

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made and entered into this 20th day of October, 2000, by and between The City of Lawrence, Kansas, a Kansas municipal corporation, c/o Mike Wildgen, City Manager, 6 East 6th Street, Lawrence, Kansas (hereinafter referred to as "City"), and 9-10, L.C., a Kansas limited liability company, c/o Martin Moore, Managing Member, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas (hereinafter referred to as "9-10").

WHEREAS, 9-10 is the owner of the real estate described as follows:

The East seventy-five (75) feet of Lots 69, 71 and 73, fronting on New Hampshire Street, in the City of Lawrence, Kansas, (hereinafter referred to as 9-10 property);

and

WHEREAS, City is the owner of the real estate described as follows:

Beginning at a point on the North line, 75.00 feet West of the Northeast Corner of Lot 69 fronting on New Hampshire Street, in the City of Lawrence, Kansas; thence South 01 degrees 46 minutes 41 seconds East, 117.09 feet; thence North 33 degrees 04 minutes 31 seconds West, 62.35 feet; thence North 01 degrees 46 minutes 51 seconds West, 63.81 feet to said North line; thence North 88 degrees 13 minutes 11 seconds East, along said North line, 32.39 feet to the point of beginning, (hereinafter referred to as City property);

and

WHEREAS, City desires to give and convey to 9-10 a temporary easement across City Property to allow 9-10 to use said property for construction services;

and

WHEREAS, City desires to sell and assign to 9-10 an easement to allow 9-10 to assign the City Property described above for use as an outside courtyard/seating area. This outside courtyard/seating area shall be used by 9-10 or its assigns as an area for the patrons of the owner of the property as an outside park or courtyard to establish a sidewalk cafe type area. This is an easement only and permits or authority for this use must be obtained through the Governing Body of the city of Lawrence as provided below.

NOW, THEREFORE, it is agreed for good and valuable consideration as follows:

1) Temporary Easement. City hereby grants, transfers, sets over and assigns to 9-10 the City Property for 9-10's use as a construction staging area during the construction of the building to be placed upon the 9-10 property described above.

2) Maintenance. The Grantee shall be responsible for proper maintenance of the area.

3) Easement to 9-10. City hereby grants to 9-10 an easement to allow 9-10 to assign the City Property for use as an outside open area to be used in conjunction with the building(s) and business activities to take upon 9-10 property. Prior to the use of said City Property easement area, 9-10 shall prepare and file a Site Plan(s) as required by City, and all uses of said easement shall be subject to the approval of City's governing body. 9-10 shall be responsible for the maintenance and upkeep of said easement, including all improvements made thereto. 9-10 shall be responsible for and pay all real estate taxes and special assessments, if any, hereinafter assessed against or placed upon said easement area. In the event 9-10 has not filed an approved Site Plan for development of said easement and requested City governing body for approval of the intended use(s) of said easement within ten (10) years from the date hereof, then, in that event this easement shall automatically terminate and be of no further force and effect. If at any time during the term of the easement, 9-10 shall fail to timely pay the real estate taxes and special assessments on and against said easement or shall fail to comply with the City's requirements for approval of the Site Plan(s) on/or the condition for the use(s) of said easement by City's governing body, then in any such event this easement shall automatically terminate, if such default by 9-10 is not cured within ninety (90) days following written notice by City to 9-10 of such default(s).

4) Dominant and Servient Estates. The dominant estate is Lots 69, 71, and 73. The servient estate is Lots 75, 77, 79, 81, 83, 85 and 87.

5) Grant of Easement. The City shall execute and deliver to 9-10 by Grant of Easement the easement set forth above.

6) Indemnification and Hold Harmless Granted by 9-10 to City. 9-10, for itself, its successors, assigns, agents and invitees, shall indemnify and hold City, its successors, assigns, agents and invitees, harmless against any claim for injury to any person or property which occurs or is alleged to have occurred by reason of the City's Grant of Easement set forth above to 9-10.

7) Indemnification and Hold Harmless Granted by City to 9-10. City, for itself, its successors, assigns, agents and invitees, shall indemnify and hold 9-10, its successors, assigns, agents and invitees, harmless against any claim for injury to any person or property which occurs or is alleged to have occurred by reason of 9-10's Grant of Easement set forth above to City.

