

Case No. BZA 59-83 - C.W. Klein, Lindy Andeel & T.G. Davis, Jr. - requests an exception to permit the establishment of a car sales lot on property zoned the "LC" Light Commercial District and generally located on the southeast corner of Topeka & Kellogg.

POSTED
10-25-83
666.

ACTION
B.Z.A. 59-83 APPROVED 11-22-83
DATE

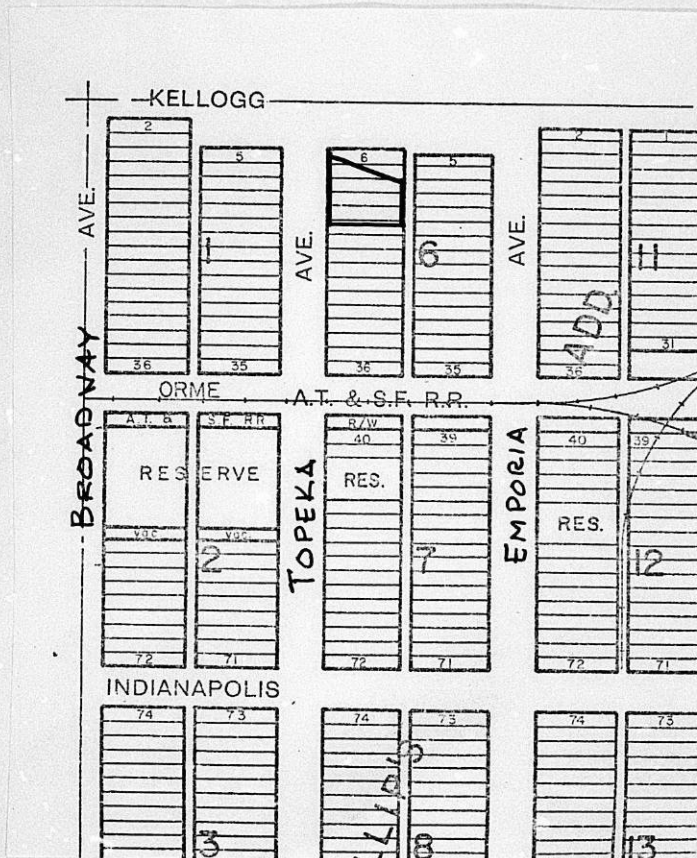
1/4 Sec 7-5-84
Study 7-9
Record

Map No. 5546 D
 BZA 37-75

BZA 59-83
 Filed _____

AREA DATA:

1. Acres: _____ (_____ ft. by _____ ft.)
2. Adjoining Zoning: E E S B W C N Hiway
3. Land Use: East Indust. South Res.
 West Comm North Hiway
4. Area (is) (~~is not~~) platted.



HASTINGS, MINN.
 LOS ANGELES, CALIF.
 MEDFORD, MASS.
 OGDEN, IOWA
 PORTLAND, ME.
 ST. LOUIS, MO.
 WASHINGTON, D.C.
 WILMINGTON, DE.
 U.S.A.

Standard
 No. 2153C

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

A G R E E M E N T

This agreement made and entered into this _____ day of _____, 19____, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

R E C I T A L S :

WHEREAS, the licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Part of Block 6, Orme and Phillips Addition to the City of Wichita, Sedgwick, County, Kansas, described as beginning at the S.W. Corner of Lot 12, in said Block 6; thence north, along the east line of Topeka Avenue, 95 feet; thence southeasterly (along the approximate toe of slope line), 148.66 feet to a point on the east line of Lot 10 in said Block 6, said point being 20 feet north of the N.E. Corner of Lot 12, in said Block 6; thence continuing southeasterly along the last described line extended, 32.29 feet; thence southwesterly, 30.94 feet to a point on the west line of Lot 11, in said Block 6, said point being 20 feet south of the N.W. Corner of said Lot 11; thence west, 20 feet to a point on the east line of said Lot 12, said point being 20 feet south of the N.E. Corner of said Lot 12; thence northwesterly, 82.46 feet to a point on the north line of said Lot 12, said point being 80 feet west of the N.E. Corner of said Lot 12; thence west, along the north line of said Lot 12, 55 feet; thence south 25 feet to a point on the south line of said Lot 12, said point being 5 feet east of the S.W. Corner of said Lot 12; thence west, 5 feet to the place of beginning. Containing 8,125.0 square feet, more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the Licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the users herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereunder and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. Licensee agrees, before occupying the real property described herein, to obtain a minor street privilege permit from Licensor. In addition to complying with the terms and conditions set forth herein, Licensee agrees to comply with all applicable laws, provisions of the Code of the City of Wichita, and other ordinances and rules pertaining to minor street privileges. It is agreed by the Licensee that this license shall be automatically terminated if Licensee's minor street privilege is cancelled, revoked, or is not renewed. Licensee acknowledges that said minor street privilege can be revoked by Licensor without cause at any time, and Licensee further acknowledges that Licensor has the absolute right to refuse to renew said minor street privilege. Licensee further agrees that a termination of this agreement for any reason will automatically result in a revocation of Licensee's minor street privilege.

No. 47-83

17. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR

Kadco - C. W. Stein

ATTEST:

CITY CLERK

(SEAL)

APPROVED:

JOHN B. KEMP, P.E.
Secretary of Transportation

By: _____

APPROVED AS TO FORM

THOMAS R. POWELL
Assistant City Attorney

EXHIBIT "A"

January 12, 1984

PROPOSED LEASE AREA DESCRIPTION

Part of Block 6, Orme and Phillips Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning at the S.W. Corner of Lot 12, in said Block 6; thence north, along the east line of Topeka Ave., 95 feet; thence southeasterly (along the approximate toe of slope line), 148.66 feet to a point on the east line of Lot 10 in said Block 6, said point being 20 feet north of the N.E. Corner of Lot 12, in said Block 6; thence continuing southeasterly along the last described line extended, 32.29 feet; thence southwesterly, 30.94 feet to a point on the west line of Lot 11, in said Block 6, said point being 20 feet south of the N.W. Corner of said Lot 11; thence west, 20 feet to a point on the east line of said Lot 12, said point being 20 feet south of the N.E. Corner of said Lot 12; thence northwesterly, 82.46 feet to a point on the north line of said Lot 12, said point being 80 feet west of the N.E. Corner of said Lot 12; thence west, along the north line of said Lot 12, 55 feet; thence south 25 feet to a point on the south line of said Lot 12, said point being 5 feet east of the S.W. Corner of said Lot 12; thence west, 5 feet to the place of beginning. Containing 8,125.0 sq. ft. more or less

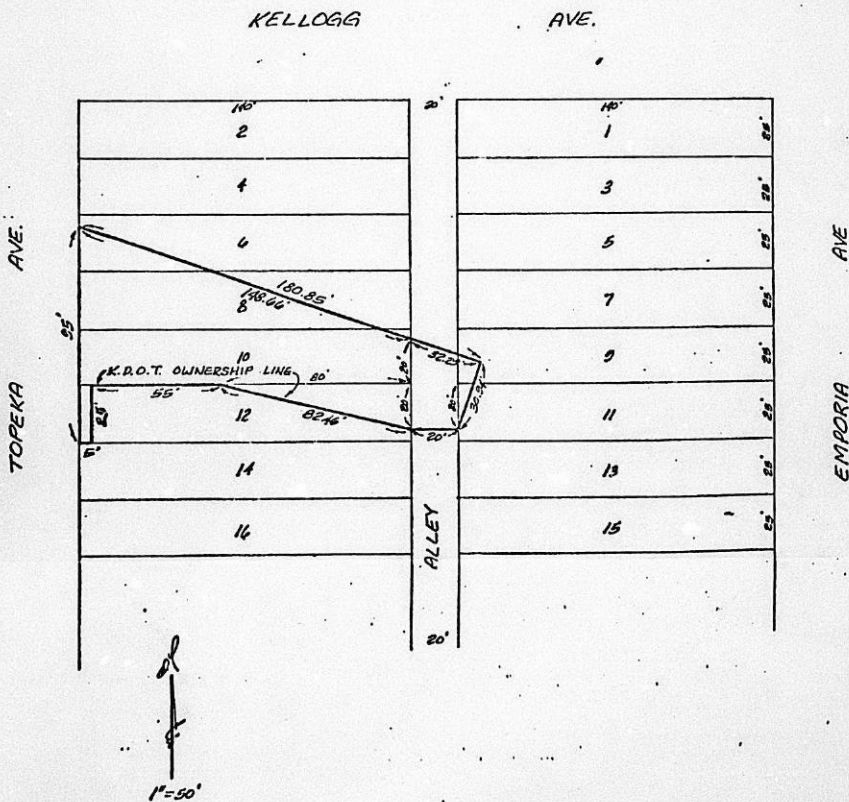


EXHIBIT "B"

Special Attachment No. 1
Sheet 1 of 3

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment

To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964 AND
REHABILITATION ACT OF 1973

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23 and 27), issued pursuant to such Act, hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin, as more specifically set out in the following eight 'Nondiscrimination Clauses'.

CLARIFICATION

Where the term 'consultant' appears in the following seven 'Nondiscrimination Clauses', the term 'consultant' is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the 'consultant's'), agrees as follows:

- (1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, age, physical handicap, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of Transportation of the State of Kansas will be permitted access to the consultants books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, physical handicap, or national origin.

- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but limited to,
- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, religion, color, sex, age, physical handicap or national origin in the award and performance of Federally-assisted contracts.
- (8) Incorporation of Provisions: The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

CITY MANAGER

April 2, 1984

DF
DF
The Honorable Board of City Commissioners

E. H. Denton, City Manager

Minor Street Privilege for Use
of Right-of-Way at the Southeast
Corner of Kellogg and Topeka

On April 3, 1984, the Commission will be asked to consider a request from C.W. Klein, Lindy Andeel and T.G. Davis, Jr., d/b/a KADCO, for a minor street privilege to use public right-of-way at the southeast corner of Kellogg and Topeka. A proposed agreement between the city, KADCO and the Kansas Department of Transportation has been prepared for joint authorization for use of the right-of-way for an annual fee of \$881.56.

In November 1984, the Board of Zoning Appeals (BZA) considered a request by KADCO for an exception to permit the establishment of an automobile sales lot in the "LC" Light Commercial District. The minutes of the BZA meeting and a map of the area in question are attached.

As indicated in the BZA minutes, the area to be leased exceeds the area owned by the applicants and it appears that it would not be feasible to operate the sales lot at the location without the right-of-way. The right-of-way was acquired for Kellogg improvements; however, the Law Department has determined that the minor street privilege is appropriate for the use of the right-of-way as an automobile sales lot.

The BZA approved the request by a 3-1 vote subject to a number of conditions which are outlined in the attached minutes. One of the conditions is that the minor street privilege must be approved by the City Commission for use of the right-of-way.

The Area CPO Council voted 7-0 to deny the request.

This information is provided as additional background material. Should the Commissioners wish to discuss the matter further, please advise.

E. H. Denton
City Manager

EHD/hpd
Attachments

Approved by Board of Commission

this APR 3 1984

THE CITY OF WICHITA

OFFICE OF PLANNING DEPARTMENT
Design Division

DATE March 22, 1984

TO The Honorable Board of City Commissioners
(Through E. H. Denton, City Manager)

FROM Mike Lindebak, City Engineer

| | |
|----------------------------------|------------------------------|
| Office of the City Manager | |
| <input type="checkbox"/> EHD | <input type="checkbox"/> SH |
| <input type="checkbox"/> RO | <input type="checkbox"/> TH |
| <input type="checkbox"/> NT | <input type="checkbox"/> MEC |
| MAR 26 1984 | |
| <input type="checkbox"/> Copy to | |
| <input type="checkbox"/> Send To | |
| <input type="checkbox"/> File | |

SUBJECT **PROPOSED AGREEMENT FOR**
Use of Right-of-Way at the
Southeast Corner of Kellogg
and Topeka.

*MDP #1923
PLD
Jan 84*

A request has been submitted on behalf of C.W. Klein, Lindy Andeel and T.G. Davis, Jr. d/b/a KADCO for the use of a portion of right-of-way at the southeast corner of Kellogg and Topeka. The right-of-way is proposed to be used as a parking area for vehicles in connection with a commercial automobile sales business to be located on their adjacent private property.

City Code Chapter 10.08 provides that a minor street privilege permit may be issued for the requested use of right-of-way in excess of five thousand square feet at a fee negotiated by the City Manager, subject to the approval of the City Commission. A total of 8,125 square feet of right-of-way is to be used. KADCO has agreed to pay an annual permit fee of \$881.56 which is based upon the square footage rate of \$1085 ~~per~~ ^{per} ~~year~~ ^{year} ~~for~~ ^{for} ~~other~~ ^{other} ~~uses~~ ^{uses} of right-of-way in this area and of a similar nature in ~~main streets and Kellogg with similar~~ ~~uses~~. (Examples: DAVIS-MOORE OLDS AND ANGELS, BOTH LOCATED ON KELLOGG AVENUE).

In conjunction with the minor street privilege, an agreement between the City, KADCO and the Kansas Department of Transportation has been prepared for joint authorization of the proposed use of right-of-way. The Law Department has approved the agreement to form.

