

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this ____ day of _____, 2015, by and between the City of Lawrence, Kansas, a municipal corporation, and ELR, LLC, a Colorado limited liability company.

RECITALS

- A. The City of Lawrence, Douglas County, Kansas ("the City"), is the holder of those Rights of Way on which Ninth Street and Highland Street ("City's Rights of Way") are located in the City of Lawrence, Douglas County, Kansas;
- B. ELR, LLC ("ELR"), a Colorado limited liability company, is an environmental company that, among other things, assesses groundsoil contamination associated with underground petroleum tanks;
- C. The Kansas Department of Health and Environment ("KDHE") has contracted with ELR to install monitoring wells to assess groundsoil contamination in the vicinity of the intersection of Ninth Street and Highland Street;
- D. In order to perform the assessment, ELR wishes to install two monitoring wells within the City's Rights of Way (a map showing the location of the proposed monitoring wells is affixed hereto as Exhibit A and incorporated herein by reference); and
- D. The City desires to assist the KDHE and ELR in performing the environmental assessment and has approved the proposed placement of two monitoring wells within the City's Rights of Way, contingent, among other things, upon the execution of this License Agreement and compliance with the terms of this License Agreement.

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 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 ELR the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, those portions of the City's Rights of Way on which the two monitoring wells will be located for the purpose of performing an environmental assessment of the groundsoil in that area.

2. **ELR's Covenants.** In exchange for this License, in addition to giving good and valuable consideration, ELR hereby covenants and warrants as follows:

- (a) To maintain the monitoring wells, and all facilities appurtenant thereto, at ELR's sole cost and expense for the duration of the License Agreement.
- (b) To move or remove, at ELR's sole cost and expense, the monitoring wells, and all facilities appurtenant thereto, located in the licensed area, at the City's request or in the event that the City needs to install, repair, or maintain any utilities that may be located or are to be located in the City's Rights of Way.
- (c) To remove or repair, upon the written notice of the City, the monitoring wells, and any facilities appurtenant thereto, in the event it becomes a hazard or is in a state of disrepair.
- (d) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
- (e) To comply with all conditions placed on it by KDHE in its contract to assess groundsoil contamination in the area and all standards regarding the installation of the monitoring wells, which standards are affixed hereto as Exhibit B and incorporated herein by reference.
- (f) To refrain from causing any waste, damage, or injury to the City's Rights of Way.
- (g) ELR shall list the City as an additional insured on its commercial insurance policy.

3. **The City Makes No Representations.** ELR agrees that the City has made no representations to it with respect to the City's Rights 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 Rights of Way or their condition. This License Agreement grants ELR the License to use the City's Rights of Way in their present condition, "as is," without any warranties, representations, or assurances from the City.

4. **Accommodation.** The permission granted to ELR under the License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to ELR and shall be made without requiring the payment of rent from ELR. ELR hereby acknowledges the City's right to the City's Rights of Way and agrees never to assail, resist, or deny such right by virtue of ELR's use or occupancy of the City's Rights of Way under this License Agreement.

5. **Indemnification.** During the time that this License Agreement is in effect, ELR 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 ELR's use or occupancy of the City's Rights of Way or any portion thereof for the location of the monitoring well, and all facilities appurtenant thereto, 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.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason, by giving ELR at least 30 days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice:
 - (a) If ELR fails to comply with or abide by each and all of the provisions, including ELR's Covenants, of this License Agreement;

 - (b) If ELR fails to comply with or abide by each and every condition established by the KDHE for the proposed monitoring wells as shown on Exhibit A; or

 - (c) If the continued use or occupancy of the City's Rights of Way presents a health or safety hazard.

7. **Term.** This License Agreement shall be valid for a period of one year. If neither party requests a termination of this License Agreement it shall be automatically extended for a period of one year. Any extension shall be considered a continuation of this License Agreement and shall not be a new agreement. This License Agreement will absolutely terminate when ELR's contract with KDHE for this project expires. The parties agree that KDHE abandonment in place policy is satisfactory to close the monitoring well.

8. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and ELR and all parties claiming by, through, or under them; provided, however, that the rights, duties, and obligations of each owner of the monitoring well, and all facilities appurtenant thereto, as set forth herein, shall cease with the termination of ownership of that property, except for those duties and obligations arising during the period of said ownership.

9. **Authorization.** Each of the persons executing this License Agreement, in behalf of their respective parties, represents and warrants that they have the authority to bind the party in behalf of whom they have executed this License Agreement, and that all acts requisite to that authorization have been taken and completed.

