

INTERLOCAL AGREEMENT AND
GUARANTEE AND REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 14th day of June, 1989, between the COUNTY OF DOUGLAS COUNTY, KANSAS, (hereinafter referred to as "County"), DOUGLAS COUNTY DEVELOPMENT, INC., a Kansas corporation (hereinafter referred to as "Development, Inc."), and THE CITY OF LAWRENCE, a municipal corporation (hereinafter referred to as "City").

WHEREAS, the County is legal titleholder to certain real property described as East Hills Business Park, a subdivision in the City of Lawrence, Douglas County, Kansas; and,

WHEREAS, Development, Inc., is in the process of purchasing, acquiring, and selling to third parties certain parcels, lots or portions of lots in the East Hills Business Park under an option to purchase said real property between the County and Development, Inc.; and,

WHEREAS, the County and Development, Inc. desire to have developed, improved, constructed, installed or extended certain public improvements, including but not limited to, streets, water systems, and sewer systems in the East Hills Business Park; and

WHEREAS, it is the normal policy of the City to make or cause to be made municipal works or improvements which confer a special benefit upon property and thereafter lay and collect assessments upon the improved property, under Kansas Statutes Annotated, 12-6a01, et. seq.; and,

WHEREAS, City agrees to proceed with the financing, installation, improvements and construction of said public improvements under K.S.A. 12-6a01, et. seq., and such additional terms and conditions hereinafter set forth; and,

WHEREAS, K.S.A. 12-2901 et. seq., and amendments thereto, titled the Interlocal Cooperation Act, authorizes the parties hereto to cooperate in making the aforesaid public improvements; and,

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into the agreement for the aforesaid and hereinafter set forth public improvements as authorized and provided by K.S.A. 12-2901 et. seq., and amendments thereto;

NOW, THEREFORE, in mutual consideration of the terms and conditions hereinafter set forth, the parties to this Agreement are hereby bound to the following;

I. PURPOSE OF AGREEMENT

The parties hereto enter into this Agreement for the purpose of making certain public improvements, including streets, water system and sewer system in East Hills Business Park, and to provide for the financing and repayment of the cost of said improvements. Those improvements and improved areas which are subject to this Agreement are set forth in Exhibit "A" attached hereto and incorporated by reference herein.

II. COST OF PROJECT

Upon completion of the construction of said public improvements, the City Director of Public Works shall submit to each of the parties hereto, a final accounting of all costs incurred in making said public improvements and said accounting shall be incorporated by reference herein and attached hereto and marked as Exhibit "B".

III. FINANCING AND REIMBURSEMENT

Financing of each of the hereinabove public improvements and reimbursement and repayment of said costs shall be in accordance with the following terms:

A. Streets

1. City agrees to provide for the financing of the cost of installing the street improvements, which shall include sidewalks, a storm sewer system, and all appurtenances normally associated with the standard street improvement, installation, construction and extensions as described and set forth in Exhibit "A".
2. The City-at-large shall pay the costs associated with street improvements in excess of 27 feet in width without reimbursement or repayment of costs associated with such additional street width.
3. One hundred percent (100%) of the total cost of the street improvement shall be placed upon the assessment roles in the manner provided by K.S.A.

12-6a01 et. seq., and amendments thereto, to be levied and collected on a per square foot basis against all lots and pieces of land within the East Hills Business Park Improvement District as established by Resolution No. 5238 of the City (the "Assessments").

4. The payment of ninety-five percent (95%) of all the Assessements levied as provided in paragraph 3 above shall be delayed in accordance with Ordinance No. 6009 and Ordinance No. 6010 of the City. Such portion of the Assessments shall be delayed for a period not to exceed the lesser of twenty (20) years or until such time as property liable for the Assessments is transferred in the manner described in Article III, paragraph A.5. hereof or in the manner described in Article IV, paragraph C. The cost of the delayed portion of the Assessments shall be borne by the City in the manner provided in Ordinance No. 6009 and Ordinance No. 6010. Upon the sale or transfer in any manner of any lot or parcel or any portion thereof by County or Development, Inc. to third parties as hereinafter provided, such delayed portion of the Assessments shall become due and payable to the City in the manner provided by law.