It is recommended that the City Commission approve the minor street privilege annual fee of \$881.56 and also the agreement for joint authorization of the use of the right-of-way.

ACTION: APPROVE THE MINOR STREET
PRIVILEGE ANNUAL FEE OF
\$881.56 AND THE AGREEMENT
FOR USE OF THE RIGHT-OF-WAY.

[Signature]
Mike Lindebak
City Engineer

Approved:
[Signature]
Robert Lakin
Director of Planning

ML:TRC:gf

REFERENCE ITEM #6-07
AGENDA FOR APR 3 1984

THE CITY OF WICHITA

OFFICE OF METROPOLITAN PLANNING DEPT.
Design Division

DATE January 25, 1984

RECEIVED

JAN 26 1984

METROPOLITAN PLANNING

ROUTE

TO Glen Lytle, Special Assistant for Zoning

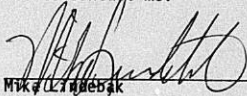
FROM Mike Lindebak, City Engineer

SUBJECT Drainage Plan - Kellogg & Topeka
BAZ 69-83

The attached drainage plan which has been submitted in reference to the above referenced request for exception is hereby approved.

Also attached for your information is a copy of recent correspondence to KDOT regarding the proposed use.

If you have any questions, please feel free to contact me.


Mike Lindebak
City Engineer

GF/03/27

Attachment:

cc: Chris Breitenstein, w/attachment

January 19 1984

Mr. Raymond E. Olson, P.E.
Chief Of Rural and Urban Development
Kansas Department of Transportation
State Office Building
Topeka, KS 66612

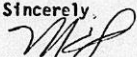
Dear Mr. Olson:

By letter dated October 6, 1983, you forwarded to me a proposed agreement (No. 47-83) for joint use of right-of-way with reference to (BC) 54-87 K-033-3(43), based upon a request submitted by the City of Wichita dated July 1, 1983. Since that time further evaluation of the proposed use of the City right-of-way in connection with a request for special use of the adjacent private property and right-of-way through the City's Board of Zoning Appeals, it has been determined that additional right-of-way will need to be used so that drainage from the site can be directed to adequate facilities (see enclosed drawings and property descriptions). As a part of the City's review process, the City's Law Department has recommended that use of the City right-of-way be authorized by a City of Wichita minor street privilege permit. In addition, the applicant has requested that consideration of the request be completed as rapidly as possible to assist them in arrangements being made to satisfy their facility needs.

I am enclosing a copy of the City of Wichita Code pertaining to minor street privileges along with a proposed letter of conditions that would accompany the permit to be issued for the proposed use following approval by the City Commission.

If the conditions of the proposed minor street privilege permit adequately satisfy the needs or concerns of the Kansas Department of Transportation through the City's permit process, we will proceed with that process rather than with the proposed agreement No. 47-83 which would otherwise need to be redrafted and probably involve considerably more time to be fully executed.

If you have any questions or need additional information, please feel free to contact me at (316) 268-4266.

Sincerely,

Mike E. Lindbak
City Engineer

GF/03/17

cc: Tom Powell, Law Department
Glen Lytle, Metropolitan Area Planning Department

bcc: Pete Klein

ADJOINING PROP. 21

TOPEKA AVE

EXIST. CATCH BASIN

95' CONTROLLED ACCESS

EXISTING WALK TO SEWAL

BUMPER GUARDS AT ALL LOCATIONS SHOWN

DRAINAGE FLUM PER CITY SPECS.

CITY OWNED PROP LEASED BY DAVIS-MOORE

ASPHALT PAVING ENTIRE SALES LOT

SIGNAL LOCATION PROP OWNED BY DAVIS-MOORE

OFF STREET PARKING 3 REG. 3 SHOWN

PROPOSED USED CAR SALES BLDG 600' MAX 14

SEWER 21" DEEP

20" ALLEY

LIGHTING

NOTES 1. GRADE PER

THIS 20' x 38' OF ALLEY TO WITH CONGR. CITY SPECS THE DRAINAGE AREA.

EDGE TO MATCH CE ADJ. PAVING

INDIC. FIXT. DIRE. RES. IT. VELL. SHAL.

3' HIGH FENCE 20'

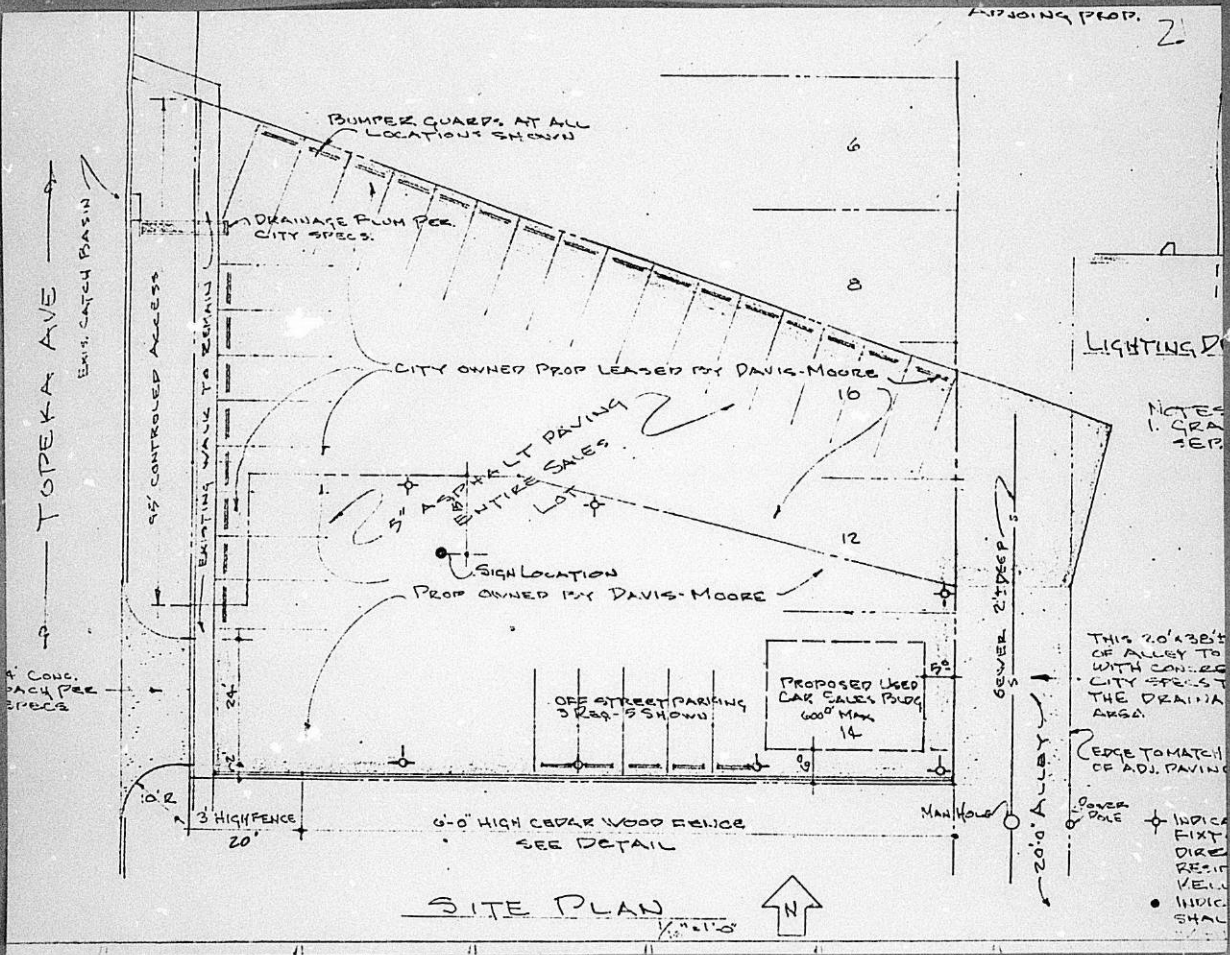
6'-0" HIGH CEDAR WOOD FENCE SEE DETAIL

MANHOLE

SITE PLAN



1/8" = 1'-0"



July 2, 1984

C. W. Klein, Lindy Andeel &
T. G. Davis, Jr.
Kadco, a partnership
9901 East Kellogg
Wichita, Ks. 67207

Re: BZA 59-83 - Request for Exception

Gentlemen:

Enclosed is a signed copy of the Resolution adopted by the Board of Zoning Appeals on November 22, 1983.

This Resolution reflects the official action of the Board to approve your request, and sets out the conditions of approval. It is forwarded to you for your information and files.

If you have questions concerning this matter, please call our office.

Sincerely,

Glen E. Lytle
Assistant Secretary

GEL:sad
Encl.

cc: Everett C. Fettis, 120 S. Market, Suite 504, Wichita 67202
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk
Tim Cain, Engineering

RESOLUTION NO. BZA 59-83

WHEREAS, C. W. Klein, Lindy Andeel and T. G. Davis, Jr., d/b/a KADCO a partnership, 9901 East Kellogg, Wichita, Kansas, requests an exception as provided in Section 2.12.590.C, Code of the City of Wichita, to permit the establishment of an automobile sales lot on property zoned the "LC" Light Commercial District and legally described as follows:

Lot 12, EXCEPT beginning at the Northeast corner, thence South 20 feet; thence Northwest to a point 80 feet West of the Northeast corner; thence East to beginning for Street, AND ALL of Lot 14 and the North 7 feet of Lot 16, all in Block 6, ORME AND PHILLIPS ADDITION to the City of Wichita, Sedgwick County, Kansas; and a tract of land adjacent on the north beginning at the southwest corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slopeline to a point 20 feet north of the northeast corner of Lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of Lot 12, 80 feet west of the northeast corner of Lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of Lot 12, thence west along the south line of Lot 12, 10 feet to the point of beginning. Generally located on the southeast corner of Topeka and Kellogg.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of November 22, 1983, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the establishment of an automobile sales lot on property zoned the "LC" Light Commercial District subject to the conditions outlined in Section 28.04.183.2, Code of the City of Wichita.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this application be approved to permit the establishment of an automobile sales lot on property zoned the "LC" Light Commercial District legally described as follows:

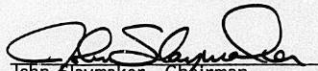
Lot 12, EXCEPT beginning at the Northeast corner, thence South 20 feet; thence Northwest to a point 80 feet West of the Northeast corner; thence East to beginning for Street, AND ALL of Lot 14 and the North 7 feet of Lot 16, all in Block 6, ORME AND PHILLIPS ADDITION to the City of Wichita, Sedgwick County, Kansas; and a tract of land adjacent on the north beginning at the southwest corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slopeline to a point 20 feet north of the northeast corner of Lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of Lot 12, 80 feet west of the northeast corner of Lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of Lot 12, thence west along the south line of Lot 12, 10 feet to the point of beginning. Generally located on the southeast corner of Topeka and Kellogg.

subject to the following conditions:


1. Prior to the release of the resolution authorizing the issuance of any permits for the establishment of an automobile sales lot, the applicant shall furnish a site plan drawn to scale showing the type, location, height and size of all screening, landscaping, signs and lighting as set forth in this resolution to the Secretary for approval. This shall include the required off-street parking spaces as set forth in the zoning ordinance.

2. Prior to the inclusion of any street right-of-way for automobile display, the minor street privilege must be approved by the City Commission after first being approved by the Director of Law and by the Kansas Department of Transportation.
3. Lighting shall be limited to lights that can be shielded to direct light away from the residential property. No string type lighting shall be permitted.
4. No sound projecting devices or loudspeakers shall be permitted on the premises.
5. Only one on-site pole or ground sign shall be permitted and it shall be located on the property owned by the applicant. The height shall not exceed 30 feet and shall be limited to 200 square feet of gross surface area. Building signs shall be limited as set forth in the zoning ordinance in the "LC" Light Commercial District. Signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. Only one portable sign shall be permitted on the property.
6. No body or fender work shall be permitted on the premises and any repair of automobiles shall be conducted within an enclosed building.
7. All storage, display and parking areas shall be paved with asphalt, concrete or other comparable surfacing.
8. A five to eight foot high solid wall or fence consisting of masonry, wood, metal panels or an architectural tile screening wall shall be installed along the south property line. The west 20 feet of the fence or wall shall be not more than 3 feet in height.
9. No building shall be constructed closer than 20 feet to the right-of-way of Topeka Street.
10. All areas shall be properly policed through inspections by the owner for the proper maintenance and removal of trash.
11. All improvements required by this resolution or the Zoning Ordinance shall be installed and maintained in good condition.
12. All parking spaces and display spaces abutting property lines shall have adequate guards to prevent the extension or over-hanging of vehicles beyond property lines or parking spaces. All parking areas shall have adequate markings for channelization and movement of vehicles.
13. Prior to the release of the resolution, a site drainage plan approved by the City Engineer shall be submitted to the Secretary. Drainage shall be directed to Topeka and shall handle all water from the applicant's property and that of the adjacent Kellogg street right-of-way.
14. Only one access driveway shall be permitted from Topeka and that being on the applicant's ownership.

ADOPTED AT WICHITA, KANSAS, this 22nd day of November, 1983.


