

SETBACK AND UTILITY EASEMENT AGREEMENT

THIS SETBACK AND UTILITY EASEMENT AGREEMENT is made this 14th day of September, 2015, by and between the City of Lawrence, Kansas, a municipal corporation, and 100 East 9th Street, LLC, a Kansas limited liability company.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation ("**City**"), owns certain real property, commonly known as 824 New Hampshire Street, Lawrence, Douglas County, Kansas, on which is located public a parking lot ("**Parking Lot**"). The legal description of the Parking Lot is as follows:

LOTS 52, 54, 56 & 58 ON NEW HAMPSHIRE STREET AND
LOTS 53, 55, 57 & 59 ON RHODE ISLAND STREET IN THE
ORIGINAL TOWNSITE OF THE CITY OF LAWRENCE,
DOUGLAS COUNTY, KANSAS.

- B.** 100 East 9th Street, LLC, a Kansas limited liability company ("**Owner**"), owns certain real estate, commonly known as 100 East 9th Street, Lawrence, Douglas County, Kansas ("**Owner's Property**"), on which it is constructing a new mixed-used building that will be seven stories in height ("**Building**"). The legal description of the Owner's Property is as follows:

LOTS 60, 62, 64, 66, & 68 ON NEW HAMPSHIRE STREET
AND LOT 61 ON RHODE ISLAND STREET IN THE ORIGINAL
TOWNSITE OF THE CITY OF LAWRENCE, DOUGLAS
COUNTY, KANSAS.

- C.** The Parking Lot and Owner's Property are adjacent and the north wall of the Building closely adjoins the Parking Lot.
- D.** The City and the Owner wish to use the north wall of the Building to display a mural that will be commissioned by the Spencer Art Museum.
- E.** The City and the Owner further acknowledge that, because of the residential use of the Building, certain utilities are needed for service at the Building and that City Code requires that access to the north wall of the Building be preserved for emergency access.
- F.** In order to preserve sight lines, to provide utility services, and to provide emergency access, the City hereby agrees, subject to execution of this Agreement and compliance with its terms, to grant to the Owner a Setback and Utility Easement on the Parking Lot, all as described in more detail below.

TERMS

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

1. **Recitals**. The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth *verbatim*.
2. **Parking Lot Building Setback Easement**. The City hereby grants to the Owner a permanent thirty-foot (30') building Setback Easement on the Parking Lot, which easement, as measured from the north property boundary of the Owner's Property, shall run the entire length of the north property boundary ("**Building Setback Area**") (A Site Plan, showing the Building Setback Area, is affixed hereto as Exhibit A and is incorporated herein by reference). The Owner agrees that neither it nor its successors shall construct within the Building Setback Area any improvements, buildings, or structures, or otherwise in any way encumber or restrict access to the Building Setback Area; provided, however, that the City or its successors may continue to use the Building Setback Area for parking purposes, may continue to maintain, in the Building Setback Area, any existing parking lot, sidewalks, landscaping, knee wall, or other existing improvements located in, or along or close to New Hampshire Street (including any utilities), and may place in the Building Setback Area directional signage, parking meters (at its discretion), or any other signage, so long as such signage or meters do not otherwise impede emergency access to the Building. The Owner shall also have a permanent easement in and to any part of the property owned by the City or its successors located in the Building Setback Area for the purposes of conducting maintenance and repair of the north exterior wall of the Building.
3. **Utility Easement**. The City hereby grants, establishes and dedicates along and over the Building Setback Area, a permanent non-exclusive easement for the location, construction, installation, relocation, maintenance, repair, and replacement of all utility services, including, without limitation, utility meters, valves, lines, wires, cables, poles, pipes, mains, drains, inlets, manholes, and conduits for electricity, gas, water, sanitary sewer, storm drainage, telecommunications, telephone, internet and cable, above ground and underground, to and for the benefit of the Owner's Property.
4. **Temporary Construction Easement**. The City agrees that the Owner may utilize the Building Setback Area during construction of the Building to place cranes and other construction equipment, stage materials, and to load and unload delivery vehicles to the job site. The City agrees that the Owner may place a temporary chain link fence around the Building Setback Area during such

construction activities, all in accordance with any Right of Way Use Agreement separately agreed to by and between the Owner's contractor (*i.e.*, First Construction) and the City.

