

Bobbie Walthall

To: Scott McCullough
Subject: RE: On behalf of Jerry Willis

Begin forwarded message:

From: "Brian Sturm" <brians@LANDPLAN-PA.COM>
To: "David Cronin" <dcronin@lawrenceks.org>
Cc: "Charles Soules" <csoules@lawrenceks.org>, "Sandra Day" <sday@lawrenceks.org>, "Mark Hecker" <mhecker@lawrenceks.org>, "dsnodgrass@askmcgrew.com" <dsnodgrass@askmcgrew.com>, "jwjwcinc@sunflower.com" <jwjwcinc@sunflower.com>, "Mike McGrew Email" <mikemcgrew@askmcgrew.com>, "Bill Fleming" <wfleming@TreanorArchitects.com>, "Bruce and Joan Snodgrass" <bsnodgrass@sunflower.com>, "Scott McCullough" <smccullough@lawrenceks.org>
Subject: FW: On behalf of Jerry Willis

David,
I'm forwarding to you the below email and attached documents at the direction of Dennis Snodgrass. This information is intended as a follow up to our meeting on Tuesday afternoon. We would request that these pieces of correspondence be included as attachments to Consent Agenda Item #8. However, I understand from speaking with Sandy Day this afternoon that my client's desire to avoid financial responsibility for the shared use path over City property is not a decision within the purview of the Commission. Instead, this challenge by the applicant constitutes an appeal of the Final Plat Administrative Determination. Appeals of administrative determinations are a matter handled by the BZA and we will be filing that appeal next week. In the meantime, please add this information to the agenda packet and we will continue with the process for appeals laid out in the Subdivision Regulations. Thank you,

Brian Sturm, RLA, ASLA, LEED AP
Project Landscape Architect
Licensed in KS

Landplan Engineering, P.A.

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From: Dennis Snodgrass [<mailto:dsnodgrass@askmcgrew.com>]
Sent: Friday, February 17, 2017 11:52 AM
To: Brian Sturm

Cc: jwjwcinc@sunflower.com; "Michael C. McGrew"; bsnodgrass@sunflower.com; 'William Fleming'

Subject: On behalf of Jerry Willis

All,

This is a follow up to the meeting that occurred at the City offices on Monday, February 14, 2017, regarding the request by the City that Willis pay for the portion of an extension of the bike/pedestrian path on City ground which was donated by the Snodgrass family to the City in 2013. Following is some history regarding discussions that have taken place between Snodgrass and various City officials regarding the donated land and the bike/pedestrian path from the Naismith Valley area, and the agreements in concept that were reached between the City and Snodgrass.

Attached are 2 documents. The first is a letter from Jerry Cooley, dated January 24, 1997. The second, is a Temporary Easement Agreement, executed by Bruce Snodgrass and Mike Wildgen, dated May 1, 1997.

The letter from Cooley states that the City of Lawrence was offering Bruce Snodgrass the amount of \$20,500.00 for a permanent easement for the bike path to be connected from the north (Naismith Valley area), across the property owned by Snodgrass, to the southern terminus of Missouri Street.

The Temporary Easement Agreement, dated May 1, 1997, shows Snodgrass receiving the amount of \$10.00 in exchange for providing a 2 year easement to the City of Lawrence for construction and maintenance of the bike path extension described above. Noteworthy items:

- Paragraph 2c states that 'Upon the termination of this Easement, Grantee shall be responsible for removing the bicycle and pedestrian path, and restoring the easement area located on Tract A to its previous, or better, condition.'
- Paragraph 5. Termination. This paragraph states this is a 2 year agreement, and prior to the expiration or termination, if no alternate path has been agreed to, then both parties will work in good faith to determine a fair market price the City will pay Snodgrass.

In 2013, Snodgrass donated 16.399 acres to the City. The parcel's appraised value was \$98,400.

In looking back at my file, I found a note dated February 7, 1997. It states that a meeting took place between Bruce Snodgrass, Bill Fleming, John Selk (Landplan), Craig Cohen (Landplan), Jerry Cooley, Mike Wildgen, Therese Gorman, Linda Finger, and myself at Jerry Cooley's office. In that meeting, the decision was made to go with a temporary easement (at a substantial savings to the City); the intent being that eventually Snodgrass would donate ground to the City for the City to build a bike path along the southern edge of the development ground to connect Naismith Valley with the proposed SLT.

A meeting was held on March 4, 1997 at Landplan with Snodgrass, Mike Keeney, Therese Gorman, and George Williams to look at a preliminary development plan proposal. The plan showed the bike path running from Naismith Valley from the north along the south side of the proposed development ground to 31st and Louisiana, on ground Snodgrass proposed to donate to the City. Both George and Therese were pleased with the proposal.

