

DEVELOPMENT AND LICENSE AGREEMENT

THIS Development and License Agreement is made this ____ day of _____, 2014, by and between the City of Lawrence, Kansas, a municipal corporation, the University of Kansas, a State institution of higher education, and HERE Kansas, LLC, a Delaware limited liability company, or its assigns.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation ("City"), is the holder of those Rights of Way on which Indiana Street ("Indiana Street Right of Way") and Mississippi Street ("Mississippi Street Right of Way") are located in Lawrence, Douglas County, Kansas.
- B.** The University of Kansas, a State institution of higher education ("KU"), owns, as part of its main campus, that real property, located in Lawrence, Douglas County, Kansas, that is south of Fambrough Drive and west of Mississippi Street ("KU Property") and which is adjacent to the Mississippi Street Right of Way. (The legal description of the KU Property is affixed hereto as Exhibit A and is incorporated herein by reference).
- C.** HERE Kansas, LLC, a Delaware limited liability company, or its assigns, ("HERE"), owns or is the contract purchaser of that real property, located in Lawrence, Douglas County, Kansas, and commonly known as 1101 and 1115 Indiana Street, which real property is adjacent to the Indiana Street and Mississippi Street Rights of Way. (The legal description of the HERE Property is affixed hereto as Exhibit B and is incorporated herein by reference).
- D.** HERE wishes to redevelop the HERE Property, has submitted to the City a Development Plan, and, in order to enhance its use of the HERE Property, has agreed as part of its Development Plan to construct, for public use, angled parking spaces ("Angled Parking") in the Indiana Street Right of Way on both sides of Indiana Street and in the Mississippi Street Right of Way on both sides of Mississippi Street approximately between West 11th Street and West 12th Street. (A drawing of the proposed Angled Parking is affixed hereto as Exhibit C and is incorporated herein by reference).
- E.** The parties have agreed, subject to execution of this Development and License Agreement and compliance with its terms, that HERE will construct to City standards the Angled Parking and sidewalks as shown on Exhibit C, that the City will license use of the Angled Parking to HERE and KU, that HERE will collect and retain all parking fees generated by the Angled Parking, and that the City will enforce, in accordance with its regulations, the Angled Parking, and retain all parking fines and penalties realized from violations of those regulations. For the

purposes of this recital, to the extent that City standards for construction of the Angled Parking and sidewalks deviate from the Public Improvement Plan attached hereto as Exhibit D, such Public Improvement Plan shall control.

- F.** Contemporaneously with the execution of this Agreement, KU shall provide a public pedestrian easement providing for the installation of a sidewalk on the west side of Mississippi Street on the KU Property.
- G.** Contemporaneously with the execution of this Agreement, HERE shall provide a public pedestrian easement providing for the installation of a sidewalk on the east side of Mississippi Street on the HERE Property.

TERMS

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 each of the parties, the parties agree as follows:

Terms Relevant to the Development Agreement

- 1. Approved Public Improvement Plan.** As a condition for receiving approval of its Development Plan and site plan related to its redevelopment of the HERE Property, HERE agrees to construct, for public use, the Angled Parking and sidewalks as shown in Exhibit C. HERE agrees to submit to the City Engineer, for his approval, a Public Improvement Plan, setting forth in detail its plan for constructing the Angled Parking and the sidewalks. HERE further agrees that no work shall be commenced on the Angled Parking or the sidewalks until the City Engineer approves HERE's Public Improvement Plan. (A copy of the approved Public Improvement Plan shall be affixed hereto as Exhibit D and shall be incorporated herein by reference as if set forth in full).
- 2. Scope of Work.** Once the Public Improvement Plan is approved by the City Engineer, HERE agrees that, at its sole cost and expense, it shall cause the Angled Parking to be constructed in a good and workmanlike manner and in accordance with the approved Public Improvement Plan. HERE also agrees that the work on the Angled Parking shall be completed to the City's reasonable satisfaction and that the same shall be in accordance with the Approved Public Improvement Plan. The City agrees that HERE shall be permitted to construct the Angled Parking without posting a bond or providing a letter of credit.
- 3. Maintenance and Repair.** HERE agrees that, during the time that this Development and License Agreement is in effect, it shall bear the cost of repairing, replacing, restoring, cleaning, removing snow and ice, and otherwise

maintaining the Angled Parking in good condition, capable of continued use for their intended purpose, ordinary wear and tear excepted. Following the termination of this Development and License Agreement, all such obligations shall revert to the City.

