

FACADE EASEMENT FACADE IMPROVEMENT PROGRAM

THIS FACADE EASEMENT made this _____ day of _____, 2007, by and between 154 Old Town Development, LLC, hereinafter called Grantor and the City of Wichita, Kansas, hereinafter called Grantee:

WITNESSETH THAT,

WHEREAS, the grantee is a municipal corporation pursuant to state law; and

WHEREAS, the grantee is authorized pursuant to K.S.A. 12-6a01 et. seq. to make or cause to be made improvements which confer a special benefit upon a property within a definable area of the city; and,

WHEREAS, the grantee may levy and collect special assessments upon property deemed by the governing body to be benefited by such improvement; and ,

WHEREAS, the grantee may acquire an interest in property when necessary for any the purposes of the statute; and,

WHEREAS, the grantee is authorized to accept easements necessary for improvements to be financed through special assessment financing pursuant to K.S.A. 12-6a01; and,

WHEREAS, the grantor is the owner in fee simple of the improved real property consisting of lots and a building located at 154 N. Emporia, Wichita, Kansas (the "property"); and,

WHEREAS, the Grantor has submitted a Facade Improvement Petition for special assessment financing to improve, restore and enhance the facade of the premises; and,

WHEREAS, the grant of a facade easement by the grantor to the grantee will assist in the improvement of the property;

NOW, THEREFORE, in consideration of the sum of ONE and NO/100 DOLLARS (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the grantor does hereby grant, bargain, sell and convey to the grantee, its successors and assigns, a facade easement in and to the building on the property described herein (sometimes herein, such building being referred to as the "premises") .

The easement granted herein (which is more particularly described in Attachment "A" and which is incorporated herein by reference) shall constitute a binding servitude upon the premises and shall be deemed to run with the said premises for a period of fifteen (15) years (or such lesser period of time if the special assessments for façade improvement are earlier extinguished), with said period being contemporaneous with the period of time that the property is encumbered with special assessment payments related to improvements made to the building's facade. As a further condition of said easement, Grantor agrees to the following covenants, restrictions and obligations related to said facade:

1. Without the express written consent of the Grantee, signed by an authorized representative of the Grantee, no construction, alteration, remodeling or other action shall be undertaken or permitted to be undertaken which would materially affect the exterior facade improvements on the premises (including, without limitation the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the premises (provided, however, that the foregoing shall not prevent maintenance and repairs undertaken in the ordinary course of Grantee's business, with such repairs/maintenance not requiring Grantor's consent hereunder.) In the event the Grantee does consent to construction, alteration, remodeling or other action which would affect the exterior facade of improvements on the premises, the Grantor agrees that such construction, alteration, remodeling or other action will conform with applicable local and state standards for construction or restoration or rehabilitation of historic property. Grantee agrees at all times to maintain the premises in good and sound state of repair and to bear the cost of all maintenance and repair of the premises.

2. The property shall not be divided, diminished or subdivided nor shall the property ever be devised or conveyed except as a unit.

3. The premises shall only be used for a use consistent with the zoning ordinances of the City of Wichita.

4. No other structures may be constructed on the property during the term of this facade easement without the express written permission of the Grantee, signed an authorized representative of the Grantee (provided, however, that the foregoing shall not prevent construction relating to (i) replacement of the existing structures on the property due to reasonable wear and tear, casualty or condemnation; and (ii) construction of appurtenances to the premises, so long as the same do not adversely impact the building and comply with applicable code and the terms of this easement.).

5. No utility transmission lines, except those required by the existing structures or by structures permitted by the Grantee, may be placed on or over the property.

6. No material topographical changes shall be made or allowed on the premises without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

7. Grantor agrees that representatives of the Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the premises. Inspections will normally take place on the exterior of the structures on the premises; however, Grantor agrees that representatives of the Grantee, its successors and assigns, shall be permitted to enter and inspect the interior of the premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and such inspection shall not materially and adversely impact Grantor's business activities in the premises. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Grantor and Grantee, its successors or assigns, and Grantor will not unreasonably withhold their consent in determining a date and time for such inspections.