There is ample evidence over the many years that Snodgrass has expended great effort and cost to work with the City of Lawrence on the development of the ground. That work has been in cooperation and good faith with the many different faces of the City. Snodgrass has saved the City thousands of dollars between the easement offer and the donated ground value. We respectfully request that the City of Lawrence pay for the portion of the bike/pedestrian path on the ground donated by Snodgrass, and now owned by the City. This is in keeping with the history of discussion and intent of all parties from the beginning.

Respectfully,

Dennis Snodgrass

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LAWRENCE, KANSAS 66044-2868
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Gerald L. Cooley
Milton P. Allen, Jr.
John M. Cooley
Michelle A. Davis
Randall F. Larkin

Milton P. Allen, Sr. (1914-1988)

January 24, 1997

Bruce Francis Snodgrass
Joan Snodgrass
1352 N 1300 Road
Lawrence, Kansas 66046

Dear Mr. and Mrs. Snodgrass:

The City of Lawrence, Kansas, has determined to acquire by direct purchase or through eminent domain proceedings, a permanent easement for the construction and maintenance of a Hike and Bike Path, together with a temporary construction easement, all as described on Exhibit "A" hereto.

The temporary easement shall terminate on February 1, 1999, or ninety (90) days after completion of the improvement, whichever shall first occur. Upon such termination date, the Grantee will leave the area of the temporary easement free of litter and debris and shall cause such area to be of a level and grade compatible with that of the area.

Mr. Thomas L. Monniger was selected by the City to appraise the value of your property for the purpose of making an offer to you for the purchase of the above-described interest(s) in and to the real estate. Mr. Monniger either viewed your real estate in your presence on at least one of his visits, or you were given the opportunity to view the property with him. Mr. Monniger made a written report of his appraisal of your property, with Marion R. Johnson making a review appraisal of Mr. Monniger's appraisal.

The City of Lawrence, Kansas, hereby offers you the sum of \$20,500.00 for the interest(s) in the above-described real estate as stated, the same being \$3,540.00 for the temporary easement and \$16,960.00 for the permanent easement. Such offer represents the highest value as set forth in either Mr. Monniger's appraisal or the review appraisal made by Mr. Johnson, and is deemed to be just compensation for said property, and such determination:

- (1) is based on the fair market value of the property;
- (2) is based on the City's inspection of the property and its consideration of the independently prepared appraisal made by a competent professional appraiser and reviewed by the review appraiser;
- (3) is not less than the approved appraised value of the property; and
- (4) disregards any decrease or increase in the fair market value of the property caused by the contemplated project.

Fair market value is defined as the price a willing seller not obliged to sell will take for his property and the price a willing buyer not obliged to buy will pay for the property.

The above offer will not be altered unless additional value information or evidence is presented or otherwise becomes known to the City of Lawrence, Kansas. In such case, it will then be necessary to have an administrative review to determine if the offer should be changed.

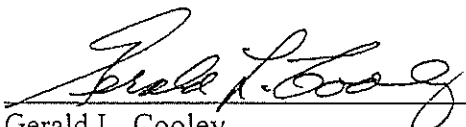
Should the offer not be acceptable to you, our only alternative under established procedure is to proceed under the laws of eminent domain to acquire the required interest(s) in your real estate.

The fifteen items set forth at K.S.A. 26-513, a copy of which is attached hereto as Exhibit "B," if applicable to your property, were considered in ascertaining the amount of compensation and damages. Other factors may also have been considered. They were not considered as separate items of damages, but were considered only as they affect the total compensation and damages established by the appraiser.

It is hoped that you will respond to this offer by February 7, 1997. If you agree to accept the offer each of you will please sign the original of this document in the place hereinafter provided and deliver it to me at the above address. If you are unable to accept the offer by February 7, 1997, please call me. I am available to address your questions and concerns upon your request.

Further, upon your acceptance of said offer to purchase and upon payment to you of the offer price, you will be required to execute, acknowledge, and deliver to the City of Lawrence, Kansas, an easement(s) thereby granting to the purchaser the stated use of the real estate as described in Exhibit "A" affixed hereto.

THE CITY OF LAWRENCE, KANSAS



Gerald L. Cooley
City Attorney

ACCEPTANCE OF OFFER TO PURCHASE

We, the undersigned, being all of the owners of the above-described real estate, together with all improvements thereon, do hereby elect to accept the above offer of the City of Lawrence, Kansas, to purchase the stated interest(s) in and to said real estate.

IN WITNESS WHEREOF, we have hereunto set our hands on this ____ day
of _____, 19 ____.

Bruce Francis Snodgrass

Joan Snodgrass

**RECEIPT OF ACCEPTANCE OF WRITTEN
OFFER TO PURCHASE**

I, Raymond J. Hummert, the duly appointed and acting City Clerk for the City of Lawrence, Kansas, do hereby acknowledge receipt of the above-executed Acceptance of Offer to Purchase the stated interest(s) in the afore-described real estate, this ____ day of _____, 19 ____, at ____ o'clock __m.