John Slaymaker, Chairman

ATTEST:


Glen E. Lytle, Assistant Secretary

FROM Tim Cain

DATE 6-25-84

| ADMINISTRATION | ADVANCE PLANS | CURRENT PLANS | ENGINEERING | GRAPHICS |
|------------------------------------|------------------------------------|---|------------------------------------|----------------------------------|
| <input type="checkbox"/> Lakin | <input type="checkbox"/> Stockwell | <input type="checkbox"/> Galbraith | <input type="checkbox"/> Lindebak | <input type="checkbox"/> Pierce |
| <input type="checkbox"/> Walter | <input type="checkbox"/> Schwartz | <input checked="" type="checkbox"/> Lytle | <input type="checkbox"/> Cain | <input type="checkbox"/> Commer |
| <input type="checkbox"/> Doramus | <input type="checkbox"/> Leivo | <input type="checkbox"/> Young | <input type="checkbox"/> Ruiz | <input type="checkbox"/> Crook |
| <input type="checkbox"/> Eubanks | <input type="checkbox"/> Bechtel | <input type="checkbox"/> Chambers | <input type="checkbox"/> Henry | <input type="checkbox"/> Jones |
| <input type="checkbox"/> Hanson | <input type="checkbox"/> Clark | <input type="checkbox"/> Daniels | <input type="checkbox"/> Schneider | <input type="checkbox"/> Whitney |
| <input type="checkbox"/> Henderson | <input type="checkbox"/> Dudark | <input type="checkbox"/> Lahay | <input type="checkbox"/> _____ | |
| <input type="checkbox"/> _____ | <input type="checkbox"/> Hart | <input type="checkbox"/> Nagley | <input type="checkbox"/> _____ | |
| <input type="checkbox"/> Scott | <input type="checkbox"/> Kelley | <input type="checkbox"/> Olivarez | <input type="checkbox"/> _____ | |
| | <input type="checkbox"/> Losew | <input type="checkbox"/> Shirkey | <input type="checkbox"/> _____ | |
| | <input type="checkbox"/> Shen | | | |
| | <input type="checkbox"/> Vinson | | | |

- Note & Return
- Handle
- All Staff
- Comment
- Signature
- Library
- Information
- File
- Type

REMARKS Sam Mobley advised you
needed the attached - I am waiting
on a certit. of insurance & approved set of plans
for the issuance of the minor street privilege

TS-105

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

AGREEMENT

This agreement made and entered into this 3RD day of APRIL, 1984, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

RECITALS:

WHEREAS, the licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Part of Block 6, Orme and Phillips Addition to the City of Wichita, Sedgwick, County, Kansas, described as beginning at the S.W. Corner of Lot 12, in said Block 6; thence north, along the east line of Topeka Avenue, 95 feet; thence southeasterly (along the approximate toe of slope line), 148.66 feet to a point on the east line of Lot 10 in said Block 6, said point being 20 feet north of the N.E. Corner of Lot 12, in said Block 6; thence continuing southeasterly along the last described line extended, 32.29 feet; thence southwesterly, 30.94 feet to a point on the west line of Lot 11, in said Block 6, said point being 20 feet south of the N.W. Corner of said Lot 11; thence west, 20 feet to a point on the east line of said Lot 12, said point being 20 feet south of the N.E. Corner of said Lot 12; thence northwesterly, 82.46 feet to a point on the north line of said Lot 12, said point being 80 feet west of the N.E. Corner of said Lot 12; thence west, along the north line of said Lot 12, 55 feet; thence south 25 feet to a point on the south line of said Lot 12, said point being 5 feet east of the S.W. Corner of said Lot 12; thence west, 5 feet to the place of beginning. Containing 8,125.0 square feet, more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and re-set or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the Licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the users herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereunder and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. Licensee agrees, before occupying the real property described herein, to obtain a minor street privilege permit from Licensor. In addition to complying with the terms and conditions set forth herein, Licensee agrees to comply with all applicable laws, provisions of the Code of the City of Wichita, and other ordinances and rules pertaining to minor street privileges. It is agreed by the Licensee that this license shall be automatically terminated if Licensee's minor street privilege is cancelled, revoked, or is not renewed. Licensee acknowledges that said minor street privilege can be revoked by Licensor without cause at any time, and Licensee further acknowledges that Licensor has the absolute right to refuse to renew said minor street privilege. Licensee further agrees that a termination of this agreement for any reason will automatically result in a revocation of Licensee's minor street privilege.

17. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

Margalee Wright
MAYOR MARGALEE WRIGHT

Kadco - C. W. Klein

ATTEST:

Donald C. Gisick
CITY CLERK DONALD C. GISICK

(SEAL)

APPROVED:

JOHN B. KEMP, P.E.
Secretary of Transportation

By: Margalee Wright



APPROVED AS TO FORM

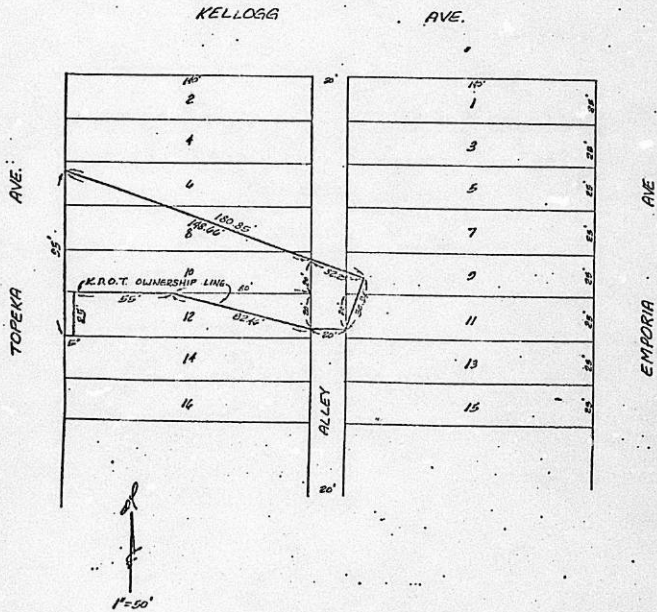
Thomas R. Powell
THOMAS R. POWELL
Assistant City Attorney

EXHIBIT "A"

January 12, 1984

PROPOSED LEASE AREA DESCRIPTION

Part of Block 6, Orms and Phillips Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning at the S.W. Corner of Lot 12, in said Block 6; thence north, along the east line of Topeka Ave., 95 feet; thence southeasterly (along the approximate toe of slope line), 148.66 feet to a point on the east line of Lot 10 in said Block 6, said point being 20 feet north of the N.E. Corner of Lot 12, in said Block 6; thence continuing southeasterly along the last described line extended, 32.29 feet; thence southwesterly, 30.94 feet to a point on the west line of Lot 11, in said Block 6, said point being 20 feet south of the N.W. Corner of said Lot 11; thence west, 20 feet to a point on the east line of said Lot 12, said point being 20 feet south of the N.E. Corner of said Lot 12; thence northwesterly, 82.46 feet to a point on the north line of said Lot 12, said point being 80 feet west of the N.E. Corner of said Lot 12; thence west, along the north line of said Lot 12, 55 feet; thence south 25 feet to a point on the south line of said Lot 12, said point being 5 feet east of the S.W. Corner of said Lot 12; thence west, 5 feet to the place of beginning. Containing 8,125.0 sq. ft. more or less



KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment

To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964 AND
REHABILITATION ACT OF 1973

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23 and 27), issued pursuant to such Act, hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin, as more specifically set out in the following eight 'Nondiscrimination Clauses'.

CLARIFICATION

Where the term 'consultant' appears in the following seven 'Nondiscrimination Clauses', the term 'consultant' is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the 'consultant's'), agrees as follows:

- (1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, age, physical handicap, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of Transportation of the State of Kansas will be permitted access to the consultants books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, physical handicap, or national origin.

- (6) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but limited to,
- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) **Disadvantaged Business Obligation**
- (a) Disadvantaged Businesses as defined in the Regulations, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, religion, color, sex, age, physical handicap or national origin in the award and performance of Federally-assisted contracts.
- (8) **Incorporation of Provisions:** The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

COMMISSIONERS PROCEEDINGS

PAGE 441

134

April 3, 1984

PLANNING AND ADMINISTRATION

Citizen Participation Organization - Wright moved that \$167,843 be allocated. Casado moved a substitute motion that \$125,000 be allocated. Motion denied for lack of a second.

Brown moved a substitute motion that the City Manager's recommendation of \$150,000 be allocated. Substitute motion carried 3 to 2. Knight, Wright - NO.

Contracts Administration - CDBG Program Administration - Brown moved that the City Manager's recommendation of \$285,000 be allocated. Motion carried 3 to 2. Kirk, Knight - NO.

Property Management - Brown moved that the City Manager's recommendation of \$15,000 be allocated. Motion carried 4 to 1. Knight - NO.

Public Affairs Office - City Commission Meetings Radio/TV Coverage - Brown moved that \$70,000 be allocated. Motion carried 5 to 0.

Housing and Economic Development Department - Energy Plans/Public Awareness - Knight moved that \$1,622 be allocated. Motion carried 4 to 1. Brown - NO.

Housing and Economic Development Department - Policy and Special Projects Team - Casado moved that the City Manager's recommendation of \$154,000 be allocated. Motion carried 3 to 2. Kirk, Knight - NO.

Planning Department - Historic Preservation - Brown moved that no funding be allocated. Motion failed 3 to 2. Kirk, Knight, Wright - NO.

Discussion was had.

Casado moved that the motion be reconsidered. Motion carried 5 to 0.

Brown moved that no funding be allocated. Motion carried 3 to 2. Knight, Wright - NO.

Planning Department Mandated CDBG Activities - Wright moved that the City Manager's recommendation of \$5,000 be allocated. Motion carried 5 to 0.

Planning Department Special Assignments & Technical Assistance - Wright moved that the City Manager's recommendation of \$110,000 be allocated. Motion carried 4 to 1. Knight - NO.

Planning Department Current Development & Housing Information - Wright moved that no funding be allocated. Motion carried 5 to 0.

Administrative Charges - Wright moved that the City Manager's recommendation of \$100,000 be allocated. Motion carried 5 to 0.

The Commission left open one allocation regarding Housing Development Administration, and after some discussion it was decided to plug in an amount of \$400,000 (which would also add back one person) to arrive at a total figure for all project allocations. It was determined that the allocations exceeded the total of funds available by \$32,997, and the limit for Administration was exceeded by \$102,622.

During the allocation process questions were raised concerning the changes in staffing. The Commission expressed a desire for additional information in that regard, as well as the affected advisory boards being apprised of the recommendations, and the matter being returned in two weeks.

The City Manager stated that he would furnish a position paper regarding staffing, look at alternatives for funding within both of the categories and wherever possible to consult with the advisory boards whose staffing would be affected and what recommendations have been made.

E. H. Denton

R/W AGREEMENT

PROPOSED AGREEMENT FOR USE OF RIGHT-OF-WAY AT THE SOUTHEAST CORNER OF KELLOGG AND TOPEKA, presented.

A request was submitted on behalf of C. W. Klein, Lindy Andeel and T. G. Davis, JR., d/b/a KADCO for the use of a portion of right-of-way at the southeast corner of Kellogg and Topeka. The right-of-way is proposed to be used as a parking area for vehicles in connection with a commercial automobile sales/business to be located on their adjacent private property.

COMMISSIONERS PROCEEDINGS

PAGE 442

JOURNAL 134

April 3, 1984

State of Kansas)
Deputy City Clerk of the City of Wichita)
City of Wichita)
I, _____, Deputy City Clerk of the City of Wichita, do hereby certify that the original on file in the true and correct copy of the City Code of the City of Wichita, Kansas, under my hand and seal of the City of Wichita, Kansas, this _____ day of _____, 1984.

City Code Chapter 10.08 provides that a minor street privilege permit may be issued for the requested use of right-of-way in excess of five thousand square feet at a fee negotiated by the City Manager, subject to the approval of the City Commission. A total of 8,125 square feet of right-of-way is to be used. KADCO has agreed to pay an annual permit fee of \$881.56 based upon the square footage rate of \$.1085 which has been approved for other similar uses of right-of-way. (Examples: Davis-Moore Oldsmobile and Angelos, both located on Kellogg Avenue.)

In conjunction with the minor street privilege, an agreement between the City, KADCO and the Kansas Department of Transportation has been prepared for joint authorization of the proposed use of right-of-way. The Law Department approved the agreement to form.

It was recommended that the City Commission approve the minor street privilege annual fee of \$881.56 and the agreement for joint authorization of the use of the right-of-way.

The City Manager briefly reviewed this matter with the Commission.

Bob Lakin, Director of Planning, presented a slide outlining the area in question, the traffic flow and answered questions by the Commission.

Brown moved that the minor street privilege annual fee of \$881.56 and the agreement for use of the right-of-way be approved and the Mayor be authorized to sign the agreement on behalf of the City. Motion carried 4 to 1. Knight - NO.

E. H. Denton.

Bob Lakin

Motion --

-- carried

Lunch Recess

The Commission recessed for lunch at 1:15 p.m. and reconvened at 1:51 p.m. Mayor Wright in the Chair. Commissioners Brown, Casado, Kirk, Knight present.

IRB REQUEST
ALLIANCE LIFE
INSURANCE CO.

