

FIRST AMENDED MUTUAL EASEMENT AGREEMENT

This Agreement made and entered into _____ day of _____, 2014, by and between the City of Lawrence, Kansas, a municipal corporation, ("City") and 900 New Hampshire, L.L.C., a Kansas Limited Liability Company ("900 New Hampshire").

WHEREAS, on or about October 2, 2000, City and 9-10, L.C., a Kansas limited liability company ("9-10, L.C.") made and entered into a Mutual Easement Agreement which was recorded in Book 691, pages 1120-1124, Office of the Register of Deeds, Douglas County, Kansas, a copy of which is attached hereto as Exhibit "A";

WHEREAS, at the time Exhibit "A" was entered into and thereafter recorded City was the owner of the fee-simple title in and to the following described real estate situated in Lawrence, Kansas to-wit:

Lots 80, 82, 84 and 86 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas ("City lots"); and

9-10, L.C. was the owner of the fee-simple title in and to the following described real estate situated in Lawrence, Kansas, to-wit:

Lots 72, 74, 76 and 78 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas ("9-10, L.C. lots")

WHEREAS, the Lawrence Arts Center building and attendant facilities have been built on City Lots, with all or part of the building's foundation perimeter drainage system being located in and upon the South four (4) feet of 9-10, L.C. Lot 78;

WHEREAS, the 9-10, L.C. Lots have been sold with the current title holder being a limited liability company ("900 New Hampshire");

WHEREAS, 900 New Hampshire is presently constructing a high-rise hotel, with retail space and underground parking;

WHEREAS, the Mutual Easement Agreement, Exhibit "A" permits the continued use and existence of the Arts Center Building's foundation perimeter drainage system located on the South four (4) feet of 9-10, L.C. Lot 78;

WHEREAS, 900 New Hampshire's construction plans provide that the South wall of its building will not abut the North Wall of the Arts Center Building, as anticipated and provided for in Exhibit "A" hereto; rather the South side of the South wall is to be ten (10) feet North of the North wall of the Arts Center Building;

WHEREAS, 900 New Hampshire will construct and keep in a good state of repair a patio and passageway in, over and upon the South ten (10) feet of said Lot 78 on New Hampshire Street, which will cover and occupy the City's easement over the South four (4) feet of said Lot 78 for its building foundation perimeter drainage system operation, maintenance, repair and replacement and the piers set forth and described in numbered paragraph 3 of the Mutual Easement Agreement.

WHEREAS, the purpose of the patio and passageway shall be to provide 900 New Hampshire and its designee(s) patio access and service access to the rear (South end) of its hotel building, with entry to the patio and passageway to be through a gate located at the East end of the passageway, which will be controlled by 900 New Hampshire and its designee(s).

WHEREAS, 900 New Hampshire shall, at its sole expense, construct the patio and passageway, including the cost of filling the South ten (10) feet of Lot 78 on New Hampshire to ground level and installing the surface cover;

WHEREAS, prior to the start of filling and surface covering the South ten (10) feet of said Lot 78 on New Hampshire, 900 New Hampshire shall present to City for its approval, the plans and specifications for such work;

WHEREAS, said fill and surface cover shall be done in such manner as not to damage or adversely affect the structural strength of the perimeter drainage system or the City piers, located in the South four (4) feet of said Lot 78 and the North portion of said Lot 80;

WHEREAS, as a part of said plans and specifications for the fill and surface cover, 900 New Hampshire shall engage the services of a licensed structural engineer, at its sole cost, and with City's prior approval, who shall sign-off on the final plans and specifications for the fill and surface cover;

WHEREAS, the City shall have full authority, at any time, to disapprove the means and methods being applied by 900 New Hampshire, its contractors and sub-contractors, when filling and applying the surface cover in and over the South ten (10) feet of said Lot 78.

WHEREAS, 900 New Hampshire, and its successors and assigns, when filling and applying the surface cover in and over the South ten (10) feet of said Lot 78, shall be responsible for the continuing maintenance of the fill area and surface cover;

WHEREAS, at such time(s) that City shall need to perform maintenance on, or repair or replace said perimeter drainage system, or any of the wall piers referred to in numbered paragraph 6 hereof, other than required by the act or acts of 900 New Hampshire, its contractors sub-contractors, successors or assigns, it will likely require

the excavation and removal of all or part of the fill in the easement space and the surface cover thereon and in such event City shall re-fill the area of removed fill in the manner required by the original plans and specifications for such fill, and replace the removed surface cover and any damaged or removed improvements; however, before City commences maintenance, repair or replacement of its perimeter drainage system or wall piers located in the South 10 feet of said lot 78, it shall, except in the case of an emergency, give 900 New Hampshire reasonable advance warning, under the circumstances, of its intended removal of fill and/or surface cover.