Raymond J. Hummert
City Clerk for the City of Lawrence, Kansas

EXHIBIT A

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at a point on the South line of Indian Hills No. 2, a subdivision in the City of Lawrence, Kansas, 28.91 feet East of the Southeast corner of Lot 34, Block 10 of said Indian Hills No. 2; thence South $48^{\circ}09'39''$ West, 42.89 feet; thence North $81^{\circ}02'50''$ West, 42.89 feet; thence North $55^{\circ}39'04''$ West, 62.38 feet; thence North $41^{\circ}33'43''$ West, 126.09 feet; thence North $49^{\circ}11'35''$ West, 335.49 feet; thence South $14^{\circ}32'16''$ East, 24.91 feet; thence South $48^{\circ}32'43''$ East, 148.15 feet; thence South $41^{\circ}33'43''$ East, 158.57 feet; thence South $55^{\circ}39'04''$ East, 99.04 feet; thence North $72^{\circ}16'05''$ East, 65.18 feet; thence North $24^{\circ}29'15''$ East, 33.13 feet to the South line of said Indian Hills No. 2; thence West along said South line to the Point of Beginning,

together with a 10-foot wide temporary construction easement described as follows:

Beginning at a point on the South line of Indian Hills No. 2, a subdivision in the City of Lawrence, Kansas, 28.91 feet East of the Southeast corner of Lot 34, Block 10 of said Indian Hills No. 2; thence South $48^{\circ}09'39''$ West, 42.89 feet; thence North $81^{\circ}02'50''$ West, 42.89 feet; thence North $55^{\circ}39'04''$ West, 62.38 feet; thence North $41^{\circ}33'43''$ West, 126.09 feet; thence South $49^{\circ}11'35''$ East, 52.71 feet; thence South $41^{\circ}33'43''$ East, 72.98 feet; thence South $55^{\circ}39'04''$ East, 59.93 feet; thence South $81^{\circ}02'50''$ East, 37.99 feet; thence North $48^{\circ}09'39''$ East, 36.02 feet to the South line of said Indian Hills No. 2; thence North $67^{\circ}10'00''$ West, along said South line to the Point of Beginning.

26-512

EMINENT DOMAIN

is less than the amount paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment in favor of the plaintiff for the return of the difference, with interest.

(b) If the money paid to the clerk of the court under K.S.A. 26-507 is paid before July 1, 1982, the judgment shall bear interest as follows:

1. On and after the date of the payment to the clerk and before July 1, 1982, at the rate of 6% per annum; and

2. on and after July 1, 1982, and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

(c) If the money paid to the clerk of the court under K.S.A. 26-507 is paid on or after July 1, 1982, the judgment shall bear interest, on and after the date of the payment to the clerk and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

History: L. 1963, ch. 234, § 11; L. 1982, ch. 88, § 2; July 1.

Research and Practice Aids:

Eminent Domain ⇨ 238(7).

C.J.S. Eminent Domain § 366 et seq.

CASE ANNOTATIONS

1. Specific reference to interest on eminent domain judgments controls over general provision. *Schwartz v. Western Power & Gas Co., Inc.*, 208 K. 844, 851, 494 P.2d 1113.

2. Special statute applicable only to condemnation appeals taken under eminent domain procedure act, 26-501 et seq. *Herman v. City of Wichita*, 223 K. 63, 68, 69, 612 P.2d 588.

3. Determination of rate of post-judgment interest. *Meinhardt v. Kansas Power & Light Co.*, 8 K.A.2d 471, 473, 661 P.2d 820 (1983).

4. Applicability of 16-204 regarding postjudgment interest rate noted. *Evans v. Provident Life & Accident Ins. Co.*, 15 K.A.2d 97, 112, 803 P.2d 1033 (1991).

26-512. Same; making surveys and location. The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto.

History: L. 1963, ch. 234, § 12; Jan. 1, 1964.

Research and Practice Aids:

Eminent Domain ⇨ 77.

C.J.S. Eminent Domain § 192.

26-513. Same; compensation. (a) *Necessity.* Private property shall not be taken or damaged for public use without just compensation.

(b) *Taking entire tract.* If the entire tract of land or interest therein is taken, the measure of compensation is the value of the property or interest at the time of the taking.

(c) *Partial taking.* If only a part of a tract of land or interest is taken, the compensation and measure of damages are the difference between the value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) *Factors to be considered.* In ascertaining the amount of compensation and damages as above defined, the following factors, without restriction because of enumeration, shall be given consideration if shown to exist but they are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section:

1. The most advantageous use to which the property is reasonably adaptable.

2. Access to the property remaining.

3. Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

4. Productivity, convenience, use to be made of the property taken, or use of the property remaining.

5. View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

6. Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

7. Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

8. Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.

