

AGREEMENT FOR PROPERTY ACQUISITION

This Agreement for Property Acquisition is made this ____ day of August, 2013 by and between THE CITY OF NORMAN, OKLAHOMA, a municipal corporation ("City"), and III Moore Properties, LTD, a limited partnership ("III Moore") which are collectively herein referred to as "Parties".

WITNESSETH:

WHEREAS, the City, by adoption of Resolution No. R-1112-60 on November 22, 2011, selected a roadway improvement project wholly located in the city limits of the City of Norman, Oklahoma and described as follows: (1) Widening and reconstruction of Cedar Lane Road, from 12th Avenue SE to 1/2 mile east of 24th Avenue SE.; (2) New traffic signal at the intersection of Cedar Lane Road and 12th Avenue SE; and (3) Modification of the existing traffic signal at the intersection of Cedar Lane Road and Classen Boulevard (collectively "the Cedar Lane Project"); and

WHEREAS, on August 28, 2012, the citizens of Norman, Oklahoma approved a \$42.5 million bond project that includes eight major transportation and storm water projects, and included funding to construct the Cedar Lane Project; and

WHEREAS, III Moore Properties LTD ("III Moore") own approximately 3.99 acres of real property abutting Cedar Lane on the south (the "Development Property"); and

WHEREAS, the Cedar Lane Project necessitated the acquisition of an interest in certain real property for Public Roadway, Drainage and Utilities Easements, Public Drainage Easements, Driveway Easement and Temporary Construction Easements (collectively the "ROW") from III Moore; and

WHEREAS, the acquisition of the ROW for the Cedar Lane Project was necessary for public convenience and use; and

WHEREAS, the City endeavored to purchase and acquire ROW from III Moore and offered to pay III Moore the fair, reasonable and just market value of the ROW based on independent review of the values of said ROW, which indicated one hundred seventy-four thousand two hundred dollars (\$174,200); and

WHEREAS, III Moore indicated that it believed the fair, reasonable and just market value of the ROW to be two hundred twenty-four thousand three hundred and thirty seven dollars (\$224,337); and

WHEREAS, the City, by adoption of Resolution No. R-1213-141, authorized eminent domain proceedings for condemnation of the ROW for a public purpose; and

WHEREAS, the City was unable to acquire the ROW from III Moore and filed the following case for condemnation in the Cleveland County District Court: *City of Norman vs. III Moore Properties, Ltd. (CJ-2013-776)*; and

WHEREAS, the Parties to the litigation initiated by the City to acquire the ROW desire to resolve said litigation under the provisions of this Agreement that will culminate in the filing of a Dismissal with Prejudice of the case now pending in the Cleveland County District Court; and

WHEREAS, III Moore owns property east of Classen Boulevard and south of Lindsey Street that is undeveloped property (“East Lindsey Property”); and

WHEREAS, approximately 2.13 acres in the vicinity of Classen and Lindsey Street was designated as “public” with the development of Boyd View Estates in 1963 prior to implementation of the City’s mandatory parkland dedication requirements and during a time in which the practice was to dedicate land as “public” in lieu of making otherwise required improvements to adjacent arterial streets; and

WHEREAS, this “public” land on the Boyd View Estates plat was later designated as Boyd View Park on the City’s land use plan in 1985 (“Boyd View Property”); and

WHEREAS, although the Boyd View Property is shown to be parkland on the City’s land use plan, it is zoned A-2, Rural Agricultural District; and

WHEREAS, the Boyd View Property consists of a large drainage channel and has never been utilized as a park; and

WHEREAS, the Boyd View Property is included in The Norman Parks & Recreation Master Plan; and

WHEREAS, the Norman Parks and Recreation Master Plan recognizes that the Boyd View Property was limited for park use because of its inaccessibility, limited visibility and lack of on-street parking and recommended no significant improvements on this property; and

WHEREAS, based on the assessment in the Norman Parks and Recreation Master Plan of the Boyd View Property, the City believes that the property is appropriate and suitable for a drainage channel, but unsuitable for public parkland in its current condition; and

WHEREAS, III Moore owns the East Lindsey Property that is adjacent to the Boyd View Property and desires to develop East Lindsey Property in conjunction with development of the Boyd View Property; and