4. **Construction Easements.** The City agrees to that it will obtain any temporary construction easements required for HERE to construct the Angled Parking on the East and West sides of Indiana Street as depicted in Exhibit C.
5. **Indemnification.** During the time that this Development and License Agreement is in effect, HERE 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 or arise out of, its construction or maintenance of the Angled Parking on account of any injury to persons or damage to property occurring during such construction or maintenance. This paragraph shall not apply to any injury or damage caused by the negligence or willful conduct of the City or its employees or agents.

Terms Relevant to the License Agreement

6. **License to KU.** KU shall have the exclusive right to use approximately forty-one (41) spaces of the Angled Parking on the west side of Mississippi Street, as depicted in the drawing on Exhibit C, from 6:00 a.m. until 11:59 p.m. on the dates of all University of Kansas home football games and three additional events per year, at KU's discretion. KU shall give notice to the City and HERE of any such additional event not less than sixty (60) days in advance of such event.
7. **HERE Exclusive Use Right.** Four (4) times annually for a period of three (3) consecutive days, HERE shall have exclusive use of the Angled Parking, or a portion thereof as determined by HERE, to provide residents of the HERE Property access to move in and move out of the residential units thereon. Such annual periods shall be in August, December, January, and May and shall align generally with the commencement and termination of fall and spring semester classes for KU. The parties shall cooperate in good faith to ascertain such dates as required by this Agreement. Additionally, the parties acknowledge that up to five (5) of the spaces within the Angled Parking shall be permanently dedicated to "15 minute loading and unloading," which spaces may be metered at HERE's discretion. Such five (5) spaces shall not be located within the spaces licensed to to KU pursuant to this Section 6.
8. **Regulation and Control of Angled Parking.** The City shall regulate and control parking, consistent with its regulation of other City parking, on those portions of the Mississippi Street Right of Way and the Indiana Street Right of

Way on which the Angled Parking will be located. The City further covenants and warrants as follows:

- a.** HERE may establish the policies, duration and prices governing the public parking, provided that the fee charged for public parking will, at all times, be commercially reasonable;
- b.** The parties acknowledge that the intent of the imposition of fines for the violation of the policies and duration affecting the Angled Parking is to preserve the integrity of such policies. Accordingly, the City agrees that all fines assessed for convictions or pleas of no contest to violations of the parking regulations shall be similar to what KU assesses for violations of its parking regulations within its campus proper, notwithstanding the fact that such fines will likely exceed the fines assessed for similar violations in other areas of the City.
- c.** The City agrees that, in exchange for regulating and enforcing parking at the Angled Parking, it shall have the right to retain all parking fines and penalties collected for convictions and pleas of no contest to violations of its parking regulations within the Angled Parking.
- d.** The City agrees and covenants that HERE shall have the right to collect and to retain all parking fees generated by the Angled Parking which fees may be set by HERE in its sole discretion in a commercially reasonable amount.
- e.** The parties acknowledge that, following the execution of this Agreement, upon the mutual agreement of the parties, KU may, but shall have no obligation to, undertake the parking enforcement obligations specified for the City under this Agreement. In such event, KU shall be entitled to the proceeds of any parking fines levied on the Angled Parking in accordance with this Agreement.

Terms Relevant to Both Agreements

- 10. Term.** This Development and License Agreement shall be valid through a period of ending at 11:59 p.m. on December 31, 2044 (the "Initial Term").
- 11. Optional Terms.** HERE shall have the option to extend the Initial Term of this Development and License Agreement for two (2) additional and successive thirty (30) year option periods (individually, "the Option Term" and, collectively, "the Option Terms"). The Development and License Agreement shall, at the end of the Initial Term or any Option Term, unless it is the second Option Term, automatically be extended an additional Option Term, unless HERE notifies the other parties of its intent to terminate or to renegotiate this Development and

License Agreement at least one hundred eighty (180) days prior to the termination of the then-current Term. Option Terms shall be deemed a continuation of this Development and License Agreement and shall not be considered an amendment thereto or a new agreement.