REQUEST BY ALLIANCE LIFE INSURANCE COMPANY FOR INDUSTRIAL REVENUE BONDS IN AN AMOUNT NOT TO EXCEED \$3,000,000, presented.

Alliance Life Insurance Company requested that the City of Wichita issue a letter of intent for industrial revenue bonds in an amount not to exceed \$3,000,000.

Proceeds from the sale of the bonds will enable Alliance Life Insurance to construct a new 2 1/2 story, 40,000 square foot office building with adjoining parking facilities on 21st Street one-half block east of Woodlawn. The building will serve as Alliance Life's corporate headquarters. Alliance Life will initially utilize approximately 50% of the space and anticipates leasing the balance until it is needed for expansion purposes.

After the construction of the new facility, Alliance Life will relocate its corporate headquarters from McPherson, Kansas, to Wichita. The company will initially employ 55 to 60 people in Wichita and expects future expansion of its operations with a corresponding increase in employment.

Tenant and guarantor of the bonds will be Alliance Life Insurance Company presently located in McPherson, Kansas. It is anticipated that the bonds will be sold through a private placement. The law firm of Gaer & Bell will act as bond counsel.

THE CITY OF WICHITA

OFFICE OF LAW DEPARTMENT

DATE February 29, 1984

TO Tim Cain, Administrative Supervisor

FROM Thomas R. Powell, Senior Assistant City Attorney

SUBJECT Use of City Right-of-Way
at Southeast Corner of
Kellogg & Topeka

In a memorandum from you, dated February 28, 1984, you advised that the Kansas Department of Transportation was unwilling to authorize the City to allow a private concern to use street right-of-way pursuant to a minor street privilege. Instead, KDOT demands that the City use their standard three-party agreement.

After reviewing KDOT's standard three-party agreement, it becomes clear that, if such agreement were used in place of a minor street privilege, the City would lose several benefits and advantages that are available under a minor street privilege. For example, if the three-party agreement were used in lieu of a minor street privilege, the City would not be able to collect a minor street privilege fee. In addition, the three-party agreement does not require insurance or a bond to protect the City from actions brought by third parties who are injured as a result of the use of the street by the private concern. The three-party agreement also allows termination of the third party's use of the street for cause only. A minor street privilege can be revoked at any time without cause and the City, on an annual basis, has a right to refuse to renew the minor street privilege permit.

I notice that KDOT did not specify on what basis they were objecting to the use of a minor street privilege. Therefore, it can be assumed that their objections are based on the fact that they feel their three-party agreement contains protections that are not provided for in a minor street privilege.

On that basis, I would recommend that the user of the street right-of-way, in addition to entering into the three-party agreement, be required to obtain a minor street privilege in the same manner as would any other individual or concern who desired to use street right-of-way.

The requirement to obtain a minor street privilege does require revisions to KDOT's three-party agreement. In this regard, it is suggested that a paragraph be added to the agreement, which would be numbered 16, providing the following:

Tim Cain
February 29, 1984
Page 2

"Licensee agrees, before occupying the real property described herein, to obtain a minor street privilege permit from Licensor. In addition to complying with the terms and conditions set forth herein, Licensee agrees to comply with all applicable laws, provisions of the Code of the City of Wichita, and other ordinances and rules pertaining to minor street privileges. It is agreed by the Licensee that this license shall be automatically terminated if Licensee's minor street privilege is cancelled, revoked, or is not renewed. Licensee acknowledges that said minor street privilege can be revoked by Licensor without cause at any time, and Licensee further acknowledges that Licensor has the absolute right to refuse to renew said minor street privilege. Licensee further agrees that a termination of this agreement for any reason will automatically result in a revocation of Licensee's minor street privilege."

It is recommended that the three-party agreement be sent back to the Kansas Department of Transportation with the suggestion that the above language be added to the agreement as paragraph number 16.

Please keep me advised of the status of this matter. If you have any questions concerning any of the above recommendations, please call me.

Thomas R. Powell

Thomas R. Powell
Senior Assistant City Attorney

TRP:cdh

cc: Mike Lindebak, City Engineer
Robert A. Lakin, Director of Planning
Glen Lytle, Special Assistant for Zoning

THE CITY OF WICHITA

OFFICE OF City Engineer

DATE February 28, 1984

TO Tom Powell, Senior Assistant City Attorney

FROM Tim Cain, Administrative Supervisor

SUBJECT Use of City Right-Of-Way at Southeast
Corner of Kellogg and Topeka -
KDOT, City, KADCO Three-Party
Agreement No. 47-83

By letter dated January 18, 1984 (copy attached) to Mr. Raymond E. Olson of the Kansas Department of Transportation (KDOT), concurrence was requested in the recommended procedure of authorizing use of City right-of-way by a Minor Street Privilege Permit without a KDOT three-party agreement (copy of KDOT's Agreement No. 47-83 also attached).

Attached is a copy of a letter from KDOT dated February 17, 1984 with their response that the proposed Minor Street Privilege Permit does not satisfy KDOT's needs and concerns. It is KDOT's recommendation that the KDOT three-party agreement be executed.

Please advise of your recommendations for proceeding on this matter.



Tim Cain
Administrative Supervisor

TC:gr

Attachments

cc: Robert Lakin, Director of Planning
Glen Lytle, Special Assistant for Zoning ✓

THE CITY OF WICHITA

OFFICE OF METROPOLITAN PLANNING DEPT.
Design Division

DATE January 25, 1984

TO Glen Lytle, Special Assistant for Zoning

FROM Mike Lindebak, City Engineer


SUBJECT Drainage Plan - Kellogg & Topeka
BAZ 69-83

B2A 59-83

The attached drainage plan which has been submitted in reference to the above referenced request for exception is hereby approved.

Also attached for your information is a copy of recent correspondence to KDOT regarding the proposed use.

If you have any questions, please feel free to contact me.


Mike Lindebak
City Engineer

GF/03/27

Attachment

cc: Chris Breitenstein, w/attachment

WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

November 17, 1983

TO John Dekker, Director of Law
FROM Glen E. Lytle, Special Assistant for Zoning
SUBJECT BZA 59-83 - Request for Legal Opinion

This department has recently received an application for an "Exception" to permit the establishment of an automobile sales lot on the property located at the southeast corner of Kellogg and Topeka. Part of the application area is owned by KADCO, a partnership, and is zoned the "LC" Light Commercial District. The remainder of the application area is street right-of-way and is shown by the attached map as a cross hatched area to be leased from K.D.O.T.


The enclosed map shows the area in blue as right-of-way that was condemned in 1950 prior to the time the old original overpass was being reconstructed. The area in green is the area that was deeded in lieu of condemnation in 1976. The red line is complete access control. Also attached is a copy of a tentative joint agreement that has apparently been worked out with K.D.O.T.

The Board of Zoning Appeals will be considering this case on Tuesday, November 22, 1983. I would appreciate your comments on the legality of the use of public right-of-way for such a use; and should the following sections of the joint agreement be amended to coincide with the restrictions that might be established by the Board of Zoning Appeals.

- #1. The area to be leased is not just a parking area for vehicles, but in fact to be used as an automobile sales lot.
- #13. The number, area and location of non-premise signs should not conflict with the limitations established by the Board of Zoning Appeals as set forth in the Zoning Ordinance.

Access Street Permits should be obtained from the City and Kansas Dept of State and the Dept

This agreement will probably be forwarded to the City Commission by the City Engineer for consideration under the provisions of a minor street permit in the near future.

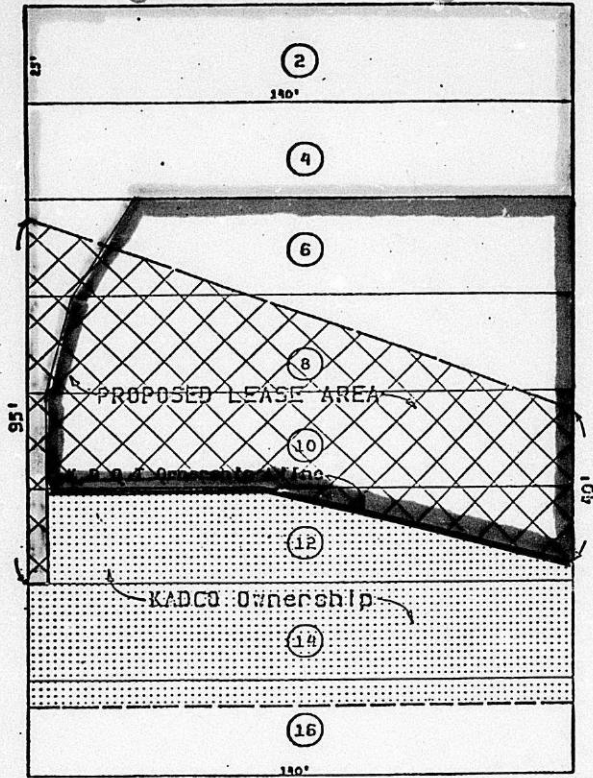

Glen E. Lytle
Special Assistant for Zoning

GEL:sad

cc: Joe Bogle, Assistant City Attorney
Mike Lindebak, City Engineer
David Stowe, Director of Operations & Maintenance
Robert A. Lakin, Director of Planning

KELLOGG

TOPEKA



PROPOSED LEASE AREA DESCRIPTION:

Beginning at the Southwest Corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence North 95 feet along the East line of Topeka to a point, thence Southeasterly along the approximate toe of slope line to a point 20 feet North of the Northeast Corner of Lot 12, thence South 40 feet to the K.D.O.T. ownership line, thence Northwesterly along the K.D.O.T. ownership line to a point on the North line of Lot 12, 80 feet West of the Northeast Corner of Lot 12, thence West along the K.D.O.T. ownership line 50 feet, thence South 25 feet to a point 10 feet East of the Southwest Corner of Lot 12, thence West along the South line of Lot 12, 10 feet to the point of beginning.

The above described tract contains 7,350 square feet more or less.

KADCO ownership contains 6,930 square feet more or less.

DAIRY-2-300-000

Original Compared
With Record

OCT 12 1976

3 01183
KANSAS DEPARTMENT OF REVENUE

GENERAL WARRANTY DEED

PH 215 RE 264

THIS INDENTURE made this 28th day of September, 1976, between BLANCH A. MELICK, a single person, a/k/a BLANCH MELICK a/k/a BLANCH ARRINA MELICK, of Sedgwick County, in the State of Kansas, of the first part, and THE CITY OF WICHITA, KANSAS, of Sedgwick County, in the State of Kansas, of the second part.

WITNESSETH, that the said party of the first part, in consideration of the sum of Seventy Nine Thousand Five Hundred Dollars, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, its heirs and assigns, all the following described REAL ESTATE situated in the County of Sedgwick and State of Kansas, to-wit:

(a) A PERMANENT EASEMENT for controlled access highway right-of-way and removal of borrow material over and upon a tract of land in Lots 6, 8, 10 and 12, Block 6, Crme and Phillips Addition to Wichita, Sedgwick County, Kansas, described as follows: BEGINNING at the Northeast corner of said Lot 6; thence South 95.0 feet along the East line of said Lots 6, 8, 10 and 12; THENCE NORTHWESTERLY TO A POINT ON THE NORTH LINE, 80.0 FEET WEST OF THE NORTH-EAST CORNER OF SAID LOT 12; THENCE WEST ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID LOT 12; thence North along the West line of Lots 6, 8, 10 and 12 to the Northwest corner of said Lot 6; thence East along the North line of said Lot 6 to the place of beginning. The above contains 10,388 square feet, more or less, exclusive of the existing highway. Lands abutting said highway shall have no right or easement of access thereto.

(b) A TEMPORARY EASEMENT for removal, salvage or demolition of the building located wholly or in part on the tract described below and including the right to eradicate foundations, floors or debris and to level and grade the area in conjunction with the construction of the highway on adjacent right-of-way over and upon a tract of land in Lot 12, Block 6, Crme and Phillips Addition to Wichita, Sedgwick County, Kansas, described as follows: BEGINNING at the Northwest corner of said Lot 12; thence South along the West line to the South line of said Lot; thence East along the South line to the East line of said Lot; thence North 5.0 feet along said East line; thence Northwesterly to a point on the North line, 80.0 feet West at the Northeast corner of said Lot; thence West along said North line to the place of beginning. The above contains 2,700 square feet, more or less.

This easement expires ninety days after completion of the highway construction for which this easement is acquired.

In lieu of condemnation.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances hereunto belonging or in anywise appertaining forever.

Key # 8-4694, 4695 & 4696

D-9309

RECORDED ON
INDEXED RELEASE
OCT 28 1976
SEDGWICK COUNTY, KANSAS

LAND RECORD

DESCRIPTION: NW 1/4 Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56
(a) Legal: All of lots 2 and 4, Block 6, Orme and Phillips Add'n.

(b) Location: S. side of Kellogg between Topeka and Emporia
(c) Size: 50 x 140 Improvements: Area: Stories: Material:

PURPOSE: Highway 54 R. of W.