WHEREAS, III Moore is willing to donate the ROW needed for the Cedar Lane Project at no cost to the City; and

WHEREAS, III Moore desires to acquire the Boyd View Property to enhance the development potential of the East Lindsey Property anticipating the use of only .63 acres for paving or structures no higher than two stories while leaving the remain Boyd View Property available for drainage purposes, open space, storm water detention and/or park type amenities accessible to the general public from the adjoining Boyd View neighborhoods; and

WHEREAS, the City desires to retain easements for drainage and utility purposes on the Boyd View Property to continue the current use by the City; and

WHEREAS, the City further desires to ensure that the future development of the Boyd View Property, in conjunction with the development of the East Lindsey Property, will provide for open space and/or park type amenities that will be accessible to the Boyd View neighborhood..

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which are hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

I. Transfer of Property.

A. Cedar Lane Project. III Moore agrees to execute separate deeds, and easements in favor of the City for the property identified in Exhibits A, B, C, D, and E and shall deliver said deeds and easements to the City contemporaneously with this Agreement for the City's acceptance.

B. Boyd View Property.

1. The City agrees to transfer title to the property contained in Boyd View Park and described in Exhibit F to III Moore within thirty (30) days of the execution of this Agreement by the Parties.
2. III Moore will execute a drainage easement and a utility easement for the Boyd View Park property in favor of the City and deliver said easements to the City upon receipt of title to the Boyd View Property as described in Exhibits G and H. III Moore recognizes that additional easements may be required upon development of the Boyd View Property and the East Lindsey Property;
3. The City acknowledges that III Moore anticipates requesting a 2025 Land Use Plan Amendment subsequent to the execution of this Agreement changing the designation of the Boyd View

Property from “Parkland”. The City acknowledges with passage of Resolution No. R-1314-23 abandoning the Boyd View Property as “Parkland”, and noting that the current land use designations of the undeveloped properties abutting the Boyd View Property on the north are designated for Commercial and High Density Residential uses, that a use other than “Parkland” would be appropriate. The City agrees to consider an application for a compatible land use designation for the Boyd View Property upon proper application.

4. III Moore covenants that the future development of the Boyd View Property, in conjunction with the development of the East Lindsey Property, is anticipated to require .63 acres for paving or structures no higher than two stories leaving a remainder that shall be provide for drainage purposes, and for open space, storm water detention, and/or park type amenities that will be accessible to the Boyd View neighborhood. III Moore agrees to submit a development plan at the time of submission of the East Lindsey Property Preliminary Plat that will provide said public access to the open space created by said development.

II. Recoupment.

- A. The Parties agree that pursuant to Resolution No. R-1213-108 adopted by the City on June 11, 2013 declaring a Recoupment Project and Section 16-603 of the Code of the City of Norman (the “Recoupment Ordinance”), costs paid under this Agreement as compensation for the acquisition of ROW must be paid back to the City within a certain time frame after declaration of the Recoupment Project prior to the filing of a final plat for development of the parcels adjacent to the Cedar Lane Project.
- B. The Parties acknowledge that because III Moore will be donating the ROW needed from their Development Property that, by virtue of this Agreement, III Moore will not be subject to recoupment for any right of way acquisition costs if and when the Development Property abutting Cedar Lane is developed as defined in the Recoupment Ordinance.
- C. The Parties further acknowledge that III Moore will only be subject to recoupment of Cedar Lane Project costs other than right of way acquisition, if any, only to the amount those costs exceed available Federal funds or Bond proceeds acquired by the City for the Cedar Lane Project.

III. Other Items.

- A. The Parties agree that upon approval of this Agreement by the Parties and execution and delivery to the City of the easements by III Moore, the Parties will submit to the District Court in the aforementioned condemnation case an Order asking that the case be dismissed by virtue of this Settlement Agreement

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the City, and III Moore Properties LTD, as Parties to this Agreement, have caused this Agreement to be duly executed and delivered as of the date first above written.

