



## TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Temporary Construction Easement ("**Easement**") is made this \_\_\_ day of \_\_\_\_\_, 2018, by and between CITY OF LAWRENCE, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas ("**Grantor**"), and KCI LAWRENCE 153, LLC, a Kansas limited liability company ("**Grantee**"), for and in consideration of the sum of One Dollar (\$1.00) and other good and sufficient consideration (the receipt and sufficiency of which is hereby acknowledged).

### RECITALS:

WHEREAS, Grantor and Grantee have entered into a certain Land Transfer and Development Agreement dated effective August 1, 2017 (the "**Development Agreement**").

WHEREAS, pursuant to the Development Agreement, Grantee has the right to purchase certain Property (as defined in the Development Agreement) pursuant to the terms and conditions set forth therein.

WHEREAS, Grantee has acquired that certain property described on Exhibit A attached hereto (the "**Phase 1 Property**") under the terms and conditions of the Development Agreement.

WHEREAS, Grantor is the owner of certain property described as the "Phase 2 Property" on Exhibit B attached hereto (the "**Phase 2 Property**") and, pursuant to Section 4.07(c) of the Development Agreement, Grantor has agreed to grant Grantee a temporary construction easement over property owned by Grantor to accommodate construction of any phase.

WHEREAS, Grantor is also the owner of certain property described as the "Tract B Property" on Exhibit B (the "**Tract B Property**") and Grantor has agreed to grant Grantee a temporary construction easement over such Tract B Property, as more fully set forth herein. The Phase 2 Property and the Tract B Property are sometimes collectively referred to herein as the "**Easement Tract**".

WHEREAS, Grantee desires an easement over the Easement Tract, and Grantor has agreed to grant such easement over the Easement Tract, for the Construction Activities (as defined below).

1. Easement Grant.

a. Grantor hereby grants and conveys unto Grantee (and Grantee's agents, contractors, servants, employees, licensees and invitees) a temporary construction easement over, upon and across: (i) the Phase 2 Property for the purpose of access, ingress, egress, construction, grading, staging, the operation of equipment and other purposes reasonably necessary for Grantee to construct, relocate and lay conduit for underground utility and water lines, relocate equipment related thereto, excavate and construct the portions of the interceptor sewer and sanitary sewer facilities and improvements located within the Phase 1 Property, and such other improvements required by Grantee and/or the City of Lawrence, Kansas in connection with the development and construction of that portion of the Project (as defined in the Development Agreement) to be constructed on the Phase 1 Property and (ii) the Tract B Property for the purpose of access, ingress, egress, construction, grading,

staging, the operation of equipment and other purposes reasonably necessary for Grantee to reconstruct the sediment basin on the Tract B Property, install drainage pipes (both on the North side and South side) into the Tract B Property, over-seed any disturbed areas within the Tract B Property, and such other improvements required by Grantee and/or the City of Lawrence, Kansas in connection with the development and construction of that portion of the Project (collectively defined herein as the "**Construction Activities**").

b. Notwithstanding the foregoing, nothing herein shall be deemed to permit Grantee to construct or install on the Easement Tract any other permanent improvements or infrastructure without first obtaining the benefit of such permanent easements or other governmental approvals as may be required. By acceptance of this Easement, Grantee agrees that it will protect Grantor's property and adjacent property from any damage, injury or loss arising from Grantee's use of the real property hereinbefore described and restore the real property described above to as near the original condition as possible, including the replacement of sod and re-seeding; provided, that restoration to original condition shall not be required as to mere grading work permitted by Grantor and performed for the Project pursuant to this Easement; and further provided, the rights granted herein shall not be construed to interfere with or restrict Grantor, its successor or assigns, from the use of the Easement Tract.

2. Term. This Easement shall commence on the date first written above and shall expire upon the earliest to occur of: (i) Grantee's completion of the Construction Activities; or (ii) the day that is twenty-four (24) months from the effective date of this Easement. Grantee's obligations under Section 5 of this Easement and the provisions of Section 6 hereof shall survive termination of this Easement.