TRACT #10

HOW ACQUIRED: Condemned

Deed: none City Clerk's No. St. filer. of D. Book No.: Page: Date:

Condemnation Title:
Widening of Kellogg between Laura and Market

Ordinance No. 16-635 Date: 6/22/50 Ordinance No. 16-702 Date: 7/13/50
Dist. Court Vol.: A Case No.: 33119 Date 8/22/50 R. of D. No.: M 263 Page: 321
Date: 8/22/50 Grantor: Robert J. Armstrong Grantee: City of Wichita

ACTUAL COST: Site 10,750 Improvement: Total:
ESTIMATED COST: Site: Improvement: Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

Key # 64693

•• (sa) - 2222

LAND RECORD

DESCRIPTION: NW 1/4 Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56 ✓
(a) Legal: The W. 5 ft. of lots 10 and 12, Block 6, Orme and Phillips Addition.

(b) Location: E. side of Topeka just S. of Kellogg
(c) Size: 5 x 50 Improvements: Area: Stories: Material:

PURPOSE: Highway 54 R. of W.

TRACT #8

HOW ACQUIRED: Condemned

Deed: none City Clerk's No. St. filer. of D. Book No.: Page: Date:

Condemnation Title:
Widening of Kellogg between Laura and Market

Ordinance No. 16-635 Date: 6/22/50 Ordinance No. 16-702 Date: 7/13/50
Dist. Court Vol.: A Case No.: 33119 Date 8/22/50 R. of D. No.: M 263 Page: 321
Date: 8/22/50 Grantor: Mattie G. Reeves Grantee: City of Wichita

ACTUAL COST: Site 250.00 Improvement: Total:
ESTIMATED COST: Site: Improvement: Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

•• (sa) - 2222

LAND RECORD

DESCRIPTION: NW $\frac{1}{4}$ Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56 ✓
(a) Legal: Beginning at the NW corner of lot 6, blk 6, Orme & Phillips Add'n; thence E. 30 ft; thence S. Westerly to a point on the S. line of lot 6 which is 14 ft. E. of the SW corner of lot 6; thence S. Westerly to a point on the S. line of lot 8, Blk 6, Orme & Phillips Add'n, which (over)
(b) Location: SE corner of Topeka and Kellogg
(c) Size: 750 SF Improvements: Area: Stories: Material:

PURPOSE: Highway 54 N. of W.

TR# 9

HOW ACQUIRED: Condemned

Deed: none City Clerk's No. St. file R. of D. Book No.: Page: Date:

Condemnation Title:

Widening of Kellogg between Laura and Market

Ordinance No. 16-635

Date: 6/22/50

Ordinance No. 16-702

Date: 7/13/50

Dist. Court Vol.: A

Case No.: 33119

Date: 8/22/50

R. of D. No.: M 263

Page: 321

Date: 8/22/50

Grantor: Blanch Melick

Grantee: City of Wichita

ACTUAL COST: Site 650.00

Improvement:

Total:

ESTIMATED COST: Site:

Improvement:

Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

44 (22) - 2000

LEGAL (continued)

is 5 ft. E. of the SW corner of said lot 8; thence W. 5 ft; thence N. 50 ft. to the place of beginning in Wichita, Sedg. Co. Kan.

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

AGREEMENT

This agreement made and entered into this _____ day of _____, 19____, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

RECITALS:

WHEREAS, The licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Beginning at the southwest corner of lot 12, block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slope line to a point 20 feet north of the northeast corner of lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of lot 12, thence west along the south line of lot 12, 10 feet to the point of beginning. The above described tract contains 7,350 square feet more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities, or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary, or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the Licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the uses herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereinafter and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR

ATTEST:

CITY CLERK

(SEAL)

APPROVED:

JOHN B. KEMP, P. E.
Secretary of Transportation

By _____



November 28, 1983

C. W. Klein, Lindy Andeel & T. G. Davis, Jr.
d/b/a KADCO
9901 East Kellogg
Wichita, Kansas

Re: BZA 59-83 - Request for Exception

Dear Mr. Klein:

In our letter to you dated November 23, 1983, there was an error in that conditions number 13 and 14 were inadvertently left out. They are as follows:

13. Prior to the release of the resolution, a site drainage plan approved by the City Engineer shall be submitted to the Secretary. Drainage shall be directed to Topeka and shall handle all water from the applicant's property and that of the adjacent Kellogg street right-of-way.
14. Only one access driveway shall be permitted from Topeka and that being on the applicant's ownership.

Sincerely yours,

Glen E. Lytle
Assistant Secretary

GEL:sad

cc: Everett C. Fettis, 120 South Market, Suite 504, Wichita
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk
Mike Lindebak, Director of Engineering Department

November 23, 1983

C. W. Klein, Lindy Andeel & T. G. Davis, Jr.
d/b/a KADCO
9901 East Kellogg
Wichita, Kansas

Re: BZA 59-83 - Request for Exception

Dear Mr. Klein:

At the regular meeting of the Board of Zoning Appeals on November 22, 1983, your request for an exception to permit the establishment of an automobile sales lot in the "LC" Light Commercial District was considered. It was the action of the Board to approve your request subject to the following conditions:

1. Prior to the release of the resolution authorizing the issuance of any permits for the establishment of an automobile sales lot, the applicant shall furnish a site plan drawn to scale showing the type, location, height and size of all screening, landscaping, signs and lighting as set forth in this resolution to the Secretary for approval. This shall include the required off-street parking spaces as set forth in the zoning ordinance.
2. Prior to the inclusion of any street right-of-way for automobile display, the minor street privilege must be approved by the City Commission after first being approved by the Director of Law.
3. Lighting shall be limited to lights that can be shielded to direct light away from the residential property. No string type lighting shall be permitted.

4. No sound projecting devices or loudspeakers shall be permitted on the premises.
5. Only one on-site pole or ground sign shall be permitted and it shall be located on the property owned by the applicant. The height shall not exceed 30 feet and shall be limited to 200 square feet of gross surface area. Building signs shall be limited as set forth in the zoning ordinance in the "LC" Light Commercial District. Signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. Only one portable sign shall be permitted on the property.
6. No body or fender work shall be permitted on the premises and any repair of automobiles shall be conducted within an enclosed building.
7. All storage, display and parking areas shall be paved with asphalt, concrete or other comparable surfacing.
8. A five to eight foot high solid wall or fence consisting of masonry, wood, metal panels or an architectural tile screening wall shall be installed along the south property line. The west 20 feet of the fence or wall shall be not more than 3 feet in height.
9. No building shall be constructed closer than 20 feet to the right-of-way of Topeka Street.
10. All areas shall be properly policed through inspections by the owner for the proper maintenance and removal of trash.
11. All improvements required by this resolution or the Zoning Ordinance shall be installed and maintained in good condition.
12. All parking spaces and display spaces abutting property lines shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces. All parking areas shall have adequate markings for channelization and movement of vehicles.

A Resolution setting forth the official action of the Board is being prepared and you will be mailed a copy as soon as you have complied with conditions 1, 2 and 13 above.

If you have any questions, please call our office.

Sincerely yours,

Glen E. Lytle
Assistant Secretary

GEL:s:d

cc Everett C. Fettis, 120 South Market, Suite 504, Wichita
Robert Feldner, Superintendent of Central Inspection (2)
Don Gisick, City Clerk
Mike Lindebak, Director, Engineering Department

THE CITY OF WICHITA

OFFICE OF CITIZEN PARTICIPATION

DATE November 22, 1983

TO Glen Lytle, Special Assistant for Zoning

FROM Stan Scott, Administrative Aide III,

SUBJECT BZA 59-83: Southwest Corner of
Topeka and Kellogg

On Monday, November 21, CPO Neighborhood Council "L" considered a request for an exception to permit the establishment of a car sales lot on property zoned "LC" Light Commercial. After discussion, the Council voted 7-0 to recommend denial of the requested variance.

Everett Fettis, agent for the applicants, appeared before the Council to describe the request and respond to questions from the Council. Council members were provided the notice to adjoining property owners, a map of the area, and MAPD staff comments.

Alvin and Cathryn Bogenreif, 738 South Topeka, appeared before the Council to express their opposition to the requested exception. Their concerns included additional drainage in an area with an existing drainage problem, traffic safety, parking, lighting, and future expansion of the car lot to the south.

Please provide the Council's recommendation to the Board of Zoning Appeals when BZA 59-83 is considered on Tuesday, November 22.



Stan Scott
Administrative Aide III

SS/lw

RECEIVED
NOV 22 1983
METROPOLITAN PLANNING
ROUTE _____

SECRETARY'S REPORT
CASE NO. BZA 59-83

APPLICANT: C. W. Klein, Lindy Andeel and T. G. Davis, Jr.,
d/b/a KADCO, a partnership, 9901 East Kellogg,
Wichita, Kansas.

AGENT: Everett C. Fettis, 120 South Market, Suite 504,
Wichita, Kansas.

REQUEST: Exception pursuant to Section 28.04.183.2, Code
of the City of Wichita to permit the establish-
ment of an automobile sales lot in the "LC"
Light Commercial District.

GENERAL LOCATION: On the southeast corner of Topeka and Kellogg.

ZONING: Subject property is zoned the "LC" Light
Commercial District and is also street right-
of-way. Property to the west is "C" Commercial
and to the east is "E" Light Industrial. Prop-
erty to the south is "B" Multiple-family.

LAND USE: Subject property is vacant. Property to the
south is a multiple-family dwelling. Property
to the west is commercial. Property to the
east is commercial and industrial.

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception provided the conditions set out in Section 28.04.183.2 can be complied with.

COMMENTS BY THE SECRETARY:

The applicants are requesting an exception to permit the establishment of an automobile sales lot in the "LC" Light Commercial District and on the adjacent public right-of-way to the north that the applicant will be required to lease from the city under a minor street privilege. The site owned by the applicant is extremely small and without the right-of-way it would apparently not be feasible to operate the sales lot at this location.

It should be noted that the area to be leased exceeds the area owned by the applicants. The right-of-way for Kellogg improvements included in the application were acquired in part by condemnation and also in part by General Warranty Deed in lieu of condemnation. We are requesting the Department of Law to review the appropriateness of a minor street privilege for the use of this property as an automobile sales lot.

Automobile sales lots are permitted in the "LC" Light Commercial District only by "exception" or special permit by the Board of Zoning Appeals when the property is adjacent to a major street. In this case both Kellogg and Topeka Streets are major streets on the Transportation Plan Element of the comprehensive plan and would comply with the intent of the zoning ordinance.

The proposed application area is immediately adjacent to a multiple-family dwelling to the south which is located in a residential zoning district. It is the Secretary's opinion that an automobile sales lot is not a compatible use immediately adjacent to a residential property. It will be almost impossible to provide screening sufficient to protect adjacent properties from light and noise when in such close proximity without special treatment and landscaping along the south property line. Also, the use of lighting will be difficult to deflect away from the residential area and still be high enough to produce the desired visibility of most automobile sales lots.

RECOMMENDATION:

It is the opinion of the Secretary that the use is inappropriate at this location at this time and the application should be denied. Should the Board determine that the use is appropriate, then it is recommended that the application be approved subject to the following conditions:

1. Prior to the release of the resolution authorizing the issuance of any permits for the establishment of an automobile sales lot, the applicant shall furnish a site plan drawn to scale showing the type, location, height and size of all screening, landscaping, signs and lighting as set forth in this resolution to the Secretary for approval. This shall include the required off-street parking spaces as set forth in the zoning ordinance.
 2. Prior to the inclusion of any street right-of-way for automobile display, the minor street privilege must be approved by the City Commission after first being approved by the Director of Law.
 3. Lighting shall be limited to lights that can be shielded to direct light away from the residential property. No string type lighting shall be permitted.
 4. No sound projecting devices or loudspeakers shall be permitted on the premises.
 5. Only one on-site pole or ground sign shall be permitted and it shall be located on the property owned by the applicant. The height shall not exceed 30 feet and shall be limited to 200 square feet of gross surface area. Building signs shall be limited as set forth in the zoning ordinance in the "LC" Light Commercial District. Signs shall not be illuminated between the hours of 11:00 p.m. and 7:00 a.m. Only one portable sign shall be permitted on the property.
 6. No body or fender work shall be permitted on the premises and any repair of automobiles shall be conducted within an enclosed building.
 7. All storage, display and parking areas shall be paved with asphalt, concrete or other comparable surfacing.
 8. A five to eight foot high solid wall or fence consisting of masonry, wood, metal panels or an architectural tile screening wall shall be installed along the south property line. The west 20 feet of the fence or wall shall be not more than 3 feet in height.
 9. No building shall be constructed closer than 20 feet to the right-of-way of Topeka Street.
 10. All areas shall be properly policed through inspections by the owner for the proper maintenance and removal of trash.
 11. All improvements required by this resolution or the Zoning Ordinance shall be installed and maintained in good condition.
 12. All parking spaces and display spaces abutting property lines shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces. All parking areas shall have adequate markings for channelization and movement of vehicles.
-

BZA CASE NO. 59-83

2 NOTICES SENT TO APPLICANT/AGENT

10 ~~NOTICES~~ ^{LEGAL ADV.} SENT TO MAPC

1 NOTICES SENT TO CPO

11 NOTICES SENT TO ADJOINING PROPERTY OWNERS

14 TOTAL NOTICES SENT 11-3-83

BOARD OF ZONING APPEALS
Tenth Floor - City Hall
455 North Main, Wichita, Kansas 67202

November 3, 1983

NOTICE TO ADJOINING PROPERTY OWNERS:

CASE NO. BZA 59-83

As required by law, all property owners of record, within 200 feet of a property to be considered for an exception or variance by the Board of Zoning Appeals, are to be notified of the public hearing. An application has been filed by C. W. Klein, Lindy Andeel and T. G. Davis, Jr., d/b/a Kadco, a partnership, 9901 East Kellogg, Wichita, Kansas, requesting an exception.