9. Destruction of a legal nonconforming use.

10. Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

11. Proximity of new improvement to improvements remaining on condemnee's land.

12. Loss of or damage to growing crops.

13. That the property could be or had been adapted to a use which was profitably carried on.

14. Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

15. Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

History: L. 1963, ch. 234, § 13; L. 1969, ch. 196, § 2; July 1.

Research and Practice Aids:

Eminent Domain § 69, 126.

C.J.S. Eminent Domain §§ 96, 136 et seq.

Law Review and Bar Journal References:

"The Eminent Domain Procedure Act," Marion Beatty, 32 J.B.A.K. 130 (1964).

"1969 Kansas Legislature—A Review of Enactment," Robert F. Bennett, 38 J.B.A.K. 59, 127 (1969).

Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 436 (1970).

Elimination of nonconforming uses; mobile homes in Kansas, Gerald E. Hertach, 20 K.L.R. 87, 107 (1971).

"Lateral Support—An Inversely Condemnable Property Right," George A. Gaitas, 13W.L.J. 248, 249, 251 (1974).

Attorney General's Opinions:

Annexation of lands located in water districts; title to facilities; agreement; compensation. 85-166.

Condemnation in cities; authority to condemn property which includes burial plot. 86-46.

Eminent domain; procedure act; human remains; compensation. 88-73.

CASE ANNOTATIONS

1. Doctrine of burden of proof not applicable to condemnation proceedings. *City of Wichita v. Jennings*, 199 K. 621, 626, 433 P.2d 351.

2. Subsection (c) considered; verdict of jury was "within the range" of the evidence. *Kansas State Highway Commission v. Roepke*, 200 K. 660, 663, 665, 666, 438 P.2d 122.

3. Compensation is necessary replacement in taking of property of one governmental agency by another. *City of Wichita v. Unified School District No. 259*, 201 K. 110, 439 P.2d 162.

4. Evidence establishing value of entire property before taking was properly taken. *Humphries v. State Highway Commission*, 201 K. 544, 546, 549, 442 P.2d 475.

5. No error in permitting landowner's witnesses to testify as to separate items of damage resulting from partial taking. *Dibble v. State Highway Commission*, 204 K. 111, 112, 460 P.2d 584.

6. Cost of removal by lessee of personalty from leased premises for reasonable distance is not compensable element of damage. *City of Manhattan v. Eriksen*, 204 K. 150, 153, 154, 155, 460 P.2d 522.

7. Applied: 63-413 does not provide procedure for exercising right of eminent domain, but merely designates interests which highway commission may acquire through such procedure. *State Highway Commission v. Moore*, 204 K. 502, 504, 464 P.2d 188.

8. Cost of removal by lessee of his personalty not an element of damage for which compensation is allowed. *Phillips Petroleum Co. v. Bradley*, 205 K. 242, 248, 468 P.2d 95.

9. Subsection (c) mentioned in determining rights of condemner in eminent domain proceeding (dissenting opinion). *City of Bonner Springs v. Coleman*, 206 K. 689, 700, 481 P.2d 950.

10. Legislature intent relating to just compensation and market value (dissenting opinion). *State Highway Commission v. Lee*, 207 K. 294, 313, 455 P.2d 310.

11. Where plaintiff establishes no "before" and "after" value, verdict not within range established by defendant cannot stand. *City of Wichita v. May's Company, Inc.*, 212 K. 153, 155, 156, 510 P.2d 154.

12. Mentioned; no misconduct in awarding damages where jury added experts' estimated values and divided total obtained by number of experts. *Hogue v. Kansas Power & Light Co.*, 212 K. 339, 345, 347, 510 P.2d 1308.

13. Mentioned; purchase of corporate utility on expiration of franchise is statutory contract right and value not determined under law of eminent domain. *City of Kiowa v. Central Telephone & Utilities Corporation*, 213 K. 169, 172, 515 P.2d 795.

14. Applied; unit rule method of valuation stated and applied; partial taking; award not based on improper evidence. *Rostine v. City of Hutchinson*, 219 K. 320, 323, 548 P.2d 756.

15. Compensable damages for taking access to motel; parol evidence upheld. *Kohn Enterprises, Inc. v. City of Overland Park*, 221 K. 230, 233, 559 P.2d 771.

16. Contention property damaged by factor specified in section; changing street to controlled access facility constituted taking private property for public use. *Teachers Insurance & Annuity Ass'n of America v. City of Wichita*, 221 K. 325, 329, 559 P.2d 347.

17. Subsection (c) applied; swine producing property did not qualify for "special use" determination of value. In re *Central Kansas Electric Coop., Inc.*, 224 K. 308, 316, 317, 582 P.2d 225.

18. Method of establishing value of property upheld; no abuse of discretion in admission of testimony or evidence. *Ellis v. City of Kansas City*, 225 K. 168, 170, 171, 589 P.2d 552.

