

## TRAFFIC SIGNAL AGREEMENT

**THIS TRAFFIC SIGNAL AGREEMENT** (this "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2013 by and between **THE CITY OF WICHITA, KANSAS**, a Kansas municipal corporation (the "City"), and **SAM'S REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Sam's").

### PRELIMINARY STATEMENTS:

WHEREAS, Sam's or its affiliate has a contract to purchase fee-simple title to certain real property located at or near the intersection of 29<sup>th</sup> Street North and Maize Avenue in Wichita, Kansas, as more particularly described on **Exhibit A** attached hereto (the "Sam's Property"), which Sam's Property is currently owned by Curtis W. Rink and Karen S. Rink (as to a portion of the Sam's Property) and Leo Marvin Rink and Vivian L. Rink, Trustees of the Leo Marvin Rink Revocable Trust, and Leo Marvin Rink and Vivian L. Rink, Trustees of the Vivian L. Rink Revocable Trust (as to the remaining portion of the Sam's Property). As a part of its proposed development of the Sam's Property, Sam's has applied for and received approval of Limited Commercial rezoning and Community Unit Plan ("CUP") approval, designated as ZON 2012-00024 and CUP 2012-0021 (the "CUP Approvals"). That certain Traffic Study prepared by \_\_\_\_\_ and dated \_\_\_\_\_ (collectively, the "Traffic Study") concluded that a traffic signal at Driveway #5, as shown on the CUP (the "Signal") may be necessary following the development of the Sam's Property and certain other future development in the vicinity of the Sam's Property. In connection with the proposed development of the Sam's Property, Sam's and the City wish to confirm their understanding regarding the construction of and payment for the Signal as further described in this Agreement.

NOW, THEREFORE, the City and Sam's, in consideration of the terms, covenants and conditions herein set forth, hereby agree as follows:

1. Traffic Signal Letter of Credit. As a condition of CUP Approvals, the Signal may be installed if traffic warrants are met for Driveway #5 as shown on the CUP. The estimated cost of the Signal is \$100,000. Upon execution of this Agreement, Sam's shall provide the City with a letter of credit (the "Letter of Credit") in the amount of the Signal Amount, which is the estimated cost of the Signal. The purpose of the Letter of Credit is to provide good faith and security to the City until Sam's closes on the Property and obtains title. It is not anticipated that traffic warrants would be met prior to the development of the Sam's Property.
2. Petition for Traffic Signal Improvement. Once Sam's closes on the Property and obtains title, it shall file a Petition for Traffic Signal Improvement with the City, as shown in **Exhibit B**, attached hereto, which states that if warrants are met, and a traffic signal installed, Sam's will participate in a benefit district and be assessed for its portion of the costs of the traffic signal.

3. Termination of Obligations. In the event that Sam's does not close on the Property or obtain title by May 11, 2014, the parties hereby agree that this Agreement and all obligations of the parties shall automatically terminate and be of no further force and effect and City shall return the Letter of Credit to Sam's.

3. No Agency or Partnership. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the City and Sam's nor between the City and any officer, employee, contractor or representative of Sam's. No joint employment is intended or created by this Agreement for any purpose. Sam's agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Agreement.

4. Third Party Rights. It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

5. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original and all of which shall constitute collectively one agreement.

6. Governing Law. This Agreement shall be interpreted according to the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter set forth.

THE CITY:

THE CITY OF WICHITA, KANSAS, a Kansas municipal corporation



By

Carl Brewer, Mayor of the City of Wichita

Date: 5-21-13

STATE OF KANSAS, SEDGWICK COUNTY, ss:

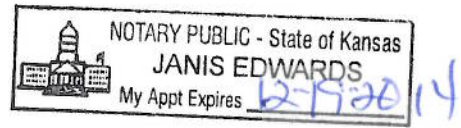
BE IT REMEMBERED, that on this 21 day of May, 2013, before me a Notary Public in and for said county and state came Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Notary Stamp Here

Janis Edwards  
Notary Public

My Commission Expires: 12-19-2014



ATTEST:

