

**AGREEMENT FOR CONSTRUCTION OF PARKING GARAGE
AND CONCERNING DOWNTOWN REDEVELOPMENT**

THIS Agreement for Construction of Parking Garage and Concerning Downtown Redevelopment made and entered into this 18th day of September, 2000, by and between the CITY OF LAWRENCE, a Kansas municipal corporation, c/o Mike Wildgen, City Hall, 6th & Massachusetts Street, Lawrence, Kansas, hereinafter referred to as "City," and 9-10, L.C., a Kansas limited liability company, c/o Martin Moore, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas, hereinafter referred to as the "Developer."

RECITALS

A. The parties herein have made extensive commitments imposing numerous rights, duties and obligations on each of the parties. These rights, duties and obligations are all dependent upon each other and any consideration shown for individual items is dependent upon all of the other commitments of each party.

B. The Developer agrees to construct and develop commercial, office and residential space on the south side of 9th Street and the north side of 10th Street between Massachusetts Street and New Hampshire Street, and also on the east side of New Hampshire Street. The development will be as shown on the Development Plan dated April 11, 2000, and attached hereto as Appendix A as submitted to the Lawrence/Douglas County Planning Commission. The Developer shall construct the commercial, office, apartments, and parking garage as shown on the plans and as set forth herein, subject to changes agreed to by the City.

C. The City plans on developing a parking garage on the west side of New Hampshire Street between 9th and 10th Street. The City shall engage the Developer to construct said parking garage, consisting of approximately 514 spaces, subject to the provisions of this Agreement and mutually agreed upon site plan changes. Said garage shall include an office infill area, meter repair shop and other agreed-upon parking space reductions. City shall use tax increment financing (K.S.A. 12-1770 *et. seq.*) to obtain a portion of the proceeds for said parking garage construction. The Developer agrees it will construct the parking garage.

D. The City and Developer desire to execute and deliver such other agreements concerning said parking garage and development plan as may be reasonably necessary to comply with this Agreement.

AGREEMENT

NOW THEREFORE, it is agreed by and between the parties as follows:

I. **LAND PURCHASE AND EXCHANGE.** Appendix B describes the legal description for the lots on which the parking garage will be constructed (hereinafter referred to as "Parking Garage Lots"), the land to be obtained by the City on which the Arts Center will be constructed (hereinafter referred to as the "Arts Center Lots"), and the lots on the east side of New Hampshire Street upon which the Developer will build commercial and office construction

(hereinafter referred to as "East Side of new Hampshire Street Lots"). In regard to the above lots, the following will occur:

a. Land Purchase. Developer has entered into an agreement with Firststar Bank (formerly known as Mercantile Bank) for the purchase of the following lots 69, 71, 73, 75, 77 and 79 on the west side of New Hampshire Street and referred to on Appendix B as the West Side of New Hampshire Street Mercantile Lots. Said agreement also provides for the purchase of certain lots on the east side of New Hampshire Street, with said lots designated on Appendix B as East Side of New Hampshire Street Mercantile Lots, said lots being 72, 74 and the north 40 feet of Lot 78 on New Hampshire Street.

b. By separate agreement, Developer and Firststar Bank will assign to the City the right to purchase certain lots for \$795,000.

c. Lots to be Exchanged. The City will exchange and convey to the Developer certain lots obtained from Mercantile on both the east and west side of New Hampshire Street. Excluded from this exchange will be those lots on the west side of New Hampshire Street to be included in the parking garage and that part of the west 42 feet of Lots 69, 71 and 73 on New Hampshire Street. In return for said lots, Developer will exchange and convey to the City those lots described as the Arts Center Lots on Appendix B attached. The lot exchanges are also shown on Appendix B and are as follows:

(i) The City will convey to the Developer Lots 72, 74, and the north 40 feet of 78 on New Hampshire Street and the east 75 feet of Lot 69, 71, and 73 on New Hampshire Street.

(ii) The Developer shall convey to the City Lots 80, 82, 84, and 86 on New Hampshire Street (Arts Center lots).

(iii) Therefore, final ownership of the land in the area involving the Developer and the City shall be:

(a) City - Lots 80, 82, 84, and 86 on New Hampshire Street (Arts Center lots), the west 42 feet of Lot 69, 71, 73, and Lots 75, 77, 79, 81, 83, 85, 87, 89, and 91 on New Hampshire Street.

(b) Developer - The east 75 feet of Lots 69, 71, and 73, and Lots 70, 72, 74, 76 and 78, all on New Hampshire Street.

d. Lot Ownership After Exchange. After the above land exchange, the City shall own those lots referred to as the Parking Garage Lots and the Arts Center Lots and the Developer shall own those lots other than the Parking Garage Lots and the Arts Center Lots on the west and east sides of New Hampshire Street between the 900 and 1000 block in Lawrence. The south 25 feet of Lot 89 and all of Lot 91 shall be leased by the City to the Developer as provided in Section VIIh.

e. Land Exchange Titles. In the above conveyances and exchanges, the conveying party shall deliver to the receiving party a commitment for title insurance insuring a good and

marketable title in the receiving party subject only to those exceptions normally found on Schedule B of a commitment for title insurance. The City and Developer shall agree upon a title insurance company to furnish said title policies. All the costs of title insurance policies shall be paid by the purchaser. After the completion of the exchanges, each recipient of land shall receive a title policy, consistent with the title commitment terms, upon each tract of land received. Each party shall receive a commitment for title insurance at least twenty (20) days prior to the actual land exchange; provided, however, that either party may request and receive a commitment at such earlier date as that party shall deem appropriate.

f. Financial Requirements of the City. In addition, in said land exchange, the City shall pay the sum of \$795,000, to Firststar at Closing for the purchase of Lots 69, 71, 72, 73, 74, 75, 77, 79 and the North 40 feet of Lot 78.

II. LAND USE APPROVAL.

a. The Developer and the City shall obtain and make available an approved site plan on the entire subject property prior to commencement of construction.

b. On a portion of the property where the City requires a plat, such plat of the property shall be approved by the City no later than December 31, 2000. On the day of the execution of this Agreement, the City acknowledges that the uses in the Redevelopment Plan are allowed under the City Zoning Code.

III. PARKING GARAGE.

a. As set out above, the City shall own the land described as the Parking Garage Lots.

b. The City hereby hires and retains the Developer to build a parking garage upon the Parking Garage Lots and provide other valuable project services for a total price of \$7,264,512. Said parking garage shall consist of approximately 500 spaces, subject to the provisions of this Agreement and mutually agreed upon site plan changes. Said garage shall include an office infill area, meter repair shop and other agreed-upon parking space reductions.

c. The Developer shall prepare plans and specifications for the parking garage. The City Manager, upon the direction of the City Commission, shall state in writing the City's acceptance and approval of such plans and specifications prior to commencement of any construction activity. The City and Developer shall enter into a separate written agreement concerning the construction of said parking garage and the payment therefore. Said separate written agreement shall cover the following subjects: plans and specifications, total purchase price, method of progress payments, City Manager's written acceptance upon the direction of the City Commission of plans and specifications, and such matters as the parties deem appropriate, in accordance with AIA 191 as modified. Said AIA 191 as modified is made a part of this Agreement, as attached as Appendix C.

d. The City shall make progress payments to the Developer during the construction of the parking garage, at least monthly. Said progress payments shall cover the costs and work to date of the Developer, subject to retainage as follows: the city shall retain five percent (5%) of the progress payment made to Developer to a maximum amount of retainage of one hundred

thousand dollars (\$100,000). Said progress payments shall be made in accordance with and upon the AIA forms attached hereto as Appendix C. The City's designee, shall review and approve or disapprove in writing the payment claims on the AIA forms. When City receives money from the issuance of notes, the City will make a payment for Developer's professional services costs and developmental costs to date, which are included in the total price set out above. These costs will be identified on a separate Appendix D.

e. Prior to commencement of construction of the parking garage, the Developer shall furnish to the City a performance bond in the form shown as Appendix E attached. The performance bond shall be approved by the City.

f. Prior to the commencement of the construction of the parking garage, the Developer shall post such bond as is required by K.S.A. 60-1111.

g. Prior to the commencement of the construction of the parking garage, the Developer shall obtain appropriate workers compensation insurance, builders risk insurance, and general liability insurance, and name the City as an additional insured on the general liability and builders risk insurance. The amount of policy coverage on the general liability insurance shall be \$500,000 per occurrence.

h. The City shall accept and the Developer shall make one payment in lieu of parking requirements for the C-4A zoning on the building to be built on the east side of New Hampshire Street, as follows: \$55,500. Payment shall be made before the issuance of an Occupancy Permit on the building to be built on the east side of New Hampshire Street.

i. The amount (total price to be paid for the parking garage) shall be reduced for the amounts paid prior to this date, pursuant to the Service Agreement between 9-10, L.C., and the City of Lawrence, dated March 30, 2000.

j. The City has selected Walker Parking Consultants to review and comment on the construction plans and construction work for the parking garage. At the time of the execution of this Agreement, Walker has approved plans presented, subject to a letter dated September 6, 2000, and attached as Appendix F. The City shall employ Walker Parking Consultants for additional services during the construction of the parking garage. 9-10, L.C., shall provide Walker Parking Consultants with access to: the construction site, and appropriate off-site locations, construction drawings, shop drawings, technical, architectural and engineering and all other materials reasonably associated with the parking garage construction and related work. 9-10, L.C., shall follow all reasonable advice and recommendations of Walker Parking Consultants in the construction of the parking garage, provided such advice and recommendations does not violate reasonable engineering and construction standards and does not violate the terms and conditions of the approved parking garage plans and specifications, and as approved by the licensed designer professional who has provided the plans and specifications, and does not increase the costs.

k. The Developer agrees to substantially finish the parking garage within 300 working days' construction time from the time that the building permits and the notices to proceed have been issued.

Working days are defined as all calendar days except the following:

- a) All Saturdays and Sundays.
- b) All holidays observed by the Lawrence City Government.
- c) Days the contractor is unable to obtain normal job performance by reason of 1) labor difficulties (including but not limited to strikes, walk-outs, picketing, boycotts, shutdowns, or inability to obtain a sufficient number of competent laborers, workers, or mechanics) or 2) force majeure which is defined as causes which are outside the control of the parties, except weather related delay, and could not be avoided by exercise of due care.
- d) Weather related delay shall not reduce or increase the number of working days pursuant to this Agreement.

In the event that the Developer fails to substantially finish the parking garage within 300 working days construction time, then there shall be a \$500 a day penalty for each day until substantial completion.

IV. PARKING GARAGE AFTER COMPLETION.

- a. The City has entered into a Parking Lease with Firststar Bank in accordance with the agreement, assumed by the City, that was entered into between the Developer and Firststar Bank. Said Parking Lease is attached hereto as Appendix G. In similar manner, the City shall lease up to 20 reserved spaces to 9-10, L.C. in the garage at the rate of \$300 per space per year, or the current rate or the rate the City is charging for similar spaces from time to time. It is understood that the number of spaces leased shall be subject to approval of bond counsel. Such reserved spaces would be used by a potential hotel operator or other tenants of Developer.
- b. The City shall enter into a Reversion Agreement on the parking garage with Firststar Bank and Developer. Said Reversion Agreement is attached as Appendix H.
- c. After completion of the parking garage, the City shall maintain said parking garage in a manner reasonably expected for a City's parking garage maintenance.
- d. The City's occupancy and operation of the parking garage shall begin upon substantial completion as defined in A191- 3.2.14. Substantial completion of the parking facility shall be defined as the completion of the parking facility to such a point pursuant to the plans and specifications that ninety percent (90%) of the parking facility may be used for its intended purposes. Upon substantial completion of the parking facility, the city and the Developer shall:
 - 1) develop a list of final items to be completed pursuant to the plans and specifications, the "punch list" items; and
 - 2) place an estimated cost to complete the punch list items and an estimated time to complete the punch list items. At the time of substantial completion and the development of the punch list, the City shall pay to the Developer from the retainage the difference between the amount retained by the City and the amount that is estimated to be necessary to complete the punch list items.

V. OTHER PUBLIC IMPROVEMENTS REQUIRED FOR REDEVELOPMENT.

- a. In connection with the remaining portions of the redevelopment, the City will pay up to a maximum of eight hundred thirty thousand and five hundred thirty-three dollars (\$830,533) total for the following allowable site redevelopment and infrastructure improvements within the

Redevelopment District out of TIF proceeds, as authorized by K.S.A. 12-1773. The parties agree that the numbers shown in the "TOTAL" column are the maximum that may be spent on each numbered item. These payments are estimated to be as follows:

Estimated TIF for Infrastructure and Site Improvements
(Items Outside Parking Structure)

	<u>NW</u>	<u>EAST</u>	<u>SW</u>	<u>TOTAL</u>
1. Testing	4,430	7,595	3,411	15,436
2. KPL Relocates	-----	18,988	34,652	53,640
3. Meters, Taps, Fees	37,975	10,850	9,223	58,048
4. Building Permits	11,935	8,680	6,727	27,342
5. Impact Fees	16,275	14,230	13,139	43,644
6. Demolition	16,275	27,125	16,275	59,675
7. Site Preparation	26,040	65,100	19,530	110,670
8. City Parking @ Street	4,883	24,413	4,400	33,696
9. City Sidewalks	10,850	27,125	8,355	46,330
10. Underground Utilities	21,170	23,870	16,709	61,749
11. City Streetlights	6,510	16,275	5,012	27,797
12. Landscaping	16,275	37,975	12,531	66,781
13. Landscaping Lot 2	16,225	-----	-----	16,225
14. Storm Drain	-----	47,000	-----	47,000
15. Temporary Signs/Walks	10,000	10,000	10,000	30,000
16. Alley Fencing	-----	15,000	-----	15,000
17. Inspection, Abate, Demo.	-----	25,000	-----	25,000
SUBTOTAL	198,843	379,226	159,964	738,033
18. Asbestos Cleanup – Remaining Expenses				+ 17,500
19. Intersection Modifications				+ 75,000
				830,533

Description of Scope

1. Testing: of soils, both existing and fill material, for suitability for bearing, absence of organics and/or rubble, compaction and suitability as a building site. Testing of materials used for infrastructure improvements as required by City standards.
2. KPL Relocates: of power lines in the alley adjacent to the Project within the public right-of-way. This does not include relocates behind the Arts Center or Parking Facility.
3. Meters, Taps, Fees: associated with bringing utility services such as water, domestic and fire, and sewer in, and to, the public right-of-way and up to the property line of each building.

4. Building Permits: City fees for the Improvements and buildings in the Development.
5. Impact Fees: to pay for infrastructure improvements necessitated by the Development as assessed by the City.
6. Demolition: of all buildings, pavements, sidewalks, curbs and gutters. Stripping of the site of all unwanted surface elements, and hauling off and disposing of materials at the surface, and providing for erosion control and cleaning of city streets during hauling operation.
7. Site Preparation: includes removal and disposal of all unsuitable subsurface material from the site including rubble, buried foundations, buried piping, organic materials and/or other deleterious materials. Removed unsuitable material replaced with acceptable subgrade materials meeting City and/or Engineering requirements. Erosion control and cleaning of City streets during haul out/in operation. Site prepared to rough grade line with suitable substrate in place.
8. City Parking @ Street: includes curb and gutter on City right-of-way beside each building, and on the east side of New Hampshire, includes concrete paved angle parking area in front of East Building.
9. City Sidewalks. includes sidewalks in City right-of-way adjacent to each building on New Hampshire frontage and 9th/10th frontage.
10. Underground Utilities: is the cost of bringing utility services across right-of-way to the building property lines in the Development.
11. City Streetlights: in the City right-of-way per City specification adjacent to each building in the Development and located along New Hampshire and 9th/10th.
12. Landscaping: in the City right-of-way adjacent to each building of the Development to include grading, seeding, sodding, plantings, shrubs, vines and trees, planters, sprinkler system, etc., as required by Site Plan.
13. Landscaping Lot 2: includes sidewalks, grading, seeding, sodding, shrubs, vines, trees, planters, sprinkler system, etc., to be installed on the portion of the City-owned Lot 2 which is between the 9th Street entrance/exit of the Parking Garage and the west face of the building to be constructed on the SW corner of 9th and New Hampshire.
14. Storm Drain: this is an in-lieu-of fee for construction of the downstream improvements necessitated by the construction of the Arts Center, and the East Building. This amount is the East Building's *pro rata* share of the total amount as determined by City Staff.

15. Temporary Signs/Walks: for the construction of temporary pedestrian walkways in City right-of-way and traffic signage during construction of the Development buildings.
16. Alley Fencing: permanent fencing to be installed on the east side of the alley at start of construction of the East Building or Arts Center, whichever comes first, to protect the adjacent neighborhood from dirt/debris during construction and buffer the neighborhood from the Development after construction.
17. Inspection, Abatement, Demo.: of 900 New Hampshire building to include certified inspection for and remediation of asbestos and PCBs, and demolition of the structure and proper removal of debris. An allowance is also included for possible cleanup costs of any petroleum contaminants not covered by the KDHE UST Trust Fund.
18. Asbestos Cleanup: residual expenses not yet paid by the Arts Center/City Project.
19. Intersection Modifications: includes six "Bulb-outs" as suggested by the Traffic Engineering Study. Two at 10th and New Hampshire, four at 9th and New Hampshire. Five of the six "Bulb-outs" include the expense of relocation/replacement of storm sewer inlets.

VI. BUILDING COMPLETION REQUIREMENTS. The City and the Developer agree that the Developer will complete the buildings referred to as the North, South and East Buildings above. The Developer shall initiate construction of the North and East buildings within three (3) years from the date of the signing of this Agreement, and shall complete said buildings within five (5) years from the date of the signing of this Agreement. The Developer shall secure this Agreement with a letter of credit furnished by a surety acceptable to the City, that provides that if the Developer fails to complete the buildings as set out above, then the Developer shall pay the City a liquidated damage payment of one hundred thousand dollars (\$100,000) and said letter of credit shall provide if the Developer fails to pay said sum, then the issuer of the letter of credit shall pay the same.

The Developer agrees to substantially finish the building on the northwest corner of Tenth and New Hampshire streets within 300 working days' construction time from the time that the south wall of the Parking Garage can be backfilled and building permits have been issued.

Working days are defined as all calendar days except the following:

- a) All Saturdays and Sundays.
- b) All holidays observed by the Lawrence City Government.
- c) Days the contractor is unable to obtain normal job performance by reason of 1) labor difficulties (including but not limited to strikes, walk-outs, picketing, boycotts, shutdowns, or inability to obtain a sufficient number of competent laborers, workers, or mechanics) or 2) force

majeur which is defined as causes which are outside the control of the parties, except weather related delays, and could not be avoided by exercise of due care.

d) Weather related delay shall not reduce or increase the number of working days pursuant to this Agreement.

In the event that the Developer fails to substantially finish the parking garage within 300 working days construction time, then there shall be a \$500 a day penalty for each day until substantial completion.