- 12. Health, Safety, and Welfare.** If the City determines that use of the Indiana Street Right of Way or Mississippi Street Right of Way, as provided herein, creates a hazard to the health, safety, or welfare of the residents of Lawrence, the parties hereto shall cooperate in good faith and use commercially reasonable efforts to address any such hazard in a manner reasonably satisfactory to the City. Such cooperation may include, but not be limited to, **(a)** engaging consultants to evaluate the risks and potential solutions thereto, **(b)** reducing the speed limit and/or installing additional traffic calming implements, or **(c)** mutually agreeing to reconfigure the Angled Parking. Notwithstanding the foregoing, the parties mutually agree that any future modifications to the Angled Parking, as shown on Exhibit C, shall result in the least possible reduction in the number of parking spaces in the Angled Parking as is necessary to address the hazard to the health, safety, or welfare of the residents of Lawrence.
- 13. Authorization.** Each of the persons executing this Development and License Agreement, in behalf of their respective parties, represent and warrant that they have the authority to bind the party in behalf of whom they have executed this Development and License Agreement, and that all acts requisite to the authorization to enter into and to execute this Development and License Agreement have been taken and completed.
- 14. Notice.** Notice under this Development and License Agreement, including denials, revocation, or alteration of site specific approvals, notice to remove equipment, and any other notice that may be required by this Development and License Agreement shall be provided in writing to the parties at the following addresses:

Notice to the City:

City of Lawrence, Kansas
City Manager's Office
6 East 6th Street
P.O. Box 768
Lawrence, Kansas 66044

Notice to KU:

University of Kansas
Office of the General Counsel
1450 Jayhawk Boulevard, Room 245
Lawrence, KS 66045

Notice to HERE:
HERE Kansas, LLC
Attn: Jim Heffernan
908 North Halsted
Chicago, IL 60642

- 15. Binding Effect.** This Development and License Agreement shall, at all times, be binding upon the City, KU, and HERE, 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 KU Property and HERE Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of his, her, or its ownership of their respective property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership. HERE may assign any rights or obligations under this Agreement to any third-party in its sole discretion and upon such assignment shall be fully released from any obligations hereunder that may arise after the effective date of any such assignment, unless any proposed assignee assumes this Development and License Agreement, at which point HERE shall be irrevocably released for all obligations hereunder.
- 16. Severability.** If any section, sentence, clause, or phrase of this Development Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Development Agreement.
- 17. 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.
- 18. Adoption of Recitals.** The above-stated recitals are incorporated herein by reference, are hereby made a part of this Development and License Agreement, and shall be as effective as if repeated verbatim.
- 19. Condition to Effectiveness.** The parties acknowledge that the provisions of this Development and License Agreement shall be effective only upon: **(a)** the City's approval of HERE's Final Development Plan, Public Improvement Plan, and all appurtenant approvals; **(b)** the City's approval of HERE's Development Plan and all appurtenant approvals; **(c)** HERE electing to proceed with the construction of the project contemplated in the Final Development Plan, the Public Improvement Plan, and the Development Plan; and **(d)** use of the HERE Property in a manner that is materially consistent with HERE's Final Development Plan. In the event that any of the foregoing items do not occur, this Agreement shall be of no further force and effect. In such event, no party shall be entitled to any special, punitive, or consequential damages, and HERE shall not be

compelled by specific performance to undertake any obligation of this Agreement or to construct any improvements upon the HERE Property.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the City, KU, and HERE have executed this Development and License Agreement with the full intent to bind themselves and their successors and assigns.

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

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of _____, 2014, 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:

**KU: UNIVERSITY OF KANSAS, a
State institution of higher
education**

(Title)_____

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this ____ day of _____, 2014, before me the undersigned, a notary public in and for the County and State aforesaid, came _____, as _____ of the University of Kansas, a State institution of higher education, 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:

**HERE: HERE KANSAS, LLC, a
Delaware limited liability company**

(Title)

ACKNOWLEDGMENT

THE STATE OF ILLINOIS)
)
THE COUNTY OF COOK) ss:

BE IT REMEMBERED, that on this ____ day of _____, 2014, before me the undersigned, a notary public in and for the County and State aforesaid, came _____, as _____ of HERE Kansas, LLC, a Delaware limited liability company, 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:

Exhibit A

Legal Description of KU Property

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 12 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LAWRENCE, DOUGLAS COUNTY KANSAS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER SECTION 330 FEET WEST OF THE SOUTHEAST CORNER; THENCE WEST ON SAID SOUTH LINE 1,171.5 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SOUTHEAST QUARTER SECTION 1,021.5 FEET; THENCE EAST 823.5 FEET TO THE WEST LINE OF MISSISSIPPI STREET IN OREAD ADDITION; THENCE SOUTH ALONG SAID WEST LINE 652.5 FEET TO THE SOUTH LINE OF ADAMS (14TH) STREET; THENCE EAST ALONG SAID SOUTH LINE 348 FEET; THENCE SOUTH 369 FEET TO THE POINT OF BEGINNING.

