

PUBLISHED IN THE WICHITA EAGLE ON MAY 12, 2009

ORDINANCE NO.48-326

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE CONSTRUCTION AND IMPROVEMENT OF THE I-135/47th STREET SOUTH INTERCHANGE PROJECT IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for improvement of the I-135/47th Street South Interchange and 47th Street South from I-135 to Broadway in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

Right of way and access control over a portion of Lot 1, Block A of HOMER MORGAN 4TH ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Lot 1; thence S89°29'37"W along the South line of said Lot 1, a distance of 249.15 feet; thence N60°53'16"E, a distance of 51.58 feet; thence N88°10'32"E, a distance of 46.81 feet; thence S83°37'51"E, a distance of 158.14 feet to a point on the East line of said Lot 1; thence S01°04'53"E along said East line, a distance of 6.84 feet to the Point of Beginning, containing 4,300.3 square feet, more or less and

There shall be no abutter's rights of access to and from 47TH Street South, over and across the South line of the remaining property from which the right of way described above was acquired, except for two access openings to 47th Street South over and across the East 40.72 feet thereof, measured along said South line, and over and across that portion of said South line described as follows:

Commencing at said Southeast corner of Lot 1; thence N01°04'53"W along the East line thereof, a distance of 6.84 feet; thence N83°37'51"W along said South line of the remaining property, a distance of 158.14 feet to the True Point of Beginning; thence S88°10'32"W along said South line, a distance of 46.81 feet and

Right of way with access control over a portion of the West Half of Lot 3, of NOLAN'S GARDENS, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Northeast corner of said West Half of Lot 3; thence S00°10'06"E along the East line of said West Half, a distance of 106.30 feet to a point on the South right of way line of 47TH Street South, said point being the Northwest corner of Lot 1 of K MART PLAZA SOUTH and the True Point of Beginning; thence continuing S00°10'06"E along said East line, along the West line of said Lot 1, a distance of 17.84 feet; thence N84°17'50"W, a distance of 60.35 feet; thence N85°03'58"W, a distance of 51.96 feet to a point on the West line of land conveyed to Pizza Hut of America, Inc., by deed recorded April 08, 1994, film 1435, page 0215; thence N00°10'06"W along said West line, a distance of 5.66 feet to a point on said South right of way line of 47TH Street South; thence N89°07'16"E along said South right of way line, a distance of 111.80 feet to the True Point of Beginning, containing 1,293.0 square feet, more or less and

There shall be no abutter's rights of access to and from 47TH Street South, over and across the North line of the remaining property from which the right of way described above was acquired, except for an access opening to 47th Street South over and across the East 60.35 feet thereof, measured along said North line and

Right of way and access control over a portion of Lot 1 of BROOKINGS BY-PASS THIRD ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southwest corner of said Lot 1; thence N89°21'25"E along the South line of said Lot 1, a distance of 406.85 feet to the Southeast corner thereof; thence N04°20'43"W along the East line of said Lot 1, a distance of 300.44 feet; thence S19°20'03"W, a distance of 156.80 feet; thence S09°47'00"W, a distance of 135.46 feet; thence S89°31'13"W, a distance of 285.00 feet; thence N06°23'30"W, a distance of 107.70 feet; thence N29°33'51"W, a distance of 30.62 feet to a point on the West line of said Lot 1; thence S01°05'51"E along said West line, a distance of 154.00 feet to the Point of Beginning, containing 25,502.9 square feet (0.585 acre), more or less and

There shall be no abutter's rights of access to and from I-135 and 47TH Street South over and across the East and South lines of the remaining property from which the right of way described above was acquired and

Right of way and access control over a portion of the Northwest Quarter of Section 21, Township 28 South, Range 1 East, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Northeast corner of said Northwest Quarter; thence S89°31'13"W along the North line of said Northwest Quarter, a distance of 861.55 feet; thence S00°28'47"E, a distance of 187.24 feet to a point on the South right of way line of 47TH Street South, said point being the True Point of Beginning; thence N72°40'54"W along said South right of way line, a distance of 137.91 feet to a point on the East line of the Riverside Drainage Canal; thence S07°58'18"E along said East line, a distance of 62.76 feet; thence N80°15'50"E, a distance of 124.75 feet to the True Point of Beginning, containing 3,912.8 square feet, more or less and