VII. PRIVATE REDEVELOPMENT.

a. The Developer has presented plans for private redevelopment, including general square footage requirements. These plans are approved by the City, including architectural review pursuant to Resolution _____. These plans are attached as Appendix I.

b. The Developer agrees to provide the City with a written notice of all tenants of the Redevelopment District Project on each November 1st and upon written request of the City. The Developer agrees to cause each tenant of the Redevelopment District to provide the City, simultaneously with submission to the Kansas Department of Revenue, its monthly sales tax returns. The Developer agrees to cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the Redevelopment District to be obligated by written contract to provide to the City simultaneously with submission to the Kansas Department of Revenue the monthly sales tax returns for their facilities in the property in the Redevelopment District of such assignee, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights. To extent provided by law, the city shall keep all sales tax information confidential.

c. The Developer agrees that, up to one year after completion of the Project, the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, audit, and copy, from time to time, all the Developer's books and records relating to the TIF Project paid for by the Bonds (including all general contractor's sworn statements, general contracts, subcontracts, material purchase orders, waivers of lien, paid receipts and invoices). The sole purpose of such audits shall be to allow the City to respond to claims, potential litigation, or litigation.

d. The Developer and any successor owners agree that, to the extent it is obligated to pay any portion of the real estate tax bills for the Property in the Redevelopment District, it shall pay such taxes promptly on or before the due date of such tax bills. Developer or its successors shall have the right to pay said taxes under protest in accordance with applicable law.

e. The Developer and any other owners of real property in the Redevelopment District shall promptly notify the City in writing of protest of real estate taxes or valuation of the Developer's property by the County Appraiser.

f. The City hereby agrees to lease the second floor of the retail/office apartment building on the northwest corner of 10th and New Hampshire Street, consisting of approximately 7600 gross square feet, at Nine Thousand Five Hundred six Dollars and 25/100 (\$9,506.25) per month for a period of ten years (City Lease). In addition, the City will pay their pro-rata share of taxes, insurance, maintenance, utilities, and common area maintenance charges. Tenant finish to be completed per Exhibit A entitled Standard Office Tenant Finish. The parties will execute an appropriate lease for said space. The lease is attached as Appendix J.

g. The Developer agrees that at least eighty percent (80%) of the ground level, leasable commercial space will be leased to tenants subject to retail sales tax. When TIF bonds are

retired, this requirement shall terminate. As a remedy, if the Developer fails to comply with this provision, the City may deny occupancy to a proposed tenant.

h. The Developer shall lease from the City Lot 91 and the south 25 feet of Lot 89 on New Hampshire Street, for One Dollar (\$1.00) a year, and reimbursement of real estate taxes. The lease shall be for twenty (20) years. The Developer shall have the option to purchase the property within the 20-year period. The price of said property is currently established at \$135,000.00, and that shall be the price for the first three (3) years. The price shall increase over the last seventeen (17) years by the amount that the Consumer Price Index increases over the Consumer Price Index of the third year times the \$135,000.00 base price. The lease is attached as Appendix K.

i. The Developer agrees that for a period of at least twenty (20) years after the execution of this Agreement, the Developer will rent the third and fourth floors of the South Building for residential apartments.

VIII. PUBLIC UTILITIES. Pursuant to franchise agreements with applicable utilities, the City shall require utilities located adjacent, under, or otherwise occupying City right-of-way, easements, or alleys to be relocated, at the expense of the utility, for parking garage and related 9th street entrance. The Developer shall be responsible for the relocation of utilities required for the private redevelopment required under this Agreement. The city shall reimburse the Developer for the relocation of utilities required for the private redevelopment required under this Agreement, pursuant to the provisions of Section V of this Agreement.

IX. DEVELOPER OF RECORD. It is understood that 9-10, L.C. is the Developer of record on this project.

X. COVENANTS ON PROPERTY. The parties acknowledge that the property that the City is purchasing will be made subject to Paragraph 14 of the Real Estate Agreement executed March 31, 2000, between Mercantile Bank and 9-10, L.C. A copy of said Paragraph 14 is attached hereto and marked Appendix L. City acknowledges that any retail improvements that the city places in or upon said parking garage area shall be subject to the Declaration of Restrictive Covenants to be placed on Firststar's land by Firststar.

XI. ASSIGNMENT. Until the TIF bonds are paid in full, the Developer shall not assign its right, title or interest in this Agreement or the project or property involved in the Agreement without the City's written approval. The City shall not unreasonably withhold such approval.

XII. CITY RESTRICTIVE COVENANT. 9-10, L.C., in a restrictive covenant to be placed upon the property involved, shall require that a buyer of the Developer's interest hereunder must follow the terms and conditions of this Agreement.

XIII. MISCELLANEOUS.

a. Notices under this Agreement shall be sent by certified mail, return receipt requested. Notices shall be effective upon receipt. Refusal of mail shall be considered acceptance as of the date of refusal. Notices shall be sent to:

CITY:

City of Lawrence
c/o Mike Wildgen, City Manager
City Hall
6th & Massachusetts
Lawrence, KS 66044

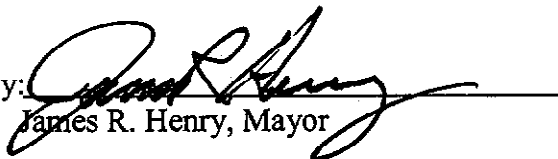
DEVELOPER:

9-10, L.C.
by Martin Moore
1441 Wakarusa, Suite 200
Lawrence, KS 66049

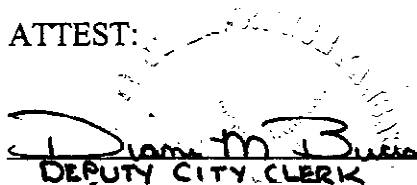
- b. Time is of the essence of this Agreement.
- c. This Agreement shall be binding on the successors, trustees and assigns of the parties hereto.

EXECUTED this 18th day of September, 2000.

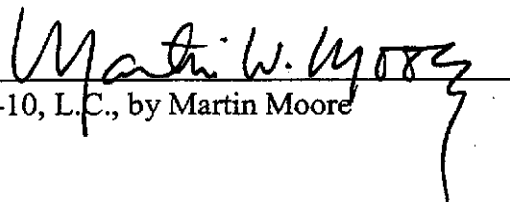
THE CITY OF LAWRENCE, KANSAS

By: 
James R. Henry, Mayor

ATTEST:


FOR RAYMOND HUMMERT
DEPUTY CITY CLERK

9-10, L.C.

By: 
9-10, L.C., by Martin Moore

REDEVELOPMENT AGREEMENT

SCHEDULE OF APPENDICES

<u>Appendix Number</u>	<u>Page</u>	<u>Paragraph</u>
A. Development Plan	1	B
B. Legal Description for Parking Garage Lots	1	I
C. AIA Form A-191	3	IIIc
D. Breakdown of Development Fee	4	IIIId
E. Performance Bond	4	IIIe
F. 9/6/00 Letter from Walker Parking Cons.	4	IIIj
G. Parking Lease	5	IVa
H. Reversion Agreement	5	IVb
I. Development Plan – Private Development	9	VIIa
J. Lease on 2 nd Floor	9	VIIIf
K. Lease on Land	10	VIIIh
L. Restrictive Covenants - Paragraph 14 of Firststar Agreement	10	X

DOWNTOWN 2000

A response to the City of Lawrence Request For Proposals

A DOWNTOWN REDEVELOPMENT PROJECT PROVIDING:

A Solution for Parking Downtown

- A first class architecturally enhanced parking facility
- 537 total public spaces with a construction budget of \$10,600 per space
- Net project budget per space as low as \$5,500 after TIF generated by 9-10 LC and tenants

A Solution for the Arts Center Expansion

- Keeping the Arts Center Downtown
- Ample building size & program space
- Ample parking for their largest events

Additional Property and Sales Taxes

- Up to 1.3 million dollars projected per year in total new taxes for a 20 year total of up to 26 million dollars, of which
- \$900,000 in annual new taxes are immediately available upon project completion to benefit the State, County, City and Schools

Introduction - Downtown 2000 Project

(a 9-10 LC Development)

This has been a continually evolving downtown project that will add tremendous appeal and value to the City of Lawrence. It is recognized that downtown redevelopment with parking facilities is expensive and requires City at Large contributions. It has been difficult to bring all factors and people together so that the project is economically feasible. We are at the point to solidify the agreements between the City, Mercantile Bank, the Arts Center and the Redeveloper (9-10 LC).

Twenty-two months, hundreds of hours of planning, significant cash investment (in excess of \$700,000 to date) has finally generated a workable plan that will ensure the continued viability of Downtown Lawrence. This is a great team project, of which all participants can be proud.

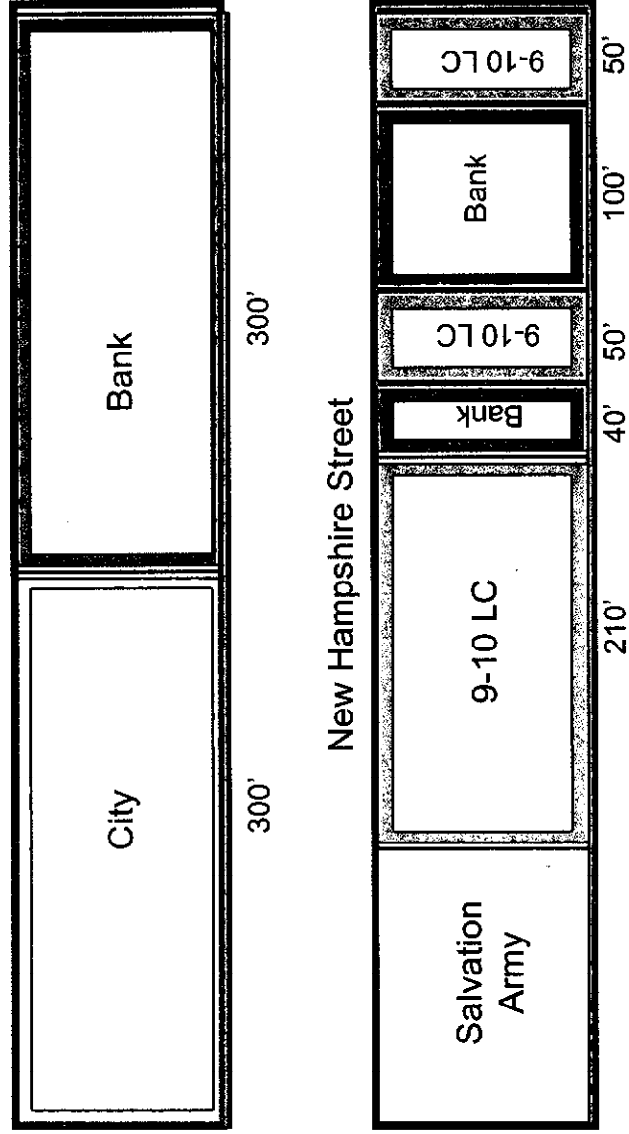
After City approval, we are proceeding with the following:

1. Obtaining a T.I.F. feasibility study based on this concept.
2. Finalizing an agreement between Mercantile Bank (Firststar) and City of Lawrence for land purchase.
3. Finalizing an agreement for City acquisition of Arts Center site.
4. Finalizing an agreement between 9-10 LC and City of Lawrence to develop the project and construct the parking structure and acquire needed land.
5. Developing construction drawings, after development agreements are in place.

9-10 LC is ready to proceed with the plan outlined in the following exhibits.

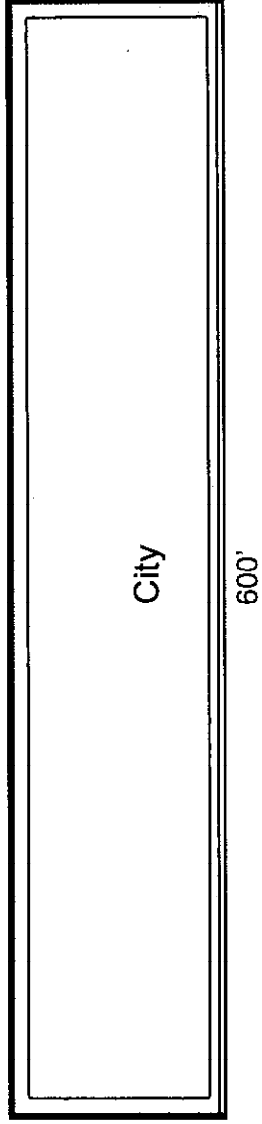
Existing Land Ownership

City: 35,100 s.f.
 Bank: 51,480 s.f.
 9-10: 36,270 s.f.
 Total: 122,850 s.f.

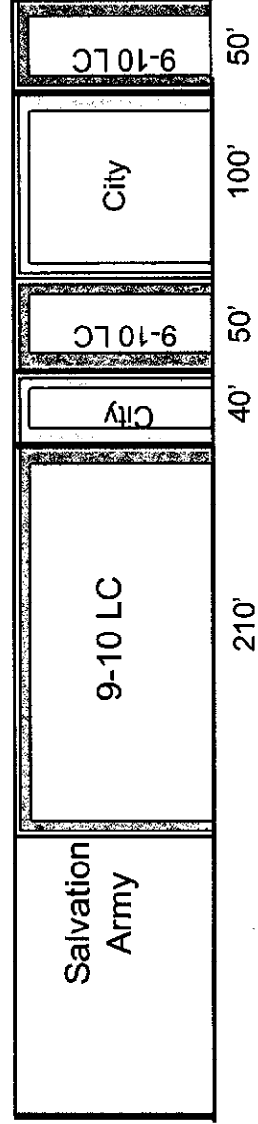


Land Ownership After City Purchases Bank Property for \$795,000

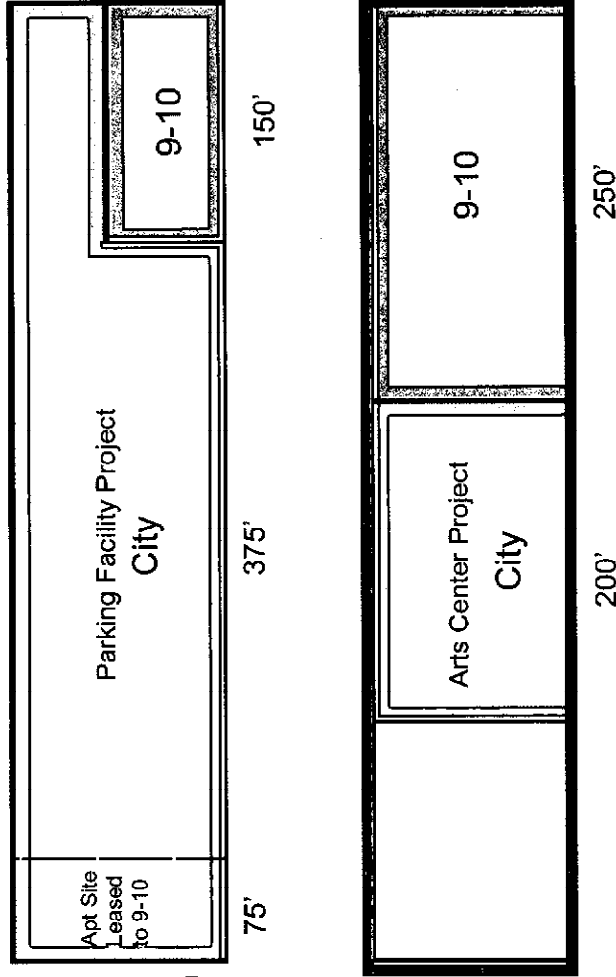
City: 86,580 s.f.
 9-10: 36,270 s.f.
 Total: 122,850 s.f.



New Hampshire Street



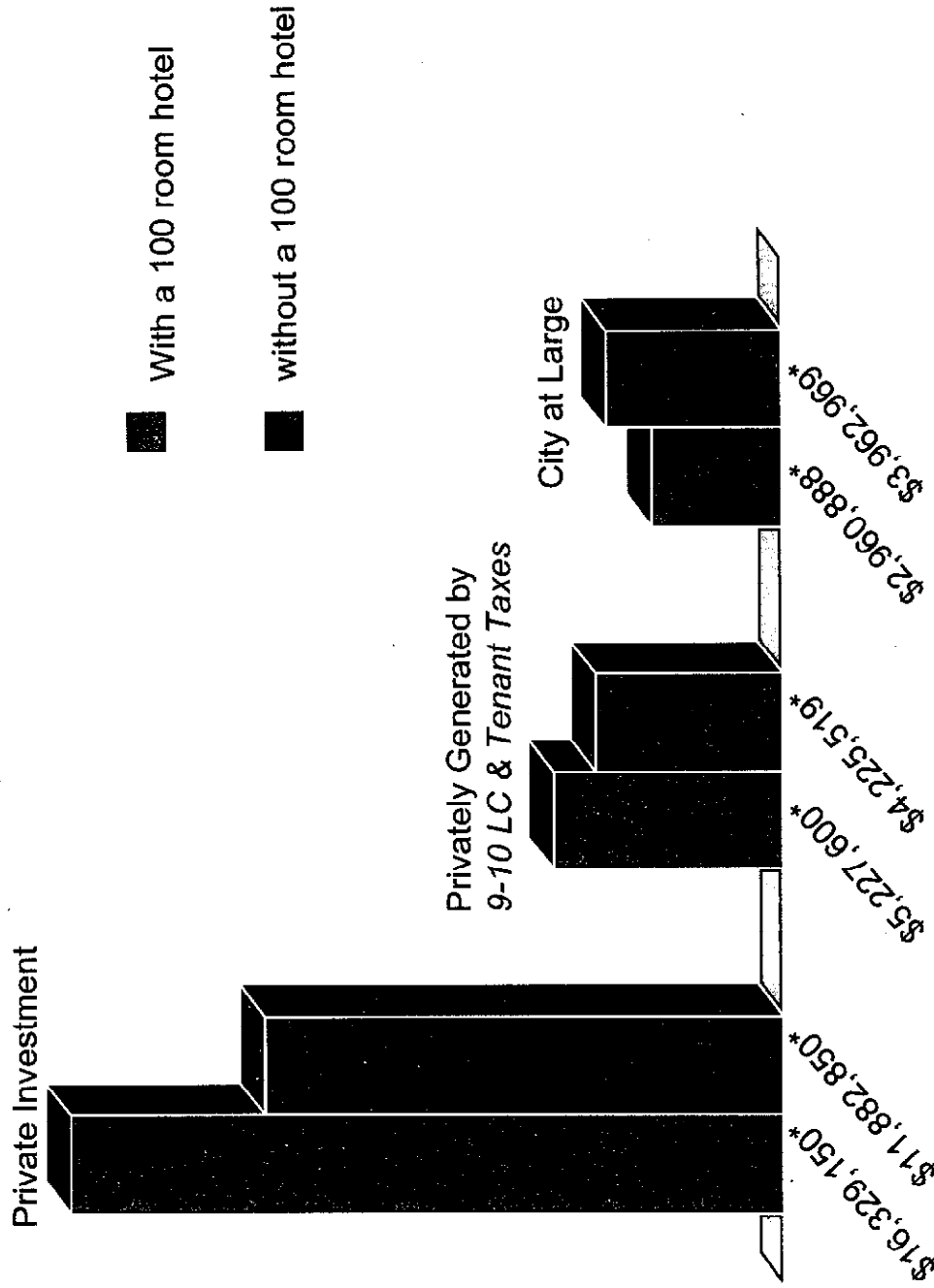
Land Ownership After Even Trade



City: 60,200 s.f. (west)
 City: 23,400 s.f. (east)
 9-10: 39,250 s.f.
 Total: 122,850 s.f.