3. Environmental Matters.

a. Grantee acknowledges the Phase 1 Property, the Phase 2 Property and the Tract B Property are subject to the following (collectively, the "Environmental Documents"): (i) that certain Kansas Department of Health and Environment Consent Order dated June 28, 2010, styled *In the Matter of Pollution at Former Farmland Industries, Inc. Nitrogen Manufacturing Plant, Lawrence Kansas*, Case No. 10-E0-94 BER, as amended by the First Amendment to Consent Order dated April 16, 2014; (ii) that certain Long-Term Care Agreement dated as of February 5, 2013, by and between the City of Lawrence, Kansas, and the Kansas Department of Health and Environment, recorded with the Douglas County Register of Deeds at Book 1101, Page 3033; and (iii) that certain Environmental Use Control Agreement dated as of May 1, 2013, by and between the City of Lawrence, Kansas, and the Kansas Department of Health and Environment, recorded with the Douglas County Register of Deeds at Book 1101, Page 3042.

b. Grantee acknowledges receipt of each of the Environmental Documents and further agrees to cooperate with Grantor in the Grantor's compliance with the Environmental Documents during and after construction. In exercising any of its rights under this Easement, Grantee shall comply with the terms and conditions of each of the Environmental Documents, including but not limited to providing all required intrusive activity notices and obtaining any other consents or approvals required under the Environmental Documents.

4. Insurance. During the term of this Easement, Grantee will maintain, or cause its developer, general contractor and/or its subcontractors and/or consultants to maintain, insurance as required pursuant to the Development Agreement. Grantee shall also provide such public works bonds, if any, as may be required under Kansas law, including but not limited to K.S.A. 60-1111.

5. Waiver. Grantee hereby waives all claims against Grantor for damages to all property, real and personal, tangible and intangible, in, upon or about the Easement Tract and for injuries to or death of persons in or about the Easement Tract from any cause arising during the term of this Easement, unless caused by Grantor's gross negligence or intentional misconduct. Grantee understands and agrees that Grantor is relying on, and does not waive or intend to waive by any provision of this Easement, any monetary limitations or any other rights, immunities, and protections provided by the State of Kansas (including sovereign immunity as a defense), as from time to time amended, or otherwise available to Grantor or its officers, employees or agents.

6. Indemnification. Except to the extent caused by Grantor's gross negligence or intentional misconduct, Grantee shall defend, indemnify and save harmless Grantor against and from all liabilities, obligations, damages, penalties, fines, demands, judgments, claims, costs, charges and expenses, including reasonable attorneys' fees and expenses, which may be imposed upon or incurred or paid by or asserted against Grantor or Grantor's interest in the Easement Tract by reason of or in connection with any of the following: (i) Grantee's work, labor, service or thing done in, on or about the Easement Tract or any part thereof, including any of the demolition activities described herein; (ii) any accident, negligence or tortious act or omission on the part of Grantee; (iii) any accident, death, injury or damage to any person or property occurring in, on or about the Easement Tract or any part thereof, or any street, alley, sidewalk, curb, vault or area adjacent thereto, during the term of this Easement; and (vi) any failure on the part of Grantee to perform or comply with any of the covenants, agreements, terms and conditions contained in this Easement on its part be performed or complied with. In case any action or proceeding is brought against Grantor by reason of any such claim referred to above, Grantee, upon notice from Grantor, will at Grantee's sole cost and expense, resist or defend such action or proceeding through counsel designated by Grantor (and Grantor and any attorney of Grantor, at Grantor's expense, shall have the right to participate in all such actions or proceedings), and if Grantee fails to provide Grantor a defense by counsel approved by Grantor, then Grantee shall pay all costs and attorneys' fees incurred or paid by Grantor in connection with such action or proceeding. If any such action, suit or proceeding should result in a final judgment against Grantor, Grantee shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of Grantee under this Section arising by reason of any such occurrence during the term of this Easement shall survive any termination of this Easement. Notwithstanding the above, the indemnification contained in this Section 6 shall not extend to the Grantor to the extent (i) such claim is the result of work being performed by employees, agents or contractors of Grantor, or (ii) such claim is the result of the gross negligence or willful misconduct of Grantor or its employees, agents or contractors.