5. The County and Development, Inc. agree that upon the closing of any contract or agreement for the sale or transfer of any parcel, lot or piece of property to any third party, an amount equal to the portion of the total delayed Assessments (including interest thereon at the rate provided on the bonds of the City which are payable from such Assessments from the date of such bonds to the final maturity of such bonds) attributable to such parcel, lot or piece of property, shall be paid to the County Clerk in the manner provided for the collection of such Assessments; provided further, County and Development, Inc. agree that they will not sell or otherwise convey any interest in any portion of the property liable for any delayed Assessments to any third party without the full and complete payment of the pro rata portion of the delayed Assessments attributable to such property.
6. The County and Development, Inc. agree that they will assume and be liable for the non-delayed five-percent (5%) portion of the Assessments and any interest thereon, to be paid as provided in K.S.A. 12-6a01 et. seq.; so long as the property liable for such Assessments is owned by the County; provided that, Development, Inc. shall

have the primary obligation to pay such non-delayed portion of the Assessments and agrees to indemnify and hold the County harmless therefrom.

7. The County, and its successors and assigns, unconditionally and irrevocably guarantees to the City and its successors and assigns, the full and faithful payment and performance by Development, Inc., of its obligations under this Agreement, without presentment or demand, protest or notice of dishonor, together with costs of collection and reasonable attorney fees, payment of the Assessments levied by the City in the manner provided herein.
8. The County and Development, Inc., agree that upon the failure of any purchaser or transferee of any parcel, lot or piece of property liable for Assessments to make payment of the non-delayed Assessments when they become due and payable, under law and in accordance with this Agreement, the City may declare the unpaid amount of the non-delayed portion of the Assessments due and payable from the County and Development, Inc., jointly and severally, provided such guarantee for the non-delayed portion of the Assessments shall terminate if a fully erected and completed building is placed on such parcel, lot or piece of property.

9. A suit against any owner of any parcel, lot or piece of property liable for Assessments, based upon default in the payment of the non-delayed portion of the Assessments, shall not be a condition to liability on the guarantee provided by Article III, Paragraph A.8., above.
10. The duration of the Assessments levied against the property in the East Hills Improvement District shall be ten (10) years from the date the Assessments are first spread against the property in accordance with the ordinance of the City levying the Assessments.
11. Upon expiration of the twenty year period for delaying payment of the delayed portion of the Assessments any of the delayed Assessments which have not been paid in the manner provided in Article III, Paragraph A.5. hereof, shall become due and owing and shall be paid by the County and Development, Inc., in the manner provided and subject to the same priorities and guarantees as stated in Article III, Paragraph A.6. and Paragraph A.7. of this Agreement.
12. No suit to set aside the Assessments or otherwise question the validity of the proceedings leading up to the Assessments shall be brought by the County in accordance with the Waiver of Notice and Consent to the Levying of Assessments executed by the County on May 15, 1989.

13. The Assessments shall constitute a valid lien upon the property all as provided in K.S.A. 12-6a01 et. seq.
14. Development, Inc. and the County, their successors and assigns, do hereby guarantee to the City the punctual annual payments of the non-delayed portion of the Assessments, except as provided in Article III, Paragraph A.8. hereof, and do further guarantee the payment of Assessments by any third party purchaser or transferee of property liable for Assessments.

B. Water System

1. Water System shall mean the construction and installation of a water main, as described and set forth in Exhibit "A".
2. City agrees to provide for the cost of constructing the water system in East Hills Business Park, as set forth in Exhibit "A", without reimbursement or repayment. No water line front footage charges will be assessed; provided, however, that the normal water service and tap fee as established by City Ordinance will be charged to the owner of the lot at the time of connection.

C. Sanitary Sewer System

1. City agrees to provide for the financing of the cost of installing the sanitary sewer system improvements in East Hills Business Park as described and set forth in Exhibit "A".
2. County and Development, Inc. agree that upon the closing of any contract or agreement for the sale or transfer of any parcel, lot or piece of property to third party purchasers an amount equal to the pro rata share, on a per square foot basis of any sewer system improvements to said lot, parcel or piece of property shall be paid to the City; provided, further, County and Development, Inc. agree that they will not sell or otherwise convey any interest to said property to a third-party purchaser without full and complete reimbursement and repayment of the pro rata share of the cost of said improvements to the City.
3. Development, Inc., its successors or assigns, unconditionally and irrevocably guarantees to the City, its successors or assigns, reimbursement and repayment of the pro rata share, on a per square foot basis, of any and all costs of said sanitary sewer system improvements, paid by the City, from third party purchasers or other sources upon the sale or transfer of any lot, parcel or piece of property.

