

**LICENSE AGREEMENT**  
(Building Encroachment)

**THIS LICENSE AGREEMENT** (the "**License**") is made this \_\_\_\_ day of \_\_\_\_\_, 2004 (the "**Effective Date**"), by The City of Lawrence, Kansas, a municipal corporation (the "**City**"), and Sheryl Lemesany, a single person (the "**Owner**").

**RECITALS**

1. Owner is the owner of Lot 3, Sigma Nu Addition, an addition to the City of Lawrence, as shown by the plat thereof in Douglas County, Kansas ("**Lot 3**") and certain building improvements on Lot 3, commonly known as Building G of West Hills Apartments ("**Building G**").

2. The City is the holder of a ten foot (10') Utility Easement (the "**Easement**") over and across Lot 3 as shown in the plat of Sigma Nu Addition.

3. Building G encroaches upon the Easement by two and one-quarter feet upon the Easement as shown on one certain ALTA/ACSM Survey for Lot B, Lemesany Addition and Lots 1, 2, 3 & 4 Sigma Nu Addition performed by Danny L. Stebbins, L.S. #1356, EBH & Associates, on June 22, 2004 (the "**Survey**"). If the Owner were to move Building G off of the Easement, the Owner would have to incur substantial expense, and therefore, the Owner has requested permission from the City to maintain Building G on a portion of the Easement, as shown on the Survey and the City has agreed to provide a license to Owner for such purpose, all in accordance with the terms and conditions of this License.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

1. **Grant of License.** The City hereby grants to the Owner, its successors and assigns, the non-exclusive license, right, privilege and permission (the "**License**") to use in common with others that portion of the Easement, on which Building G is currently located as shown in the Survey, for the purpose of maintaining Building G in its current location.

2. **No Representation by the City.** The Owner represents that the City has made no representations with respect to the Easement or its condition, and that the Owner is not relying on any representations of the City or the City's agents with respect to the use or condition of the Easement. This License Agreement grants to the Owner the privilege and permission to use the Easement in their present condition "as is" without any warranties.

3. **Covenants of the Owner.** The Owner hereby covenants and warrants to the City, as follows:

a. To maintain Building G at the Owner's sole cost and expense and to remove all debris and other items placed thereon by the Owner or as a result of the Owner's use of the Easement.

b. If the City, or any utility franchise, needs to access the Easement under Building G for the purpose of installation, repair or maintenance of any utilities located within the

Easement, if any, the Owner shall reasonably cooperate with the City or utility franchise to allow such installation, repair or maintenance of such utilities.

c. To comply with all laws and ordinances, including all land use requirements of the City of Lawrence, Kansas and the County of Douglas, Kansas.

d. To refrain from causing any waste, damage or injury to the Easement.

e. The Owners shall not have any right to enlarge the present scope of this License Agreement, without the prior written consent of the City.

4. **Indemnification of the City.** During the time this License Agreement is in effect, Owner agrees to indemnify, defend, and save the City, and the City's officers, commissioners, agents, employees, grantees and assigns, harmless from and against all claims, actions, liabilities, damages, costs, expenses and judgments (including, without limitation, attorneys' fees), which relate to, arise from, or are in connection with the Owner's use or occupancy of the Easement, or any portion thereof, or the maintenance of Building G within the Easement, on account of any injury to persons or damage to property, excluding therefrom such injury or damages caused by the negligence of the City.

5. **Accommodation.** The permission granted to the Owner under this License Agreement is given to the Owner as an accommodation to the Owner, and shall be without charge to the Owner. The Owner hereby acknowledges the City's rights to the Easement, and agrees never to assail, resist or deny such rights by virtue of the Owner's occupancy or use under this License Agreement.

6. **Term and Termination.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason by giving the Owner at least 180 written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice at any time if (i) the Owner fails to comply with or abide by each and all of the provisions of this License Agreement or (ii) if the continued use of the License presents a health or safety hazard. Furthermore, the Owner acknowledges and agrees that if substantially all of Building G is damaged or destroyed, and the Owner desires to replace Building G, this License shall terminate automatically, and the Owner agrees to replace Building G in such a manner so Building G no longer encroaches upon the Easement.

7. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and the Owner and all owners of Lot 3 and all parties claiming by, through or under them, shall run with the land, and shall be for the benefit of and limitations upon all future owners of Lot 3; provided, however, that the rights, duties, and obligations of each owner as set forth herein shall cease with the termination of his or its ownership of Lot 3, or portion thereof, except for the duties and obligations arising during the period of his or its ownership.

8. **Governing Law.** This License Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Kansas.

**IN WITNESS WHEREOF**, the undersigned have caused this License Agreement to be executed as of the Effective Date.

**OWNER:** \_\_\_\_\_  
Sheryl Lemesany

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

By: \_\_\_\_\_  
Mike Rundle, Mayor

ATTEST:

\_\_\_\_\_  
Frank Reeb, City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by Mike Rundle, Mayor of the City of Lawrence, Kansas, a municipal corporation, on behalf of said City of Lawrence, Kansas.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by Sheryl Lemesany, a single person.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

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