5. **Maintenance and Repair.** The City shall be solely responsible for the maintenance and repair of the Parking Lot and all improvements located in the Building Setback Area. The Owner shall be solely responsible for exterior maintenance of the Building, including fixtures, equipment, glass, and all utility or service lines and equipment located therein or which provide utility services to said Building (pursuant to and consistent with normal City policy on maintenance of utility lines located within the boundaries of any lot). In performing such maintenance or repair, or in improving or altering the interior of their respective Parking Lot or Building, neither the City nor the Owner shall do any act or work that impairs or damages the Parking Lot, that impairs the structural soundness of the Building, that damages the mural, or that interferes with any easement granted or reserved.
6. **Damage or Destruction.** In the event of damage to or destruction of the Parking Lot from activities conducted by the Owner on the Parking Lot, the Owner, at its sole expense, shall repair or rebuild the Parking Lot and the City shall have the full use of the Parking Lot so repaired or rebuilt.
7. **Insurance.** The Owner shall maintain insurance on the Building and the Building Setback Area against loss from fire and extended coverage perils (including vandalism and malicious mischief). The Owner shall also separately be responsible for insurance covering loss or damage to personal property and liability for injury, death, or damage occurring with respect to the repair or maintenance activities conducted on the Building if a portion of such activities are being conducted in the Building Setback Area. The Owner shall, on demand of the City, produce certificates of insurance evidencing that all insurance required hereunder is in force.
8. **Indemnification.** Each party shall hold harmless, indemnify, and defend the other party from all liability, penalties, losses, damages, costs, expenses, causes of action, liens, claims, and judgments arising by reason of any injury or death of any person or persons, or damage to the property of any person or persons arising from or relating to any party's negligence while conducting activities in the Building Setback Area that are for the benefit of the Building. If either the City or the Owner shall be made a party to any litigation commenced by or against the other as the result of the negligence of the other, then the negligent party shall defend, protect, and hold the non-negligent party harmless and shall pay all costs, expenses, and reasonable attorneys' fees incurred in connection with such litigation.

9. **Binding Effect.** This Agreement and each of the easement rights described herein shall at all times be construed as covenants running with the land and shall be binding upon and inure to the benefit of the owner or owners of the above-described Parking Lot and Owner's Property, their respective legal representatives, successors, grantees and assigns, and all parties claiming under them, and shall be for the benefit of and limitations upon all future owners of such real estate, provided, however, that the respective rights, duties, and obligations of the City and the Owner set forth herein shall cease with the termination of its ownership of a parcel, except for the duties and obligations arising during the period of its ownership. Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of the general public.
10. **Authority.** Each of the parties executing this 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 Agreement, and that all acts requisite to the authorization to enter into and to execute this Agreement have been taken and completed.
11. **Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.
12. **Governing Law.** This Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.
13. **Right to Enjoin.** In the event of any violation or threatened violation of any of the terms, restrictions, covenants or conditions provided herein by any party, the other party or their respective legal representatives, successors, grantees, or assigns, shall have, in addition to all other rights and remedies at law, the equitable right to enjoin such violation or threatened violation in a court of competent jurisdiction.
14. **Warranty of Title.** The City does hereby warrant that it has the good and lawful right to grant and convey the easement rights described in this Agreement, and will forever warrant and defend the title thereto.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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

CITY:
City of Lawrence, Kansas, a municipal corporation

By: *Diane Stoddard*
Diane Stoddard
Interim City Manager

ACKNOWLEDGMENT

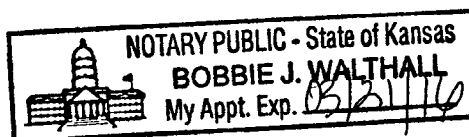
THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this 14 day of September, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Diane Stoddard, as Interim 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.

Bobbie J. Walthall
Notary Public

My Appointment Expires:



OWNER:

100 East 9th Street, LLC, a Kansas limited liability company

By:

**North Project, Inc., a Kansas corporation,
as manager of 100 East 9th Street, LLC, a
Kansas limited liability company**

By: _____

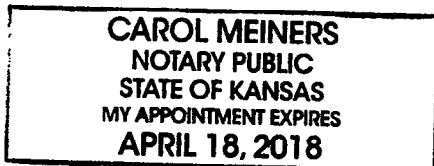
**Douglas J. Compton
President**

ACKNOWLEDGMENT

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

BE IT REMEMBERED, that on this 11th day of September, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Douglas J. Compton, President of North Project, Inc., a Kansas corporation, the manager of 100 East 9th Street, LLC, a Kansas 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.



Carol Meiners
Notary Public

My Appointment Expires: 4-18-2018

New Hamp - 100010
Rhode Island - 100018



Douglas County Register of Deeds
Book: 1128 Page: 2524-2529

Receipt #: 471563
Pages Recorded: 6
Cashier Initials: rec

Recording Fee: \$52.00
Authorized By Kay Pearson

Date Recorded: 9/14/2015 11:54:26 AM