IV. ADDITIONAL PROVISIONS

- A. The sale or transfer of any parcel, lot or piece of property shall not relieve Development, Inc.'s obligations nor County's obligations as to the remaining lots, parcels or pieces of property, and such remaining obligations and guarantees as to unsold lots shall continue until the sale or transfer of any and all properties subject to this entire Agreement.
- B. The parties hereto agree that sale or transfer, in any manner, of any lot, parcel or piece of property to third party purchasers without full and complete reimbursement or repayment of any sums due under this Agreement shall constitute a breach of this Agreement and City may exercise any available legal remedy, in law or equity, including specific performance, to collect any amounts due and owing City from Development, Inc., or County as guarantors.
- C. Notwithstanding paragraphs A.5., C.2. and C.3. of Article III above, City agrees that property subject hereto may be conveyed by County and Development, Inc. without payment of the amounts described in such paragraphs A.5., C.2. and C.3. of Article III to a purchaser (hereinafter referred to as "Party A") who agrees to construct a speculative building for resale on such property, provided that Party A presents proof satisfactory to City, County and Development, Inc. of Party A's financial capacity to construct such

building, and provided further, that payment of the amounts described in paragraphs A.5., C.2. and C.3. of Article III shall be required upon the closing of a sale or lease of the property by Party A to a subsequent purchaser or lessee. If property has been transferred or conveyed to Party A under the terms of this paragraph and at the end of the 20 year period for delay of a portion of the Assessments Party A has not sold or leased the property in a manner requiring payment of the delayed Assessments as provided herein, the delayed Assessments shall become due and shall be paid by the County and Development, Inc., in the manner provided and subject to the same priorities and guarantees as stated in Article II, Paragraph A.6. and Paragraph A.7. of this Agreement.

- D. The duties, obligations and guarantees contained herein are nonassignable and shall remain the obligations of the parties until satisfied as provided for herein.
- E. Development, Inc., its successors and assigns, unconditionally agrees to pay County any and all sums paid by County to any party as a result of a failure by Development, Inc. to comply with the obligations and duties created hereunder, without presentment or demand, protest or notice of dishonor, together with costs of collection and reasonable attorney fees.

V. CASH BASIS LIMITATION

Notwithstanding anything herein to the contrary, County shall be obligated to make only those payments required hereunder which may lawfully be made from funds budgeted and appropriated for that purpose during County's current budget year or from funds made available from any lawfully operated revenue producing source.

VI. CONTINGENCY

This Agreement shall be contingent upon the full compliance by all parties with provisions of K.S.A. 12-6a01, et. seq. In the event any party fails or is unable to comply with those statutory provisions and the improvements and assessments are not instituted, this Agreement shall be null, void, and of no further effect.

VII. DURATION AND TERMINATION

- A. This Agreement shall terminate upon the sale of the last tract located in the East Hills Business Park upon which the delayed Assessments have been levied and paid as provided in this Agreement, or upon the date occurring twenty (20) years from the date the Assessments are first levied by the City, whichever is later.
- B. The duration of this Agreement shall be from the date of its execution through its termination as provided in this Article.

VIII. PLACING AGREEMENT IN FORCE

A. The parties shall cause this Agreement to be executed in quadruplicate and submitted to the Attorney General of the State of Kansas for his approval. Thereafter, the parties shall cause this Agreement to be filed with the Register of Deeds of Douglas County, Kansas, and with the Secretary of State, all in accordance with K.S.A. 12-2904 and 12-2905 and amendments thereto. Each party hereto shall receive a duly executed copy of this Agreement for their official records.

IN WITNESS WHEREOF, we have hereunto set our hands
this 16 day of June, 1989.

DOUGLAS COUNTY DEVELOPMENT COMPANY,
INC.

By: _____

[Signature]
President

ATTEST:

[Signature]
Secretary

COUNTY OF DOUGLAS COUNTY, KANSAS

BY: _____

[Signature]
Chairman, Board of County
Commissioners

[Signature]
Commissioner

[Signature]
Commissioner

ATTEST:

[Signature]
County Clerk

APPROVED AS TO FORM:

[Signature]
County Counselor

CITY OF LAWRENCE, KANSAS,
A Municipal Corporation

By: _____

Mayor

ATTEST:

Raymond J. Hummert
Raymond J. Hummert
City Clerk

APPROVED AS TO FORM:

Frederick L. Cooley
Frederick L. Cooley
City Attorney

The foregoing Agreement approved this 21st day
of July, 1989, by the Attorney General for the State of
Kansas.