THE CITY OF NORMAN, OKLAHOMA

By: _____
Name: Cindy Rosenthal
Title: Mayor

By: _____
Name: Brenda Hall
Title: City Clerk
(SEAL)

Reviewed and approved as to legality on this ____ day of August, 2013.

City Attorney

III Moore Properties, LTD, a foreign limited partnership, Texas by:

Managing Partner

REPRESENTATIVE ACKNOWLEDGEMENT

STATE OF OKLAHOMA, COUNTY OF CLEVELAND, SS:

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 20__, personally appeared _____, to me known to be the identical person(s) who executed the foregoing grant of easement and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.

Notary Public: _____

My Commission Expires: _____

Exhibit A
Parcel 8.0
Permanent Right of Way – Warranty Deed

A strip, piece, or parcel of land lying in the Southeast Quarter (SE 1/4) of Section 9, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. Said parcel of land being more particularly described as follows:

COMMENCING at the Southwest corner of said SE 1/4, THENCE North 89°06'58" East along the South line of said SE 1/4, a distance of 67.94 feet to the POINT OF BEGINNING, said point being on the East Right-of-Way line of the AT&SF Railroad, THENCE North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 67.27 feet, THENCE North 89°06'58" East parallel with the South line of said SE 1/4, a distance of 406.45 feet, THENCE North 30°45'10" East a distance of 37.97 feet to a point on the West Right-of-Way line of the Oklahoma State Highway 77, THENCE South 27°36'37" East along the West Right-of-Way line, a distance of 103.37 feet to the South line of said SE 1/4, THENCE South 89°06'58" West along the South line of said SE 1/4, a distance of 442.44 feet to the POINT OF BEGINNING.

Containing 12535.26 sq. ft. or 0.29 acres, more or less, of new Roadway Easement, the remaining area included in the above description being right-of-way occupied by the present roadway.

Exhibit B
Parcel 8.1
Temporary Construction Easement

A strip, piece, or parcel of land lying in the Southeast Quarter (SE 1/4) of Section 9, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. Said parcel of land being more particularly described as follows:

COMMENCING at the Southwest corner of said SE 1/4, THENCE North 89°06'58" East along the South line of said SE 1/4, a distance of 67.94 feet to a point on the East Right-of-Way line of the AT&SF Railroad, THENCE North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 67.27 feet, THENCE North 89°06'58" East parallel with the South line of said SE 1/4, a distance of 55.38 feet to the POINT OF BEGINNING, THENCE North 45°29'47" West a distance of 14.05 feet, THENCE North 89°06'58" East parallel with the South line of said SE 1/4, a distance of 367.10 feet, THENCE South 30°45'10" West a distance of 11.75 feet, THENCE South 89°06'58" West parallel with the South line of said SE 1/4, a distance of 351.07 feet to the POINT OF BEGINNING.

Containing 3590.87 sq. ft. or 0.08 acres, more or less.

Exhibit C
Parcel 8.2
Permanent Drainage Easement

A strip, piece, or parcel of land lying in the South Half (S 1/2) of Section 9, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. Said parcel of land being more particularly described as follows:

COMMENCING at the Southwest corner of said SE 1/4, THENCE North 89°06'58" East along the South line of SE 1/4 of Section 9, a distance of 67.94 feet to a point on the East Right-of-Way line of the AT&SF Railroad, THENCE North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 67.27 feet to the POINT OF BEGINNING, THENCE continuing North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 146.87 feet, THENCE North 89°06'58" East parallel with the South line of SE 1/4 of Section 9, a distance of 11.21 feet, THENCE South 27°45'53" East a distance of 43.64 feet, THENCE South 45°29'47" East a distance of 129.34 feet, THENCE South 89°06'58" West parallel with the South line of SE 1/4 of Section 9, a distance of 55.38 feet; to the POINT OF BEGINNING.

Containing 3501.96 sq. ft. or 0.08 acres, more or less.