7. Limitation of Liability.

a. Notwithstanding anything herein set forth to the contrary, neither Grantor nor any present councilmember, officer, or employee of Grantor shall have any personal liability of any kind or nature for or by reason of any matter or thing whatsoever under or in connection

with this Easement or any other agreement entered into under or in connection herewith, and Grantee hereby waives all such personal liability.

b. It is expressly understood and agreed that, except as to any fraudulent act (including fraudulent distribution of assets), action(s) rendering Grantee insolvent, misrepresentation, or misappropriation of insurance or condemnation proceeds, nothing herein contained shall be construed as creating any liability of any partner, venturer, trustee, beneficiary, shareholder, officer, director, employee or agent of Grantee, individually or personally, to perform any covenant, either express or implied, contained herein, all such liability, if any, being expressly waived by Grantor and by each, and every person now or hereafter claiming by, through or under Grantor, and that, so far as the partner, venturer, trustee, beneficiary, shareholder, officer, director, employee or agent of Grantee, individually or personally, are concerned, Grantor, and any person claiming by, through or under Grantor, shall look solely to the assets of Grantee for the performance of any obligation under this Easement.

8. Miscellaneous.

a. Grantee may not assign this Easement without the prior written consent of Grantor. Subject to the foregoing, this Easement shall inure to and bind the successors and assigns of the parties, and shall constitute a covenant running with the land.

b. This Easement shall be recorded in the office of the Register of Deeds for Douglas County, Kansas.

c. If any provision of this Easement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Easement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Easement; and each provision of this Easement shall be valid and enforceable to the fullest extent permitted by law.

d. This Easement shall be construed in accordance with the laws of the State of Kansas and the parties hereto consent to the jurisdiction of the courts having jurisdiction over Douglas County, Kansas, and to the laying of venue therein.

e. This Easement contains the entire agreement and understanding of Grantor and Grantee with respect to the subject matter hereof, and this Easement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to this Easement or their successors or assigns; this Easement shall not be otherwise amended, modified or terminated during the term hereof.

f. The terms "Grantor" or "Grantee" shall be deemed to refer to such parties and to the respective successors, grantees and assigns of such parties. Each subsequent owner land benefitted or burdened hereby or part thereof shall by reason of such ownership automatically accept and shall be deemed to have assumed the duties and obligations to be undertaken and assumed by the owner of such land under this Easement and shall be entitled to the rights afforded under this Easement for such land.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Easement to be executed as of the day and year first above written.

**GRANTOR:**

CITY OF LAWRENCE, KANSAS,  
a municipal corporation duly organized under  
the laws of the State of Kansas

By: \_\_\_\_\_  
Stuart Boley, Mayor

**ATTEST:**

\_\_\_\_\_  
Sherri Riedemann, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Toni R. Wheeler, City Attorney

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Leslie Soden, Mayor of the CITY OF LAWRENCE, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered said instrument, on behalf of said municipal corporation as her free and voluntary act, and as the free and voluntary act of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

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



## **EXHIBIT A**

### **Legal Description of the Phase 1 Property**

Lot 1, Block "A", VENTUREPARK SUBDIVISION NO. 1, A Minor Subdivision/Replat of Lot 1 and Lot 2, Block "B" Former Farmland Property, in the City of Lawrence, Douglas County, Kansas, as shown by the recorded plat thereof.

## **EXHIBIT B**

### **Legal Description of the Easement Tract**

#### **PHASE 2 PROPERTY:**

Lot 2, Block "A", VENTUREPARK SUBDIVISION NO. 1, A Minor Subdivision/Replat of Lot 1 and Lot 2, Block "B" Former Farmland Property, a subdivision in the City of Lawrence, Douglas County, Kansas, as shown by the recorded plat thereof.

#### **TRACT B PROPERTY:**

Green Way Tract "[B](#)", [Block "B"](#), FORMER FARMLAND PROPERTY, a subdivision in the City of Lawrence, Douglas County, Kansas, as shown on the recorded plat thereof. **CONFIRM**