the form of Exhibit 2 and its attachments with the Douglas County, Kansas Register of Deeds.
10. KDOT agrees that its primary purposes for the permanent public and utility easements acquired on the Northland and Domino properties is for utilities, sidewalk, roadway

signage and traffic signals and except for that portion of Wakarusa Drive and 6th Street, which currently exists within the KDOT permanent public and utility easements as reflected on sheets 32 and 34 of 287 sheets of the Plan and Profile of State Project West 6th Street (U.S. 40) Improvements Douglas County City of Lawrence, Kansas, Project No. 40-23 K-6880-01, a copy of each sheet, which is attached hereto as Exhibits 3 and 4 and incorporated herein by this reference; KDOT will construct no roadway within the permanent easement for public and utility purposes without acquiring the additional right to do so by negotiation with the landowners or by eminent domain. KDOT excluded from the permanent easements it acquired the "KWIK Shop and Peoples Bank" monument signs located within the permanent easements it acquired.

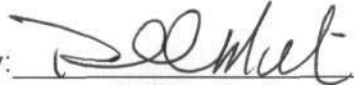
11. So far as any obligations to Northland or Domino, the participation of the City in this Agreement is only as to its agreement that time is of the essence of this Agreement and its exercise of good faith in the timely implementation of the terms of this Agreement including: (1) its ratification of Exhibit 1 hereto; (2) its approval and filing of the revised final development plans with the Douglas County, Kansas Register of Deeds no later than January 30, 2007; and (3) its representation that there is no need to replat the properties because the KDOT revised final development plans will illustrate the location of the KDOT permanent easement, the elimination of the 50-foot green space easement and the adjustments to the peripheral setbacks on this property. The setbacks will be measured from the exterior property lines which were

not modified by the KDOT acquisition despite the presence of any roadway on a portion of the permanent easement. The lack of a survey of the portion of the roadways that are located within KDOT's permanent easement shall not require the landowners to replat or survey the property.

12. All parties shall execute three original copies of this Agreement, so that each party has one fully executed original in its possession.

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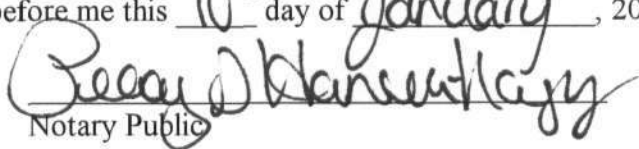
KANSAS DEPARTMENT OF
TRANSPORTATION (KDOT):

By: 
Debra L. Miller, in her capacity as the
Secretary of Transportation for the State of
Kansas

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

This instrument was acknowledged before me on the 10th day of January, 2007 by
DEBRA L. MILLER, in her capacity as the Secretary of the Kansas Department of
Transportation on behalf of whom this Settlement Agreement was executed.

SUBSCRIBED AND SWORN to before me this 10th day of January, 2007.

Notary Public

My Appointment Expires: 03/12/2009



CITY OF LAWRENCE, KANSAS: a
municipal corporation

By: _____
Mike Amyx, Mayor
City of Lawrence, Kansas

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the ____ day of January, 2007 by MIKE AMYX, in his capacity as the Mayor of the City of Lawrence, a Kansas municipal corporation on behalf of whom this Settlement Agreement was executed.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2007.

Notary Public

My Appointment Expires: _____

NORTHLAND VENTURE, L.C., a Kansas
limited liability company

By: *James D. Schwada*
James D. Schwada, Managing Member
Northland Venture, L.C.

ACKNOWLEDGMENT

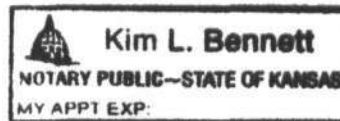
STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the 6th day of January 2007 by
JAMES D. SCHWADA in his capacity as the Managing Member of Northland Venture, L.C., a
Kansas limited liability corporation on behalf of whom this Settlement Agreement was executed..

SUBSCRIBED AND SWORN to before me this 6th day of January, 2007.