ALSO BEGINNING AT A STONE 1,021.02 FEET NORTH AND 1,501.5 FEET WEST OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER SECTION, THAT STONE BEING THE NORTHWEST CORNER OF STATE UNIVERSITY GROUNDS; THENCE NORTH 628.98 FEET TO A STONE; THENCE EAST 823.02 FEET TO A STONE ON THE WEST LINE OF MISSISSIPPI STREET IN OREAD ADDITION; THENCE SOUTH ALONG SAID WEST LINE 9.53 CHAINS TO A STONE AT THE NORTHEAST CORNER OF SAID UNIVERSITY GROUNDS; THENCE WEST 12.47 CHAINS TO THE POINT OF BEGINNING.

ALSO BEGINNING 1,650 FEET NORTH OF A POINT 1501.5 FEET WEST OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER SECTION; THENCE EAST 823.02 FEET TO THE WEST LINE OF MISSISSIPPI STREET IN OREAD ADDITION; THENCE NORTH ALONG SAID WEST LINE 660 FEET TO A POINT 330 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER SECTION; THENCE WEST 12.47 CHAINS; THENCE SOUTH 10 CHAINS TO THE POINT OF BEGINNING.

ALSO BEGINNING AT A POINT ON THE WEST LINE OF SAID SOUTHEAST QUARTER SECTION 330 FEET SOUTH OF THE NORTHWEST CORNER; THENCE SOUTH ALONG SAID WEST LINE 464.5 FEET TO A POINT IN SAID LINE; THENCE EAST AND BOUNDING ON LAND OF CAWLIN E. CHAPIN 841.5 FEET TO A POINT; THENCE NORTH STILL BOUNDING SAID CHAPIN'S LAND 464.5 FEET; THENCE WEST 51 RODS TO THE POINT OF BEGINNING, LESS 0.384 ACRES CONVEYED IN A DEED RECORDED IN BOOK 224, PAGE 483 AT THE DOUGLAS COUNTY REGISTER OF DEEDS OFFICE.

ALSO BEGINNING 794.5 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER SECTION; THENCE EAST 841.5 FEET; THENCE NORTH 464.5 FEET; THENCE EAST 297 FEET; THENCE SOUTH 726 FEET; THENCE WEST 1,138.5 FEET; THENCE NORTH 261.5 FEET TO THE POINT OF BEGINNING.

ALSO BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SOUTHEAST QUARTER SECTION; THENCE NORTH 264 FEET TO THE SOUTHWEST CORNER OF CAWLIN CHAPIN'S LAND; THENCE EAST 1,138.5 FEET TO THE SOUTHEAST CORNER OF SAME LAND; THENCE SOUTH 4 CHAINS; THENCE WEST 17.25 CHAINS TO THE POINT OF BEGINNING.

ALSO BEGINNING AT A POINT 1,320 FEET SOUTH OF THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER SECTION; THENCE EAST 1,138.5 FEET; THENCE SOUTH 1,320 FEET; THENCE WEST 1,138.5 FEET; THENCE NORTH 1,320 FEET TO THE POINT OF BEGINNING.

ALSO LOTS 4 AND 5, BLOCK THIRTY-TWO, QUIVERA PLACE.

Exhibit B

Legal Description of HERE Property

LOTS 1, 2, 3, 4, 5, AND 6, BLOCK FOURTEEN, LANE'S SECOND ADDITION TO THE CITY OF LAWRENCE; AND LOTS 1, 2, 3, 4, 9, 10, 11 AND 12, BLOCK NINE, OREAD ADDITION TO THE CITY OF LAWRENCE; ALL IN THE CTY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

Exhibit C

Angled Parking

Exhibit D

Public Improvement Plan