There shall be no abutter's rights of access to and from 47TH Street South, over and across the North line of the remaining property from which the right of way described above was acquired and

Right of way and access control over a portion of Lots 4 and 5, Block 1 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Lot 4; thence N00°51'09"W along the East line thereof, a distance of 25.85 feet; thence N78°55'18"W, a distance of 111.98 feet; thence N65°14'49"W, a distance of 48.69 feet; thence N49°49'06"W, a distance of 56.25 feet; thence N40°18'51"W, a distance of 76.37 feet to a point on the North line of Said Lot 5; thence S89°35'59"W along said North line, a distance of 12.59 feet to a point on the easterly right of way line of I-135; thence S39°34'00"E along said easterly right of way line, a distance of 166.38 feet to a point on the northerly right of way line of 47th Street South; thence S77°32'07"E along said northerly right of way line, a distance of 157.20 feet to the Point of Beginning, containing 5,889.6 square feet, more or less and

There shall be no abutter's rights of access to and from I-135 and 47TH Street South, over and across the West and South lines of the remaining property from which the right of way described above was acquired and

That portion of Lot 4, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southwest corner of said Lot 4; thence N89°35'59"E along the South line of said Lot 4, a distance of 243.74 feet to the Southeast corner thereof; thence N00°51'10"W along the East line of said Lot 4, a distance of 7.04 feet; thence S89°42'40"W, a distance of 181.01 feet; thence N87°23'46"W, a distance of 62.85 feet to a point on the West line of said Lot 4; thence S00°51'10"E along said West line, a distance of 10.69 feet to the Point of Beginning, containing 1,873.7 square feet, more or less and

There shall be no abutter's rights of access to and from 47TH Street South, over and across the South line of the remaining property from which the right of way described above was acquired.

Permanent Easements for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

That portion of Lot 1, "K-Mart Plaza South, in the City of Wichita, Sedgwick County, Kansas described as follows:

Beginning at the Northwest corner of said Lot 1: thence S61°59'36"E along the South right of way line of 47th Street South, a distance of 46.77 feet; thence N84°17'50"W a distance of 41.45 feet to a point on the West line of said Lot 1; thence N00°10'06"W along said West line, distance of 17.84 feet to the Point of Beginning, containing 367.9 feet, more or less and

That portion of Lot 1 of BELL-JACKSON ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southwest corner of said Lot 1; thence N89°29'37"E along the South line of said Lot 1, a distance of 178.40 feet; thence N84°10'22"W, a distance of 43.85 feet; thence N89°39'19"W, a distance of 134.91 feet to a point on the West line of said Lot 1; thence S01°04'53"E along said West line, a distance of 6.84 feet to the Point of Beginning, containing 892.8 square feet, more or less and

That portion of Lot 4, Block 2 of SOUTH BROADWAY INDUSTRIAL PARK, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Lot 4; thence S85°32'41"W along the South line of said Lot 4, a distance of 157.26 feet to the Southwest corner thereof; thence N73°27'04"E, a distance of 32.11 feet; thence N56°13'54"E, a distance of 94.21 feet; thence N67°57'17"E, a distance of 50.05 feet to a point on the East line of said Lot 4; thence S01°05'51"E along said East line, a distance of 68.09 feet to the Point of Beginning, containing 5,299.2 square feet, more or less and