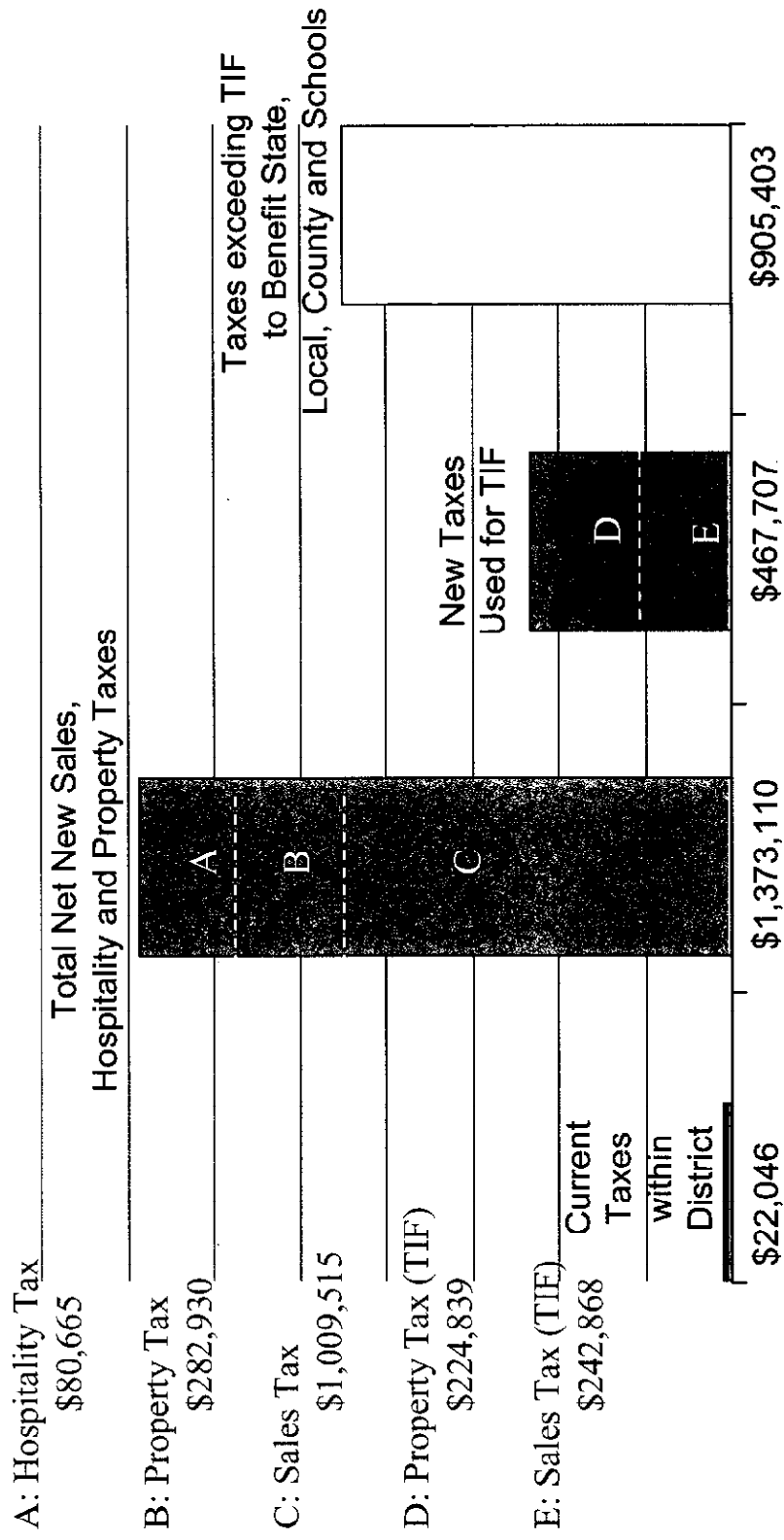
- The Arts Center Project to pay for its site.
- The title to the office/hotel site (southwest corner of 9th & NH) and the Bank's property on the east side of NH (totaling 26,380 s.f.) will be deeded to 9-10 LC in exchange for Arts Center site (23,400 s.f.).

Investment by Source



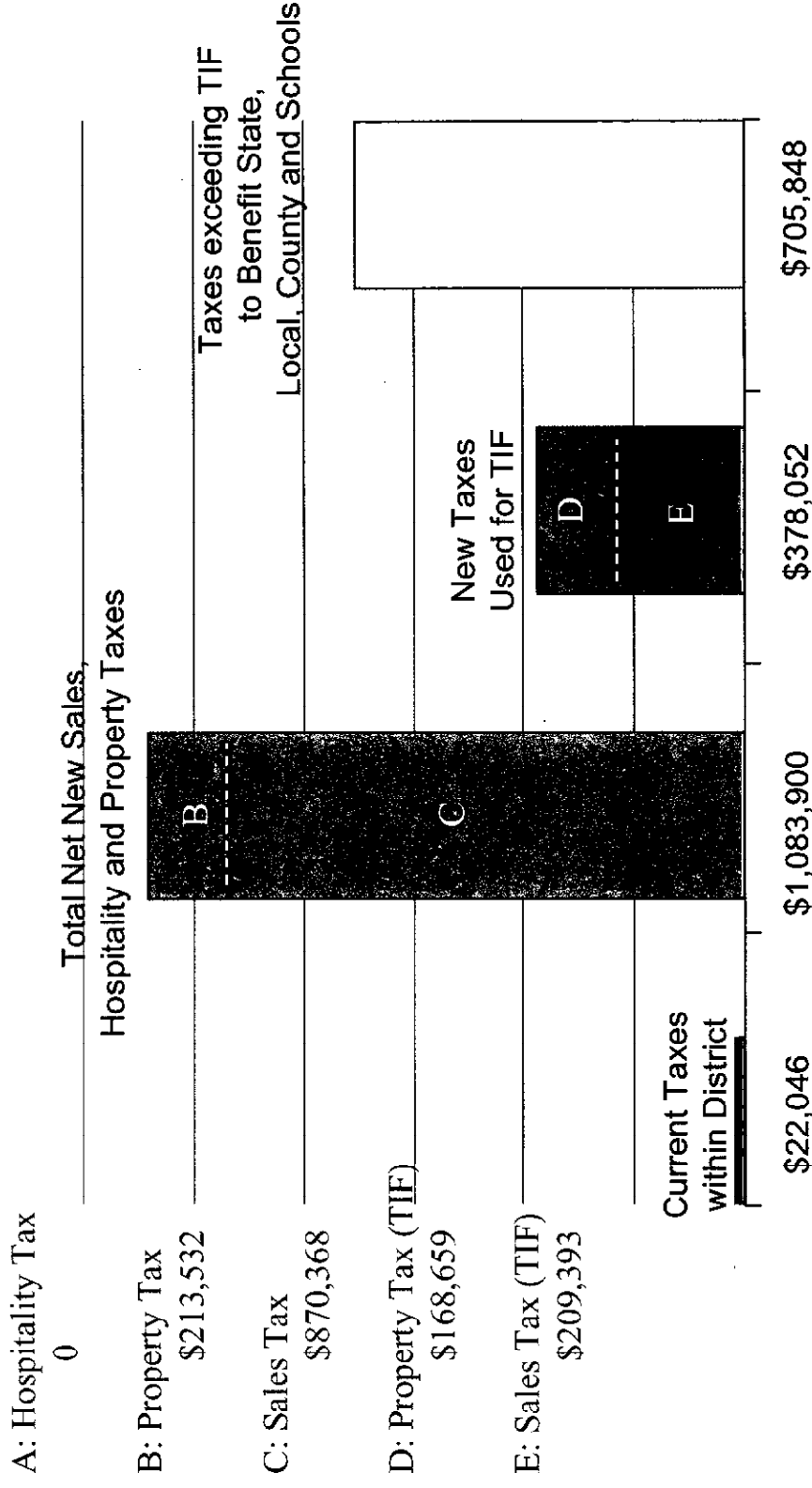
*Subject to minor adjustments.

Estimated Taxes Generated Yearly within the Redevelopment District* with a 100 room hotel



*Not adjusted for inflation.

Estimated Taxes Generated Yearly within the Redevelopment District* without a 100 room hotel

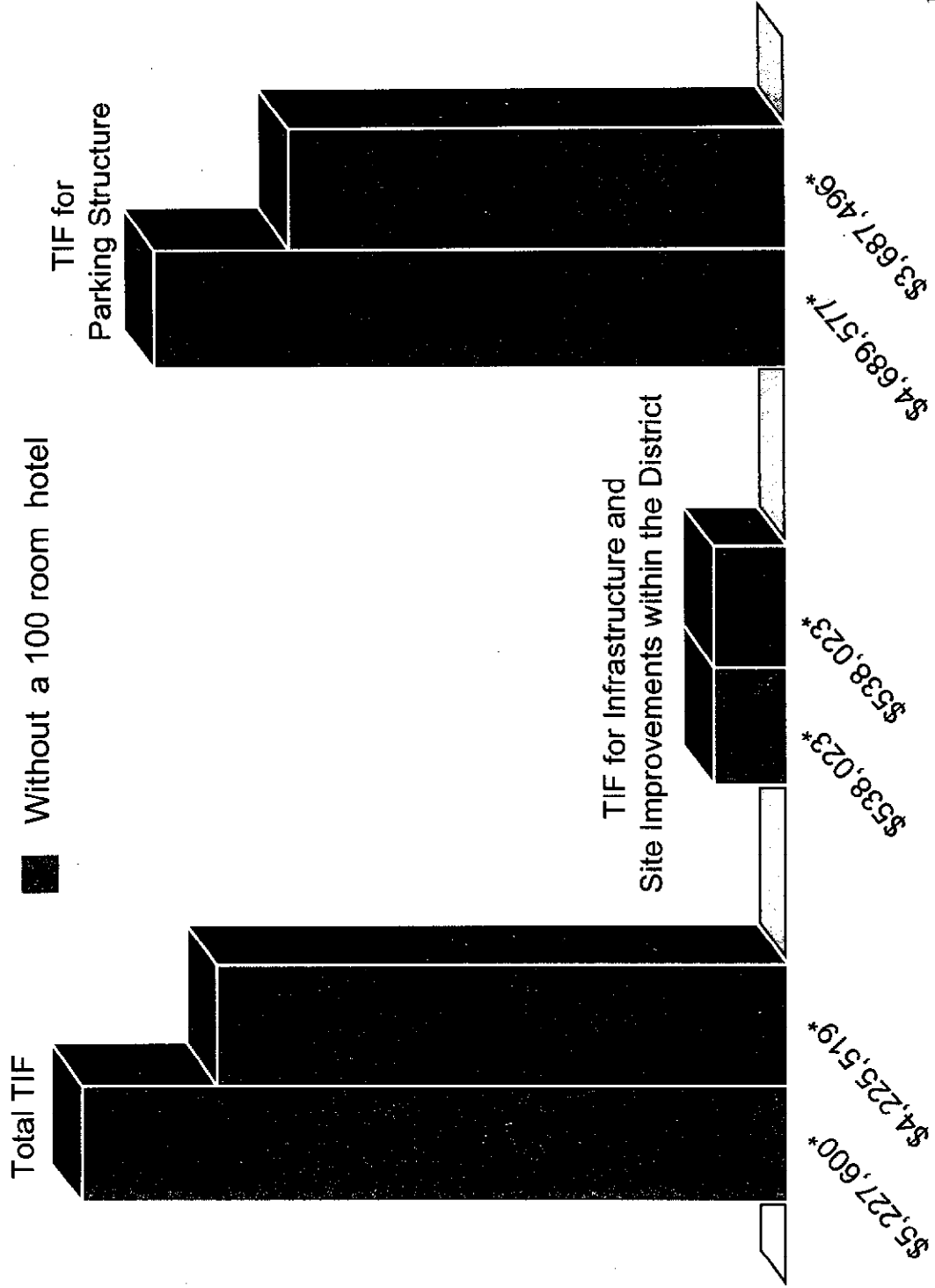


*Not adjusted for inflation.

TIF Bonding Potential

■ With a 100 room hotel

■ Without a 100 room hotel



*Subject to minor adjustments.

1/07/00

TIF for Infrastructure
and Site Improvements

\$538,023

- Demolition
- Site Preparation
- New Sidewalks
- Utility Relocates
- Meters, Taps, Fees
- Street Lights
- Sanitary & Storm Sewers
- Landscaping
- Street Modifications/Repair & Striping
- Alley Resurfacing
- Drives & Driveways in Public Right of Way
- Plazas
- Underground Utilities within Public Right of Way

None of the Proceeds shall be used for construction of privately owned buildings.

4 Level Parking Structure

537 stalls & 2,500 s.f. office or retail

Paid by	Paid
Project	by
Generated	City
Taxes	at Large

Up to 60% paid by 9-10 LC and tenant taxes

- \$3,962,969 paid by City at Large after TIF
- \$2,960,888 paid by the City at Large after TIF if hotel included
- Net project cost of \$5,500 to \$7400 per stall after TIF

City Budget 900 Block Redevelopment

	Without Hotel	With Hotel
City Purchases "Bank" Land	795,000	
Arts Center Pays for its Site	<u><390,000></u>	
Net Land Cost for this Project	\$405,000	\$405,000
City Purchases Parking Structure *	6,793,047	
9-10 Pays to City a C4A in Lieu of Payment	<u><55,500></u>	
Net Cost of Parking Structure	<u>\$6,737,547</u>	<u>\$6,737,547</u>
Total Parking Project Including Land	7,142,547	7,142,547
Allowable TIF Items for Infrastructure & Site Development	<u>538,023</u>	<u>538,023</u>
Total Project Before Bond Fees & Temporary Financing Interest	\$7,680,570	\$7,680,570
Estimate for Interest on Temporary Financing	387,281	387,281
Estimate for Bond Underwriting Fees	<u>120,637</u>	<u>120,637</u>
Total Bonding Requirements	\$8,188,488	\$8,188,488
Less TIF Paid (est.)	<u><4,225,519></u>	<u><5,227,600></u>
Net Cost After TIF	\$3,962,969	\$2,960,888

*Parking Structure includes all Architectural, Engineering, Design Development and Construction Management.

Assumptions

- The City purchases land from Mercantile Bank for \$795,000 and land transfers are made as specified.
- The Arts Center project will pay for its own site.
- 9-10 LC will enter into a contract with City to construct the parking structure, subject to design approval, for a fixed contract sum of \$6,793,047, the majority of which is paid by TIF.
- The City will own, maintain and operate the parking structure, subject to conditions stipulated in Mercantile Bank's land sale agreement.
- TIF Bond proceeds of \$538,023 ± will be allocated to the TIF District for site improvements, infrastructure improvements and other permitted developmental expenses outside the parking structure.

Assumptions

- The City will enter into a lease agreement with 9-10 LC for second floor office space in the Apartment Building
- The project will be constructed in phases with the parking structure being in the first phase.
- The City will be responsible for KPL relocation behind the parking structure and the Arts Center.
- General obligation bonds will be issued for the TIF and bond underwriting fees will be paid by the City.
- Estimated interest on temporary financing of \$387,281.
- Estimated bond underwriting fee of \$120,637.

Assumptions

- The City will be responsible for the building permit and fees for the parking structure.
- The City will make progress payments on the parking structure.
- An in-lieu-of parking payment paid by 9-10 LC of \$55,500 is included (\$1,500/space for 37 spaces) as required by C4A zoning.
- The TIF funding estimate is based on certain property valuations and retail sales projections that must be verified by a feasibility study. Also, we have included financial analysis of the TIF proceeds both with and without inclusion of a 100 room hotel on the southwest corner of 9th & New Hampshire.
- A 100 room hotel would provide estimated property and sales taxes sufficient to retire an additional one million dollars of the bonds used for the parking structure.

APPENDIX B

LEGAL DESCRIPTION FOR PARKING GARAGE LOTS

The West forty-two (42) feet of Lots 69, 71 and 73.

Lots 75, 77, 79, 81, 83, 85, 87 and the North twenty-five (25) feet of Lot 89.

AIA Document A191

Standard Form of Agreement Between Owner and Design/Builder

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE, COMPLETION OR MODIFICATION.

This document comprises two separate Agreements: Part 1 Agreement and Part 2 Agreement. To the extent referenced in these Agreements, subordinate parallel agreements to A191 consist of AIA Document A491, Standard Form of Agreements Between Design/Builder and Contractor, and AIA Document B901, Standard Form of Agreements Between Design/Builder and Architect.

PART 2 AGREEMENT

1996 EDITION

AGREEMENT

made as of the _____ day of August in the year of 2000.
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name and address)

The City of Lawrence, Kansas, a municipal corporation
c/o Mike Wildgen, City Manager
P.O. box 708
Lawrence KS 66044

and the Design/Builder:
(Name and address)

9-10, L.C.
c/o Martin Moore
1441 Wakarusa Drive - Suite 200
Lawrence KS 66049

Copyright 1985, ©1996 The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006-5292. Reproduction of the material herein or substantial quotation of its provisions without the written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution.



For the following Project:

(Include Project name, location and a summary description.)

Downtown 2000 parking structure between 9th and 10th and Massachusetts and New Hampshire Streets.

To construct a parking garage at the above location, and to provide downtown development project coordination, professional services, and allowance to require apartment construction at 10th/New Hampshire.

The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

(Name and address)

(Registration Number)

(Relationship to Design/Builder)

Glenn, Livengood, Penzler
Architects, P.A.
1001 New Hampshire
Lawrence KS 66044

None - Subcontractor

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

(Name, address and discipline)

(Registration Number)

(Relationship to Design/Builder)

All will be provided through architect.

The Owner and the Design/Builder agree as set forth below.

TERMS AND CONDITIONS—PART 2 AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Subparagraph 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Paragraph 8.3.

1.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 It is the intent of the Owner and the Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Drawings, specifications, and other documents and electronic data are furnished for use solely with respect to this Part 2 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the drawings, specifications, and other documents and electronic data furnished by the

Design/Builder for information and reference in connection with the Project except as provided in Subparagraphs 1.3.2 and 1.3.3.

1.3.2 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to the Design/Builder, unless the Design/Builder is adjudged to be in default under this Part 2 Agreement or under any other subsequently executed agreement.

1.3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect shall grant a license to the Owner to use the drawings, specifications, and other documents and electronic data furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure the Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

1.3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Subparagraph 1.3.1.

ARTICLE 2

OWNER

2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design/Builder agree in writing, in addition to representatives of the Owner's Building Inspection Department.

2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections.

Design/Builder

2.4 The ~~Owner~~ shall furnish services of land surveyors,

geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

2.7 Those services, information, surveys and reports required by Paragraphs 2.5 and 2.6 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

~~2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.~~

2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

ARTICLE 3 DESIGN/BUILDER

3.1 SERVICES AND RESPONSIBILITIES

3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

3.1.2 The agreements between the Design/Builder and

the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, with respect to this Project, shall be promptly and fully disclosed to the Owner upon request. Design/Builder shall satisfy Owner as to its ability to complete the Project.

3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

3.2 BASIC SERVICES

3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

3.2.3 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- 1 be consistent with the intent of the Design/Builder's Proposal;
- 2 provide information for the use of those in the building trades; and
- 3 include documents customarily required for regulatory agency approvals.

Owner shall have 15 days to approve documents.

3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

3.2.5 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

3.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents.

3.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the

Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

3.2.10 The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure ~~building~~ building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.