19. Subsections (a) and (b) mentioned; error to use the substitute facilities method of determining compensation in eminent domain proceedings against a church's property. *Urban Renewal Agency of Wichita v. Gospel Mission Church*, 4 K.A.2d 101, 103, 105, 603 P.2d 209.

20. On issue of value jury is not bound by expert opinion evidence; all evidence may be considered. *Kansas Power & Light Co. v. Floersch*, 4 K.A.2d 440, 608 P.2d 1023.

21. Condemnation proceeding not improper; comparable market values should be used where available. *Consultation, Inc. v. City of Lawrence*, 5 K.A.2d 486, 487, 619 P.2d 150.

22. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing

TEMPORARY EASEMENT AGREEMENT

This Temporary Easement Agreement (the "Easement") is granted effective this 1st day of May, 1997 (the "Effective Date"), by Snodgrass Holdings, L.C., a Kansas limited liability company ("GRANTOR"), to the City of Lawrence, Kansas, a municipal corporation ("GRANTEE").

RECITALS

- A. GRANTOR is the owner of a tract of real estate hereinafter described as "Tract A," legally described as follows:

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of Lot 34, Block 10, Indian Hills No. 2, a subdivision in the City of Lawrence, Douglas County, Kansas; thence South 67°10'00" East, along the South line of said subdivision, 649.39 feet; thence South 90°00'00" East, along said South line, 1110.43 feet; thence North 00°00'00" East, along said South line, 125.00 feet; thence South 90°00'00" East, along said South line, 55.05 feet; thence Easterly along said South line, on a curve to the left with a radius of 380.00 feet, an arc length of 195.95 feet; thence South 00°00'00" West, 174.40 feet; thence South 90°00'00" East, 425.00 feet to the West right-of-way line of Louisiana Street; thence South 00°04'30" East, along said West right-of-way line, 19.87 feet; thence South 89°55'30" West, along said West right-of-way line, 35.00 feet; thence South 01°11'14" West, along said West right-of-way line, 640.94 feet to the North right-of-way line of 31st Street; thence South 89°23'20" West, along said North right-of-way line, 1159.47 feet; thence North 00°36'40" West, along said North right-of-way line, 40.00 feet; thence South 89°23'20" West, along said North right-of-way line, 105.00 feet; thence South 00°36'40" East, along said North right-of-way line, 120.00 feet; thence South 89°23'20" West, along said North right-of-way line, 133.46 feet; thence North 02°18'58" West, 50.16 feet; thence North 64°39'50" West, 732.68 feet; thence North 49°08'29" West, 688.63 feet to the West line of said quarter section; thence North 00°00'05" East, along said West line, 412.71 feet; thence South 49°11'35" East, 335.49 feet to the point of beginning. The above contains 36.669 acres, more or less. (See map attached as Exhibit A for schematic view of property).

- B. GRANTEE desires to construct a bicycle and pedestrian path across a portion of Tract A, extending from property that it owns adjacent to the northwest corner of Tract A, generally known as Naismith Park, to Missouri Street, a public right-of-way; and
- C. GRANTOR has agreed to grant a temporary easement for construction of the bicycle and pedestrian path, and for ingress and egress for use exclusively as a bicycle and pedestrian path across a portion of Tract A, all in accordance with the conditions of this Easement.

AGREEMENT

NOW, THEREFORE, in consideration of ten dollars (\$10.00), the promises and obligations contained in this Easement and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby enter into the following agreements:

1. **EASEMENT FOR INGRESS AND EGRESS.** Unless terminated earlier in accordance with this Agreement, GRANTOR hereby grants, establishes and dedicates along and over a portion of Tract A, for construction, maintenance

and use, a temporary easement for pedestrian and bicycle ingress and egress, which Easement shall run with the land and shall be for the benefit of GRANTEE, described as follows:

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of Lot 34, Block 10, of Indian Hills No. 2, a Subdivision in the City of Lawrence, Kansas; thence South 67°10' East along the South line of said Indian Hills No. 2 Subdivision, 199.00 feet; thence South 24°29'15" West, 32.89 feet; thence South 72°16'05" West, 65.18 feet; thence North 55°39'04" West, 99.04 feet; thence North 44°56'05" West, 306.15 feet; thence North 14°32'16" West, 24.91 feet; thence South 49°11'35" East, 259.69 feet to the Point of Beginning. (See map attached as Exhibit B for schematic view of property).