That portion of Lots 3 and 4, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Lot 3; thence N00°51'10"W along the East line thereof, a distance of 28.34 feet; thence S89°07'32"W, a distance of 6.01 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 275.00 feet; thence southwesterly along said curve through a central angle of 14°31'33", a distance of 69.72 feet; thence S74°36'00"W, a distance of 43.47 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 225.00 feet; thence southwesterly along said curve through a central angle of 03°57'55", a distance of 15.57 feet to a point on the West line of said Lot 3; thence S00°52'41"E along said West line, a distance of 4.17 feet to the Southwest corner of said Lot 3; thence S89°35'59"W along the North line of said Lot 4, a distance of 131.80 feet to the Northwest corner thereof, said point lying on a curve, concave easterly, having a radius of 176.21 feet; thence southeasterly along said curve, through a central angle of 13°14'58", a distance of 40.75 feet to a point on a curve, concave southwesterly, having a radius of 236.21 feet and a radial bearing of N70°47'42"E; thence southeasterly along said

curve through a central angle of $02^{\circ}38'26''$, a distance of 10.89 feet; thence $N89^{\circ}30'13''E$, a distance of 77.28 feet to the beginning of a tangent curve, concave northerly, having a radius of 275.00 feet; thence northeasterly along said curve through a central angle of $14^{\circ}54'14''$, a distance of 71.53 feet; thence $N74^{\circ}36'00''E$, a distance of 43.47 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 225.00 feet; thence northeasterly along said curve through a central angle of $14^{\circ}31'33''$, a distance of 57.04 feet; thence $N89^{\circ}07'32''E$, a distance of 5.99 feet to a point on the East line of Lot 4; thence $N00^{\circ}51'10''W$ along said East line, a distance of 21.66 feet to the Point of Beginning, containing 13,049.4 square feet, more or less.

Temporary Easements for the uses and purposed herein set forth in and to the following-described tracts, to-wit:

That portion of Lot 1, Block A of HOMER MORGAN 4TH ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 1; thence $N01^{\circ}04'53''W$ along the East line of said Lot 1, a distance of 6.84 feet; thence $N83^{\circ}37'51''W$, a distance of 158.14 feet to the True Point of Beginning; thence $S88^{\circ}10'32''W$, a distance of 46.81 feet; thence $N00^{\circ}19'26''W$, a distance of 5.00 feet; thence $N88^{\circ}11'03''E$, a distance of 46.98 feet; thence $S01^{\circ}34'17''W$, a distance of 5.00 feet to the True Point of Beginning, containing 234.2 square feet, more or less and

That portion of Lot 1, Block A of HOMER MORGAN 4TH ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Northwest corner of Lot 1, Block A of HOMER MORGAN 4TH ADDITION; thence $S01^{\circ}08'01''E$ along the West line of said Lot 1, a distance of 17.69 feet; thence $N47^{\circ}30'44''E$, a distance of 10.86 feet; thence $N02^{\circ}13'46''W$, a distance of 10.43 feet to a point on the North line of Lot 1; thence $S89^{\circ}31'12''W$ along said North line, a distance of 7.96 feet to the Point of Beginning, containing 113.6 square feet, more or less and

That portion of Lot 1 of K MART PLAZA SOUTH, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Northeast corner of said Lot 1, said point lying on a curve, concave northerly, having a radius of 3,899.83 feet and a radial bearing of $S02^{\circ}47'22''E$; thence westerly along the North line of said Lot 1, along said curve through a central angle of $01^{\circ}25'42''$, a distance of 97.22 feet; thence $S05^{\circ}03'00''E$, a distance of 17.44 feet; thence $N89^{\circ}53'46''E$, a distance of 95.89 feet to a point on the East line of said Lot 1; thence $N00^{\circ}45'07''W$ along said East line, a distance of 20.72 feet to the Point of Beginning, containing 1,820.3 square feet, more or less and

That portion of Lot 1 of BROOKINGS BY-PASS THIRD ADDITION, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 1; thence $N04^{\circ}20'43''W$ along the East line of said Lot 1, a distance of 300.44 feet to the True Point of Beginning; thence continuing $N04^{\circ}20'43''W$ along said East line, a distance of 24.90 feet; thence $S19^{\circ}20'03''W$, a distance of 180.43 feet; thence $S09^{\circ}47'00''W$, a distance of 127.94 feet; thence $S89^{\circ}31'13''W$, a distance of 272.66 feet; thence $N06^{\circ}23'30''W$, a distance of 99.19 feet; thence $N38^{\circ}32'38''W$, a distance of 32.03 feet to a point on the West line of said Lot 1; thence $S29^{\circ}33'51''E$, a distance of 30.62 feet; thence $S06^{\circ}23'30''E$, a distance of 107.70 feet; thence $N89^{\circ}31'13''E$, a distance of 285.00 feet; thence $N09^{\circ}47'00''E$, a distance of 135.46 feet; thence $N19^{\circ}20'03''E$, a distance of 156.80 feet to the True Point of Beginning, containing 6,385.2 square feet, more or less and