Exhibit D
Parcel 8.3
Permanent Driveway Easement

A strip, piece, or parcel of land lying in the Southeast Quarter (SE 1/4) of Section 9, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. Said parcel of land being more particularly described as follows:

COMMENCING at the Southwest corner of said SE 1/4, THENCE North 89°06'58" East along the South line of said SE 1/4, a distance of 232.82 feet, THENCE North 00°53'02" West a distance of 70.00 feet to the POINT OF BEGINNING, THENCE continuing North 00°53'02" West a distance of 15.00 feet, THENCE North 89°06'58" East parallel with the South line of said SE 1/4, a distance of 100.00 feet, THENCE South 00°53'02" East a distance of 15.00 feet, THENCE South 89°06'58" West parallel with the South line of said SE 1/4, a distance of 100.00 feet to the POINT OF BEGINNING.

Containing 1500.00 sq. ft. or 0.03 acres, more or less.

Exhibit E
Parcel 14.0
Permanent Drainage Easement

A strip, piece, or parcel of land lying in the Southwest Quarter (SW 1/4) of Section 9, Township 8 North, Range 2 West of the Indian Meridian, Cleveland County, Oklahoma. Said parcel of land being more particularly described as follows:

COMMENCING at the Southeast corner of said SW ¼, THENCE North 89°06'58" East along the South line of the SE 1/4 of Section 9, a distance of 67.94 feet to a point on the East Right-of-Way line of the AT&SF Railroad, THENCE North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 214.14 feet to the POINT OF BEGINNING, THENCE continuing North 27°45'53" West along the East Right-of-Way line of the AT&SF Railroad, a distance of 214.14 feet, THENCE North 89°06'58" East parallel with the South line of the SE 1/4 of Section 9, a distance of 11.21 feet, THENCE South 27°45'53" East parallel with the East Right-of-Way line of the AT&SF Railroad, a distance of 214.14 feet, THENCE South 89°06'58" West parallel with the South line of the SE 1/4 of Section 9, a distance of 11.21 feet to the POINT OF BEGINNING.

Containing 2141.38 sq. ft. or 0.05 acres, more or less.

Exhibit F
Boyd View Property
Quit Claim Deed from City of Norman

Commencing at the North West corner of Lot 1, Block 7, Boyd View No. 1 Addition to the City of Norman, County of Cleveland, State of Oklahoma, THENCE N 27°17'00" W a distance of 227.20 feet, THENCE S 89°47'00" E a distance of 328.14 feet, THENCE N 54°37'29" E a distance of 352.13 feet, THENCE S 43°05'08" E a distance of 110.49 feet, THENCE S 54°37'29" W a distance of 472.8 feet, THENCE S 76°00'00" W a distance of 207.23 feet to the POINT OF BEGINNING.

Containing 92641.10 sq. ft. or 2.13 acres, more or less.

Exhibit G
Boyd View Property Drainage Easement to City of Norman

A tract of land in the Northeast Quarter (NE1/4) of the of Section Five (5), Township Eight (8) North, Range Two (2) West of the Indian Meridian, Cleveland County Oklahoma, and in the Boyd View No. 1 Addition, described as follows:

Beginning at northwest corner of lot 1, block 7 of said Addition; thence N.27°17' E a distance of 144.69 feet , along the roadway right of way; thence N.62°43'00''E a distance of 17.74 feet; thence N.0°0'0''E a distance of 65.00 feet; to a point on south edge of the University Plaza Addition; thence S.89°47'00''E a distance of 30.00 feet; along the south edge of the University Plaza Addition; thence S.0°0'0''W a distance of 65.00 feet; thence S.89°47'00''E a distance of 165.35 feet; thence N.58°24'49''E a distance of 460.22 feet; to a point on the boundary of Boyd View No. 2 Addition; thence S.43°05'08''E a distance of 40.82 feet; along the boundary of Boyd View No. 2 Addition; thence S.58°24'49''W a distance of 462.93 feet, to the point of beginning.

Containing 0.896 acres more or less.

Exhibit H
Boyd View Park Land Utility Easement to City of Norman

A tract of land in the Northeast Quarter (NE1/4) of the of Section Five (5), Township Eight (8) North, Range Two (2) West of the Indian Meridian, Cleveland County Oklahoma, and in the Boyd View No. 1 Addition, Seventeen (17) feet wide parallel and adjacent to the northwesterly sides of lots 1 through 10 of Block 7 in the said Addition.

Containing 0.264 acres more or less.