3.2.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

3.2.12 The Design Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

3.2.13 The Design Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

3.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

3.3 ~~ADDITIONAL SERVICES~~

~~3.3.1 The services described in this Paragraph 3.3 are~~

~~not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Paragraph 3.3 shall be provided only if authorized or confirmed in writing by the Owner.~~

~~3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.~~

~~3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.~~

~~3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.~~

~~3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.~~

~~3.3.6 Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.~~

~~3.3.7 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.~~

ARTICLE 4

TIME

4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

4.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

4.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Paragraph 4.2 above.

4.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by

spates, fire, unusual delay in deliveries, adverse conditions not reasonably anticipatable, able casualties or other causes beyond the Builder's control, or by [redacted] authorized by the [redacted], or by other causes which the [redacted] and Design/Builder agree may justify delay; then Contract Time shall be reasonably extended by Order.

ARTICLE 5 PAYMENTS

PROGRESS PAYMENTS

The Design/Builder shall deliver to the Owner [redacted] Applications for Payment in such detail as set forth in Article 14.

Within [redacted] days of the Owner's receipt of a [redacted] Application for Payment, the Owner shall make payment to the Design/Builder.

Each Application for Payment shall constitute a [redacted] by the Design/Builder to the Owner that design and construction have progressed to the extent indicated, the quality of the Work covered by the Application is in accordance with the Contract Documents, and the Design/Builder is entitled to [redacted] in the amount requested.

Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

The Owner shall have no obligation under this Part of the Agreement to pay or to be responsible in any way for the Work of the Architect, another design professional or contractor performing portions of the Work.

Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of Work not in accordance with the Contract Documents.

The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

FINAL PAYMENT

Neither final payment nor amounts retained, if any,

shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt.

5.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

1. liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

5.3 INTEREST PAYMENTS

5.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

ARTICLE 6

PROTECTION OF PERSONS AND PROPERTY

6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

ARTICLE 7

INSURANCE AND BONDS

7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

7.1.1 The Design/Builder shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
4. claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out

of ownership, maintenance or use of a motor vehicle; and

7. claims involving contractual liability insurance applicable to the Design/Builder's obligations under Paragraph 11.5.

7.1.2 The insurance required by Subparagraph 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

7.1.3 Certificates of insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These certificates and the insurance policies required by this Paragraph 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

7.2 OWNER'S LIABILITY INSURANCE

7.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

7.3 PROPERTY INSURANCE

7.3.1 Unless otherwise provided under this Part 2 Agreement, the Owner shall purchase and maintain, in a company or companies authorized to do business in the jurisdiction in which the principal improvements are to be located, property insurance upon the Work to the full insurable value thereof on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 7.3 to be insured, whichever is earlier. This insurance shall include interests of the Owner, the Design/Builder, and their respective contractors and subcontractors in the Work.

7.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and

debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

7.3.3 If the Owner does not intend to purchase such property insurance required by this Part 2 Agreement and with all of the coverages in the amount described above, the Owner shall so inform the Design/Builder prior to commencement of the construction. The Design/Builder may then effect insurance which will protect the interests of the Design/Builder and the Design/Builder's contractors in the construction, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Design/Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, then the Owner shall bear all reasonable costs properly attributable thereto.

7.3.4 Unless otherwise provided, the Owner shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

7.3.5 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 7.3.10. The Design/Builder shall pay contractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require contractors to make payments to their subcontractors in similar manner.

7.3.6 Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of each policy that includes insurance coverages required by this Paragraph 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design/Builder.

7.3.7 If the Design/Builder requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design

professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/Builder, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Paragraph 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

7.3.9 If required in writing by a party in interest, the Owner as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. ~~IF AFTER SUCH LOSS NO OTHER SPECIAL AGREEMENT IS MADE, REPLACEMENT OF DAMAGED WORK SHALL BE COVERED BY APPROPRIATE CHANGE ORDER.~~

7.3.10 The Owner as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

7.3 Property Insurance. The Parties have deleted Owner's responsibility for property insurance with the agreement that the Design/Builder shall have no obligation for losses on the job site other than those covered by the Builder's Risk Insurance.

7.4 LOSS OF USE INSURANCE

7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design/Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

ARTICLE 8

CHANGES IN THE WORK

8.1 CHANGES

8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, [redacted] or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder: [redacted] an order for a minor change in the Work may be issued by the Design Builder alone.

8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order. [redacted] or order for a minor change in the Work.

8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order and [redacted] application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or the Design/Builder, the applicable unit prices shall be equitably adjusted.

8.2 CHANGE ORDERS

8.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

8.3 CONSTRUCTION CHANGE DIRECTIVES

8.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

8.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for

Design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- .4 costs of premiums for all bonds and insurance permit fees, and sales use or similar taxes;
- .5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architects, engineers and other professionals.

8.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

8.4 MINOR CHANGES IN THE WORK

8.4.1 The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

8.5 CONCEALED CONDITIONS

8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no

Any costs incurred by reason of such conditions shall be paid by the Design/Builder. In no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

8.6 REGULATORY CHANGES

8.6.1 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

ARTICLE 9

CORRECTION OF WORK

9.1 The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

9.2 If, within one (1) year after the date of Substantial Completion of the Work or after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

9.3 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Subparagraph 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

9.4 If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

9.5 If the Design/Builder defaults or neglects to carry

out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

9.6 The Design/Builder shall assign all manufacturer's warranties on the property transferred to the Owner.

~~Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.~~

~~10.3 Demand for arbitration shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.~~

~~10.4 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 2 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 2 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing~~

specific reference to this Part 2 Agreement signed by the Owner, the Design/Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 2 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

10.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

11.2 SUBCONTRACTS

11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project.

11.3 WORK BY OWNER OR OWNER'S CONTRACTORS

11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Subparagraph 11.4.

11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

11.4 CLAIMS FOR DAMAGES

11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the

other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

11.5 INDEMNIFICATION

11.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 11.5.

11.5.2 In claims against any person or entity indemnified under this Paragraph 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Paragraph 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

11.6 SUCCESSORS AND ASSIGNS

11.6.1 The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES

11.7.1 Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services

originally to have been provided by the Architect or other design professional whose services are being terminated.

11.8 EXTENT OF AGREEMENT

11.8.1 This Part 2 Agreement supersedes prior negotiations, representations or agreements, either written or oral, subject to paragraph 14.2.1 of this Agreement. This Part 2 Agreement may be amended only by written instrument and signed by both Owner and the Design/Builder.

ARTICLE 12

TERMINATION OF THE AGREEMENT

12.1 TERMINATION BY THE OWNER

12.1.1 This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

12.1.2 If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written

notice that the Owner intends to terminate this Part Agreement. If the Design/Builder fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

12.2 TERMINATION BY THE DESIGN/BUILDER

12.2.1 If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

ARTICLE 13

BASIS OF COMPENSATION

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

13.1 COMPENSATION

13.1.1 For the Design/Builder's performance of the Work, as described in Paragraph 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

\$7,264,512

13.1.2 For Additional Services, as described in Paragraph 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

13.2 REIMBURSABLE EXPENSES

13.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

13.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of () times the amounts expended.

13.3 INTEREST PAYMENTS

13.3.1 The rate of interest for past due payments shall be as follows: 12%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)

ARTICLE 14

OTHER CONDITIONS AND SERVICES

14.1 The Basic Services to be performed shall be commenced on Notice to Proceed and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved in the Contract Time of [REDACTED]

14.2 The Basic Services beyond those described in Article 3 are as follows: none.

14.2.1. In the event of conflict between the terms of A-191 and the Redevelopment Agreement, the Redevelopment Agreement shall control.

14.3 Additional Services beyond those described in Article 3 are as follows: None.

14.4 The Design/Builder shall submit an Application for Payment on the first (1st) day of each month.

14.5 The Design/Builder's Proposal includes the following documents:
(List the documents by specific title and date; include any required performance and payment bonds.)

Title	Date
CIVIL DRAWINGS	AUGUST 2000
SHEET 1 Site Plan	
SHEET 2 Landscape Plan	

ARCHITECTURAL DRAWINGS	AUGUST 2000
A-001 General Notes	
A-002 Code Plan	
A-010 Site Plan	
A-011 Demolition Site Plan & Details	
A-012 Site Plan Details	
A-100 Basement Floor Level	
A-110 Street Level	
A-120 Second Floor Level	
A-130 Third Floor Level	
A-140 Roof Plan	
A-200 Building Elevations	
A-201 Enlarged Building Elevations	
A-202 Enlarged Building Elevations	
A-203 Enlarged Building Elevations	
A-204 Enlarged Building Elevations	
A-250 Building Sections	
A-300 Wall Sections	
A-301 Wall Sections	
A-310 Building Details	
A-311 Building Details	
A-312 Building Details	
A-400 Plan Details	
A-450 Plan Details	
A-451 Stair Details	
A-452 Stair Details	
A-453 Stair Details	
A-454 Stair Details	
A-455 Stair Details	
A-456 Stair Details	
A-600 Door Schedule/Door Types	
A-601 Door Details	
A-700 Window Types	
A-800 Room Finish Schedule	

THIS LIST CONTINUES ON ATTACHED APPENDIX A.

This Agreement entered into as of the day and year first written above.

OWNER
CITY OF LAWRENCE, KANSAS

DESIGN/BUILDER
9-10, L.C.

By: _____
(Signature) Mike Wildgen, City Manager

By: _____
(Signature) Martin Moore

Mike Wildgen, City Manager
(Printed name and title)

Martin Moore
(Printed name and title)



CAUTION: You should sign an original AIA document which has this caution printed in red.
An original assures that changes will not be obscured as may occur when documents are reproduced.

APPENDIX A

CONTINUATION OF LIST FROM 14.5.

Title	Date
STRUCTURAL DRAWINGS	AUGUST 2000
S-100 Foundation & Basement Plan/Details	
S-101 Street Level Framing Plan/Details	
S-102 Second Floor Framing Plan/Details	
S-103 Third Floor Framing Plan/Details	
S-104 Tower Roof Framing Plan/Details	
S-200 Street Details	
MECHANICAL/ELECTRICAL/PLUMBING DRAWINGS	AUGUST 2000
M-100 Basement Level Plan – Mechanical	
M-101 Street Level Plan – Mechanical	
M-103 Third Level Plan – Mechanical	
E-100 Basement Level Plan – Electrical	
E-101 Street Level Plan – Electrical	
E-102 Second Level Plan – Electrical	
E-103 Third Level Plan – Electrical	
E-200 Electrical Details & Schedules	
Garage lighting changed based on Walker recommendation. \$29,685 cost reduction as deducted from price.	
E-300 Electrical Riser Diagrams	
P-100 Basement Level Plan – Plumbing	
P-101 Street Level Plan – Plumbing	
P-102 Second Level Plan – Plumbing	
P-103 Third Level Plan – Plumbing	
P-200 Plumbing Riser Diagram, Schedules & Details	

APPENDIX D

Development Fee of which includes:	\$723,000
Overall Development Fee	\$280,000
RE Holding Costs	\$68,200
Professional Services	\$70,600
Allowance for Residential Construction in Comm. Bldg.	\$304,200

is included in the Total Price for the Parking Structure of \$7,264,512.

The City shall pay \$418,800 with temporary note proceeds as soon as those proceeds are available.

The City shall pay \$304,200 when construction begins on the Apartment/Office/Retail building on the Northwest Corner of 10th and New Hampshire.

NOTE: The Architectural Fees of \$395,000 are included in Total Price of \$7,264,512 and will be invoiced as soon as temporary note proceeds are available. Prepayments made pursuant to the Service Agreement dated March 30,2000, will be credited toward the \$395,000.

APPENDIX E
PERFORMANCE BOND

information still coming

September 6, 2000

Mr. Mike Wildgen, City Manager
City of Lawrence – City Hall
6 East Sixth Street
Lawrence, Kansas 66044

RE: Review Comments of Walker Parking Consultants Memo dated August 24, 2000

Dear Mr. Wildgen:

A meeting was held today with Tom Romine – Walker Parking Consultants, Mike Falbe – Bob D. Campbell and Company, and Dale Glenn – GLPM Architects, Inc., to review comments made in the above referenced memo to Mike Wildgen.

In partial attendance of this meeting was George Williams and Dave Corliss representing the City of Lawrence.

For ease of review, original comments are shown and actions are indicated in bold.

We believe actions agreed upon today resolve issues shown in the August 24, 2000 memo.

1. The floor slopes are still not correct. The ramp from the first floor to the second floor is 7.5%. this is too much of a slope. The floor slopes from the outside to the light wall is over two feet in some locations. This too is excessive.

**Design modifications made 6-Sept-99 reduce 7.5% to 6% -
We agree this is acceptable.**

2. All precast joints need to be sealed. Some are shown sealed, many are not shown sealed. Light wall joints need sealant as an example.

We agree.

3. Traffic topping is included in the specification, but not shown on the drawings. It needs to be on the floor above all occupied spaces and extend 5' beyond the walls of those spaces.

Will be shown on Sheet A120.

4. No ADA parking for the offices is shown.

GLPM discussed this issue with the city and Walker consultants at an earlier review meeting. At that time the city indicated that they could designate an accessible space close to the offices if they were to hire an employee with a disability. As designed, the office is fully accessible, as is the route to reach the office. An employee can park in ANY of the accessible spaces in the garage, take the elevator to the street level, proceed north along the public sidewalk, and enter the office space through the doors facing New Hampshire street. There is no requirement that the accessible spaces be located directly adjacent to the office space.

5. How is the light wall fencing going to be protected from car bumpers?

May not be an issue with slots as designed.

6. Accessible van spaces are not shown on the drawings.

We have modified our drawings to include two van accessible parking spaces just north of the elevator on the first floor level.

7. The door swing on the toilet rooms may exceed the allowable encroachment into the 5' circle.

We have modified our drawings to correct this error.

8. Are entrances 103c and 104c accessible?

Entrance 103c is accessible. Entrance 104c can not be made accessible because of the slope at the vehicle entrance at this area. Neither of these entrances is required to be accessible. The accessible route leads to the entrances facing New Hampshire (see notes on item #4).

9. Is path of egress from stair S5 acceptable to the building department? Stairs are to exit onto a public way.

Only two exit stairs are required from the garage by Code. We have provided a total of five. Stair S5 has not been counted as a designated exit, and has been provided for convenience only. Additionally we have modified our drawings so that the walk leading to the alley is located just north of column line B as close to the stair as possible. Will review gate extension from main level to basement.

10. No lateral load diagram is shown. How are the lateral loads in the structure to be handled?

Lateral loads are sustained by shear walls on the north and south end walls on "A" and "D" lines and the center light walls on "2" line from grids "C" to "G" and "H" to "N" line.

11. Notes on sheet S100 conflict as to the required bearing capacity of the bedrock.

Drawings will be revised.

12. Many references are made to saw cutting of the joints. Joints must be tooled and not saw cut. The only exception is on the slab-on-grade where a "sof-cut" may be used.

Joints will be tooled.

13. Precast engineer should be registered in Kansas.

Agreed.

14. Concrete topping and slab must have a water-cement ratio not to exceed 0.40.

Agreed.

15. Structural notes reference 1991 UBC. They should reference 1997 UBC.

Agreed.

16. All slab to wall, beam, or column interfaces need to have cove sealant installed.

Agreed.

17. Joints shown on the details are too shallow and too thin. Use a groover that provides a 1" deep V-groove with a 0.5" surface width and 3/16" to 1/4" edge radius.

Agreed.

18. The slab-on-grade needs more control joints. It is shown as a 30' by 30' area. It would be better to have 15' by 20' maximum.

Agreed.

19. All the first supported floor there needs to be provisions to accommodate the differential movement between the floor and the basement walls. There needs to be expansion joints. I do not see any on the drawings. There will be significant cracking if these are omitted. Details 17, 11, 14, 9 and 10 on sheet S101 will all cause cracking. In addition, the office walls, storefront, etc. must have detailing to address this movement.

Agreed. Details to be developed.

20. Where is the connection between double tee flanges shown? This is one of the most critical connections in the building.

Will be included in shop drawings, for review and approval.

21. The warping in the double tees at the north end of the structure will result in cracking of the double tees.

Elevations will be revised at grid P2.

22. The floor elevations shown on the structural drawings are not correct. Example: still showing 28" slope from outside to light wall. Example: tee at grid N is flat for the first 20' then it slopes down 15 inches.

Were resolved in today's meeting.

23. Designer should specify bearing pad and not leave it to the discretion of the precast supplier.

MASTICORD bearing pads will be typically specified – Falbe to confirm loads.

24. Where flat precast slabs are shown, make sure it is not hollow or void formed.

Solid slab has been bid.

25. Where are the emergency light fixtures?

The plans reviewed were not complete documents. The emergency fixtures have now been showed and are fed from the generator panel. These will be the fixtures provided with quartz re-strike feature.

26. Where is emergency power shown and where is it from?

The plans reviewed were not complete documents. The addenda to the bid set included the location, size, and arrangement of the emergency generator.

27. Sump pump should be connected to emergency power.

Will be added.

28. There needs to be many more fixtures added at the entrance and exits to provide a transition while the driver's eyes adjust.

Will be added.

29. The lights on the roof do not need to be at every grid line. There are too many.

Designers will review.

30. Does the City want to review the appearance of the light fixtures?

Will review.

31. Where are fire sprinklers shown for the "basement"?

These are being prepared by the Design Build Sprinkler contractor.

32. Where does the mechanical ventilation show for the basement?

Mechanical ventilation is supplied, see sheets M100 and M104.

33. Some floor drains along grid 2 are missing at the upper levels.

Drain line been modified.

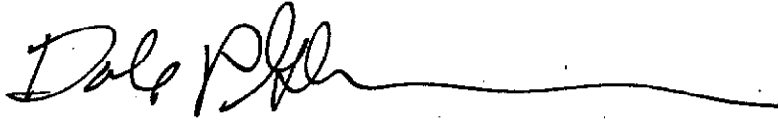
34. Where are fire standpipes?

These are being prepared by the Design Build Sprinkler contractor.

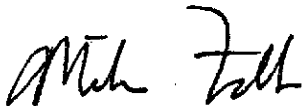
35. Fire extinguishers are not indicated on the plans.

Will be included - Will review with Fire Marshal.


Sincerely,



Dale P. Glenn, AIA
GLPM Architects, Inc.



Mike Falbe
Bob D. Campbell & Company



Tom Romine
Walker Parking Consultants

cc: 9-10 LC
File

APPENDIX G

PARKING LEASE AGREEMENT
IN CITY OF LAWRENCE, KANSAS
PARKING GARAGE FACILITY
900 BLOCK OF NEW HAMPSHIRE

THIS AGREEMENT is made and entered into the 31st day of March, 2000, by and between the City of Lawrence, Kansas (hereinafter referred to as the "City") and Mercantile Bank, a state banking corporation, 900 Massachusetts, Lawrence, Kansas 66044, (hereinafter referred to as the "Bank").

RECITALS

WHEREAS, the City is causing to have constructed a multi-level parking garage facility (hereinafter the "Parking Garage") on the west side of the 900 block of New Hampshire Street, Lawrence, Kansas which, when constructed, will contain approximately 530 parking spaces, and is generally set forth in the site plan map attached as Exhibit A; and

WHEREAS, pursuant to an agreement between the Bank and 9-10, L.C., the Bank shall transfer certain real property to 9-10, L.C., which will then transfer a portion of such real property to the City, all as part of a redevelopment project of the 900 block of New Hampshire; and

WHEREAS, a portion of the consideration of the exchange of real estate as described above is this Lease Agreement, which shall provide the Bank with certain leasehold interests in the Parking Garage.