8) Duration of Easement. This easement shall continue in full force and effect for ninety-nine (99) years.

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9) Liability Insurance. 9-10 shall carry liability insurance on their subject premises in at least the amount of one million dollars (\$1,000,000.00) for any single injury and in at least the amount of one million dollars (\$1,000,000.00) in the aggregate. City shall be additional named insured.

10) Recording of Easement. This Easement Agreement may be recorded in the office of the Register of Deeds of Douglas County, Kansas, in the event that either party shall fail to execute the Grant of Easement grant referred to above.

11) Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supercedes all prior agreements between them respecting such matters.

12) Headings. The paragraph headings are for purposes of convenience in identification only and shall not be used to interpret or construe this Agreement.

13) Waiver. The failure of any party hereto to demand performance of any act required hereunder shall not be deemed a waiver of the right to enforce such performance or any other performance required hereunder. Waiver can only be made if it is writing and signed by the parties excusing performance. Any attempted oral waiver shall not be valid.

14) Notice. Notice shall be given to the City at:

City of Lawrence
c/o Mike Wildgen, City Manager
6 East 6th Street
Lawrence, Kansas, 66044.

Notice shall be given to 9-10 at:

9-10, L.C.
c/o Martin Moore, Managing Member
1441 Wakarusa Drive, Suite 200
Lawrence, Kansas, 66047.

15) Governing Law. This agreement shall be construed and enforced according to the laws of the State of Kansas.

16) Binding Effect. This agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, representatives, successors, trustees and assigns.

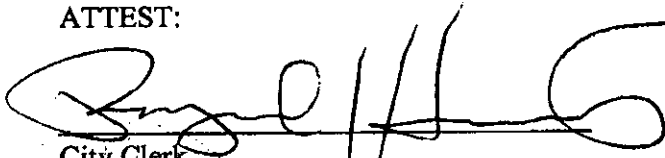
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IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year above written.

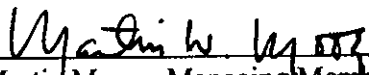
THE CITY OF LAWRENCE, KANSAS

ATTEST:



City Clerk
[SEAL]

By: 
Mike Wildgen, City Manager

9-10, L.C.

By: 
Martin Moore, Managing Member

ATTEST:

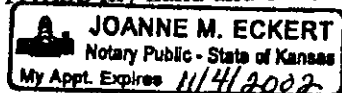

Secretary

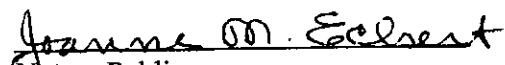
[SEAL]

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On October 23, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Mike Wildgen, the City Manager of the City of Lawrence, Kansas, a Kansas municipal corporation, and Raymond J. Hummert, the City Clerk of the City of Lawrence, Kansas, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same on behalf of said municipal corporation.

WITNESS my hand and official seal.




Notary Public

My appointment expires: 11/4/2002

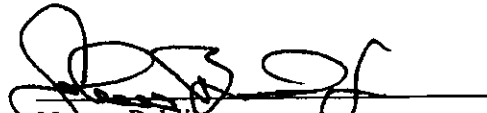
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STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On October 22, 2000, before me the undersigned, a Notary Public in and for said county and state, personally appeared Martin Moore, the Managing Member of 9-10, L.C., a Kansas limited liability company, and ~~_____~~, ~~secretary of 9-10, L.C., a Kansas limited liability company~~, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same on behalf of said limited liability company. JBF

WITNESS my hand and official seal.


Notary Public

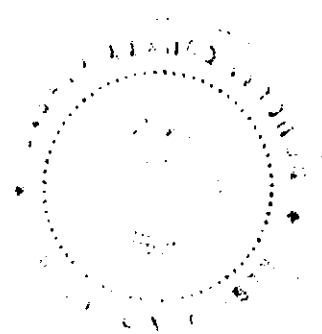
My appointment expires:

10-06-02



Index ☒ Numerical Index 100-010
No. 189503 Book 691 Page 1119
State of Kansas, Douglas County, SS.
Recorded in Book 691 Page(s): 1115 - 1119
Filed Nov 28, 2000 9:59 AM Fees \$14.00
Register of Deeds





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