Pursuant to Section 2.12.590.C, of the Code of the City of Wichita, the applicant is requesting an exception to permit the establishment of a car sales lot on property zoned "LC" Light commercial District. A legal description of the applicant's property is as follows:

Lot 12, EXCEPT beginning at the Northeast corner, thence South 20 feet; thence Northwest to a point 80 feet West of the Northeast corner; thence East to beginning for Street, AND ALL of Lot 14 and the North 7 feet of Lot 16, all in Block 6, ORME AND PHILLIPS ADDITION to the City of Wichita, Sedgwick County, Kansas; and a tract of land adjacent on the north beginning at the southwest corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slope line to a point 20 feet north of the northeast corner of Lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of Lot 12, 80 feet west of the northeast corner of Lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of Lot 12, thence west along the south line of Lot 12, 10 feet to the point of beginning. Generally located on the southeast corner of Topeka and Kellogg.

This application has been assigned Case BZA 59-83. It will be considered by the Board of Zoning Appeals on November 22, 1983 at 1:30 p.m. in the Board Room, First Floor of City Hall, 455 North Main Street, Wichita, Kansas. If you have no interest or objections regarding the requested exception, you have no obligation to appear or comment. If you desire to appear at the Board meeting, you are invited to do so, either in person or by agent or attorney.

It should be noted that the Citizen Participation Organization Area Council may consider this case at its next meeting. Additional information about such a meeting may be obtained by calling the CPO Office, 268-4516.

If you have any questions about the application, please feel free to call the Wichita-Sedgwick County Metropolitan Area Planning Department at 268-4421.

Jack H. Galbraith
Secretary

BOARD OF ZONING APPEALS

CASE NO. 59-83

CITY OF WICHITA, KANSAS

FILED 10-24-83

APPLICATION FOR EXCEPTION

C.W. Klein, Lindy Andeel and T. G. Davis, Jr.
d/b/a Kadco, a partnership

I. Name of Applicant _____

Mailing Address 9901 E. Kellogg Phone 685-1451

Name of Authorized Agent EVERETT C. FETTIS

Mailing Address 120 S. Market, Su 504 Phone 267-7251

Relationship of applicant to property is that of Owner & Lessee
(Owner, Tenant, Lessee, Other)

II. Application is made for an exception as provided in Section

2.12.590.C, Code of the City of Wichita, Kansas, to permit

the establishment of a car lot

on property zoned the L.C. Light Commercial Dist.

located at the SE corner of Kellogg & Topeka

and legally described as: _____

SEE ATTACHED

*see
adv.*

_____, in the City of Wichita.

III. The applicant herein, or his authorized agent, acknowledges:

- a. That he has received an instruction sheet concerning the filing and hearing of this matter;
- b. That he has been advised of the fee requirements established by Section 2.12.580 of the Code of the City of Wichita (Ordinance No. 36-596); and that the appropriate fee is herewith tendered;
- c. That all documents are attached hereto as noted in paragraphs 2, 3, and 4 of the instructions;
- d. That he has been advised of his right to bring action in the District Court of Sedgwick County to appeal the decision of the Board.

Applicant _____

Authorized Agent *Everett C. Fettis*
EVERETT C. FETTIS

OFFICE USE ONLY: Received in Office of Secretary, Board of Zoning Appeals, 2:00 (a.m.-p.m.), OCT. 24, 1983, together with appropriate fee of 200.00.

Signed *[Signature]*

Applicants own the following property:

Lot 12, EXCEPT beginning at the Northeast corner, thence South 20 feet; thence Northwest to a point 80 feet West of the Northeast corner; thence East to beginning for Street, AND ALL of Lot 14 and the North 7 feet of Lot 16, all in Block 6, ORME AND PHILLIPS ADDITION to the City of Wichita, Sedgwick County, Kansas

Applicants lease the following property:

Beginning at the southwest corner of lot 12, block 6 of Urme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slope line to a point 20 feet north of the northeast corner of lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of lot 12, thence west along the south line of lot 12, 10 feet to the point of beginning. The above described tract contains 7,350 square feet more or less.

OWNERSHIP LIST

Property Description

Property Owner

Lot 12, except beginning at the northeast corner; thence south 20 feet; thence northwest to a point 80 feet west of the northeast corner; thence east to beginning for street & all of lot 14, & the north 7 feet of lot 16, Block 6, Orme & Phillips Addition.

KADCO
c/o C. W. Klein
D 9901 E. Kellogg
Wichita, Kansas
67207

Beginning at the northeast corner of lot 6; thence south 95 feet on the east line of lots 6, 8, 10 & 12; thence northwesterly to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12; thence west along said north line to the northwest corner of lot 12; thence north along the west line of lots 6, 8, 10 & 12 to the northwest corner of lot 6; thence east along the north line of lot 6 to the point of beginning, Block 6, Orme & Phillips Addition.

City of Wichita
455 N. Main
Wichita, Kansas
67202

The south 18 feet of lot 16 & the north half of lot 18, Block 6, Orme & Phillips Addition.

Marian E. Arrington
RFD #2
Box 190
✓ Douglas, Kansas
67039

The south half of lot 18, all of lot 20, & all of lots 22 & 24, Block 6, Orme & Phillips Addition.

Ophie Waller
- 730 S. Topeka
Wichita, Kansas
67211

Cathryn L. Bogenreif
- 738 S. Topeka
Wichita, Kansas
67211

Lots 26, 28, 30 & 32, Block 6, Orme & Phillips Addition.

Cathryn L. Bogenreif
D 738 S. Topeka
Wichita, Kansas
67211

Odd lots 5 through 23, inclusive, Block 1, Orme & Phillips Addition.

H. Stan Chilton
- 3010 Grail
Wichita, Kansas
67211

Lots 25 & 27, Block 1, Orme & Phillips Addition

Carl E. Forbes
- 5348 N. Athenian
Wichita, Kansas
67204

(Purchase Contract)
- Kelly Land Co.
514 N. Topeka
Wichita, Kansas
67214

Property Description

Property Owner

Lot 29 & lot 31, except the west 50 feet
Block 1, Orme & Phillips Addition.

Joseph Olden
✓ Marliyn Olden
12540 E. Mt Vernon
Wichita, Kansas
67207

The south 15 feet of lot 5 & all of lot 7,
Block 6, Orme & Phillips Addition

D City of Wichita
455 N. Main
Wichita, Kansas
67202

Lot 13 & the north 10 feet of lot 15,
Block 6, Orme & Phillips Addition

Booth Investment Co. Inc.
✓ 745 S. Emporia
Wichita, Kansas
67211

The south 15 feet of lot 15 & all of
lot 17 & the north 10 feet of lot 19,
Block 6, Orme & Phillips Addition

Same as above

The south 15 feet of lot 19 & all of
odd lots 21 through 29, inclusive,
Block 6, Orme & Phillips Addition,
& the north half of lot 31, Block 6,
Orme & Phillips Addition.

✓ The Grit Printing Co.
nka Booth Investment Co.
745 S. Emporia
Wichita, Kansas
67211

The south 44 feet of lot 17 and the
north 16 feet of lot 19, Topeka,
English's 5th Addition, except that
part taken for condemnation
Case No. A-33119.

✓ The Wilbur E. Walker
Revocable Trust
& The Bernice H. Walker
Revocable Trust
12 Via Roma
Wichita, Kansas
67230

We hereby certify the foregoing to be a true and correct list
of the property owners of the hereinbefore described lots and
tracts within a 200 foot radius of:

Lot 12, except beginning at the northeast
corner; thence south 20 feet; thence north-
west to a point 80 feet west of the north-
east corner; thence east to beginning for
Street, and all of lot 14 and the north 7
feet of lot 16, Block 6, Orme and Phillips
Addition to the City of Wichita, Sedgwick
County, Kansas and Beginning at the southwest
corner of lot 12, Block 6, Orme and Phillips
Addition to Wichita, thence north 95 feet along
the east line of Topeka to a point; thence south-
easterly along the approximate toe of slope line
to a point 20 feet north of the northeast corner of
lot 12; thence south 40 feet to the K.D.O.T.
ownership line; thence northwesterly along the
K.D.O.T. ownership line to a point on the north line
of lot 12, 80 feet west of the northeast corner of
lot 12; thence west along the K.D.O.T. ownership
(continued on next page)

Page 3

(continued from last page)

line 50 feet; thence south 25 feet to a point 10 feet east of the southwest corner of lot 12; thence west along the south line of lot 12, 10 feet to the point of beginning.

as shown by the last deed of record on file in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 24th day of October, 1983, at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE CO. INC.

By

Mary Gable
Vice President

Order No: 326705
cf

CITY OF WICHITA
Route Slip
(PLEASE CIRCLE DESTINATION)

| | | |
|----------------------|-------------------------|-------------------------|
| Administration | Credit Union | Library |
| Budget & Mgmt. | Emergency Com. | M.T.A. |
| Contracts Admin. | Engineering | Municipal Court |
| Controller | Admin./Planning | Operations/Maint. Dept. |
| Data Processing | Construction/Survey | Admin. Research |
| Purchasing | Design | Fleet Maintenance |
| Microfilm | Fire Department | Flood Control |
| Print Shop | Grievance Office | Litter Control |
| Stores/Mail Room | Health Department | Street Services |
| Ret. & Insurance | Housing/Econ. Dev. | Traffic Oper./Maint. |
| Treasurer | Admin. & Finance | Park Department |
| Airport Authority | Central Inspection | Planning Department |
| Art Museum | Energy Resources | Graphics |
| City Commission | Industrial Development | Police Department |
| City Manager | Local Housing Authority | Water Department |
| City Clerk | Human Resources | Accounting |
| Personnel | Admin. Services | Engineering |
| Public Affairs | C.P.O. | Filtr. Plant |
| | Civil Rights/EEO | Mains & Services |
| Community Facilities | Neighborhood Services | Sewer Maintenance |
| Building Services | Planning/Evaluation | Water Pol. Control |
| Century II | | |
| Community Arts | Law Department | Court House |
| Omnisphere | | |

For TIM CAIN
 For your information _____ For your comments _____
 MESSAGE:

(over)
 LYTLE
 Signed _____ Date 10/10
 #00-013 Nov. 82

TIM:
 1. ANY APPROVAL FOR A RECR. VEHICLE SALES LOT SHALL BE SUBJECT TO THE APPLICANT RECEIVING DD. OF ZONING APPEALS APPROVAL FOR AN EXEPTION.
 2. BEFORE THE MINOR STREET PRIVILEGE IS ISSUED, BZA ACTION SHOULD HAVE TAKEN PLACE.
 3. I THINK THIS AGREEMENT SHOULD BE REVIEWED BY DEPT. OF LAW PRIOR TO SUBMISSION TO CITY COMM. FOR ACTION. COULD BE A PROBLEM IF PROP. WERE CONDEMNED FOR ST. PURPOSES.
 LYTLB

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612

JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor



October 6, 1983

Agreement No. 47-83
(BC) 54-87 K-038 - 3(43)
Joint Use of Right of Way - Commercial Business
City of Wichita
Sedgwick County

Mr. Mike Lindebak
City Engineer
City Hall - 455 N. Main
Wichita, Kansas 67202

Dear Mr. Lindebak:

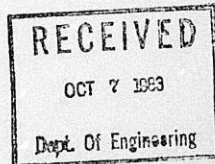
Upon the request of KADCO and the City, we have prepared an agreement form setting forth the responsibilities of both parties in connection with the use of a portion of City right of way for a recreational (parking) area.

The proposed agreement becomes the official document permitting the joint use when fully executed and approved by the Secretary of Transportation and the Federal Highway Administration.

We are transmitting with this letter, the original and four copies of the agreement form for your review and action by the City. If the proposed form is agreeable to the City, we would appreciate your obtaining the necessary signatures from officials of the City and KADCO then having the original and two copies executed by the City and returned to this office for our further handling with the Secretary. The remaining two copies may be retained by KADCO and the City for reference until you receive your fully executed copies.

Your attention is called to statements in the agreement concerning implementation of the Civil Rights Act of 1964 as it pertains to all parties to contracts or agreements.

In connection with executing the agreement, the City will no doubt find it necessary to pass a resolution authorizing the



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Mayor and City Clerk to execute the agreement. We should be furnished a copy of such resolution as the City adopts or, in the alternative, a certified copy of excerpts of the City's action in order to complete our files.

If you have any questions concerning the proposed agreement, please feel free to call upon this office.

Very truly yours,

Raymond E. Olson
RAYMOND E. OLSON, P. E.
Chief of Rural and
Urban Development

REO:ls

Encl.

cc: Michael O'Keefe, Director of Planning and Development
Milton S. Fry, District V Engineer, w/a

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

A G R E E M E N T

This agreement made and entered into this _____ day of _____, 19____, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

R E C I T A L S:

WHEREAS, The licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Beginning at the southwest corner of lot 12, block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slope line to a point 20 feet north of the northeast corner of lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of lot 12, thence west along the south line of lot 12, 10 feet to the point of beginning. The above described tract contains 7,350 square feet more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities, or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary, or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the Licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the uses herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereinafter and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR

ATTEST:

CITY CLERK

(SEAL)

APPROVED:

JOHN B. KEMP, P. E.
Secretary of Transportation

By _____



IMPORTANT MESSAGE

FOR Jack
DATE 6-27 TIME 10:05 A.M.
P.M.