2. USE AND MAINTENANCE.

- a. The use of this Easement shall be held by GRANTEE for the uses and purposes described herein.
- b. No building, structure, obstruction, or other improvement of any kind which interferes with the intended use of the Easement shall be constructed, installed, or maintained in or upon this Easement; provided, however, the following shall apply:
 - (1) GRANTOR may place dirt and fill material in the Easement so long as such material does not block access or impede use of the bicycle and pedestrian path;
 - (2) GRANTOR may, during the course of making improvements to Tract A, such as digging sewer, electric, gas, and other utility lines, and building streets, temporarily block ingress and egress over the easement, so long as GRANTOR takes reasonable steps to minimize such disruption to the use of the Easement.
- c. GRANTEE shall be responsible to maintain the Easement, at its own cost and expense, in such a state of repair so that it may be used in the manner described herein, and for the purposes set forth in this Easement. GRANTEE shall use reasonable efforts to keep the Easement free of litter, trash, and other debris. GRANTEE shall also be responsible for the cost to repair any damage done to the concrete or asphalt pedestrian and bicycle path caused by GRANTOR in the course of making improvements to Tract A, including but not limited to items such as digging sewer, electric, gas, and other utility lines, and building streets across such path, subject to the conditions stated in Section 2.b.(2) above. Upon the termination of this Easement, GRANTEE shall be responsible for removing the bicycle and pedestrian path, and restoring the easement area located on TRACT A to its previous, or better, condition. GRANTEE will not be responsible for removing any dirt or ~~fill~~ material placed in said easement under Section 2.b.(1).
- d. ^{fill} GRANTEE shall indemnify and hold harmless GRANTOR, its officers, members, owners, managers, employees, and agents, from and against (a) any and all claims based upon, arising out of, or in any way related to the general public or GRANTEE's use of the Easement and/or bicycle and pedestrian path, any damage or injury caused by a member of the general public using the Easement and/or bicycle and pedestrian path, whether on or off of Tract A, and (b) any and all fees (including attorneys' fees), costs and other expenses incurred by or on behalf of GRANTOR in the investigation of or defense against any and all such claims, payable upon demand.

3. **RIGHT TO ENJOIN.** In the event of any violation or threatened violation by the owners, lessee, or occupant of Tract A of any of the terms, restrictions, covenants, or conditions provided herein, GRANTEE shall have the right to enjoin such violation, or threatened violation, in a court of competent jurisdiction.

4. **MODIFICATION.** This Easement may be extended, modified, or amended only with the written consent of GRANTOR and GRANTEE. This Easement Agreement may not be assigned and any purported assignment of this Easement Agreement or any interest therein shall be void and of no force and effect.
5. **TERMINATION.** This Easement and GRANTEE's rights and obligations under this Easement shall terminate and be of no further force and effect two (2) years after the Effective Date, or six (6) months after written notice of termination from either party to the other, whichever shall first occur. Prior to the expiration or termination of this Easement, GRANTOR AND GRANTEE hereby agree that if no alternate bicycle and pedestrian path has been agreed to by the parties, or GRANTEE gives notice to GRANTOR that it desires for the temporary easement location to become the permanent location for the Easement, the parties agree to negotiate in good faith to determine the fair market value of the property to be paid to GRANTOR for the Easement. If the parties fail to agree on such fair market value within a reasonable period of time, GRANTEE may initiate condemnation proceedings against GRANTOR, and GRANTOR hereby agrees to continue give GRANTEE the right to use the Easement, consistent with the terms of this Agreement, until the conclusion of such litigation.
6. **AUTHORITY.** Each of the parties to this Agreement represents and warrants that it has the requisite power and authority to execute this Agreement.
7. **LIENS.** GRANTEE shall not permit any claim, lien, or other encumbrance arising from the construction of the concrete or asphalt bicycle and pedestrian path to accrue against or attach to Tract A or the interest of GRANTOR in adjacent lands.

IN WITNESS WHEREOF, this Easement is duly approved and executed as of the Effective Date.

GRANTOR:
SNODGRASS HOLDINGS, L.C.
a Kansas limited liability company

By: Bruce F. Snodgrass
Bruce F. Snodgrass, Manager

GRANTEE:
CITY OF LAWRENCE, KANSAS,
a municipal corporation

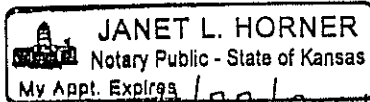
By: Michael Wildgen
Michael Wildgen, City Manager

ATTEST:

By: [Signature]
City Clerk

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) SS:

This foregoing instrument was acknowledged before me this 22nd day of May, 1997, by Bruce F. Snodgrass, Manager of Snodgrass Holdings, L.C., a Kansas limited liability company, on behalf of such company.



My Appointment Expires: 1/22/2001

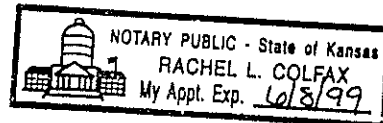
Janet L. Horner
Notary Public

STATE OF KANSAS)
)
COUNTY OF DOUGLAS) SS:

This foregoing instrument was acknowledged before me this 28 day of May, 1997, by Michael Wildgen, City Manager of the City of Lawrence, Kansas, a municipal corporation, on behalf of said City of Lawrence, Kansas.

