

189504

DOUGLAS COUNTY TITLE

MUTUAL EASEMENT AGREEMENT

Book 691 Page 1120

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THIS MUTUAL EASEMENT AGREEMENT, made and entered into this 2nd day of October, 2000, by and between The City of Lawrence, Kansas, a Kansas municipal corporation, c/o Mike Wildgen, City Manager, 6 East 6th Street, Lawrence, Kansas (hereinafter referred to as "City"), and 9-10, L.C., a Kansas limited liability company, c/o Martin Moore, Managing Member, 1441 Wakarusa Drive, Suite 200, Lawrence, Kansas (hereinafter referred to as "9-10").

WHEREAS, City has purchased from 9-10 the following property:

Lots 80, 82, 84 and 86 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas,

for the purpose of building an Arts Center thereon; and

WHEREAS, 9-10 has retained or purchased the following lots:

Lots 70, 72, 74, 76 and 78,

for the purpose of constructing a retail and office building thereon; and

WHEREAS, City needs to acquire a temporary easement across the south twenty (20) feet of Lot 78 for the purpose of allowing the construction of an Arts Center wall across Lot 80; and

WHEREAS, City needs to acquire a permanent easement across the south four (4) feet of Lot 78 for the purpose of installing a foundation perimeter drainage system; and

WHEREAS, 9-10 needs to retain a permanent easement to allow its retail and office building foundation/slab to bear on the Arts Center north foundation wall; and

WHEREAS, this mutual easement is for the purpose of allowing and setting forth the easements set forth above.

NOW, THEREFORE, as agreed by and between the parties in consideration of the mutual promises contained herein, as follows:

1) Temporary Easement for Arts Center. The City of Lawrence is hereby granted and conveyed an easement across the south twenty (20) feet of Lot 78 on New Hampshire Street in the City of Lawrence, Douglas County, Kansas, for the use of the City in connection with the construction of the foundation and north wall of their Arts Center building. This easement shall terminate upon (1) completion of the north wall of the Arts Center or (2) if 9-10 is ready to begin construction of its two-story building on Lot 78, 76, 74, 72, 70, then this easement will terminate when the Arts Center completes its foundation wall. In the event that 9-10 is ready to build and the Arts Center has not completed its north wall (as in (2) above) the termination of this twenty-foot (20-foot) easement will not preclude 9-10 from granting the City or its contractor reasonable access to the north face of the north wall of the Arts Center

and such reasonable access shall not be denied unless it significantly impedes or prohibits ^{Book 691 Page 1121} 9-10 from its construction activities.

2) Water Passage Easement for Arts Center. The City of Lawrence is hereby granted and conveyed, across the south four (4) feet of Lot 78 on New Hampshire Street in the City of Lawrence, Douglas County, Kansas, an easement for the City's underground water coming off of Lot 80 and flowing onto the south four (4) feet of Lot 78 through a foundation perimeter drainage system. The purpose of this easement is to allow a foundation perimeter drainage system from Lot 80 onto Lot 78.

3) Suitable Foundation Bearing and Easement for 9-10. The City hereby grants and conveys to 9-10 a permanent easement alongside the north side of the north wall of the Arts Center building which is to be constructed. The purpose of this easement shall be to allow 9-10 to utilize the north wall of the Arts Center, thereby using industry accepted methods of attaching flashing, caulking, waterproofing, expansion joints and the like onto the Arts Center north wall. (See exhibit A.) No attachment will be deleterious to the wall of the Arts Center and all attachments and/or connections will be approved by the Arts Center's architects. Additionally, the City will cause, during the construction of the north wall of the Arts Center, piers to be built from the Arts Center foundation bearing elevation up to within three (3) feet of the proposed finished first floor of 9-10's building which is to be built north of the Arts Center. These piers will be in place prior to the Arts Center backfilling the north face of its north wall with suitable compacted bearing soils, thus avoiding the disturbance of the Arts Center foundation at such time 9-10 begins construction of its building. These piers will be designed by 9-10's structural engineer and approved by the Arts Center's architect. The city and/or its architect and/or its contractor will cause these piers to be constructed as designed, and at City expense. See Exhibit B for approved location and size of piers. In return for the City's payment for the piers, 9-10 will not invade the City's waterproof zone.

4) Servient and Dominant Estates for City. For the easement granted to the City, the servient estate shall be Lots 70, 72, 74, 76 and 78 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas, and the dominant estate shall be Lots 80, 82, 84 and 86 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas.

5) Servient and Dominant Estates for 9-10. For the easement granted to 9-10, the servient estate shall be Lots 80, 82, 84 and 86 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas, and the dominant estate shall be Lots 70, 72, 74, 76 and 78 on New Hampshire Street, in the City of Lawrence, Douglas County, Kansas.

6) Grant of Easements. Each party shall execute and deliver to the other by Grant of Easement the easements set forth above. Copies of easements are attached as Exhibits C and D.

7) Indemnification and Hold Harmless Granted by 9-10 to City. 9-10, for itself, its successors, assigns, agents and invitees, shall indemnify and hold City, its successors, assigns, agents and invitees, harmless against any claim for injury to any person or property which

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occurs or is alleged to have occurred by reason of the City's Grant of Easement set forth above to 9-10.

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

9) Duration of Easements. These easements shall continue in full force and effect for ninety (90) years.

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

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

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

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

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

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

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

Notice shall be given to 9-10 at:

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

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

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

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

THE CITY OF LAWRENCE, KANSAS

By: Mike Wildgen
Mike Wildgen, City Manager

ATTEST:

Raymond J. Hummert
Raymond J. Hummert, City Clerk

[SEAL]

9-10, L.C.

By: Martin W. Moore
Martin Moore, Managing Member

ATTEST:

Secretary
Secretary

[SEAL]

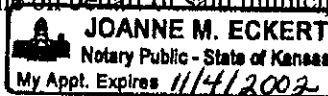
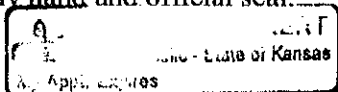
STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On October 23, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Mike Wildgen, the City Manager of the City of Lawrence, Kansas, a Kansas municipal corporation, and Raymond J. Hummert, the City Clerk of the City of

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Lawrence, Kansas, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same on behalf of said municipal corporation.

WITNESS my hand and official seal.



Joanne M Eckert
Notary Public

My appointment expires: 11/4/2002

STATE OF KANSAS)
) ss.
COUNTY OF DOUGLAS)

On OCTOBER 20, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Martin Moore, the Managing Member of 9-10, L.C., a Kansas limited liability company, and ~~_____~~, secretary of 9-10, L.C., a Kansas limited liability *and* ~~company~~, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same on behalf of said limited liability company.

WITNESS my hand and official seal.

[Signature]
Notary Public
Index _____ Numerical Index _____
No. 189504 Book 691 Page 1124
State of Kansas, Douglas County, SS.
Recorded in Book 691 Page(s): 1120 - 1124
Filed Nov 28, 2000 10:03 AM Fees \$14.00
Register of Deeds
[Signature]

My appointment expires:

10-06-02

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