WHILE YOU WERE AWAY

Tim Cain

OF _____

PHONE No. 4601

| | | |
|-------------------|--------------------|-------------------------------------|
| TELEPHONED | PLEASE CALL | <input checked="" type="checkbox"/> |
| CALLED TO SEE YOU | WILL CALL AGAIN | <input type="checkbox"/> |
| WANTS TO SEE YOU | RETURNED YOUR CALL | <input type="checkbox"/> |

MESSAGE Topolna Kellogg
- Codes -

SIGNED E

FORM 000-017

IMPORTANT MESSAGE

FOR Jack G
DATE 6-27-83 TIME 9:55 A.M.
P.M.

WHILE YOU WERE AWAY

Everett Pettis

OF _____

PHONE No. 267 7251

| | | |
|-------------------|--------------------|-------------------------------------|
| TELEPHONED | PLEASE CALL | <input checked="" type="checkbox"/> |
| CALLED TO SEE YOU | WILL CALL AGAIN | <input type="checkbox"/> |
| WANTS TO SEE YOU | RETURNED YOUR CALL | <input type="checkbox"/> |

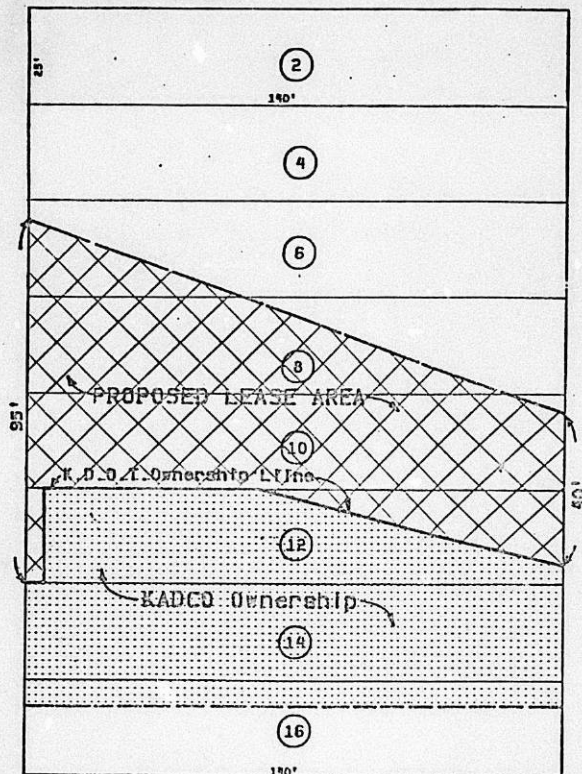
MESSAGE _____

SIGNED _____

FORM 000-017

KELLOGG

TOPEKA



PROPOSED LEASE AREA DESCRIPTION:

Beginning at the Southwest Corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence North 95 feet along the East line of Topeka to a point, thence Southeasterly along the approximate toe of slope line to a point 20 feet North of the Northeast Corner of Lot 12, thence South 40 feet to the K.D.O.T. ownership line, thence Northwesterly along the K.D.O.T. ownership line to a point on the North line of Lot 12, 80 feet West of the Northeast Corner of Lot 12, thence West along the K.D.O.T. ownership line 50 feet, thence South 25 feet to a point 10 feet East of the Southwest Corner of Lot 12, thence West along the South line of Lot 12, 10 feet to the point of beginning.

The above described tract contains 7,350 square feet more or less.

KADCO ownership contains 6,930 square feet more or less.

November 17, 1983

John Dekker, Director of Law

Glen E. Lytle, Special Assistant for Zoning

BZA 59-83 - Request for Legal Opinion

This department has recently received an application for an "Exception" to permit the establishment of an automobile sales lot on the property located at the southeast corner of Kellogg and Topeka. Part of the application area is owned by KADCO, a partnership, and is zoned the "LC" Light Commercial District. The remainder of the application area is street right-of-way and is shown by the attached map as a cross hatched area to be leased from K.D.O.T.

The enclosed map shows the area in blue as right-of-way that was condemned in 1950 prior to the time the old original overpass was being reconstructed. The area in green is the area that was deeded in lieu of condemnation in 1976. The red line is complete access control. Also attached is a copy of a tentative joint agreement that has apparently been worked out with K.D.O.T.

The Board of Zoning Appeals will be considering this case on Tuesday, November 22, 1983. I would appreciate your comments on the legality of the use of public right-of-way for such a use; and should the following sections of the joint agreement be amended to coincide with the restrictions that might be established by the Board of Zoning Appeals.

- #1. The area to be leased is not just a parking area for vehicles, but in fact to be used as an automobile sales lot.
- #13. The number, area and location of on-premise signs should not conflict with the limitations established by the Board of Zoning Appeals as set forth in the Zoning Ordinance.

This agreement will probably be forwarded to the City Commission by the City Engineer for consideration under the provisions of a minor street permit in the near future.

Glen E. Lytle
Special Assistant for Zoning

GEL:sad

cc: Joe Bogle, Assistant City Attorney
Mike Lindebak, City Engineer
David Stowe, Director of Operations & Maintenance
Robert A. Lakin, Director of Planning

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

AGREEMENT

This agreement made and entered into this ____ day of _____, 19____, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

RECITALS:

WHEREAS, The licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Beginning at the southwest corner of lot 12, block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slopeline to a point 20 feet north of the northeast corner of lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of lot 12, thence west along the south line of lot 12, 10 feet to the point of beginning. The above described tract contains 7,350 square feet more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities, or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary, or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the Licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the uses herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereinafter and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR

ATTEST:

CITY CLERK

(SEAL)

APPROVED:

JOHN B. KEMP, P. E.
Secretary of Transportation

By _____



KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment

To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964 AND
REHABILITATION ACT OF 1973

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23 and 27), issued pursuant to such Act, hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin, as more specifically set out in the following eight 'Nondiscrimination Clauses'.

CLARIFICATION

Where the term 'consultant' appears in the following seven 'Nondiscrimination Clauses', the term 'consultant' is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

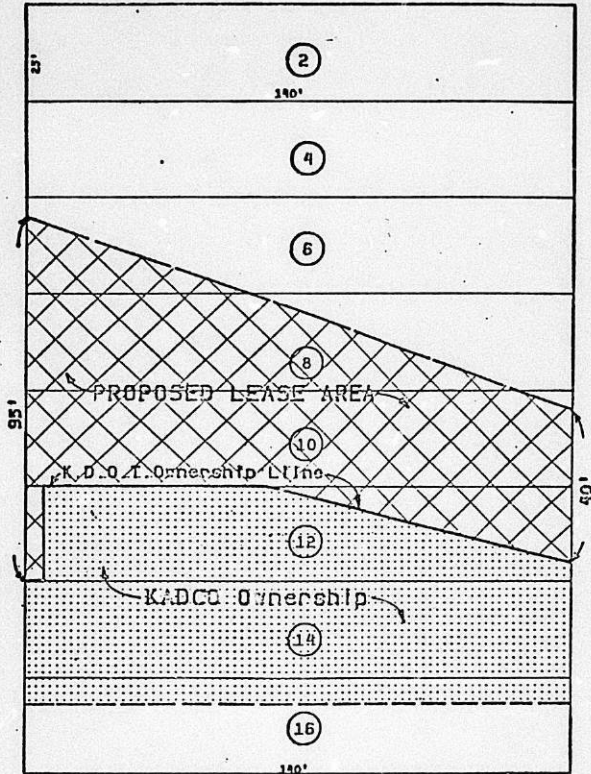
During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the 'consultant's'), agrees as follows:

- (1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, age, physical handicap, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of Transportation of the State of Kansas will be permitted access to the consultants books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, physical handicap, or national origin.

- (6) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but limited to,
- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) **Disadvantaged Business Obligation**
- (a) Disadvantaged Businesses as defined in the Regulations, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, religion, color, sex, age, physical handicap or national origin in the award and performance of Federally-assisted contracts.
- (8) **Incorporation of Provisions:** The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

KELLOGG

TOPEKA



PROPOSED LEASE AREA DESCRIPTION:

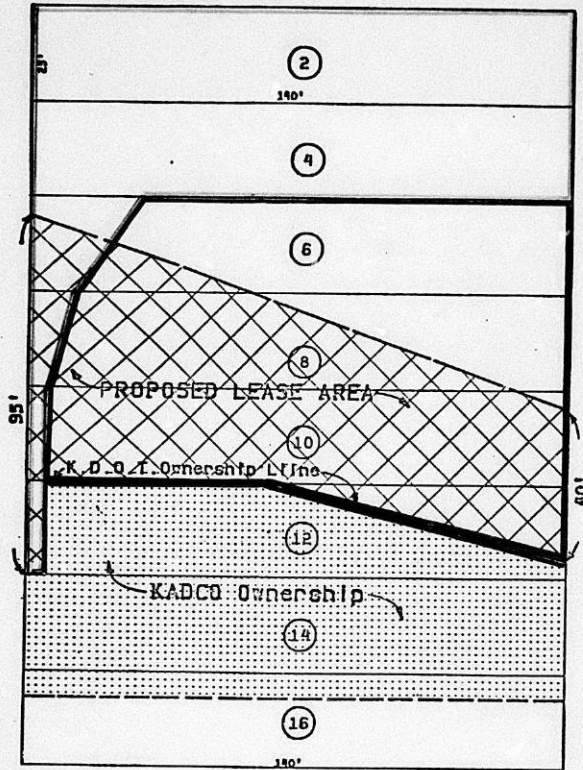
Beginning at the Southwest Corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence North 95 feet along the East line of Topeka to a point, thence Southeasterly along the approximate toe of slope line to a point 20 feet North of the Northeast Corner of Lot 12, thence South 40 feet to the K.D.O.T. ownership line, thence Northwesterly along the K.D.O.T. ownership line to a point on the North line of Lot 12, 80 feet West of the Northeast Corner of Lot 12, thence West along the K.D.O.T. ownership line 50 feet, thence South 25 feet to a point 10 feet East of the Southwest Corner of Lot 12, thence West along the South line of Lot 12, 10 feet to the point of beginning.

The above described tract contains 7,350 square feet more or less.

KADCO ownership contains 6,930 square feet more or less.

KELLOGG

TOPEKA



PROPOSED LEASE AREA DESCRIPTION:

Beginning at the Southwest Corner of Lot 12, Block 6 of Orme and Phillips Addition to Wichita, thence North 95 feet along the East line of Topeka to a point, thence Southeasterly along the approximate toe of slope line to a point 20 feet North of the Northeast Corner of Lot 12, thence South 40 feet to the K.D.O.T. ownership line, thence Northwesterly along the K.D.O.T. ownership line to a point on the North line of Lot 12, 80 feet West of the Northeast Corner of Lot 12, thence West along the K.D.O.T. ownership line 50 feet, thence South 25 feet to a point 10 feet East of the Southwest Corner of Lot 12, thence West along the South line of Lot 12, 10 feet to the point of beginning.
The above described tract contains 7,350 square feet more or less.

KADCO ownership contains 6,930 square feet more or less.

DAK-300000

Original Compared
With Record

OCT 12 1976

3 01183
STATE DEPARTMENT

GENERAL WARRANTY DEED

PH 215 DE 264

D-9309

Reg # 8-4694, 4695 & 4696

THIS INDENTURE made this 28th day of September, 1976, between BLANCH A. MELICK, a single person, a/k/a BLANCH MELICK a/k/a BLANCH ARRINA MELICK, of Sedgwick County, in the State of Kansas, of the first part, and THE CITY OF WICHITA, KANSAS, of Sedgwick County, in the State of Kansas, of the second part.

WITNESSETH, that the said party of the first part, in consideration of the sum of Seventy Nine Thousand Five Hundred Dollars, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, its heirs and assigns, all the following described REAL ESTATE situated in the County of Sedgwick and State of Kansas, to-wit:

(a) A PERMANENT EASEMENT for controlled access highway right-of-way and removal of borrow material over and upon a tract of land in Lots 6, 8, 10 and 12, Block 6, Orme and Phillips Addition to Wichita, Sedgwick County, Kansas, described as follows: BEGINNING at the Northeast corner of said Lot 6; thence South 95.0 feet along the East line of said Lots 6, 8, 10 and 12; THENCE NORTHWESTERLY TO A POINT ON THE NORTH LINE, 80.0 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 12; THENCE WEST ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID LOT 12; thence North along the West line of Lots 6, 8, 10 and 12 to the Northwest corner of said Lot 6; thence East along the North line of said Lot 6 to the place of beginning. The above contains 10,388 square feet, more or less, exclusive of the existing highway. Lands abutting said highway shall have no right or easement of access thereto.