NOW THEREFORE, in consideration of the mutual premises and covenants hereinafter contained, the parties agree as follows:

1. Recitals. The recitals are hereby incorporated by reference as if fully set forth herein.
2. Purpose. The purpose of this Agreement is to lease certain areas of the Parking Garage to Mercantile, in consideration of Mercantile's agreement to convey the real property to 9-10, L.C. and, further, in consideration of the obligations upon Mercantile as set forth in this Agreement.

3. Parking Uses of Parking Garage.

(A) The Parking Garage shall consist of four (4) levels, with parking spaces maintained on each level, as follows:

<u>Lower level:</u>	approximately 137 parking spaces.
<u>Street level:</u>	approximately 117 parking spaces.
<u>Second level:</u>	approximately 136 parking spaces.
<u>Third level:</u>	approximately 140 parking spaces.
	<u>530</u> total parking spaces.

For purposes of this Agreement, the enumeration of parking spaces shall include those disabled accessible parking spaces which are required by federal, state or local law.

(B) The Bank shall lease from the City, and the City shall lease to the Bank, thirty (30) designated reserved parking spaces in the lower level of the Parking Garage, in such location or locations as the City and the Bank mutually designate. A designated reserved parking space shall be a parking space with an individual name, firm name or other identification which will clearly identify that a particular parking space is reserved solely for an individual or firm. The Bank shall pay on an annual basis, due and owing on January 15 of each year, the total sum of \$9,000.00 for the lease of the thirty (30) designated reserved parking spaces, which amount shall remain fixed for the term of this Agreement (including any extensions thereof). For any fraction of a year in which the Bank shall become obligated to pay rent (i.e., the first and last years of the term of this Agreement), the Bank shall pay rent for the fractional year on a per diem basis. The remainder of the lower level parking spaces and all of the first level parking spaces shall be designated as two (2) hour free parking spaces pursuant to City laws and regulations.

(C) The Bank shall have the right, but not the obligation, to purchase from the City up to and including eighty (80) long term parking passes which shall allow the bearer, pursuant to City laws and regulations establishing the display requirements for such parking passes, to park in available parking spaces on the second level and third level of the Parking Garage. The second level and third level of the Parking Garage shall be designated as long term parking spaces pursuant to City laws and regulations. Nothing in this Agreement shall be interpreted as a guarantee of parking spaces in the long term parking areas. The Bank shall pay on an annual basis, due and owing on January 15 of each year, the sum of \$96.00 per year, for each such long term parking pass, for the first five (5) years after the Commencement Date of this Agreement. On and after the sixth full calendar year after the Commencement Date of this Agreement, the purchase price of each such long term parking passes shall be the lesser of one of the following: (1) the actual sale price offered to the general public for long term parking passes; or (2) the adjusted value of \$96.00 as established by using the Bureau of Labor Statistics Consumer Price Index All Urban Consumers data as adjusted using the Commencement Date of this

Agreement as the base year. Provided, that the price for long term parking passes shall not be less than \$96.00 per year. For any fraction of a year in which the Bank shall become obligated to pay rent (i.e., the first and last years of the term of this Agreement), the amount paid by the Bank for each such long term parking pass shall be prorated for the fractional year on a per diem basis.

4. Maintenance of Parking Garage. The City shall maintain and repair the Parking Garage pursuant to generally acceptable industry standards for parking garages of similar size and comparably situated. The City and the Bank acknowledge that the Parking Garage shall not be staffed with a full-time attendant. The City shall maintain the parking surface and the Parking Garage structure which may from time to time necessitate the temporary removal of all or a portion of parking in the Parking Garage. All repair and maintenance work shall be performed in a workmanlike manner with all reasonable methods employed to minimize disruption of parking rights pursuant to this Agreement.

5. Notice. Notice to the City shall be to:

City Manager
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

Notice to the Bank shall be to:

Mercantile Bank
900 Massachusetts Street
Lawrence, Kansas 66044

6. Mutual Indemnification.

A) The City shall at all times save and hold harmless the Bank, its officers, directors, shareholders, agents, employees, successors and assigns, from all liability, costs, damages, and expenses of any kind, for the payment of which the Bank may become liable to any person, firm, or corporation by reason of any claim or damages to the extent caused by the failure of the City, its employees, patrons, agents, invitees, or servants to exercise due care and diligence in the construction, installation, maintenance, use and operation of the Parking Garage:

B) The Bank shall at all times save and hold harmless the City from all liability, costs, damages, and expenses of any kind, for the payment of which the City may become liable to any person, firm, or corporation by reason of any claim of damages to the extent caused by the failure of the Bank, its employees, patrons, agents, invitees, or servants to exercise due care and diligence in the use of the Parking Garage.

7. **Termination.** This Agreement may be terminated at any time by the Bank upon the deposit in the U.S. Mail, pursuant to the notice provisions of this Agreement, of a written termination addressed to the City. Upon the Bank's termination, the Bank shall have no further rights or interests in the Parking Garage. The termination of this Agreement by the City (other than for the Bank's failure to timely and fully make payments under the Agreement and/or otherwise a material default in the Bank's obligations under this Agreement) shall invoke the reversionary rights of that certain agreement dated March 31st, 2000, between the City, 9-10, L.C. and the Bank, establishing a procedure for the exercise of reversionary rights to certain real property and the use thereof on behalf of the Bank.

8. **Duration.** The duration of this Agreement shall be thirty-five (35) years from the Commencement Date, after which time this Agreement shall be automatically extended for successive periods of ten (10) years each, unless an instrument agreeing to terminate this Agreement has been executed by duly authorized representatives of both the City and the Bank, or unless otherwise terminated as herein provided.

9. **Survival of Representation and Warranties.** All representations, warranties, covenants and agreements contained herein shall survive for the period from the commencement date of this Agreement to the time of termination of this Agreement.

10. **Assignment and Binding Effect.** This Agreement may be assigned by the Bank at any time, or from time to time, without the consent of the City. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **Applicable Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Kansas.

12. **Commencement Date.** The Commencement Date of this Agreement shall be upon the delivery by the City to the Bank of a written statement that construction of the Parking Garage is substantially completed and that parking in all portions of the Parking Garage leased pursuant to this Agreement is permitted pursuant to the provisions of this Agreement.

13. **Prior Agreements.** This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, and discussions concerning any matter contained herein.

14. **Resolution of Disputes.** The parties shall in good faith attempt to resolve any controversy, dispute, or disagreement (referred to collectively as a "Dispute") arising out of or relating to this Agreement, or the breach thereof, by negotiations. If any such Dispute is not resolved within thirty (30) days, then the Dispute will be submitted to mediation, but if the

Dispute cannot be settled through mediation within an additional one hundred-twenty (120) days, the Dispute will be settled pursuant to applicable law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the day and year first set out.

MERCANTILE BANK

By: Joseph H. Ullrich
Its: Vice President

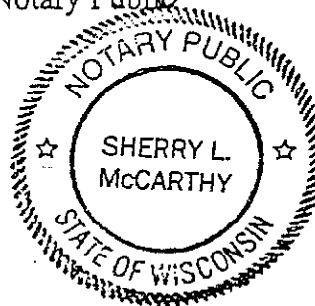
STATE OF WISCONSIN)
COUNTY OF MILWAUKEE)

BE IT REMEMBERED, that on this 31st day of MARCH, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came JOSEPH G. ULLRICH, VICE President of Mercantile Bank, a state banking corporation, who is personally known to me to be the same person who executed the above Agreement on behalf of said state banking corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

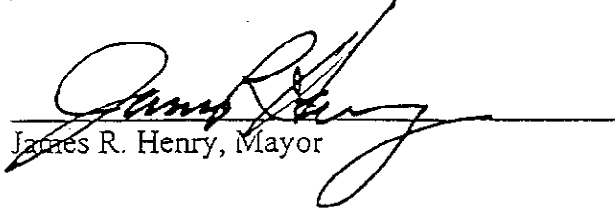
Sherry L. McCarthy
Notary Public

My appointment expires: 11/19/2000



CITY OF LAWRENCE, KANSAS

This Agreement is approved as authorized by the governing body of the city of Lawrence, Kansas this 11th day of April, 2000.


James R. Henry, Mayor

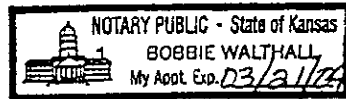
STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this 26th day of April, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came James R. Henry, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Agreement on behalf of said City of Lawrence, Kansas.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last mentioned.


Notary Public

My appointment expires: 03/31/04



APPENDIX H

REVERSION AGREEMENT

This Reversion Agreement (the "Agreement") made and entered into the 31st day of March, 2000, by and between Mercantile Bank, (hereafter "Bank"), 9-10 L.C. (hereafter "9-10") and City of Lawrence, Kansas (hereafter "City").

WHEREAS, City has agreed with Bank and 9-10 that it will build or have built and own a municipal parking garage (collectively hereafter "Garage") to be located on all or a part of the following described real estate situated in Lawrence, Douglas County, Kansas, to-wit:

Lots 71, 73, 75, 77, 79, 81, 83, 85, 87, 89 and 91 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas;

WHEREAS, pursuant to its agreement(s) with Bank and 9-10, it is the duty of City to maintain Garage; and

WHEREAS, this agreement provides for the procedure by which Bank and/or 9-10 can cause or attempt to cause City to maintain Garage; and the transfer of ownership of Garage and the subsequent maintenance thereof in the event City fails or refuses to maintain garage as herein provided.

WHEREAS, it being the duty and obligation of City, under and pursuant to its agreement(s) with Bank, and 9-10, to maintain the Garage to be constructed and owned by City, including the land located on the West side of New Hampshire Street, Lawrence, Kansas between Ninth and Tenth Streets, upon which it is constructed. City, Bank and 9-10 do hereby make and enter into this Reversion Agreement which provides for the ownership and maintenance of Garage in the event City fails or refuses to maintain Garage as provided herein.

IT IS THEREFORE UNDERSTOOD AND AGREED BY THE PARTIES HERETO:

1: City's duty is to maintain interior and exterior of Garage, both structurally and aesthetically, the mechanical and electrical systems (including, without limitation, lighting), elevator(s), stairwells, the traffic pattern and parking stall markings and the driving and parking surfaces.

2. Should City fail to perform the duties required of it by numbered paragraph 1 above, Bank and/or 9-10 may elect to give City and 9-10 written notice of such failure to maintain. Such written notice shall provide a detailed account of the item or items of maintenance City is to perform on Garage. City shall have a reasonable time, not to exceed thirty (30) days, after receipt of said written notice within which to correct or commence and pursue with diligence, in good faith, the correction of such noticed defect(s).

3. Should City determine that it will not proceed to correct the noticed defect(s) because they are not the City's responsibility under its written agreement(s) with Bank and/or 9-10, or should City for any other reason, determine that it will not correct the noticed defects, City shall give written notice of its refusal to cure no later than thirty (30) days following City's receipt of said written notice of its failure to maintain Garage. Upon receipt of City's written notice of its refusal to cure, Bank and/or 9-10 shall have one hundred twenty (120) days within which to file suit in the District Court of Douglas County, Kansas, against City whereby judgment is sought to compel City to cure some or all of said "noticed defects". 9-10 shall be made a party to such legal proceeding. If Bank and/or 9-10 obtain judgment against City commanding City to correct some or all of said "noticed defects", the Court may enter judgment in favor of the successful party(ies) and against City for reasonable attorney fees and expenses in the execution of the suit against City. If a judgment against City, compelling it to cure some or all of the "noticed defects" is sustained, in whole or in part, by the Court of Appeals of the state of Kansas, and/or the Kansas Supreme Court, or if an appeal of the district court judgment is not taken, then in those events City shall have thirty (30) days after the entry of said final judgment to correct the defect(s) ordered to be corrected by said final judgment, or shall have made a continuous good faith effort to start the correction of such defect(s) within said thirty (30) day period. Should City then fail to timely correct the defect(s) ordered by the final judgment of the court(s), or fail to make a timely continuous good faith effort to correct such defect(s), then in those events the ownership of Garage, including fee simple title to the real estate upon which Garage is situated together with all improvements, hereditaments and appurtenances thereto, and the obligation for the maintenance thereof, shall transfer to Bank and/or 9-10, free and clear of all liens and encumbrances, in the manner hereinafter provided.

4. 9-10 shall have the first option to assume ownership of Garage. In the event City shall default, as set out in Paragraph 3 above, 9-10 may assume ownership by filing a written notice in the Register of Deeds office and the court proceeding above, indicating assumption of ownership (referred to herein as an "Assumption of Ownership"). Said notice must be filed within sixty (60) days of the final judgment as referred to in Paragraph 3 above.

5. If 9-10 shall file a notice of assumption of ownership as set out in Paragraph 4 above, 9-10 shall be considered the Garage owner just as the City shall previously have been considered the owner.

6. If 9-10 shall assume ownership of Garage, the provisions of Paragraphs 1, 2 and 3 above shall be fully applicable to 9-10, just as they are applicable now to the City, and 9-10 may be removed from ownership by Bank in the same manner that City may be removed, as set out in Paragraphs 1, 2 and 3 above.

7. If there shall be a default by City under Paragraphs 1, 2 or 3 above, and 9-10 shall fail to file an Assumption of Ownership, Bank may file an Assumption of Ownership as set out above, and thereafter Mercantile shall be the owner of Garage.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the day and year first set out.

MERCANTILE BANK

By: Joseph G. Wllrich
Its: Vice President

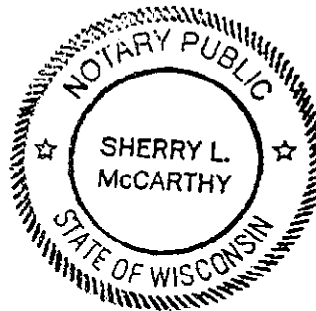
STATE OF WISCONSIN)
COUNTY OF MILWAUKEE)

BE IT REMEMBERED, that on this 31st day of MARCH, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came JOSEPH G. WLLRICH, VICE President of Mercantile Bank, a state banking corporation, who is personally known to me to be the same person who executed the above Agreement on behalf of said state banking corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

Sherry L. McCarthy
Notary Public

My appointment expires: 11/19/2000



9-10 L.C., a Kansas limited liability company

By: Martin W. Moore
Its: Manager/Member

STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this 28th day of March, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Martin Moore, Manager/Member of 9-10 L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the above Agreement on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

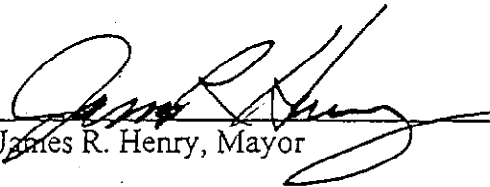


Sarah K. Graber
Notary Public

My appointment expires: 7-6-01

CITY OF LAWRENCE, KANSAS

This Agreement is approved as authorized by the governing body of the city of Lawrence, Kansas this 11th day of April, 2000.


James R. Henry, Mayor

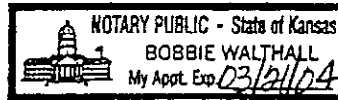
STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this 26th day of April, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came James R. Henry, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Agreement on behalf of said City of Lawrence, Kansas.

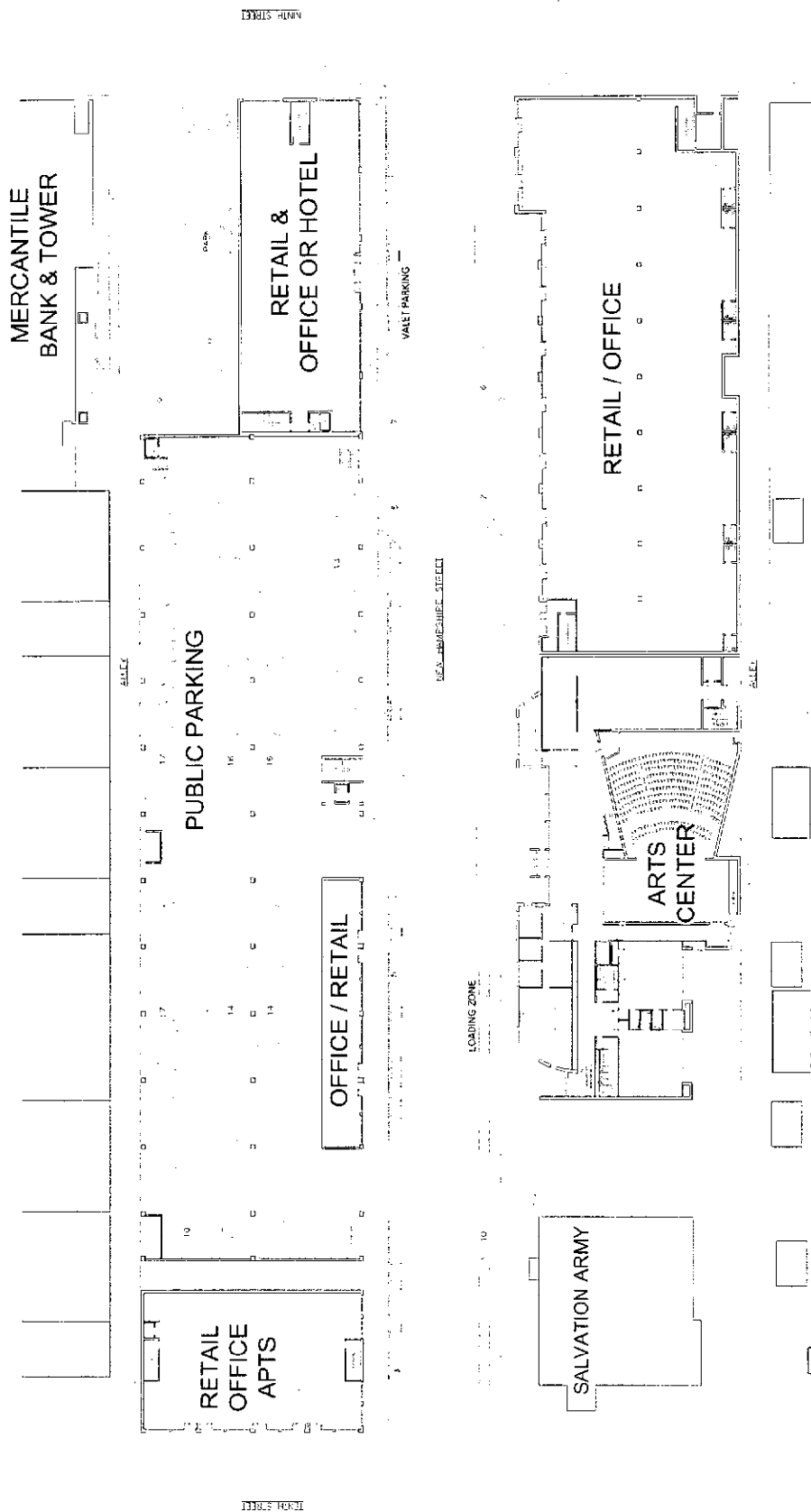
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last mentioned.