10. **Notice.** Notice under this 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 ELR:
ELR, LLC
5590 Havana, Unit B
Denver, Colorado 80239

11. **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.
12. **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.
13. **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

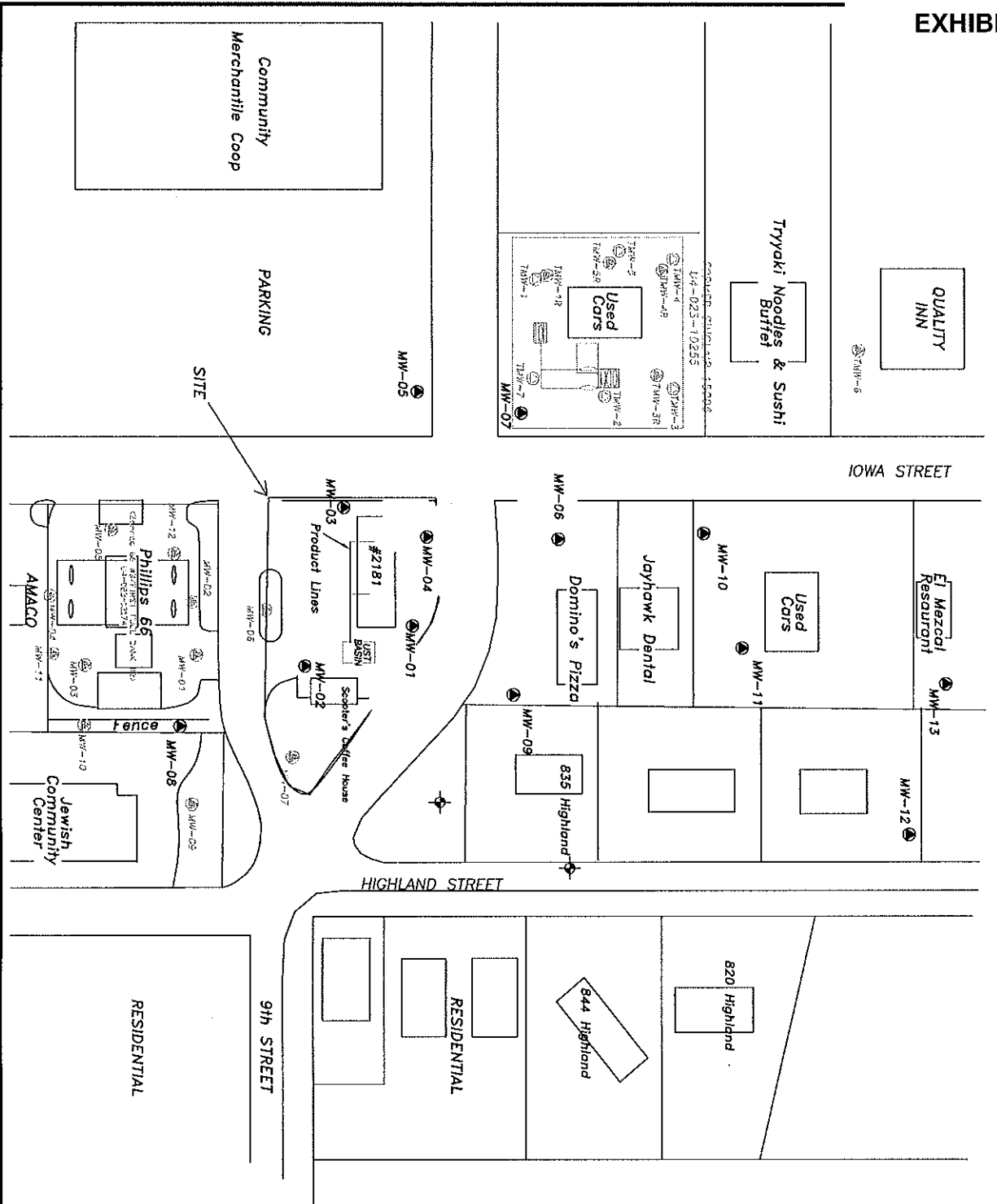
THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2015, 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:




LEGEND:

-  PROPOSED MONITORING WELLS
-  MW-02 MONITORING WELL
-  PROPERTY LINE



1.0



Cardino
ATC
Shaping the Future

PROPOSED MONITORING WELLS

TOTAL RETAIL #2181
2005 WEST 9TH STREET
LAWRENCE, KANSAS

PROJECT NUMBER: UA-023-01573	ISSUE DATE: MW 05/07/14
PROJECT NAME: 2005 WEST 9TH STREET LAWRENCE, KANSAS	SHEET NO. OF 74