Karen Sublett, mme  
Karen Sublett, City Clerk

Approved As To Form:

Gary E. Rebenstorf by epr  
Gary E. Rebenstorf, City Attorney

SAM'S REAL ESTATE BUSINESS TRUST, a  
Delaware statutory trust

By J. Chris Callaway  
J. Chris Callaway  
Vice President – Real Estate  
Date: 4-30-13

STATE OF Arkansas, Benton COUNTY, ss:

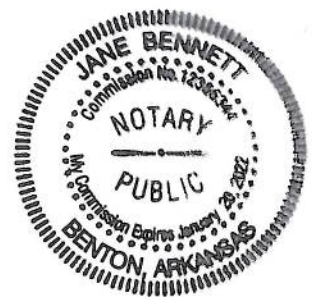
BE IT REMEMBERED, that on this 30th day of April, 2013, before me a Notary Public in and for said county and state came J. Chris Callaway, to me personally know to be the person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Jane Bennett  
\_\_\_\_\_  
Notary Public

My Commission Expires: 1-20-2022

Notary Stamp Here



## EXHIBIT A

### LEGAL DESCRIPTION OF THE SAM'S PROPERTY

#### Maize & 29th Commercial Addition Plat Legal Description

Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, EXCEPT a tract described as commencing at the southwest corner of the East Half of the South Half of said Southwest Quarter; thence N90°00'00"W (assumed) along the south line of said Southwest Quarter, 140.00 feet; thence N00°00'00"E, 626.16 feet; thence S90°00'00"E, 626.16 feet; thence S00°00'00"W, 626.16 feet; thence N90°00'00"W, 486.16 feet to the point of beginning, and EXCEPT a tract described as commencing at the southwest corner of the East Half of the South Half of said Southwest Quarter; thence N90°00'00"W (assumed) along the south line of said Southwest Quarter, 140.00 feet to the point of beginning, being the southwest corner of a tract of land recorded in the Register of Deeds Office on Warranty Deed in Film 1207, Page 248; thence along the south line of said Section, N90°00'00"W, 40 feet; thence N00°00'00"E, 626.16 feet; thence N90°00'00"E, 40 feet to the northwest corner of said Deed; thence S00°00'00"W, 626.16 feet along the west line of said Deed to the point of beginning, and EXCEPT that portion of said Southwest Quarter platted as Fox Ridge Addition, an Addition to Wichita, Sedgwick County, Kansas and Fox Ridge Second Addition, an Addition to Wichita, Sedgwick County, Kansas, all being subject to road rights-of-way of record.

**EXHIBIT B**  
**TRAFFIC SIGNALIZATION**

## TRAFFIC SIGNALIZATION

To the Mayor and City Council  
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

### MAIZE & 29<sup>TH</sup> ST COMMERCIAL ADDITION

Lots 1 through 7, Block A

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- (a) That, at such time as current MUTCD criteria warrant placement of a traffic control signal at Driveway #5 as shown on CUP 2012-0021, there be constructed a traffic signalization device to serve the major opening on Maize Rd. at the northern Sam's Club drive (the "Improvements").
- (b) That the estimated and probable cost of the foregoing improvement being 100,000 Dollars (\$100,000.00), with 100 percent payable by the improvement district. Said estimated cost as above setforth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after February 1, 2013.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

Construction of this Improvement may be abandoned, altered and/or performed privately in part or whole, in which case construction of this Improvement under the authority of this petition, shall be precluded. In addition, if the Improvement is abandoned at any state during the design and/or construction of the Improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the Improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said

Improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the traffic signal for which the improvement district is liable shall be on a **[this could be strictly on a square foot basis or specific fractions of the cost could be divided among the 7 lots]**.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessments set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the Improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned Improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

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LEGAL DESCRIPTION	SIGNATURE	DATE
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**MAIZE & 29<sup>TH</sup> ST COMMERCIAL ADDITION**

Lots 1 through 7, Block A

By: \_\_\_\_\_