Robert S. Stephan
Robert Stephan, Attorney General

NO. 6381 ✓
INDEXED ✓
NUMERICAL INDEX ✓

State of Kansas, Douglas County, SS.	
Filed and Entered in Vol. <u>434</u>	
Page <u>837</u>	at <u>4:50</u> o'clock <u>P.</u> M.
JUL 26 1989	
<u>Don A. [Signature]</u>	
By _____	Register of Deeds
	Deputy

ORIGINAL COMPARED WITH RECORD

-15-

BGC: 434 PAGE 851

Chris
McKenzie

ATTACHMENT B

EAST HILLS BUSINESS PARK
STREET, STORM SEWER, SIDEWALK, SANITARY SEWER
PROJECT NO. 50-CP16-1287(BD)
PROJECT NO. 40-SS13-1187(C)

Lot Number	STREET, STORM SEWER, SIDEWALK			SANITARY SEWER	
	Square Footage	Total Cost Per Lot (\$)	Assessed Cost Per Lot (\$)	Square Footage	Total Cost Per Lot (\$)
Lot 1, Block 1	650,311	86,647.28	4,332.36	650,311	23,767.43
Lot 2, Block 1	474,664	63,244.12	3,162.21	474,664	17,347.92
Lot 3, Block 1	458,348	61,070.18	3,053.51	458,348	16,751.60
Lot 4, Block 1	486,080	64,765.18	3,238.26	486,080	17,765.15
Lot 5, Block 1	311,976	41,567.61	2,078.38	311,976	11,402.03
Lot 6, Block 1	256,929	34,233.16	1,711.66	256,929	9,390.19
Lot 8, Block 2	290,290	38,678.17	1,933.91	290,290	10,609.46
Lot 9, Block 2	238,507	31,778.62	1,588.93	238,507	8,716.90
Lot 1, Block 3	210,760	28,081.61	1,404.08	210,760	7,702.81
Lot 6, Block 3	280,609	37,388.28	1,869.41	280,609	10,255.64
Lot 7, Block 3	278,412	37,095.55	1,854.78	278,412	10,175.34
Lot 8, Block 3	232,275	30,948.27	1,547.41	232,275	8,489.14
Lot 9, Block 3	177,861	23,698.16	1,184.91	177,861	6,500.43
Lot 10, Block 3	368,981	49,162.94	2,458.15	368,981	13,485.44
Lot 11, Block 3	296,594	39,518.11	1,975.91	296,594	10,839.85
Lot 1, Block 4	221,709	29,540.45	1,477.02	221,709	8,102.97
Lot 2, Block 4	87,363	11,640.23	582.01	87,363	3,192.92
Lot 3, Block 4	115,438	15,380.93	769.05	115,438	4,219.00
Lot 4, Block 4		0.00	0.00	168,993	6,176.32
Lot 1, Block 5	157,393	20,971.01	1,048.55	157,393	5,752.37
Lot 2, Block 5	121,295	16,161.32	808.07	121,295	4,433.06
Lot 3, Block 5	109,612	14,604.68	730.23	109,612	4,006.08
Lot 4, Block 5	107,299	14,296.49	714.82	107,299	3,921.54
	5,932,706	\$790,472.35	\$39,523.62	6,101,699	\$223,003.57

EXHIBIT A

Tract 1:

Lot 1 and Lot 2 in Block 1, East Hills Business Park, a subdivision in the City of Lawrence, Douglas County, Kansas, containing 25.83 acres (1,124,975 sq. ft.), all in the southwest quarter of Section 3, Township 13 South, Range 20 East of the Sixth Principal Meridian.

Tract 2:

Beginning at the northwest corner of the southwest quarter of Section 3, Township 13 South, Range 20 East of the Sixth Principal Meridian; thence south $89^{\circ} 54' 24''$ east, along the north line of said southwest quarter of Section 3, a distance of 1134.20 feet; thence along the south right-of-way line of A.T. & S. F. Railroad, on a curve to the left with a radius of 1960.08 feet and a delta of $04^{\circ} 16' 24''$, an arc length of 146.19 feet to the northwest corner of Lot 1, Block 1, East Hills Business Park, a subdivision in the City of Lawrence, Douglas County, Kansas; thence south $00^{\circ} 19' 36''$ east, a distance of 856.00 feet to a point on the north right-of-way line of Greenway Circle; thence westerly along said right-of-way line on a curve to the right with a radius of 2942.60 feet and a delta of $09^{\circ} 23' 24''$, an arc length of 482.25 feet; thence north $75^{\circ} 21' 10''$ west, a distance of 939.23 feet; thence on a curve to the left with a radius of 658.48 feet and a delta of $56^{\circ} 04' 16''$, an arc length of 644.40 feet; thence north $44^{\circ} 54' 23''$ west, a distance of 181.22 feet; thence on a curve to the left with a radius of 1540 feet and a delta of $08^{\circ} 18' 44''$, an arc length of 223.41 feet; thence north $00^{\circ} 19' 36''$ west, a distance of 431.88 feet to a point on the north line of the southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian; thence south $89^{\circ} 18' 06''$ east along said north line of the southeast quarter of Section 4, a distance of 999.87 feet to the point of beginning; containing 34.74 acres (1,513,332 sq. ft.), all in the southwest quarter of Section 3 and the southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian, in the City of Lawrence, Douglas County, Kansas.