(b) A TEMPORARY EASEMENT for removal, salvage or demolition of the building located wholly or in part on the tract described below and including the right to eradicate foundations, floors or debris and to level and grade the area in conjunction with the construction of the highway on adjacent right-of-way over and upon a tract of land in Lot 12, Block 6, Orme and Phillips Addition to Wichita, Sedgwick County, Kansas, described as follows: BEGINNING at the Northwest corner of said Lot 12; thence South along the West line to the South line of said Lot; thence East along the South line to the East line of said Lot; thence North 5.0 feet along said East line; thence Northwesterly to a point on the North line, 80.0 feet West at the Northeast corner of said Lot; thence West along said North line to the place of beginning. The above contains 2,700 square feet, more or less.

This easement expires ninety days after completion of the highway construction for which this easement is acquired.

in lieu of condemnation.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances hereunto belonging or in anywise appertaining forever.

RECORDED BY
INDEXED BY
OCT 28 1976
CROME & PHILLIPS
COUNTY CLERK

LAND RECORD

DESCRIPTION: NW 1/4 Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56 ✓
(a) Legal: All of lots 2 and 4, Block 6, Orme and Phillips Add'n.

(b) Location: S. side of Kellogg between Topeka and Emporia
(c) Size: 50 x 140 Improvements: Area: Stories: Material:

PURPOSE: Highway 54 R. of W. **TRACT #10**

HOW ACQUIRED: Condemned
Deed: none City Clerk's No. St. file# of D. Book No.: Page: Date:

Condemnation Title: Widening of Kellogg between Laura and Market

Ordinance No. 16-635 Date: 6/22/50 Ordinance No. 16-702 Date: 7/13/50
Dist. Court Vol.: A Case No.: 33119 Date: 8/22/50 R. of D. No.: M 263 Page: 321
Date: 8/22/50 Grantor: Robert J. Armstrong Grantee: City of Wichita

ACTUAL COST: Site 10,750 Improvement: Total:
ESTIMATED COST: Site: Improvement: Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

Key# 64693

..(a)..

LAND RECORD

DESCRIPTION: NW 1/4 Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56 ✓
(a) Legal: The W. 5 ft. of lots 10 and 12, Block 6, Orme and Phillips Addition.

(b) Location: E. side of Topeka just S. of Kellogg
(c) Size: 5 x 50 Improvements: Area: Stories: Material:

PURPOSE: Highway 54 R. of W. **TRACT #8**

HOW ACQUIRED: Condemned
Deed: none City Clerk's No. St. file# of D. Book No.: Page: Date:

Condemnation Title: Widening of Kellogg between Laura and Market

Ordinance No. 16-635 Date: 6/22/50 Ordinance No. 16-702 Date: 7/13/50
Dist. Court Vol.: A Case No.: 33119 Date: 8/22/50 R. of D. No.: M 263 Page: 321
Date: 8/22/50 Grantor: Mattie G. Reeves Grantee: City of Wichita

ACTUAL COST: Site 250.00 Improvement: Total:
ESTIMATED COST: Site: Improvement: Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

..(a)..

LAND RECORD

DESCRIPTION: NW $\frac{1}{4}$ Section: 28 Twp: 27 Range: 1E Plat Book Page: 9-56 ✓
(a) Legal: Beginning at the NW corner of lot 6, blk 6, Orme & Phillips Add'n; thence E. 30 ft; thence S. Westerly to a point on the S. line of lot 6 which is 14 ft. E. of the SW corner of lot 6; thence S. Westerly to a point on the S. line of lot 8, Blk 6, Orme & Phillips Add'n, which (or-
(b) Location: SE corner of Topeka and Kellogg
(c) Size: 750 SF Improvements: Area: Stories: Material:

PURPOSE: Highway 54 N. of W.

TR# 9

HOW ACQUIRED: Condemned

Deed: none City Clerk's No. St. file R. of D. Book No. Page: Date:

Condemnation Title:

Widening of Kellogg between Laura and Market

Ordinance No. 16-635 Date: 6/22/50 Ordinance No. 16-702 Date: 7/13/50

Dist. Court Vol.: A Case No.: 33119 Date: 8/22/50 R. of D. No.: M 263 Page: 321

Date: 8/22/50 Grantor: Blanch Melick Grantee: City of Wichita

ACTUAL COST: Site 650.00

Improvement:

Total:

ESTIMATED COST: Site:

Improvement:

Total:

DATE EXEMPTION APPLICATION FILED:

Exempted by State Order # 622, dated 2/14/51

.. (2) - 2000

LEGAL (continued)

is 5 ft. E. of the SW corner of said lot 8; thence W. 5 ft; thence N. 50 ft. to the place of beginning in Wichita, Sedg. Co. Kan.

PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

A G R E E M E N T

This agreement made and entered into this ___ day of _____, 19___, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

R E C I T A L S:

WHEREAS, The licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

Beginning at the southwest corner of lot 12, block 6 of Orme and Phillips Addition to Wichita, thence north 95 feet along the east line of Topeka to a point, thence southeasterly along the approximate toe of slopline to a point 20 feet north of the northeast corner of lot 12, thence south 40 feet to the K.D.O.T. ownership line, thence northwesterly along the K.D.O.T. ownership line to a point on the north line of lot 12, 80 feet west of the northeast corner of lot 12, thence west along the K.D.O.T. ownership line 50 feet, thence south 25 feet to a point 10 feet east of the southwest corner of lot 12, thence west along the south line of lot 12, 10 feet to the point of beginning. The above described tract contains 7,350 square feet more or less.

2. The Licensee agrees to prepare or have prepared any necessary plans and specifications for the development of the area. Upon approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration, said plans are by reference made a part of this agreement. The Licensee further agrees that any revision in the design of the development, as originally approved for construction, or any change in the authorized use of the right of way shall receive prior review and approval by the Licensor, the State Transportation Engineer, and the Federal Highway Administration.

3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities, or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

7. Licensee agrees that the area will not be used to store any material or used for purposes which would constitute a potential fire hazard or any other hazard which would impair the use or safety of the public roadway.

8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary, or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

11. Licensee agrees the licensor reserves the right for itself, the Federal Highway Administration and the Secretary, to enter upon said premises at any time to construct, inspect and maintain the right of way or for any other highway purpose in a manner calculated so as not to unreasonably interfere with the Licensee's use of the premises. If the Licensor or the Secretary anticipate that activities under this section may require the disruption of normal operation of the licensed premises, the Licensor or the Secretary shall notify the Licensee of the need for such activities and the expected period of disruption.

12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

13. Licensee agrees that on-premises signs shall be restricted to those indicating ownership or indicating direction and control of vehicles. Installation of such signs shall be subject to regulation by Licensor, with concurrence of the Secretary, with respect to number, size, location and design.

14. Licensee agrees that as part of the consideration hereof, that it will use said premises in compliance with requirements imposed pursuant to the Civil Rights Act of 1964 and any amendment thereto. (See Exhibit "B" which is incorporated herein by reference) In the event of breach of any of the above nondiscrimination covenants, the state shall have the right to terminate the license and to re-enter and repossess said land and the facilities thereon, and hold the same as if said license had never been made or issued.

15. Licensor warrants and represents to Licensee that it has full power and authority to enter into this license for the uses herein described, and that it has complied with all laws and regulations applicable to the entering of this agreement. Licensor further warrants that Licensee, upon paying all license fees hereinafter and observing all terms under this license, shall have the right to use the licensed premises hereunder.

16. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR _____

ATTEST:

CITY CLERK _____

(SEAL)

APPROVED:

JOHN B. KEMP, P. E.
Secretary of Transportation

By _____



PROJECT NO. (BC) 54-87 K-038-3(43)

JOINT USE OF RIGHT OF WAY - COMMERCIAL BUSINESS

CITY OF WICHITA, KANSAS

A G R E E M E N T

This agreement made and entered into this ____ day of _____, 19____, by and between the City of Wichita, a municipal corporation of the State of Kansas, hereinafter called the Licensor, and KADCO, hereinafter called the Licensee.

R E C I T A L S:

WHEREAS, The licensee desires to use one tract of land that is part and parcel of the state highway facility, referred to as a city connecting link and under the jurisdiction of the City of Wichita, Kansas, as a parking area for vehicles in connection with a commercial business, and

WHEREAS, Licensor, with approval of the Secretary of Transportation of the State of Kansas, is willing to permit joint use of the right of way providing such use does not impair the use and safety of the existing public roadway.

NOW, THEREFORE, in consideration of the premises the parties hereto mutually agree as follows:

1. Licensor agrees to grant, license and empower, to the extent of its interest therein, the Licensee the right and privilege to use one tract of land acquired for the construction of US-54 highway in Wichita, Sedgwick County, Kansas as a parking area for vehicles in connection with a commercial business. Said privilege to extend to the location shown on the print which is marked "Exhibit A" and incorporated herein by reference, specifically described as follows:

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3. It is agreed that all costs of Planning, construction and other contingencies that may arise in connection therewith, shall be at the expense of the Licensee.

4. Disposition of income received from the authorized use of the right of way shall be the Licensor's responsibility and credit to the state or federal interest shall not be required.

5. It is agreed that the authority to use the right of way shall not be transferred, assigned or conveyed without the written approval of the Licensor, the Secretary, and the Federal Highway Administration.

6. The Licensor may in its own behalf terminate this license at any time for cause by giving Licensee a thirty (30) day written notice of such intent. "For cause" includes, but is not limited to, failure of the Licensee to properly maintain the facilities, cessation of use or abandonment of the facilities, or the need to use the joint use areas for highway purposes.

The cost of vacation or abandonment of said area, including restoring the area, to its former condition, shall be paid by the Licensee to the extent required by the Secretary and Licensor. This license shall be revocable by any party to this agreement in the event that the facility ceases to be used or is abandoned.

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8. Licensee agrees that access to the area will be permitted only through the adjacent property on the south, and the existing barrier fence will be moved and reset or replaced on the east and north sides of the area to maintain control of access rights.

9. Licensee agrees to provide the necessary safeguards to protect the public and the highway facility and further agrees that they will repair or replace any damages to the highway facility caused by their use thereof, such repair or replacement to be made within a reasonable time after written notice has been given to the Licensee by either the Licensor or the Secretary, or in lieu thereof, at the election of Licensee, compensation may be paid to said Licensor or the Secretary for the necessary expense for said repairs. Licensee shall carry adequate insurance to cover its obligation under this section. It is understood and agreed to by all the parties herein, that the Licensee shall not be granted the use of the tract of land referred to herein and the terms of this agreement will not be in effect until the Licensee has submitted evidence to the Secretary and the Licensor that it has public liability insurance and said insurance has been approved by the Secretary and the Licensor.

10. The Licensee will save the Licensor and the Secretary and their authorized representatives harmless from any and all costs, liabilities, expenses, damages, suits, judgments and claims of any nature whatsoever arising out of or in connection with the provisions or performance of this contract, or subcontracts entered into in connection therewith, or the maintenance of the hereindescribed improvement.

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12. Licensee agrees that no permanent structure will be built on said right of way, but Licensor agrees that the Licensee may make such temporary improvements, including paved parking, lights and drainage, as are necessary in order that the said premises may be used for the purposes hereinbefore stated. Licensee further agrees that the areas provided will be functional and orderly, that any screening measures deemed necessary to improve the appearance of the areas will be provided along with proper maintenance of said right of way to insure a pleasing appearance.

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No. 47-83

16. It is further understood that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the Licensee, the Secretary and the Licensor and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement by their proper officers on the day and year first above written.

THE CITY OF WICHITA, KANSAS

KADCO

MAYOR

ATTEST:

CITY CLERK

(SEAL)

APPROVED: /

JOHN B. KEMP, P. E.
Secretary of Transportation

By _____



KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment

To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964 AND
REHABILITATION ACT OF 1973

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23 and 27), issued pursuant to such Act, hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin, as more specifically set out in the following eight 'Nondiscrimination Clauses'.

CLARIFICATION

Where the term 'consultant' appears in the following seven 'Nondiscrimination Clauses', the term 'consultant' is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the 'consultant's'), agrees as follows:

- (1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, sex, age, physical handicap, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, physical handicap, or national origin.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of Transportation of the State of Kansas will be permitted access to the consultants books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, physical handicap, or national origin.

- (6) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but limited to,
- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) **Disadvantaged Business Obligation**
- (a) Disadvantaged Businesses as defined in the Regulations, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, religion, color, sex, age, physical handicap or national origin in the award and performance of Federally-assisted contracts.
- (8) **Incorporation of Provisions:** The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

FORM 29

PAYMENT NOTICE
City of Wichita

| | | | |
|-------|------------------|------------|--------|
| Bldg. | Use of Str. | Code Bks | Copies |
| Elec | Elev. Insp. | Hse Moving | Lic. |
| Mech | Boiler Insp. | Pav. Cuts | Cert. |
| Plbg | Exam Fees | Sewer | Elev. |
| Signs | Plan Rev. (P.W.) | Cement | M.S.P. |
| | Planning | | |

| DESCRIPTION | AMOUNT |
|-----------------|-------------------|
| CITY B7A EXCEPT | 200 ⁰⁰ |

NAME EVERETT C FETTIS

ADDRESS 170 So. MK

FUND 25-40071-003 DUE DATE

COMMENTS

DATE 06241983 BY [Signature]

*

This BZA. Case
Has a Large Drawing
On 35mm Microfilm

Roll # 2