Notary Public

My appointment expires: 03/21/04



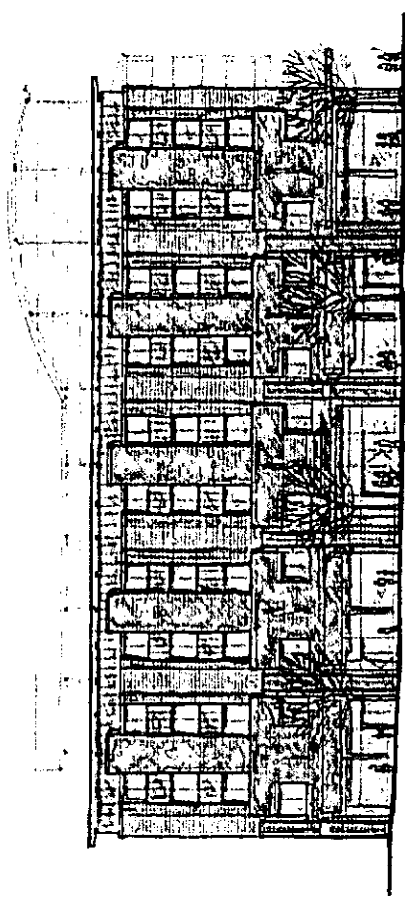
Site - Street Level



Street Level Plan

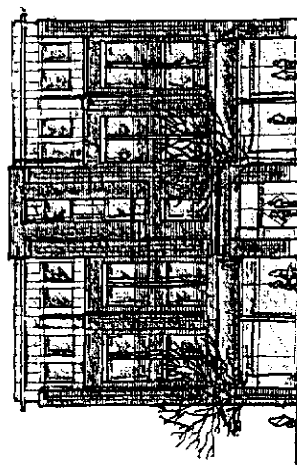
1/07/00

Retail and Office or Hotel
(located at southwest corner of 9th & NH)



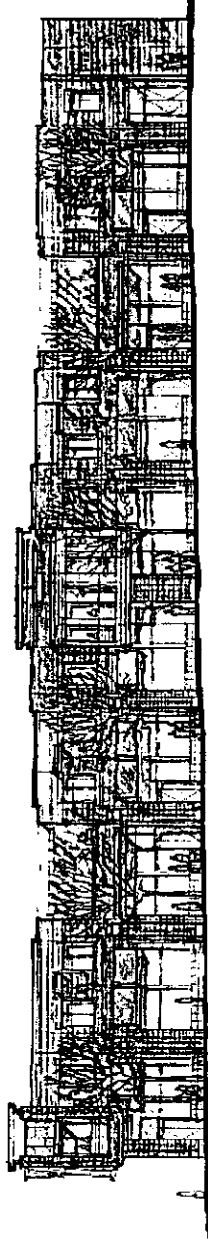
- 6-story + penthouse if hotel
- 3 story if office
- 9,750 sf per floor
- 6,500 sf penthouse/suites and meeting rooms
- 8,000 sf 1st floor retail
- 1,750 sf 1st floor hotel lobby
- (2) elevators served
- fully sprinklered
- 100 hotel rooms + meeting rooms
- Total sf = 71,000 if hotel
- Total sf = 29,250 if office

Apartment Building
(located on NW corner of 10th & NH)



- 7,605 sf/floor
- 4-story
- street-level retail
- 2nd floor office
- 2 floors of apartments
- 24 total units
- fully sprinklered, non-combustible construction
- elevator served
- total square feet = 30,420

Retail and Office Building
(located between the Arts Center and 9th Street)



- 2-story
- 26,750 sf per floor
- street-level retail
- 2nd floor office with terraces
- fully sprinklered
- elevator served
- total sf = 53,500
- diagonal (sawtooth) parking is essential to the success of the project, which is designed as an extension of the Mass. Street streetscape
- Lane configuration in 900 block to be same as 800 block of New Hampshire

STANDARD OFFICE TENANT FINISH

- Layout includes office/conference rooms around perimeter with center "open office" space
- Two finished restrooms and one kitchenette
- Walls finished and painted
- 2' x 4' suspended ceiling
- Standard commercial office carpet at \$2.00 per yard installed in the offices and "open area"
- Vinyl flooring in restrooms and kitchenette
- Vinyl base throughout
- 2' x 4' Fluorescent lights at one fixture per 100 s.f. minimum
- One electric outlet each office wall
- One conduit and wall box each office for telephone/data
- Conduit and circuits to 3 points in "open space" for power/communications poles to work stations
- Office lights switched individually
- Open area lights switched by three way switch - front and back
- Standard solid core office doors
- Metal doors at stairs (2) and elevator to secure space from rest of building

LEASE

This Lease made and entered into this _____ day of September, 2000, between, 9-10, L.C., a Kansas Limited Liability Company, c/o Martin Moore, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas, hereinafter referred to as "Lessor" and The City of Lawrence, Kansas, a Kansas municipal corporation, c/o Mike Wildgen, City Hall, 6th East 6th, Lawrence, Kansas, hereinafter referred to as "Lessee."

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. DEMISE AND DESCRIPTION.

Lessor does hereby agree to let and lease unto Lessee the following-described premises in the City of Lawrence, Douglas County, Kansas:

The second (2nd) floor, containing 7,600 gross square feet in a new building to be constructed on the real property described as: the south twenty-five (25) feet of Lot 89 and all of Lot 91 in the City of Lawrence, Douglas County, Kansas, in accordance with plans and specifications made a part of this Lease. See Appendix A.

2. TERM OF LEASE.

The term of this Lease shall be for ten (10) years to commence upon completion of the construction, including completion of the tenant improvements to the leased premises and when the lease space is ready for occupancy. In addition, the Lessee shall have two (2) additional five (5) year terms, exercisable by notice given at least ten (10) months prior to the termination of the previous term. If such notice is not timely given by Lessee, Lessor shall give Lessee notice and Lessee shall have an additional ten (10) days to give such notice.

3. BASE RENT.

Lessee shall pay to Lessor as base rent the sum of nine thousand five hundred six dollars and twenty-five cents (\$9,506.25). Rent shall be paid on or before the first day of each month, with the first month's rent being due on the signing of this Lease, in advance, at such place designated by Lessor.

4. RENT ADJUSTMENT.

After the third (3rd) year of the term of this Lease, the rent shall be adjusted upward or downward based upon the Consumer Price Index with the fraction derived by using the Consumer Price Index – All Items, for the third year of the lease as the denominator, and the Consumer Price Index – All Items, for the fourth and subsequent years of the lease as the

numerator, and with such fraction being multiplied by of nine thousand five hundred six dollars and twenty-five cents (\$9,506.25) per month to determine the monthly rental for each such year.

(a) Additional Rent. Lessee shall pay to Lessor on a monthly basis during the term of the Lease and commencing with the payment of the Lessee's base rent as herein provided, the sum of \$2,535.00 for the estimated real estate taxes, building insurance premiums, grounds, parking area maintenance and lighting. This additional rent may be paid in one yearly payment, based on actual taxes and insurance in December of each year. This amount is based upon the Lessee's use and occupancy of twenty-five percent (25%) of the building. This additional rent will be adjusted annually in December based upon the previous year's actual costs for said taxes, insurance and services. Any adjustment shall be paid/refunded by February 15th of the year following the period for which the payments apply.

(b) Tenant Finish. The Lessor shall expend one hundred fifty thousand dollars (\$150,000) for Tenant Finish in accordance with the plans attached as Exhibit A. Any changes to the improvements or tenant's finish work described in Appendix A must be made by written change order signed by both Lessor and Lessee in order to be valid. All builder warranties for tenant finish work will be extended to both Lessor and Lessee.

5. AUDIT OF CAM, TAXES AND INSURANCE.

Lessor shall, upon request, provide an accounting of all ad valorem taxes on the premises, insurance expenses and common area maintenance expenses of each year of the Lease Term at such time as Lessee shall request, if Lessee is required to pay any portion of such expenses by the terms of this Lease.

6. PLANS AND SPECIFICATIONS.

Within sixty (60) days upon receipt of Lessee's executed copy of this Lease Agreement, Lessee agrees to provide final layout and finish specifications of their space for Lessor's use in preparing the final working plans and specifications. Lessor, agrees to submit to Lessee for its examination and approval, three (3) sets of the working plans and specifications of said building. Lessee agrees to examine said working plans and specifications so submitted by Lessor and to advise Lessor in writing within twenty (20) days whether said working plans and specifications are satisfactory and, if not, Lessee shall specify the changes necessary to make them conform to Lessee's requirements; and Lessor shall alter said working plans and specifications as required by Lessee until they conform in all respects with the Lessee's requirements. After the working plans and specifications are finally approved, there shall be no significant deviation therefrom without written approval by Lessee and any unauthorized deviation therefrom shall give Lessee the right to require Lessor to remove the unauthorized deviation and replace it with the construction provided for in the approved plans and specifications.

7. USE OF LEASED PREMISES.

The leased premises shall be used by Lessee for city offices or other municipal office use and for no other purpose without the written consent of Lessor which shall not be withheld unreasonably and Lessee shall obtain, at its own expense, any and all licenses and permits necessary for the operation of said business upon the premises.

8. ACCESS TO PARKING.

It is understood that Lessee shall own and operate a city parking garage immediately north of the leased premises and thus no other provisions are made for parking.

9. TAXES.

During the term of this Lease, the Lessee shall pay promptly all taxes and assessments levied upon its trade fixtures, merchandise, and all other personal property located in or on said premises. Lessee shall also pay its twenty-five percent (25%) pro rata share, based upon its square footage of the total floor space of the building, the real estate taxes assessed against the entire land and building as additional rent heretofore provided. Payment for real estate taxes shall be made as provided in 4a above.

In addition the Lessee shall pay, the full amount of any additional real estate taxes assessed, on the tenant finish provided for or by the Lessee. This is the cost and/or valuation assessed above the "Shell" base lease: space valuation. Lessee shall have no obligation for Tenant Finish of other tenants if the Appraiser's Office separates Tenant Finish from their overall appraisal.

10. MAINTENANCE AND ALTERATIONS.

Lessor agrees to maintain and repair the roof, exterior walls, foundation, sprinkler system, and structural parts of the building located on the leased premises, in as good condition as they shall be on the commencement of this Lease, reasonable wear and tear excepted, except that Lessee agrees to make any such repairs caused by the negligence of Lessee or its agents or employees, subject to the provisions of paragraph 28.

Lessee agrees that it will keep and maintain in good working order, condition and repair the leased premises and every part of thereof, including without limitation the front, exterior and interior portions of all doors, all plumbing and sewage facilities within the leased premises, the fixtures and interior walls, floors, ceilings, signs and all interior building appliances and similar equipment, including heating and air conditioning equipment provided, however, that in the event the heating unit or air conditioning compressors, condensers, or the entire unit on the air conditioners need to be replaced, said units will be replaced at Lessor's expense. All glass and glass windows in the leased premises shall be maintained and repaired at Lessor's cost. All warranties shall be extended to Lessee where applicable. Lessee further agrees that the leased premises shall be kept in a safe, clean and sanitary condition in accordance with the laws of the State of Kansas and the ordinances of the City of Lawrence and Douglas County, Kansas.

Lessee further agrees to comply with all directions, rules and regulations of the health officers, fire marshal, building inspector, and other proper officials of any government agencies having jurisdiction. Should Lessee neglect to reasonably keep and maintain the leased premises in the manner set forth above, then Lessor shall have the right, but not the obligation, to have the work done, and any reasonable cost thereof shall be charged to Lessee as additional rent and payable by Lessee.

At the expiration or termination of this Lease, Lessee shall return the leased premises in the same condition as when received, usual wear and tear excepted, except for damage or loss caused by a peril which is insured against by a standard form policy of fire and extended coverage insurance upon which the Lessor is a named insured.

It is further agreed that the Lessee shall not make any structural changes to said leased premises, except as being done in preparation for possession, without having first obtained, in writing, the consent of the Lessor, which shall not be unreasonably withheld.

11. COMMON AREA MAINTENANCE.

Lessees shall bear responsibility, based upon their pro rata share which shall be based upon the square footage of the Lessee compared to the square footage of the total floor space of the building for common area maintenance. Items subject to common area maintenance are the elevator, the grounds, common area lobbies, corridors, seasonal service and repairs to HVAC, landscaping, lawn care, snow removal, pest control, common area lighting and heating, and the sidewalks, but excluding capital item replacements. Lessee shall promptly pay all assessments for common area maintenance when the bills therefore are received. Notwithstanding Lessee's obligation to pay its proportionate share of the common area expenses, it shall be the sole duty of Lessor to maintain and keep in good and proper condition and working order all common areas.

12. MECHANIC'S LIENS.

Lessee shall not permit any liens to stand against the premises for any labor or materials furnished to Lessee in connection with any permissible work performed thereon. Lessee shall not be the agent of Lessor with respect to any such liens, and no such liens shall attach to or affect the interest of Lessor.

13. DAMAGE TO PROPERTY OF LESSEE.

Lessor shall not be liable to Lessee for any damage to property of Lessee contained in the premises caused by reason of any defects in the roof, exterior walls, foundation or structural parts of the building, provided Lessor shall repair such defects within a reasonable time after having been given written notice thereof by Lessee, unless the damage results from a peril which is insured against under a standard fire and extended coverage insurance policy; in which event, the policy proceeds shall be used to repair the damage.

14. UTILITIES.

Lessee shall pay for all utilities furnished the leased premises. Lessor may interrupt or suspend the supply of all utilities to the premises in order to make any necessary repair or alteration to the premises. There shall be no abatement in rent because of any such interruption or suspension, provided that Lessor shall make such repair or alteration with reasonable diligence, and provided further that such repair or alteration shall not unreasonably interfere with Lessee's business conducted in the premises. When possible, Lessor will give notice of the interruption or suspension of utility services.

15. SIGNS.

Any sign attaching to the premises by Lessee must be approved, in writing, by the Lessor before the same can be installed. However, consent will not be unreasonably withheld if such sign does not impair the structure and meets all City codes.

16. INSURANCE.

Lessor shall, at its cost, insure the premises against loss by fire and other perils insured against by a standard form of fire and extended coverage insurance in an amount or amounts to be determined by Lessor, in its sole judgment, as adequate. Lessee shall reimburse Lessor for its pro rata share of the costs of insurance based upon the Lessee's percentage square footage of floor space of the leased premises (twenty-five percent (25%)). Lessee shall not permit the leased premises to be operated or used in such a manner as would render Lessor's insurance void or cause a cancellation thereof.

If the Lessor fails to have in full force, at any time during the term of this Lease, or any renewal thereof, a standard form policy(ies) of fire and extended coverage insurance, as provided in this Lease, the Lessee shall have no greater obligation to the Lessor hereunder in the event of loss or damage to the leased premises, or the entire structure of which the leased premises is a part, than Lessee would have if such policy(ies) was in full force and effect at the time of such loss.

It is expressly understood by the parties that the Lessee is a self-insurer of all perils and losses for which it might obtain a policy(ies) of insurance, subject to all limitations as to the dollar amount of liability as provided by law.

17. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES.

If the leased premises should be damaged or destroyed during the term of this Lease by fire or other insurable casualty without the fault of Lessee, Lessor shall, subject to the time that elapses due to adjustment of insurance, repair and/or restore the same at substantially the condition it was in immediately prior to such damage or destruction, except as in this paragraph provided. Lessor shall not be required to replace or restore any trade fixtures, signs, personal property, or other installations theretofore installed by the Lessee. Lessor shall be required to replace tenant finish if the loss is covered by the Lessor's property or casualty insurance. Rent

payable under this Lease shall be abated proportionately according to the floor area of the leased premises which is usable by Lessee to the extent that Lessor receives rent payments from any business interruption insurance coverage it maintains. If the damage was caused by the fault of Lessee and Lessor does not receive rent payments from its business interruption policy, there shall be no abatement of rent. Any abatement shall continue for the period commencing with such damage or destruction and ending with the completion by the Lessor of such work or repair or reconstruction as Lessor is obligated to do.

Notwithstanding the foregoing, in the event of any such casualty causes damages to extent that the premises are untenable and the repair or restoration of the premises is not economically feasible, the Lessor shall have the option to terminate this Lease by giving written notice thereof to the Lessee within thirty (30) days after the happening of such casualty, and thereupon this Lease shall be deemed to have terminated as of the date of the damage or destruction, and the Lessee shall immediately quit and surrender the leased premises to the Lessor. If the Lessor so terminates the Lease, their option to purchase the land underlying the Leased Premises is terminated, but this shall apply only if the Lessee requests comparable lease space in the same building from the Lessor and the Lessor refuses.

18. LESSEE TO HOLD LESSOR HARMLESS.

Except as excluded or exempted by the non-subrogation clause and provisions of this Lease, the Lessee hereby covenants and agrees to indemnify, protect and save harmless the Lessor and assigns of and from any and all claims, demands and liabilities for any loss, damage, injury or other casualty to property owned, or in the possession of other than the Lessee, and to persons, whether third persons or employees of the Lessee, caused by, or growing out of, or having connection with, Lessee's conduct of its business or use and occupancy of the leased premises, improvements or equipment located thereon, due to the negligence or misconduct of the Lessee, its agents, servants or employees, or of any other person or persons entering upon the leased premises, under the express or implied invitation of the Lessee, or where such injuries are the result of the violation of laws or ordinances or governmental orders of any kind.

19. NON-ASSIGNABILITY.

The Lessee shall not assign this Lease, nor sublet the premises or any portion thereof, without the prior written consent of Lessor, which shall not be unreasonably withheld.

20. CONDITION OF PREMISES UPON OCCUPANCY.

Upon completion of the construction, the Lessee agrees to accept the leased premises, and the taking of possession of the leased premises by the Lessee shall be deemed an acceptance of the condition thereof by the Lessee.

21. DEFAULT.

If default shall be made by the Lessee in the payment of rent, or any part thereof, or in the performance of the agreements, on its part required to be fulfilled and performed, or in the event the Lessee shall abandon or vacate the leased premises without the consent of the Lessor, and such default is not cured within twenty (20) days after the Lessee has received written notice of default in payment of rent and within thirty (30) days after the Lessee has received, written notice of any default other than payment of rent, the Lessor, at its option, shall have the right to deem the Lessee in default, and Lessor, shall have the right, at its option, to enter the leased premises, or any part thereof, either with or without process of law, and to remove the Lessee and all other persons therefrom together with all personal property found therein, and shall have the option of terminating this Lease;-or the Lessor may, from time to time, without terminating this Lease, relet the leased premises or any part thereof for such term or terms, although extended beyond the term of this Lease and at such rental or rentals and upon such other terms and conditions as the Lessor, in its sole discretion, may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change the leased premise. At the option of Lessor, rents received by Lessor from such reletting shall be applied first to the payment of any indebtedness from Lessee to Lessor other than rent due hereunder; second, to the payment of any cost and expenses of such reletting, including but not limited to, attorneys' fees, advertising fees and brokerage fees, and to the payment of any repairs, renovations, remodeling, redecoration, alterations and changes in the leased premises; third, to the payment of rent due and payable hereunder, and, if after so applying said rentals a deficiency exists in the rent payable by Lessee hereunder, Lessee shall pay any such deficiency to Lessor monthly. No such reentry or taking possession of the leased premises shall be construed as an election of Lessor to terminate this Lease unless a written notice of such termination shall be given to Lessee. No remedy provided in this Lease shall be exclusive, but each shall be cumulative with all other remedies provided in this Lease and at law or in equity.

22. BANKRUPTCY OR INSOLVENCY OF LESSEE.

In the event of insolvency, bankruptcy, or attachment proceedings against Lessee involving any business conducted upon the leased premises, this Lease shall not be deemed an asset that can be passed to the trustee in bankruptcy of Lessee, or to its creditors, and if such proceedings continue beyond the p period for which rent has actually been paid, then Lessor shall have the option immediately and without notice to terminate this Lease.