Tract 3:

Commencing at the northeast corner of the southwest quarter of Section 3, Township 13 South, Range 20 East of the Sixth Principal Meridian; thence south $00^{\circ}, 00' 00''$ east, along the east line of said southwest quarter, a distance of 979.81 feet; thence south 90°

00' 00" west, a distance of 40.00 feet to a point on the west right-of-way line of Noria Road for a point of beginning; thence south 00° 00' 00" east, along said west right-of-way line, a distance of 500.50 feet; thence south 90° 00' 00" west, a distance of 1136.03 feet; thence south 73° 17' 13" west, a distance of 98.77 feet; thence north 66° 40' 27" west, a distance of 567.77 feet; thence south 28° 56' 54" west, a distance of 490.00 feet; thence north 57° 31' 53" west, a distance of 383.30 feet; thence on a curve to the right with a radius of 600.00 feet and a delta of 11° 56' 28", an arc length of 125.05 feet; thence south 45° 44' 04" west, a distance of 704.94 feet; thence north 89° 02' 50" west, a distance of 108.96 feet; thence on a curve to the right with a radius of 430.46 feet and a delta of 87° 28' 20", an arc length of 657.18 feet; thence on a curve to the right with a radius of 1836.84 feet and a delta of 13° 37' 4", an arc length of 436.58 feet; thence on a curve to the right with a radius of 558.48 feet and a delta of 92° 36' 15", an arc length of 902.64 feet; thence south 75° 21' 10" east, a distance of 939.23 feet; thence on a curve to the left with a radius of 3042.60 feet and a delta of 14° 38' 50", an arc length of 777.82 feet; thence south 90° 00' 00" east, a distance of 1042.00 feet to the point of beginning; containing 55.49 acres (2,417,142 sq. ft.), all in the southwest quarter of Section 3 and the Southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian, in the City of Lawrence, Douglas County, Kansas.

Tract 4:

Commencing at the southwest corner of the southeast quarter of the southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian, thence north 00° 06' 11" west, along the west line of said southeast quarter of the southeast quarter, a distance of 752.28 feet for a point of beginning; thence north 00° 06' 11" west, a distance of 790.24 feet; thence north 25° 01' 18" east, a distance of 686.91 feet; thence on a curve to the right with a radius of 1460 feet, a delta of 8° 18' 44", and a chord length of 211.62 feet bearing south 49° 03' 45" east, an arc length of 211.81 feet; thence south 44° 54' 23" east, a distance of 181.22 feet to a point on the west right-of-way line of Greenway Circle; thence southerly along said right-of-way line, on a curve to the left with a radius of 658.48 feet and a delta of 29° 34' 05", an arc length of 339.82 feet; thence on a curve to the left with a radius of 1936.84 feet and a delta of 13° 37' 04", an arc length of 460.34 feet; thence on a

curve to the left with a radius of 520.00 feet and a delta of $26^{\circ} 52' 18''$, an arc length of 243.88 feet; thence south $57^{\circ} 08' 30''$ west, a distance of 77.05 feet; thence on a curve to the right with a radius of 707.73 feet and a delta of $32^{\circ} 38' 01''$, an arch length of 403.10 feet to the point of beginning; containing 11.38 acres (495,599 sq. ft.), all in the southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian, in the City of Lawrence, Douglas County, Kansas.

Tract 5:

Lot 1, Lot 2 and Lot 3 in Block 4, East Hills Business Park, a subdivision in the City of Lawrence, Douglas County, Kansas, containing 9.75 acres (424,510 sq. ft.), all in the southeast quarter of Section 4, Township 13 South, Range 20 East of the Sixth Principal Meridian.