8. In the event of a violation of any covenant or restriction herein, the Grantee, its successors and assigns, following no less than thirty (30) days notice to Grantor of the violation, may institute suit to enjoin such violation and to require restoration of the premises in compliance with the covenants or restrictions herein. The Grantee, its successors or assigns, shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder (following expiration of the thirty (30) day notice and cure period set forth above), and in the event Grantor is found to have violated any of their obligations following expiration of such notice and cure period, Grantor shall reimburse Grantee, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and reasonable attorneys' fees.

9. Grantor agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the premises, or any part thereof during the term of this facade easement. Grantor agrees to give Grantee written notice of any sale or mortgage of the premises or any part thereof within a reasonable time after such sale or mortgage.

10. Grantor agrees to maintain the facades of the premises in materially its original condition and configuration or in a condition or configuration which is agreed to by the Grantee.

11. Nothing herein contained shall impose any obligation or liability on the Grantee for the restoration, renovation, preservation or maintenance of the facades of the premises or any part of the premises. Excepting any damage/expenses/claims dues to Grantee's gross negligence or willful misconduct, the Grantor shall indemnify and hold harmless the Grantee from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the premises or any part thereof or in connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the premises.

12. The Grantor shall maintain insurance on the premises in such amount and on such terms as will allow the Grantee to restore, repair or rebuild the facade of the premises in the event the facade is

damaged or destroyed. In the event of damage to or destruction of the facades of the premises, the Grantor alone may determine that the facade of the premises cannot be reasonably restored, repaired or reconstructed. In such event, the Grantee shall be entitled to receive from the Grantor the greater of the following: the fair market value of the easement granted herein at the time the easement was granted or the fair market value of the easement granted herein immediately before the facade of the premises was damaged or destroyed. However, any payment to the Grantee under the terms of this paragraph shall not terminate the easement granted herein unless the façade is fully destroyed beyond reasonable ability to repair (as determined by Grantor in its reasonable discretion), and the terms of the easement which are still applicable to the premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Grantor maintains the insurance coverage required by this paragraph. In the event the Grantee receives any payment under the terms of this paragraph, the Grantee shall use such payment in a manner consistent with the purpose of this easement.

13. Grantor acknowledges that the easement granted herein gives rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the premises. Thus, if a subsequent unexpected change in the conditions surrounding the premises makes it impossible or impracticable to preserve the premises for the purposes for which the easement was granted and restrictions imposed by the easement granted herein are terminated by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the premises, will be entitled to a portion of the proceeds determined in accordance with the ratio that the fair market value of the easement granted herein determined on the date of this Facade Easement is executed, unless state law determines that the Grantor is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by the Facade Easement. In the event the Grantee receives such proceeds from the subsequent sale, exchange or involuntary conversion of the premises, the Grantee shall use such proceeds in a manner consistent with the terms conservation/enhancement purposes of the easement.

The covenants and restrictions imposed by the aforesaid, shall not only be binding upon the Grantor, but also upon their heirs, assigns, and all other successors in interest, and shall continue as a servitude running for the fifteen year term of the Facade Easement with the land and shall survive the Grantor and any termination of the Grantee's existence. All rights reserved herein to the Grantee shall run for the benefit of and be exercised by its successors, assigns, or by its designee duly authorized.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

GRANTOR: 154 Old Town Development, LLC

[Signature] Dec 15, 2006

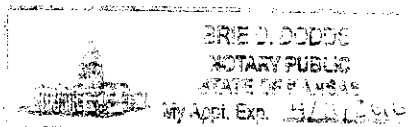
(Date)
Brend Saville, Managing Member
State of Kansas)
County of Shawnee) 12/15/06
(Date)

Signed or attested before me on
December 15, 2006 by
Brend Saville

Brie D. Dodds

Notary Public

(Seal)



My appointment expires: 4/11/2010

GRANTEE:

By Direction of the City Council

Carlos Mayans,
Mayor

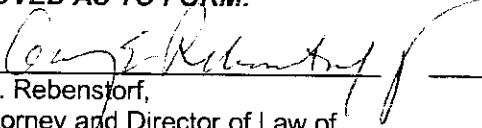
(Date)

ATTEST:

Karen Sublett,
City Clerk

(Date)

APPROVED AS TO FORM:



Gary E. Rebenstorf,
City Attorney and Director of Law of
the City of Wichita

12/22/00
(Date)

ATTACHMENT A

**Lots 13 & 15, Emporia Ave. J.R. Mead's Addition
to Wichita, Sedgwick County, Kansas**



FACADE IMPROVEMENT PROGRAM



APPLICATION FORM

Name of Applicant 154 Old Town Development, LLC

Name of Business 154 Old Town Development, LLC

Address of Business 155-N. Market, Suite 501 154 N EMPORIA

Telephone Number 316-262-2442 Fax Number 316-262-2696

E-Mail Address bdodds@landmarkrealestate.net

Type of Business

Applicant is the [X] Property Owner [] Business Owner [] Other

How long has the business been at the current address?

When does your current lease expire? n/a

Property Owner's Name: (if different) same as applicant

Property Owner's Address: 155 N. Market, Suite 501 Wichita, KS 67202

Property Owner's Signature [Signature] - Brad Saville

Property Owner's Telephone Number: (316) 262-2442

NOTE: If you are not the property owner, please have the property owner or an authorized representative co-sign this application. If more than one property owner, please attach a list with name(s) and address(es) of each owner. All owners must sign the petition.

Please provide a description of the scope of work to be accomplished on this facade improvement project:

The property and parking lot located at 154 N. Emporia will be improved to include power-washing the exterior, tuck pointing and repairing brick, painting, installing new doors and several new windows and awnings on the north and west sides. The parking lot will be improved and include a decorative fencing system, and several new irrigated landscaping beds will be installed.

Meridian Construction- Darrell Leffew						
PROJECT NAME / ADDRESS 154 N. Emporia						
	Total Project Cost	T.I Grant	Landscaping Grant	Façade Grant	Not Eligible	
<i>Architect</i>	\$5,500.00			\$5,500.00		
<i>Engineer Fees</i>	\$3,300.00			\$3,300.00		
<i>Landscape Plan</i>	\$1,650.00		\$1,650.00			
<i>Historic Design Costs</i>	\$1,650.00			\$1,650.00		
INTERIOR IMPROVEMENTS						
Flooring	\$5,500.00	\$5,500.00				
Interior Walls & Demolition	\$19,800.00	\$19,800.00				
Restroom Rehab	\$6,600.00	\$6,600.00				
Wiring	\$6,050.00	\$6,050.00				
Lighting	\$11,550.00	\$11,550.00				
HVAC ductwork/vents	\$3,850.00	\$3,850.00				
Doors, casing and woodwork	\$8,800.00	\$8,800.00				
EXTERIOR IMPROVEMENTS						
Decorative monument sign basi	\$3,300.00			\$3,300.00		
Roof and Roof cap repairs 1st	\$3,300.00			\$3,300.00		
ADA compliance	\$4,950.00			\$4,950.00		
Entry Concrete ADA	\$6,105.00			\$6,105.00		
Exterior Prep & Paint	\$13,200.00			\$9,900.00	\$3,300.00	East & South
Exterior Masonry repair	\$13,200.00			\$9,900.00	\$3,300.00	East & South
Power Washing	\$4,950.00			\$2,475.00	\$2,475.00	East & South
Exterior Window Replacement	\$7,040.00			\$7,040.00		
Exterior Door repair/replaceme	\$6,105.00			\$6,105.00		
Sidewalks	\$8,800.00			\$8,800.00		
Canopies	\$4,950.00			\$4,950.00		
Decorative Fencing	\$5,280.00		\$5,280.00			
Trash Enclosure	\$2,310.00		\$2,310.00			
Brick Columns/Fencing	\$4,400.00		\$4,400.00			
Paving Asphalt	\$16,720.00		\$2,200.00		\$14,520.00	
Landscape	\$9,368.00		\$9,368.00			
Exterior Lighting	\$3,300.00			\$3,300.00		
Contingency	\$5,000.00				\$5,000.00	
Management FEE-OH&P	\$10,000.00	\$4,000.00	\$500.00	\$5,500.00		
TOTAL COST	\$206,528.00	\$66,150.00	\$25,708.00	\$86,075.00	\$28,595.00	\$206,528.00