WHEREAS, in order for City to remove fill from and re-fill all or a part of the easement space 900 New Hampshire hereby grants and conveys to City and its successors and assigns, the permanent and perpetual right of entry upon all of the South ten (10) feet of Lot 78 on New Hampshire for the purpose of maintenance on or repair or replacement of said perimeter drainage system or the piers referenced in said numbered paragraph 6 hereof;

NOW THEREFORE, in consideration of the promises and obligations herein stated, the nature, extent and sufficiency of which are mutually agreed to, the parties, each with the other, agree as follows:

1. The above-stated recitals are by reference adopted and incorporated herein and made a part hereof the same as if repeated verbatim herein.
2. The Mutual Easement Agreement of October 2, 2000, is hereby amended to incorporate the terms and conditions set forth in the Recitals adopted by reference herein together with those specific changes, amendments and alterations hereafter set forth.
3. Except for the temporary easements, all other easements shall be permanent and perpetual, rather than for 90 years as stated in numbered paragraph 9 of the Mutual Easement Agreement.
4. All references to 9-10, L.C. in the Mutual Easement Agreement shall hereafter read to include 900 New Hampshire, L.L.C.
5. Numbered paragraph 3 of the Mutual Easement Agreement states that the City hereby grants and conveys to 9-10, L.C. a permanent easement alongside the North face of the Art Center's North wall, thereby allowing 9-10, L.C. to utilize the North wall of the Arts Center for attaching flashing, caulking, waterproofing, expansion joints and the like onto the North wall of the Arts Center. By reason of the fact that 900 New Hampshire has started construction of the high-rise hotel with rental space and underground parking, the South wall of which is ten (10) feet North of the Art Center's North wall, 900 New Hampshire no longer has

need for the easement allowing it to tie into the Art Center's North wall, therefore 900 New Hampshire hereby vacates said easement, in favor of City.

6. Numbered paragraph 3 of the Mutual Easement Agreement also provides that City would install piers on the North wall of the Arts Center from the Art Center's Foundation bearing elevation up to within three (3) feet of the proposed finished first floor of 9-10, L.C.'s building which was to be built north of the Arts Center. Those piers were constructed and remain in place. However, the location of the piers on the South portion of Lot 78 on New Hampshire Street presents the question by what authority are the piers so located. In order to eliminate this question **900 New Hampshire hereby grants and conveys to City a permanent and perpetual easement over the South** four (4) feet of said Lot 78 on New Hampshire Street for the installation, maintenance, repair and replacement of said piers, and Art Center's foundation drainage system.
7. City hereby agrees to save and hold harmless 900 New Hampshire for claim(s) for any damage to the Arts Center caused by construction of its high-rise hotel with retail space and underground parking at any time prior to the full execution of this First Amended Mutual Easement Agreement.
8. This First Amended Mutual Easement Agreement shall be filed of record in the office of the Register of Deeds, Douglas County, Kansas.
9. Unless specifically changed, amended, altered or expanded by this First Amended Mutual Easement Agreement, the terms and conditions of the Mutual Easement Agreement of October 2, 2000, shall remain in full force and effect.

This First Amended Mutual Easement Agreement is and shall be binding and obligatory upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused this document to be executed on their behalf on the date(s) adjacent to the signatures, with the date of the last to sign to be the date of this document.

[Signature Pages Follow]

**City of Lawrence, Kansas
a municipal Corporation**

Mike Amyx, Mayor

ATTEST:

By: _____
Diane Trybom, Acting City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)


The foregoing the First Amended Mutual Easement Agreement was acknowledged before me this ____ day of _____, 2014, by Mike Amyx, Mayor, on behalf of City of Lawrence, Kansas, a municipal corporation.

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

Notary Public

My commission expires:

**900 New Hampshire, L.L.C.,
a Kansas Limited Liability Company**

By: 

ATTEST:
By: 

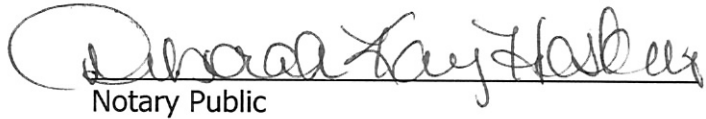
ACKNOWLEDGMENT

STATE OF KANSAS)
 Johnson)
COUNTY OF DOUGLAS)

ss:

The foregoing First Amended Mutual Easement Agreement was acknowledged before me this 13th day of May, 2014, by Charles E Mackey in behalf of 900 New Hampshire, L.L.C., a Kansas Limited Liability Company.

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


Notary Public

**DEBORAH KAY HOSKINS
NOTARY PUBLIC
STATE OF KANSAS**

My commission expires: 6/12/2017

My Appt. Exp. 6/12/2017