Kim L. Bennett
Notary Public

My Appointment Expires: February 20, 2008



DOMINO, L.C., a Kansas limited liability
company

By: James D. Schwada

James D. Schwada, Managing Member
Domino, L.C.

ACKNOWLEDGMENT

STATE OF KANSAS)

) ss:

COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the 6th day of January 2007 by
JAMES D. SCHWADA in his capacity as the Managing Member of Domino, L.C., a Kansas
limited liability corporation on behalf of whom this Settlement Agreement was executed..

SUBSCRIBED AND SWORN to before me this 6th day of January, 2007.

Kim L. Bennett
Notary Public

My Appointment Expires: February 20, 2008

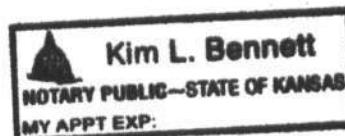


EXHIBIT 1



SIXTH AND MASSACHUSETTS STREET • P.O. BOX 708

LAWRENCE, KANSAS 66044-0708 • FAX (785) 832-3160 • PHONE (785) 832-3150

December 19, 2006

Eldon Shields
Gates, Biles, Shields & Ryan, P.A.
10990 Quivira, Suite 200
Overland Park, KS 66210-1284

RE: KDOT v. Northland, LC and Domino, LC and
KDOT v. Westgate, LC

Dear Eldon:

You have indicated that as part of the settlement agreement with Westgate, Northland and Domino, KDOT has agreed to be responsible for preparing revised Final Development Plans so that they will note that the properties are currently in compliance with the setback requirements of the City and also that the Final Development Plans are modifiable. In discussing this with you, I have indicated that I believe those revisions are minor and the revised Final Development Plans can be administratively approved by the Planning Director.

You have also asked me to consider whether there is a requirement to replat these properties for compliance with the City Code and specifically, with respect to conformance of the properties to the required peripheral setback along both Wakarusa Drive and W. 6th Street. I have reviewed the approved Final Plat of Westgate Place No. 3 and the relevant city code provisions. In my opinion, there is no need to replat the property. The revised Final Development Plans will illustrate the location of the KDOT permanent easement. The peripheral setback is measured from the exterior property lines of planned unit developments and the KDOT acquisition does not modify those exterior property lines in any way. The peripheral setback is required to be shown on the Final Development Plans and, as I understand, will be shown on the revised Final Development Plans.

Please let me know if you have additional questions regarding the planning process.

Sincerely,

Sheila M. Stogsdill
Interim Planning Director

C: David Corliss, City Manager
John Miller, Staff Attorney

EXHIBIT 2

PARTIAL RELEASE OF EASEMENT

This Partial Release of Easement (the "**Release**") is made this ____ day of _____, 2007 (the "**Effective Date**"), by Debra L. Miller, in her capacity as the Secretary of Transportation for the State of Kansas ("**KDOT**").

RECITALS

- A. KDOT is the owner of a permanent easement described on Exhibit A and, by reference, made a part hereof (the "**Easement**") obtained from Northland Venture, L.C. and Domino, L.C. (the "**Owners**") through the right of eminent domain in a case entitled *Debra L. Miller, in her capacity as the Secretary of Transportation for the State of Kansas v. Diamond Head Limited Partnership, et al.*, Case No. 03 C 311, in the District Court of Douglas County, Kansas (the "**Condemnation Action**"), for public and utility purposes.
- B. Owners are the owners of real estate described on Exhibit B and, by reference, made a part hereof (the "**Owners' Parcel**"), over which the Easement is located, and Owners filed an appeal of its Court Appointed Appraisers award in Case No. 04 C 213, in the District Court of Douglas County, Kansas (the "**Appeal**").
- C. As part of the settlement of the Appeal, KDOT has agreed to partially release the Easement by excluding any use of Easement for roadway purposes. KDOT and Owner agree that the Easement shall not be used for the construction of a roadway, including, without limitation, a highway, street, or road ("**Roadway**"), except as set out herein, unless KDOT acquires an additional right to do so from the Owners, their successors or assigns, or by the power of eminent domain commenced after the date of this Agreement, all in accordance with the terms and provisions of this Release.