23. QUIET ENJOYMENT OF LEASED PREMISES.

If Lessee shall perform, all and singular, the agreements on its part herein contained to be performed, Lessor and assigns shall warrant and defend Lessee in the quiet enjoyment and peaceful possession of the leased premises during their term aforesaid.

24. INSPECTION OF LEASED PREMISES.

Lessor shall have the right to enter into and upon the leased premises or any part thereof at any reasonable hours for the purpose of inspection and making repairs, but Lessor agrees not to exercise this right in such a way as unreasonably to interfere with the business of Lessee.

25. TERMINATION AND REMOVAL OF LESSEE'S PROPERTY.

Upon the expiration or the sooner termination of this Lease, Lessee shall quit and surrender the leased premises in as good condition as the reasonable use thereof would permit, ordinary wear and tear excepted. Upon the expiration or sooner termination of this Lease, all changes, additions, alterations or modifications of the leased premises and any fixtures installed as a part of such changes, additions, alterations or modifications shall, at Lessor's option, become the property of Lessor, and Lessee shall thereupon remove such of its personal property as is not permanently affixed to the leased premises, which personal property shall include trade fixtures of Lessee. Lessee shall also remove any of the changes, additions, alterations or modifications made by Lessee as Lessor may request and shall repair any damage caused by such removal. Provided, however, Lessee may remove any fixtures or additions added or made by them if they can do so and return the premises to the condition it was in prior to the fixtures being attached or the additions made. All fixtures, furnishings, floor coverings and equipment which are permanently affixed to the leased premises, other than trade fixtures as herein provided, shall thereupon become the property of Lessor, and any personal property of Lessee not removed from the leased premises within twenty (20) days following the expiration of this Lease or its sooner termination shall become the property of Lessor, at the option of Lessor. It is expressly agreed that the Lessee shall not remove from the premises any part of the heating and air conditioning system.

26. EMINENT DOMAIN.

If at any time during the term of this Lease title to the whole or any part of the real estate shall be taken by condemnation or by agreement between the condemning authority and the Lessor, and if such taking materially affects the Lessee's use of said premises, this Lease shall be terminated. Termination date shall be the date of taking of the agreement between the condemning authority and the Lessor, and the unused portion of any prepaid rent shall be refunded to Lessee. It is expressly understood and agreed that Lessee waives any and all rights and interest to the proceeds from any condemnation or from any agreement between the condemning authority and the Lessor.

27. CONSENTS.

It is agreed that either Lessor or Lessee be allowed to mortgage or pledge as collateral their respective interests in the premises and improvements and that the other party shall execute any appropriate consents. Further, if a requirement is made of either Lessor or Lessee to provide estoppel certificates, the other party shall provide such reasonable certificates as may be requested.

28. BILATERAL WAIVER OF SUBROGATION.

Lessee hereby waives any and all right of subrogation against Lessor, its agents, servants and employees, for any damage caused to the property of Lessee located in and upon the leased premises, by reason of its negligence, the same as though Lessee insured its said property by a standard form policy of fire and extended coverage insurance, rather than being a self-insurer of its said property. Lessor hereby waives any and all right of subrogation against Lessee, its agents, servants, and employees, for any damage caused to the property of Lessor, including the leased premises; the structure of which the leased premises is a part; and that property located in and upon said premises, by reason of its negligence, and said Lessor shall cause said waiver of subrogation rights to be endorsed upon the policy or policies of standard form fire and extended coverage insurance written to insure the Lessor's said property, unless said policy(ies) do not require such endorsement.

29. OPTION TO PURCHASE -- SUBJECT TO REVIEW.

Lessee, throughout the term of this Lease, shall have the option to purchase the subject building for the price of 4,563,000.00, plus Consumer Price Index adjustment annually from execution. The option shall be exercised by giving sixty (60) days' written notice of intent to exercise. In the event Lessor desires to sell the building, Lessor must first give Lessee a written notice of such intent to sell and the Lessee shall have thirty (30) days from the receipt of such notice to exercise their option to purchase. If Lessee so exercises the option, the property shall be sold to Lessee at the option price. If Lessee fails to exercise said option, then Lessor shall have an additional sixty (60) days in which to enter into a contract for the sale of said property. If Lessor shall fail to enter into a contract within said sixty (60) day period, then the option and right of first refusal of Lessee shall remain in full force and effect. If Lessor shall enter into a contract for the sale and purchase of said property within said sixty (60) day period, and shall consummate said sale and purchase, then Lessee's option to purchase and right of first refusal shall terminate and Lessor shall be entitled to give good title to said property free and clear of any claim by Lessee.

30. KANSAS CASH BASIS LAW.

The parties mutually understand and agree that it is their intent that the terms of this Lease agreement, and renewals thereof, are lawful under the provisions of the Kansas Cash Basis Law, including K.S.A. 10-1101, *et seq.*, which state as follows:

(a) This agreement is for a term exceeding the current fiscal year of Lessee and must be approved by a majority vote of all members of the Lessee's governing body;

(b) No lease payment required by this agreement, including those for any renewal term, will exceed 3% of the total amount budgeted by the Lessee during the current budget year;

(c) The amount of capital cost required to purchase Property, if presently paid for by cash, is \$4,563,000.00;

(d) The annual average effective interest cost is \$114,075.00.

(e) The amount included in the payments for service, maintenance, insurance, and other charges, exclusive of the capital cost and interest cost, is estimated at \$2,535.00 per month.

31. NOTICES.

All notices in connection with this Lease shall be sent by certified mail. Notices to the Lessor shall be addressed to it, c/o Martin Moore, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas. Notices to the Lessee shall be addressed to the Lessee, c/o City Manager at City Hall, 6th East 6th Street, Lawrence, Kansas 66044, or at such address as the Lessee shall, from time to time designate in writing.

32. HOLDING OVER.

Should the Lessee hold over for any reason after the expiration of the basic term or the option term, if the option is exercised, said holding over shall create only a tenancy from month to month, terminable on thirty (30) days written notice from either party to the other.

33. NO BROKER.

Lessor and Lessee agree to hold each other harmless against any and all claims by any person for brokerage commissions arising out of any conversation, negotiations or other dealings held by the other party with any broker regarding this Lease. In the event that the Lessor has used the services of a broker in the negotiation of this Lease, Lessor alone is responsible for the payment of any commissions due.

34. WAIVER OF BREACH NOT WAIVER OF OTHERS.

The waiving of any of the covenants, provisions or terms of this Lease by either Lessor or the Lessee shall be limited to the particular instance and shall not be deemed to waive any other breach or breaches.

35. Should Developer fail to timely commence the construction of the Leased Premises, or if Developer shall fail, through its own fault and no fault of acts of God or others, to substantially complete the project within 300 working days after issuance of the building permit and notice to proceed, then the right or option to purchase the real estate underlying the Leased Premises shall terminate and be of no further force and effect. Provided, however, that Developer shall have an additional 180 days if Developer is diligently pursuing completion.

36. DEFAULT CORRECTION.

In the event of any notice of default under this Lease, either party shall be given 30 days to correct, unless it is reasonable to assume that correction will take longer. In which event, they shall be given such time required for correction.

37. TERMINATION OF OPTION TO PURCHASE LAND.

Should Developer fail to timely commence the construction of the Leased Premises in a reasonable time, or if Developer shall fail, through its own fault and no fault of acts of God or others, to substantially complete the project within 300 working days, then the right or option to purchase the real estate underlying the Leased Premises shall terminate and be of no further force and effect. Working days are defined as all calendar days except the following:

- a) All Saturdays and Sundays.
- b) All holidays observed by the Lawrence City Government.
- c) Days the contractor is unable to obtain normal job performance by reason of 1) labor difficulties (including but not limited to strikes, walk-outs, picketing, boycotts, shutdowns, or inability to obtain a sufficient number of competent laborers, workers, or mechanics) or 2) force majeure which is defined as causes which are outside the control of the parties and could not be avoided by exercise of due care.

38. BINDING EFFECT OF LEASE.

This lease shall inure to the benefit of and be binding upon the successors and permissible assigns of the parties hereto.

39. TIME.

Time is of the essence in this agreement.

Dated as of this _____ day of September, 2000.

LESSOR:
9-10, L.C.

By: _____
9-10, L.C., by Martin Moore

LESSEE:
THE CITY OF LAWRENCE, KANSAS

By: _____
James R. Henry, Mayor

ATTEST:

City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On _____, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared James R. Henry, Mayor of the City of Lawrence, Kansas, a Kansas municipal corporation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

My appointment expires:

Notary Public

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On _____, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Martin Moore, the _____ of 9-10, L.C., a Kansas Limited Liability Company, known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

My appointment expires:

Notary Public

LAND LEASE AND OPTION TO PURCHASE

THIS Land Lease and Option to Purchase is made and entered into this _____ day of September, 2000, between The City of Lawrence, a Kansas municipal corporation, c/o Mike Wildgen, City Hall, 6th East 6th, Lawrence, Kansas, hereinafter referred to as "City" and 9-10, L.C., a Kansas Limited Liability Company, c/o Martin Moore, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas, hereinafter referred to as "Developer".

RECITALS:

A. City is the owner of certain real property described as:

City Lot 91 and the South 25 feet of Lot 89 on New Hampshire Street in the City of Lawrence, Douglas County, Kansas.

hereinafter referred to as the "Property", and sometimes hereinafter referred to as "the Premises".

B. City desires to lease to Developer the property on the terms and conditions set forth below.

C. City desires to give to Developer an option to purchase the property on the terms and conditions set forth below.

WITNESSETH:

In consideration of the covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the parties hereto as follows:

1. PREMISES.

City hereby leases to Developer, and Developer hereby leases from City the Property (sometimes hereinafter called "the Premises") for the term and upon the conditions hereinafter set forth.

2. TERM.

The Commencement Date for the Term of this Lease (the "Term") shall be upon execution of the Redevelopment Agreement, and the Term shall end on the date which is twenty (20) years thereafter ("Termination Date"). For the purpose of this Lease, the term "Lease Year" shall mean the initial period commencing upon the Commencement Date and ending on the date which is twelve

(12) months thereafter, and each succeeding twelve-month period commencing on the anniversary of the Commencement Date in each year.

3. RENT.

(a) Rent:

The Developer shall pay to the City as rent, the sum of one dollar (\$1.00) a year, payable on the Commencement Date and upon the first day of each succeeding twelve-month period, commencing on the anniversary of the Commencement Date in each year.

(b) Reimbursement of Real Estate Taxes:

Developer shall either pay or shall reimburse the City for payment of all real estate taxes due on the property after the Commencement Date. Real estate taxes in the year of commencement shall be prorated based upon the Commencement Date.

4. OPTION TO PURCHASE.

During the first three (3) years of the lease term, the Developer shall have the option to purchase the property for the price of \$135,000. The price shall increase or decrease over the last seventeen (17) years by the amount that the Consumer Price Index increases or decreases over the Consumer Price Index of the third year times the \$135,000.00 base price. In the event of the exercise of this option, City shall convey marketable title free and clear of all liens and encumbrances except those normally found on Schedule B of a title insurance policy. In the event of the exercise of this purchase option, City shall bear the cost of providing title insurance to Developer in the amount of the purchase price and Developer shall bear the expense of recording the deed of conveyance. The parties shall share equally in the costs of the closing agent.

5. CITY LEASE.

The City will lease the second (2nd) floor of a building to be placed upon the property by the Developer. Said lease shall be independent of this Lease and Option to Purchase and shall contain the necessary terms and conditions for said lease arrangement. None of said terms and conditions are contained herein.

6. COMPLIANCE WITH LAWS; DECLARATION; LICENSES AND PERMITS; RULES AND REGULATIONS.

(a) Compliance with Laws and Restrictions:

Developer shall not use, or permit any person to use, the Premises or any part thereof for any use or purpose in violation of federal, state or local law, including, but

not limited to, present and future ordinances or other regulations of any municipality in which the Premises are situated, and Developer agrees, that if during the term of this Lease new laws and regulations and restrictions be imposed by any of the foregoing, City will, at the sole cost and expense of City, make alterations or improvements in or to the Premises which may be required by any federal, state or local law, or by any municipal ordinance, or regulation applicable thereto unless such alteration or improvement is required as a direct result of the operation of Developer's business in which case the alterations or improvements shall be made by Developer at Developer's sole cost. Developer shall also comply with all orders, directives, rules and regulations of all governmental bodies, bureaus and offices having jurisdiction over Developer or the Premises. City makes no warranties or representations as to the state of such ordinances, rules and regulations, and Developer acknowledges that it has independently investigated same and represents that it will comply therewith.

(b) Compliance with Declaration of Covenants Filed Against the Property:

During the term of this Lease, Developer will comply with and perform all obligations with respect to the Premises under the Declaration of Covenants filed against the property, and shall indemnify and hold City harmless from and against all loss, claim, damage or other liability City may suffer or incur by reason of Developer's failure to comply with any provision of said Declaration with respect to the Premises, including attorneys' fees and court costs City may incur in connection with the defense against any claim as to which City is entitled to be indemnified against hereunder.

(c) Licenses and Permits:

Developer shall procure and maintain at Developer's own expense and responsibility all licenses, permits and inspection certificates required by any governmental authority respecting Developer's use of the Premises. Developer may contest any such law, ordinance or regulation, and if required, may join City in any such contest. In such event, however, Developer shall indemnify City against any costs, penalties or attorneys' fees incurred by or asserted against City by virtue thereof.

7. PAYMENT OF TAXES, FEES, ASSESSMENTS AND UTILITIES.

(a) Payment of Taxes, Fees and Assessments:

(i) Developer shall pay prior to delinquency, pursuant to bills procured and timely submitted to Developer by City, or sent directly

to Developer by any federal, state or municipal governmental authority, all personal property taxes, transaction privilege, sales or use taxes, license fees, permits and special assessments levied or imposed against the Developer's property on the Premises and/or Developer's use of Developer's property thereon.

(b) Payment of Utilities:

Developer shall post all required deposits for, and shall pay all charges for water, gas, sewer, electric and all other utilities used, consumed or wasted on the Property.

8. INDEMNIFICATION AND INSURANCE.

(a) Indemnification of City:

Developer agrees to indemnify, hold harmless and defend City from all claims, actions, liabilities, damages, expenses and judgments, including but not limited to reasonable attorneys fees, reasonable investigative and discovery costs, court costs and all other sums on account of any injury to persons, loss of life or damage to property, violation of the civil rights of persons or groups, labor disputes, and similar controversies, occurring on the Premises or arising from or connected with the use, non-use, condition or occupation of such Premises, which are not caused, in whole or in part by the negligence of City or its agents or employees.

(b) Indemnification of Developer:

City agrees to indemnify, hold harmless and defend Developer from all claims, actions, liabilities, damages, expenses and judgments, including but not limited to reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other sums on account of any injury to persons, loss of life or damage to property, in violation of the civil rights of persons or groups, labor disputes, and similar controversies, occurring on the Premises or arising from or connected with the use, non-use, condition or occupation of such Premises, which are not caused, in whole or in part, by the negligence of Developer, or its agents or employees.

(c) General Liability Insurance:

Developer agrees that Developer shall, during the Term of this Lease, including renewals hereof, at Developer's own expense, keep in force by advance payment of premiums, public liability insurance with a "Combined Single Limit" (covering bodily injury liability, death and property damage) in any one occurrence

in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) and umbrella coverage of not less than Five Hundred Thousand Dollars (\$500,000.00) insuring Developer and City against any liability that may accrue against them or any of them on account of any occurrence in or about the Premises during the Term of this Lease or in consequence of Developer's occupancy thereof and resulting in personal injury, death or property damage.

(d) Fire and Extended Coverage Insurance:

Developer shall cause the building on the Premises to be insured against loss by fire with extended coverage, for the full replacement value thereof, and with one or more insurance companies acceptable to City and which are qualified to do business in the State of Kansas. Developer shall insure its improvements and equipment and all other property which Developer may bring onto the Premises against loss. City shall have no liability for the Premises or Developer's property in the event of any casualty loss.

(e) Insurance Policies:

All policies of insurance required to be carried by Developer shall contain a provision that the insurance company issuing such policies will give City not less than thirty (30) days advance written notice of any cancellation or lapse or change in the effective date or any reduction in the amount or scope of coverage. All such policies of insurance shall name as co-insureds, as their respective interests may appear, each of Developer and City. Developer shall furnish to City, before Developer may take occupancy of the Premises, and shall thereafter provide City as necessary to up-date and correct policies previously furnished to City, with true and correct copies of all policies of insurance required to be carried by Developer pursuant to this paragraph, together with the waiver of rights of subrogation described above.

(f) Indemnity:

Developer agrees to indemnify and save harmless City from and against all claims of whatever nature arising from (i) any act, omission or negligence of Developer, or Developer's contractors, agents, servants, or employees, or (ii) arising from any accident, injury or damage whatsoever caused by any person or to the property of any person occurring during the term hereof in or about the Premises, where such accident, damage or injury results or is claimed to have resulted from an act or omission on the part of Developer or Developer's undertakings in this Lease, including, but not limited to, any alleged violation of any rule or regulation promulgated by the Environmental Protection Agency of the United States or any state or governmental subdivision relating to hazardous waste or substances,

pollution or noise emissions. Such indemnity shall not extend to any act, omission or negligence on the part of City or City's undertakings in this Lease. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities in connection with any claim or proceeding brought thereon and the defense thereof, including reasonable attorneys' fees, and shall not be limited, in any way, by the amounts of insurance required to be carried by Developer pursuant to this Lease. Developer's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

9. ASSIGNMENT AND SUBLETTING.

Developer may not assign or sublet the Lease, except to any entity controlling, controlled by, or under common control with the Developer, or to a successor by merger or consolidation, without the prior written consent of City which consent shall not be unreasonably withheld.

City shall have the right to assign its interests under this Lease and this Lease shall be binding on City's successors and assigns.

10. ENVIRONMENTAL REQUIREMENTS.

The City represents to the Developer that it has no knowledge of any violation of federal, state or local laws, environmental or otherwise, other than those such violations as may be revealed by the inspection that the Developer had performed on the property.

11. CONVEYANCE UPON EXERCISE OF OPTION.

In the event that Developer exercises the option granted hereunder, the City will convey the property to the Developer by warranty deed, in such form as required by the title company issuing the title policy upon the property. At closing of the sale and purchase of the land, the City will provide such title policy insuring a good and merchantable title, subject only to encumbrances as set forth above, in Developer.

12. QUIET ENJOYMENT.

City covenants and agrees that Developer, upon paying the rent and all other charges provided for in this Lease, and upon observing and keeping all of the covenants, conditions and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease, without hindrance or molestation by or from anyone claiming by, through or under City, and City shall not permit any condition to exist on or about the Premises that would deprive Developer of the beneficial enjoyment thereof subject to the terms of this Lease and the Declaration of Covenants.

13. ELECTION OF REMEDIES; WAIVER.

No exercise by Developer or City of any right or power arising from any default and no delay or omission of City or Developer to exercise any right or power arising from any default on any occasion shall impair any such right or power or be construed to be a waiver of any such default or an acquiescence therein on such occasion, or on any other occasion, or as an election of the same or any other right or remedy on the same or on any other occasion.

14. SUBORDINATION.

City agrees that Developer may place a leasehold mortgage or mortgages upon the building to be constructed on the subject property, but not the land, and City agrees that they will consent to such mortgage or mortgages and all of their terms, subject only to the rights of the City in the property and the terms of this agreement.