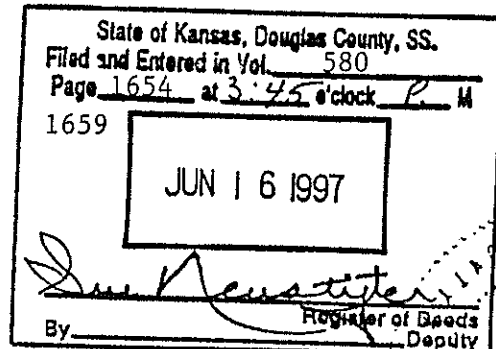
My Appointment Expires: 6/8/99
g:\wnf\k\snodgrass5.ass

Rachel L. Colfax
Notary Public



NO. 117412
INDEX
NUMERICAL INDEX
12-13-1998 City & County

CERTIFICATION
I, Raymond J. Hummert, City Clerk for the City of Lawrence, Kansas, do hereby certify this to be a true and exact copy of Temporary Basement Agreement on file in my office.
Raymond J. Hummert
Raymond J. Hummert, City Clerk



ORIGINAL COMPARED WITH RECORD

EXHIBIT A**LEGAL DESCRIPTION:**

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 34, BLOCK 10, INDIAN HILLS NO. 2, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS; THENCE SOUTH 67°10'00" EAST, ALONG THE SOUTH LINE OF SAID SUBDIVISION, 649.39 FEET; THENCE SOUTH 90°00'00" EAST, ALONG SAID SOUTH LINE, 1110.43 FEET; THENCE NORTH 00°00'00" EAST, ALONG SAID SOUTH LINE, 125.00 FEET; THENCE SOUTH 90°00'00" EAST, ALONG SAID SOUTH LINE, 55.05 FEET; THENCE EASTERLY ALONG SAID SOUTH LINE, ON A CURVE TO THE LEFT WITH A RADIUS OF 380.00 FEET, AN ARC LENGTH OF 195.95 FEET; THENCE SOUTH 00°00'00" WEST, 174.40 FEET; THENCE SOUTH 90°00'00" EAST, 425.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF LOUISIANA STREET; THENCE SOUTH 00°04'30" EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, 19.87 FEET; THENCE SOUTH 89°55'30" WEST, ALONG SAID WEST RIGHT-OF-WAY LINE, 35.00 FEET; THENCE SOUTH 01°11'14" WEST, ALONG SAID WEST RIGHT-OF-WAY LINE, 640.94 FEET TO THE NORTH RIGHT-OF-WAY LINE OF 31ST STREET; THENCE SOUTH 89°23'20" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 1159.47 FEET; THENCE NORTH 00°36'40" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 40.00 FEET; THENCE SOUTH 89°23'20" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 105.00 FEET; THENCE SOUTH 00°36'40" EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 120.00 FEET; THENCE SOUTH 89°23'20" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 133.46 FEET; THENCE NORTH 02°18'58" WEST, 50.16 FEET; THENCE NORTH 64°39'50" WEST, 732.68 FEET; THENCE NORTH 49°08'29" WEST, 688.63 FEET TO THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH 00°00'05" EAST, ALONG SAID WEST LINE, 412.71 FEET; THENCE SOUTH 49°11'35" EAST, 335.49 FEET TO THE POINT OF BEGINNING. THE ABOVE CONTAINS 36.669 ACRES, MORE OR LESS.

