

## LAND LEASE AND OPTION TO PURCHASE

THIS Land Lease and Option to Purchase is made and entered into this ~~18th~~ day of September, 2000, between The City of Lawrence, a Kansas municipal corporation, c/o Mike Wildgen, City Hall, 6<sup>th</sup> East 6<sup>th</sup>, 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 (2<sup>nd</sup>) 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:

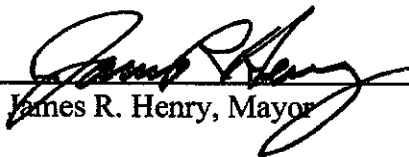
All notices to or demands upon City or Developer desired or required to be given under any of the provisions hereof shall be in writing. Any notices or demands from the City to the Developer shall be deemed to have been duly and sufficiently given if a copy thereof has been mailed by United States registered 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.

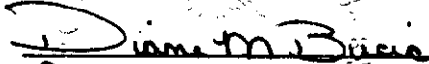
In the event of any notice of default under this Lease, either party shall be given 30 days to correct, unless it is reasonable to assume that correction will take longer. In which event, they shall be given such time required for correction. This provision shall not apply to the default provisions on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

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

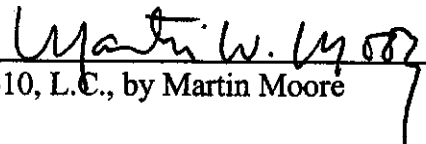
THE CITY OF LAWRENCE, KANSAS

By:   
James R. Henry, Mayor

ATTEST:

 FOR RAYMOND  
DEPUTY CITY CLERK HUMMERT

9-10, L.C.

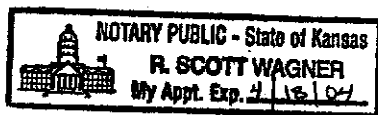
By:   
9-10, L.C., by Martin Moore

STATE OF KANSAS )  
 ) ss.  
COUNTY OF DOUGLAS )

On September 18, 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:



R. Scott Wagner  
Notary Public

STATE OF KANSAS )  
 ) ss.  
COUNTY OF DOUGLAS )

On Sept. 18, 2000, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Martin Moore, the manager 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:



Melody C. Smith  
Notary Public