15. ESTOPPEL CERTIFICATE.

Each party agrees, at any time, and from time to time, upon not less than ten (10) days' prior notice by the other, to execute, acknowledge and deliver to the requesting party a statement in writing addressed to the requesting party certifying that this Lease is unmodified and in full force and effect or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications, and stating the dates to which the rent and other charges have been paid, and stating whether or not to the best knowledge of the signer of such certificate there exist any default by either party in the performance of any covenant, agreement, term, provision, or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by the requesting party or a purchaser of such party's interest and by any mortgagee or prospective mortgagee of any mortgage affecting the Improvements on the Premises.

16. TERMINATION OF OPTION TO PURCHASE LAND.

Should Developer fail to timely commence the construction of the Leased Premises, or if Developer shall fail to substantially complete the project within three hundred (300) working days, then the right or option to purchase the real estate underlying the Leased Premises shall terminate and be of no further force and effect. Working days are defined as all calendar days except the following:

- a) All Saturdays and Sundays.
- b) All holidays observed by the Lawrence City Government.
- c) Days the contractor is unable to obtain normal job performance by reason of 1) labor difficulties (including but not limited to strikes, walk-outs, picketing,

boycotts, shutdowns, or inability to obtain a sufficient number of competent laborers, workers, or mechanics) or 2) force majeure which is defined as causes which are outside the control of the parties and could not be avoided by exercise of due care.

17. END OF TERM.

Upon the expiration or other termination of the term of this Lease, Developer shall quit and surrender to City the Premises. All property not removed from the Premises by Developer at the end of the term shall be deemed abandoned and may be retained as City's property, and the building shall be the sole property of the City.

18. MISCELLANEOUS.

(a) Authority:

The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their representative capacity as indicated.

(b) Time:

Time is of the essence of this Lease. In the event the time for the performance of any obligation or the giving of any notice or the taking of any action hereunder expires on a Saturday, Sunday or legal holiday, the time for such performance, notice or action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

(c) No Agency Created:

Developer shall have no authority, express or implied, to act as agent of City, or any of its affiliates for any purpose. Developer is, and shall remain, an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to Developer's business operations, including any personal property, equipment, fixtures or real property connected therewith and for all claims or demands based upon damage or destruction of property or based upon injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of Developer's business.

(d) Force Majeure:

Whenever a period of time is provided in this Lease for either party to do or perform any act or thing, except the payment of monies, neither party shall be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war,

governmental regulation or control or other causes beyond the reasonable control of the parties, and in any event, the period for the performance of an obligation hereunder shall be extended for the amount of time of the delay. This clause shall not, however, apply to nor result in any extension of the term of this lease.

(e) Paragraph Headings:

Paragraph headings of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

(f) Invalidity of Provision:

If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(g) Law Governing:

The terms and provisions of this Lease shall be interpreted in accordance with and governed by the laws of the State of Kansas applicable to leases of real property located in such state entered into and to be performed in such state, without regard to principles of conflicts of law.

(h) Entire Agreement:

This Lease shall be deemed to include the entire agreement between the parties hereto, and it is agreed that neither City nor anyone acting on its behalf has made any statement, promise, or agreement or taken upon himself any engagement whatsoever, whether verbally or in writing, in conflict with the term of this Lease, or that in any way modified, varies, alters, enlarges, or invalidates any of the provisions hereof, or extend the term of this Lease, and that no obligations of the City shall be implied in addition to the obligations herein expressed. This Lease cannot be changed orally, but only by an agreement in writing signed by City and Developer.

(i) Parties Bound:

The terms of this Lease shall extend to and be binding upon the permitted assigns and successors of the parties to this instrument.

(j) Notices:

All notices to or demands upon City or Developer desired or required to be given under any of the provisions hereof shall be in writing. Any notices or demands from the City to the Developer shall be deemed to have been duly and sufficiently given if a copy thereof has been mailed by United States registered or certified mail in an envelope properly stamped and addressed to Developer either at the address set forth below or, with respect to Developer, at the address of the Premises. Any notices or demands from the Developer to the City shall be deemed to have been duly and sufficiently given if mailed by United States registered or certified mail in an envelope properly stamped and addressed to the City at the address set forth below. Either Party, by notice, may change the addressed to which notice shall be sent, but all notices mailed to the Developer at the address of the Premises shall be deemed sufficient.

19. DEFAULT CORRECTION.

In the event of any notice of default under this Lease, either party shall be given 30 days to correct, unless it is reasonable to assume that correction will take longer. In which event, they shall be given such time required for correction. This provision shall not apply to the default provisions on the building construction time.

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

THE CITY OF LAWRENCE, KANSAS

By: _____
James R. Henry, Mayor

ATTEST:

9-10, L.C.

By: _____
9-10, L.C., by Martin Moore

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On _____, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared James R. Henry, Mayor of the City of Lawrence, Kansas, a Kansas municipal corporation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

My appointment expires:

Notary Public

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On _____, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Martin Moore, the _____ of 9-10, L.C., a Kansas Limited Liability Company, known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

My appointment expires:

Notary Public

DECLARATION OF COVENANTS
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made effective the 1st day of August, 2000, by and between Firststar Bank Midwest, N.A. (formerly known as Mercantile Bank and as The First National Bank of Lawrence) (referred to as "Firststar"), the City of Lawrence, a Kansas municipal corporation (referred to as the "City"), and 9-10 L.C., a Kansas limited liability company (referred to as "9-10").

RECITALS

1. Firststar is the legal and/or equitable owner of real estate located in Lawrence, Douglas County, Kansas, and described on Exhibit "A", attached to and by reference made a part of this Declaration (referred to as the "Firststar Lots").
2. The City is the legal and/or equitable owner of real estate located in Lawrence, Douglas County, Kansas, and described on Exhibit "B", attached to and by reference made a part of this Declaration (referred to as the "City Lots").
3. 9-10 is the legal and/or equitable owner of real estate located in Lawrence, Douglas County, Kansas, and described on Exhibit "C", attached to and by reference made a part of this Declaration (referred to as the "9-10 Lots").
4. The Firststar Lots, City Lots, and 9-10 Lots are referred to in this Declaration collectively as the "Real Estate".
5. Firststar (acting under the name of Mercantile Bank) and 9-10 entered into a certain Real Estate Agreement (the "Contract"), dated March 31, 2000, for the sale and purchase of the Firststar Lots (excluding the Retained Property), which Contract requires that the types of uses permitted upon the Real Estate be restricted pursuant to this Declaration, that such restrictions shall be a servitude upon the entire Real Estate and shall be binding upon any person, owner, or occupant acquiring any interest in any part of the Real Estate, and that this Declaration shall be filed of record in the Office of the Register of Deeds of Douglas County, Kansas.
6. Declarants hereby agree that the Real Estate shall be subject to the covenants and restrictions set forth in this Declaration.

DECLARATION

NOW, THEREFORE, Declarants declare that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions described in this Declaration, for the purposes of (i) enhancing and protecting the value, desirability and attractiveness of the Real Estate and the Retained Property, (ii) encouraging and assisting the orderly economic development of the Real Estate, (iii) increasing the public benefit to be derived from the Real Estate, (iv) preserving the amenities and for the maintenance of the same located on the Real Estate, (v) promoting the efficient development of the Real Estate, and (vi) protecting the owners, lessees and sublessees of the Retained Property against incompatible uses of the surrounding Real Estate, and (vii) promoting safety to life, health and property in the area. These covenants and restrictions shall run with the Real Estate, shall be a servitude upon the entire Real Estate, and shall be binding upon all Persons, Owners or occupants having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE ONE DEFINITIONS

1. "Declarants" shall mean and refer to Firststar Bank Midwest, N.A. (formerly known as Mercantile Bank and as The First National Bank of Lawrence), the City of Lawrence, a Kansas municipal corporation, and 9-10 L.C., a Kansas limited liability company.
2. "Lot" or "Lots" shall mean and refer to any subdivision of the Real Estate pursuant to the Plat.
3. "Mortgagee" shall mean and refer to any person, persons, or entities holding a mortgage secured by a Lot or Lots and improvements thereon.
4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a Lot (including a contract purchaser of a Lot). The term "Owner" shall not mean any Mortgagee unless and until such Mortgagee has acquired fee simple title to a Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.
5. "Person" shall mean a natural individual, corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.
6. "Plat" shall mean and refer to the Plat of subdivision for the original townsite of Lawrence, Kansas, filed in the office of the Register of Deeds of Douglas County, Kansas, and is incorporated herein by reference.

7. "Real Estate" shall mean and refer to all of the real property described in Exhibit "A", Exhibit "B", and Exhibit "C", which Exhibits are attached to and by reference made a part of this Declaration.

8. "Retained Property" shall mean and refer to all of the real property described as Lots 70, 72 and 74, on Massachusetts Street, in the City of Lawrence, Douglas County, Kansas, which Retained Property is the existing site of the bank tower building located adjacent to and west of the Firststar Lots, and commonly known as 900 Massachusetts Street, Lawrence, Kansas.

ARTICLE TWO USE RESTRICTIONS

In accordance with the terms and provisions of the Contract, this Declaration shall prohibit certain uses upon the Real Estate, as follows:

1. Funeral homes;
2. Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage incidental to the retail sale thereof from the Project;
3. Entertainment or recreational facilities. As used herein, "entertainment or recreational facility" includes, but is not limited to, a bowling alley, carnivals, skating rink, electronic or mechanical games arcade, billiard room or pool hall, off-track betting operation, massage parlor, tattoo parlor, discotheque, dance hall, night club, tavern, night club, flea market, head shop, pornographic or "adult" store, strip club, or other similar places of public amusement or entertainment. As used herein, "entertainment or recreational facility" shall not include the Lawrence Arts Center, nor include any theaters, restaurants, or sports bars primarily devoted to the sale of food for on-premises consumption, each of which may contain an electronic or mechanical game room if operated as an incidental part thereof;
4. Veterinary hospital, mobile home sales or service facility, or automobile, truck, or other motor vehicle dealership or sales facility;
5. Any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke, gases, or materially increases fire, explosion or radioactive hazards on adjacent Lots;
6. Any "banking related business" (hereinafter defined) on the Property or any portion thereof, or locate on the Property or any portion thereof any structure, equipment or device which is intended for use in the conduct of any banking related business. For purposes of the foregoing, the term "banking related business" is defined as any business which includes any

one or more of the following activities: (i) The solicitation, receipt or acceptance of money or its equivalent on deposit, whether such deposit is made subject to withdrawal upon demand or is evidenced by a certificate of deposit, passbook, money market account, note or receipt; (ii) the discounting, buying, selling, trading or providing of bills, notes or other evidences of debt; (iii) the buying, selling, trading or providing of stocks, bonds, securities, annuities, insurance products or trust services; (iv) the lending of money to consumers or commercial enterprises, pawn services, check cashing, or the issuance of credit cards or bills, notes or other evidences of debt; (v) the conduct of any other business by a bank, a trust company, a savings and loan association, a savings bank, a credit union or a mortgage company; and (vi) the operation of an automated teller machine (ATM). Notwithstanding anything herein to the contrary, the provisions of subsection (iii) of this paragraph 6 shall not apply to (x) Lot 91, on New Hampshire Street, in the City of Lawrence, Kansas (fronts along Tenth Street), or (y) the second and third floor levels above the ground level of Lots 70, 72, 74, 76, and the North Forty (40) feet of 78, on New Hampshire Street, in the City of Lawrence, Kansas (fronts along the East side of New Hampshire Street.

7. Tire sales, tire repair, and automotive repair, maintenance, lubrication and/or body shops; and

8. Establishments whose primary purpose is the sale of package alcoholic beverages (e.g., beer, wine, liquor); provided, however, that this shall not be construed as a prohibition against (i) eating establishments, restaurants or sports bars primarily devoted to the sale of food for on-premises consumption, each of which may also serve alcoholic beverages incidental to its primary business, and (ii) wine and cheese shops, primarily devoted to the sale of premium wines and cheeses for off-premises consumption.

ARTICLE THREE **ENFORCEMENT OF DECLARATION**

All present and future Owners, tenants and other occupants of the Real Estate, or any portion thereof, shall be subject to and shall comply with the provisions of this Declaration, as may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Lot or portion of the Real Estate shall constitute an agreement that the provisions of this Declaration, as may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time any interest or estate in such Lot or portion of the Real Estate, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. In the event of a material violation or breach of this Declaration, as may be amended from time to time, Firststar, its successors and assigns, or any Owner shall be entitled to the following relief, in addition to the remedies that may be provided by law:

(a) **Enforcement.** Firststar, its successors and assigns, or any Owner of a Lot (or any portion thereof), shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations and charges now or hereafter imposed by the provisions of this Declaration. Failure by Firststar, its successors and assigns, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of an Owner or occupant to comply with the terms of this Declaration, as may be amended from time to time, Firststar, its successors and assigns, or any Owner bringing such a proceeding shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

(c) **Abating and Enjoining Violations.** The violation or the breach of any provision of this Declaration shall give Firststar, its successors and assigns, or any Owner the right, in addition to any other rights set forth herein: (i) to enter on or in the Lot on or in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner and/or occupant, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions of this Declaration, and Firststar, its successors and assigns, or any Owner shall not thereby be deemed guilty in any manner of trespass; and/or (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such violation or breach.

(d) **Remedies Cumulative.** All rights, remedies and privileges granted to Firststar, its successors and assigns, or the Owners, or any Owner, pursuant to the terms, provisions, covenants, or conditions of this Declaration, shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be available to such party at law or in equity.

ARTICLE FOUR **GENERAL PROVISIONS**

1. **Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Real Estate subject to this Declaration, and shall inure to the benefit of and be enforceable by Firststar, its successors and assigns, or the Owner or Owners of any Lot included in the Real Estate, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date that this Declaration is first recorded in the Office of the Register of Deeds of Douglas County, Kansas, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by at

least two-thirds of all of the then Owners of all of the Lots has been recorded, agreeing to terminate this Declaration, or to change this Declaration in whole or in part, all in accordance with paragraph 3 of this Article Four of the Declaration.

2. Voting. For purposes of voting upon any termination of or amendments to this Declaration, the Owners shall be entitled to one vote for each Lot in which they hold the fee simple interest. When more than one Person holds an interest in any Lot, all such Persons shall be Owners, and the vote for such Lot shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any Lot.

3. Termination or Amendments. Termination of or amendments to this Declaration shall be made by an instrument in writing which sets forth the agreement of the Owners to terminate or amend this Declaration. In all events, each written instrument of termination of or amendment to this Declaration, if and when adopted, shall bear the signature of the Owners approving such, who shall state whether it was properly adopted, and shall be duly acknowledged by the Owners approving the same. A written instrument of termination or amendment to this Declaration, once properly adopted, shall be effective upon recording in the Office of the Register of Deeds of Douglas County, Kansas. Notwithstanding anything in this Declaration to the contrary, this Declaration may not be terminated or amended by the Owners without the written consent of Firststar, or its successors and assigns, and the then present owner or owners of the Retained Property, which consent may be withheld for any reason.

4. Severability. The invalidity in whole or in part of covenants or restrictions, or any paragraph, subparagraph, sentence, clause, phrase or word, or other provision of this Declaration shall not affect the validity of the remaining portions thereof.

5. Notices. Notices, demands, or other communications under this Declaration shall be in writing and shall be deemed to have been given or submitted upon personal delivery or upon deposit in the United States mail by certified or registered mail, postage prepaid, with return receipt requested, addressed to the party, as the case may be, at the party's last known mailing address. Notices shall be deemed received upon personal delivery or three (3) days following deposit in the mail, if mailed in accordance with this paragraph.

6. Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

7. Construction. Whenever the context so permits, the use of plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, this Declaration has been executed and made effective the day and year first above written.

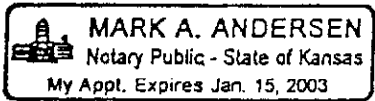
*FIRSTAR BANK MIDWEST, N.A.
(formerly known as Mercantile Bank and
as The First National Bank of Lawrence)*


By: 
Charles Warner, Community Bank President

STATE OF KANSAS)
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 2nd day of August, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Charles Warner, Community Bank President of Firststar Bank Midwest, N.A. (formerly known as Mercantile Bank and as The First National Bank of Lawrence), who is personally known to me to be the same person who executed the above Declaration on behalf of said banking corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.




Notary Public

My appointment expires: Jan. 15, 2003

9-10 L.C., a Kansas limited liability company

By: _____

Its: _____

STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ of 9-10 L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the above Declaration on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last mentioned.

Notary Public

My appointment expires: _____

CITY OF LAWRENCE, KANSAS

This Agreement is approved as authorized by the governing body of the city of Lawrence, Kansas this _____ day of _____, 2000.

James R. Henry, Mayor

STATE OF KANSAS)
DOUGLAS COUNTY)

BE IT REMEMBERED, that on this _____ day of _____, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came James R. Henry, Mayor, City of Lawrence, Kansas, who is personally known to me to be the same person who executed the above Declaration on behalf of said City of Lawrence, Kansas.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by notarial seal the day and year last mentioned.

Notary Public

My appointment expires: _____

EXHIBIT "A"

Legal Description of Firststar Lots

"East Lots":

Lots 72, 74, and the North Forty (40) feet of Lot 78, on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas.

"West Lots":

Lots 69, 71, 73, 75, 77 and 79, on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas;

Subject to that part of Lot 75 dedicated for public use as an alley, as described in that certain Dedication of Right-of-Way for Public Use, filed of record in Book 268, at Page 4, in the Office of the Register of Deeds of Douglas County, Kansas; and

Subject to all that part of the former sixteen-foot alley between Lots 70, 72, 74, and 76 on Massachusetts Street and Lots 69, 71, 73, and 75 on New Hampshire Street lying North of a line beginning at the Southeast corner of the North Half (N ½) of Lot 76 on Massachusetts Street, thence running East to the Northwesternly line of existing alley, thence Northeasterly on a curve along the Northwesternly line of existing alley to a point where it intersects the West line of Lot 75 on New Hampshire Street, such part of said former sixteen-foot alley having been vacated by Ordinance No. 4049 passed and approved by the governing body of the City of Lawrence, Kansas, on February 24, 1970, and recorded in the Office of the Register of Deeds of Douglas County, Kansas, in Book 267, at page 536, subject to the utility easement reserved therein pursuant to the authority of K.S.A. 13-443 and K.S.A. 1969 Supp. 12-512(a).

EXHIBIT "B"

Legal Description of City Lots

"City Lots":

Lots 81, 83, 85, 87, 89 and 91, on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas.

EXHIBIT "C"

Legal Description of 9-10 Lots

"9-10 Lots":

Lots 70, 76, the South ten (10) feet of Lot 78, 80, 82, 84 and 86, on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas.

To: Casey Liebst
From: Chuck Adcock
Cc: Dave Corliss
Date: 6-12-00
Re: City Lease Agreements

FYI

Casey do file

I have reviewed your memo dated 5-31, regarding the City's lease agreements. One lease agreement comes to mind that is not on the list.

The Utility department has historically maintained an agreement with Mr. Bill Boehle to farm some City property near the 4 Seasons pump station (3613 Brush Creek Dr.). I have attached some information for your review. I don't know if Mr. Boehle has reached a new agreement, but he has already planted a crop this spring.

Please add this to your list and I will try to get some more information from him. Please feel free to contact me if you have any questions.