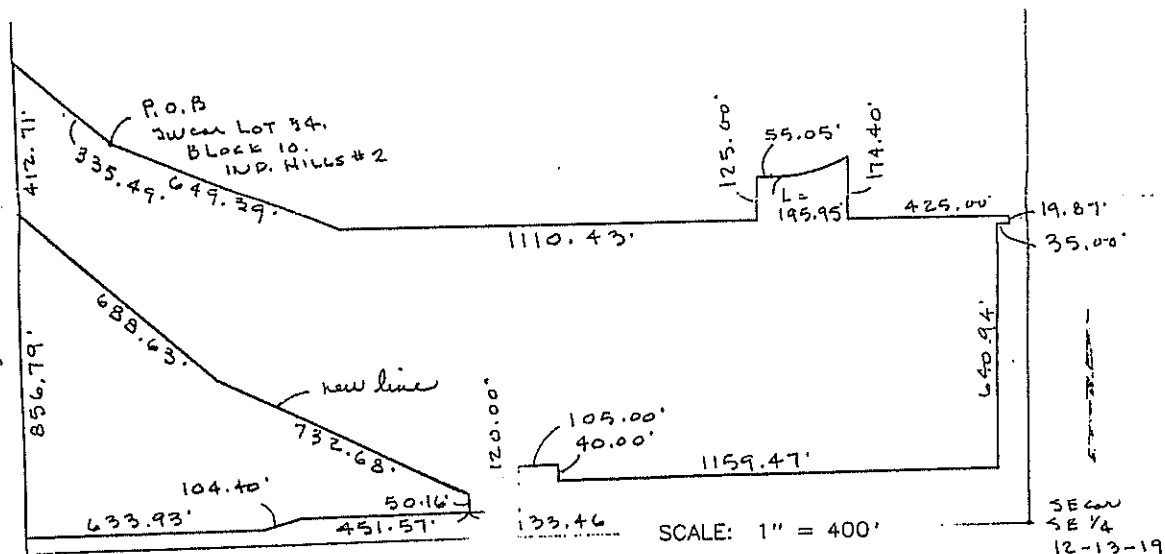
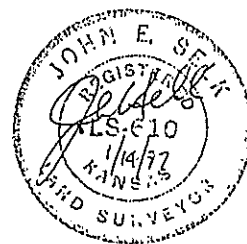
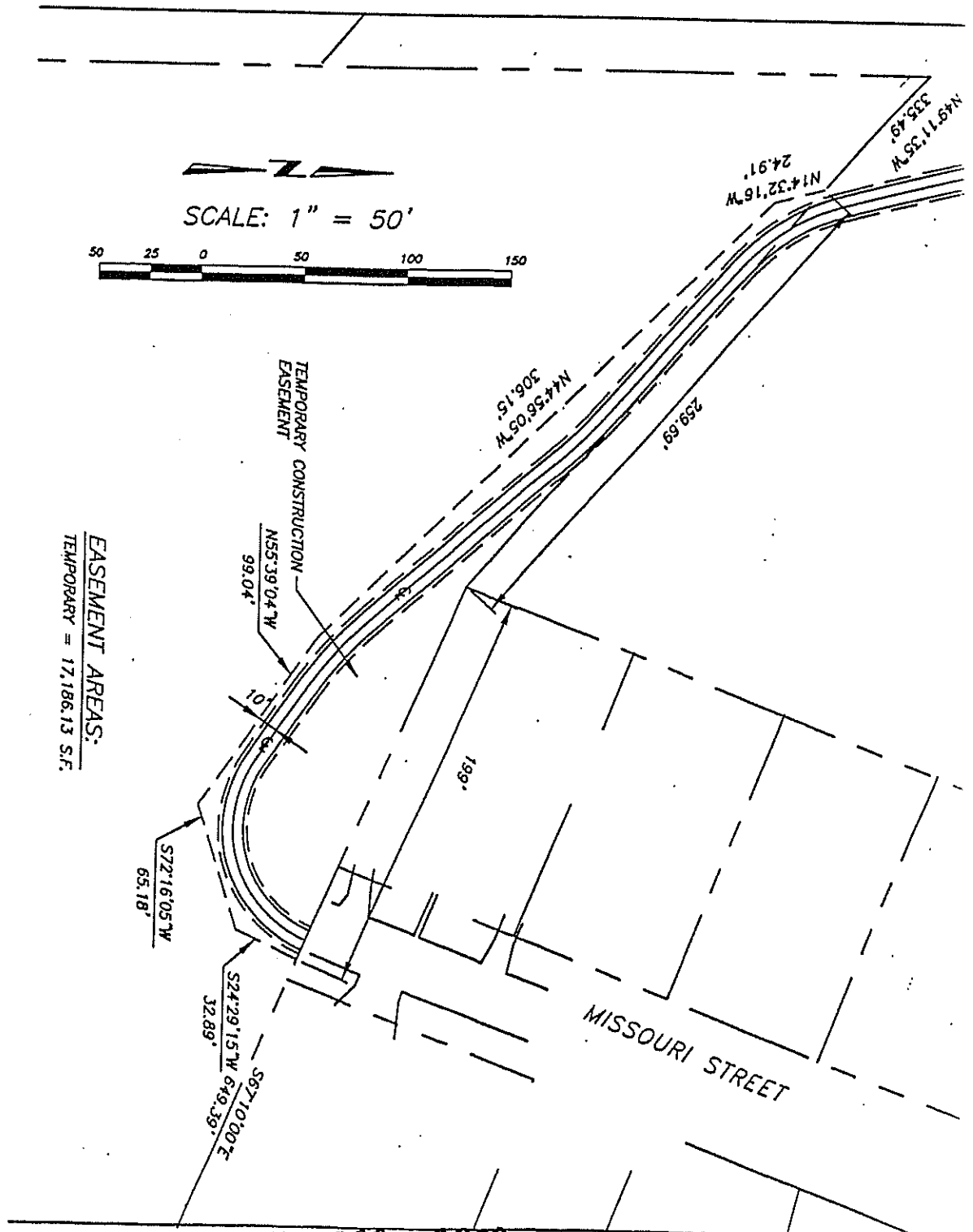


EXHIBIT B



EASEMENT AREAS:
TEMPORARY = 17,186.13 S.F.