That portion of Lot 4, Block 1 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Northeast corner of said Lot 4; thence $S89^{\circ}35'59''W$ along the North line of said Lot 4, a distance of 34.88 feet to the True Point of Beginning; thence continuing $S89^{\circ}35'59''W$ along said North line, a distance of 25.00 feet; thence $S00^{\circ}29'47''E$, a distance of 43.32 feet; thence $N89^{\circ}30'13''E$, a distance of 25.00 feet; thence $N00^{\circ}29'47''W$, a distance of 43.28 feet to the True Point of Beginning, containing 1,082.6 square feet, more or less and

That portion of Lot 3, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 3; thence $N00^{\circ}51'10''W$ along the East line thereof, a distance of 28.34 feet to the True Point of Beginning; thence $S89^{\circ}07'32''W$, a distance of 6.01 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 275.00 feet; thence southwesterly along said curve through a central angle of $14^{\circ}31'33''$, a distance of 69.72 feet; thence $S74^{\circ}36'00''W$, a distance of 43.47 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 225.00 feet; thence southwesterly along said curve through a central angle of $03^{\circ}57'55''$, a distance of 15.57 feet to a point on the West line of said Lot 3; thence $N00^{\circ}52'41''W$ along said West line, a distance of 112.04 feet; thence $N89^{\circ}32'41''E$, a distance of 132.30 feet to a point on said East line of Lot 3; thence $S00^{\circ}51'10''E$ along said East line, a distance of 88.00 feet to the True Point of Beginning, containing 12,830.8 square feet, more or less and

That portion of Lot 4, Block 2 of CEDARVALE ACRES, and of a portion of vacated Ida Street lying adjacent to said Lot 4, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 4; thence $N00^{\circ}51'10''W$ along the East line of said Lot 4, a distance of 7.04 feet to the True Point of Beginning; thence $S89^{\circ}42'40''W$, a distance of 15.11 feet; thence $N00^{\circ}36'12''W$, a distance of 179.99 feet to a point on a curve, concave southeasterly, having a radius of 220.00 feet and a radial bearing of $N03^{\circ}02'43''W$; thence southwesterly along said curve through a central angle of $12^{\circ}21'17''$, a distance of 47.44 feet; thence

S74°36'00"W, a distance of 43.47 feet to the beginning of a tangent curve, concave northerly, having a radius of 280.00 feet; thence southwesterly along said curve through a central angle of 14°54'14", a distance of 72.83 feet; thence S89°30'13"W, a distance of 2.60 feet; thence S00°18'59"W, a distance of 151.62 feet; thence N87°23'46"W, a distance of 62.85 feet to a point on the West line of said Lot 4; thence N00°51'10"W, a distance of 89.30 feet to the beginning of a tangent curve, concave westerly, having a radius of 236.21 feet; thence northerly along said curve through a central angle of 15°42'42", a distance of 64.77 feet; thence N89°30'13"E, a distance of 77.28 feet to the beginning of a tangent curve, concave northerly, having a radius of 275.00 feet; thence northeasterly along said curve through a central angle of 14°54'14", a distance of 71.53 feet; thence N74°36'00"E, a distance of 43.47 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 225.00 feet; thence northeasterly along said curve through a central angle of 14°31'33", a distance of 57.04 feet; thence N89°07'32"E, a distance of 5.99 feet to a point on said East line of said Lot 4; thence S00°51'10"E along said East line, a distance of 185.30 feet to the True Point of Beginning, containing 13,709.3 square feet, more or less.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 12th day of, May 2009.

CITY OF WICHITA

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law