PARTIAL RELEASE

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, KDOT hereby agrees as follows:

- 1. **Recitals.** The Recitals set forth above are a part of this Release.
- 2. **Partial Release of Easement.** KDOT hereby releases, vacates, quitclaims and abandons the use of the Easement for the construction of a roadway, including, without limitation, a highway, street, or road, except as set out herein, it being the intention of KDOT to vacate and terminate the use of the Easement, for purposes of constructing a Roadway, except those areas where a roadway already exists, as specifically reflected on sheets 32 and 34 of 287

sheets of the Plan and Profile of State Project West 6th Street (U.S. 40) Improvements Douglas County City of Lawrence, Kansas, Project No. 40-23 K-6880-01, a copy of each sheet is attached hereto as Exhibits C and D and incorporated herein by this reference. KDOT agrees that if it should desire to construct a Roadway or use the easement for a roadway after the date of this Release, KDOT may not do so unless it obtains such right from the Owners, its successors or assigns, or acquires such right in the exercise of the power of eminent domain.

3. **Ratification of Remaining Easement.** Nothing in this Release shall in any way diminish KDOT's right, title and interest in and to the remaining portion of the Easement not released in this Release. KDOT does not release the Easement or the description of the Easement, but rather KDOT's release only pertains to the uses of the Easement (other than the Existing Roadway) that KDOT obtained in the Condemnation Action.
4. **Benefit of Partial Release.** This Release shall be binding upon and inure to the benefit of KDOT and the owners of the Owners' Parcel and their respective successors and assigns.

IN WITNESS WHEREOF, KDOT has executed this Release as of the Effective Date.

KDOT: _____
Debra L. Miller, in her capacity as the
Secretary of Transportation for the State of
Kansas

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

This instrument was acknowledged before me on this ____ day of _____, 2007, by Debra L. Miller, Secretary of Transportation for the State of Kansas.

Notary Public

My Appointment Expires: _____

EXHIBIT A

[Legal Description of Easement as Taken]

A PERMANENT EASEMENT for public and utility purposes over and upon a tract of land in Lots 3 and 4, Westgate Place No. 3, City of Lawrence, Douglas County, Kansas, according to the recorded plat thereof, described as follows: BEGINNING at the Southwest corner of Said Lot 3; FIRST COURSE, thence on an assumed bearing of thence North 01 degree 51 minutes 23 seconds West, 85.344 meters (280.00 feet) along the West line of said Lot to the North line of said Lots; SECOND COURSE, thence North 88 degrees 11 minutes 41 seconds East, 123.432 meters (404.96 feet) along the North line of said Lots to the East line of said Lot 4; THIRD COURSE, thence South 01 degree 51 minutes 23 seconds East, 7.620 meters (25.00 feet) along said East line; FOURTH COURSE, thence South 88 degrees 11 minutes 41 seconds West, 103.038 meters (338.05 feet); FIFTH COURSE, thence South 45 degrees 09 minutes 14 seconds West, 17.787 meters (58.36 feet); SIXTH COURSE, thence South 00 degrees 56 minutes 50 seconds East, 41.973 meters (137.71 feet); SEVENTH COURSE, thence South 01 degree 53 minutes 19 seconds East, 23.616 meters (77.48 feet) to the South line of said Lot 3; EIGHTH COURSE, thence South 88 degrees 11 minutes 41 seconds West, 6.730 meters (22.08 feet) along said South line to the point of beginning. The above described tract contains 1564 square meters (16833 square feet).

Plaintiff-Condemnor specifically excludes from the acquisition of the above-described Permanent Easement the "Kwik Shop" and "Peoples Bank" monument signs located within the described Permanent Easement. KDOT will require its contractors to preserve and protect such signs from damage during construction, and agrees to repair or replace such signs at its costs should damage occur during construction.

EXHIBIT B

[Legal Description of Owners' Parcels]

Lots 3 and 4 of Westgate Place No. 3, all in the City of Lawrence, Douglas County, Kansas.