

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this ____ day of July, 2013, by and between the City of Lawrence, Kansas, a municipal corporation, and 900 New Hampshire, LLC, a Kansas limited liability company.

RECITALS

- A.** The City of Lawrence, Douglas County, Kansas ("the City"), is the holder of that Right of Way on which New Hampshire Street ("City's Right of Way") is located in the City of Lawrence, Douglas County, Kansas;
- B.** 900 New Hampshire, LLC, a Kansas limited liability company ("the Owner"), owns certain real estate ("the Property") adjacent to and along the City's Right of Way, bearing the following legal description:

Lots 70, 72, 74, 76, and 78 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas (Combined in the year 2000). Contains 29,328 square feet, or 0.673 Acres, More or Less;
- C.** In order to enhance the use and enjoyment of the Property, the Owner wishes to install an underground parking garage. The underground parking garage will extend approximately seven feet eleven inches (7' 11") into, and would be of approximately fifteen feet (15') below, the surface of the City's Right of Way (a map of the underground parking garage is affixed hereto as Exhibit A);
- D.** The Owner has submitted to the City a Site Plan setting forth the details of its proposed location of a portion of its underground parking garage in the City's Right of Way; and
- E.** The City has approved the Site Plan, including the proposed location of the underground parking garage in the City's Right of Way, contingent, among other things, upon the execution of this License Agreement and compliance with the terms of this License Agreement.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Grant of License.** In exchange for the sum of one dollar and no cents (\$1.00) and for other good and valuable consideration, the City hereby grants to the Owner the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, that portion of the City's Right of Way on which the underground parking garage will be located, for the purpose of enhancing the use and enjoyment of the Property.
2. **The Owner's Covenants.** In exchange for this License, in addition to giving good and valuable consideration, the Owner hereby covenants and warrants as follows:
 - (a) To maintain the underground parking garage at the Owner's sole cost and expense and to remove all debris and other items placed thereon by the Owner or that may be caused to be deposited thereon as a result of the Owner's use and occupancy of the City's Right of Way.
 - (b) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
 - (c) To comply with any and all conditions placed on the underground parking garage by the approved Site Plan.
 - (d) To refrain from causing any waste, damage, or injury to the City's Right of Way.
 - (e) The Owner shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the City's Right of Way as described in this License Agreement without the prior written consent of the City.
3. **The City Makes No Representations.** The Owner agrees that the City has made no representations to it with respect to the City's Right of Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the City's Right of Way or its condition. This License Agreement grants the Owner the License to use the City's Right of Way in its present condition, "as is," without any warranties, representations, or assurances from the City.
4. **Accommodation.** The permission granted to the Owner under the License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to the Owner and shall be made without requiring the payment of rent from the Owner. The Owner hereby acknowledges the City's right to the City's Right of Way and agrees never to assail, resist, or deny such right by virtue of the Owner's use or occupancy of the City's Right of Way under this License Agreement.

5. **Indemnification.** During the time that this License Agreement is in effect, the Owner agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Owner's use or occupancy of the City's Right of Way or any portion thereof as an underground parking garage or the maintenance of the underground parking garage, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.

6. **Termination.**

(a) The City reserves the right to terminate the permission granted by this License Agreement by giving the Owner written notice of such termination and ninety (90) days to cure any defect, if

(i) The Owner fails to comply with or abide by each and all of the provisions, including the Owner's Covenants, of this License Agreement; or

(ii) The Owner fails to comply with or abide by each and every condition established, if any, in the approved Site Plan.

(b) The City may, at the City's election, terminate the permission immediately without such notice if the continued use or occupancy of the City's Right of Way presents a health or safety hazard.

7. **Binding Effect.**

(a) For the purposes of this License Agreement, Owner shall mean 900 New Hampshire, LLC, any successor, assign, or any entity otherwise in control of the Property.

(b) This License Agreement shall, at all times, be binding upon the City and the Owner, any successor or assign, including all owners of the Property and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of the Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of ownership of the Property, or portion thereof, except for those duties and obligations arising during the period of said ownership.

8. **Severability.** If any section, sentence, clause, or phrase of this License Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this License Agreement.
9. **Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.
10. **Recitals.** The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth herein *verbatim*.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the date noted above.

**CITY: CITY OF LAWRENCE,
KANSAS, a municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2013, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

Notary Public

My Appointment Expires:

**OWNER: 900 NEW HAMPSHIRE,
LLC, a Kansas Limited Liability
Company**

By: 900 NH, Inc.,
Its: Manager

By: _____
Charles E. Mackey, President

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of July, 2013, before me the undersigned, a notary public in and for the County and State aforesaid, came Charles E. Makey, President of 900 NH, Inc., Manager of 900 New Hampshire, LLC, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

Notary Public

My Appointment Expires: