

STATE OF IOWA

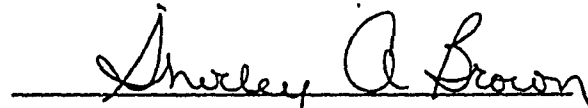
Woodbury County

CITY OF SIOUX CITY

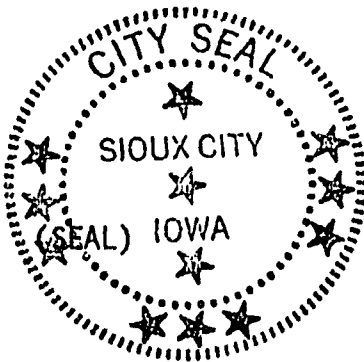
Office of the City Clerk

I, Shirley A. Brown, City Clerk of the City of Sioux City and City Clerk of the City Council, thereof, and, as such, having charge of and in my possession all the records and documents pertaining to said office now remaining therein, do hereby certify that it appears from such records that the foregoing is a true and correct copy of Resolution No. 95/U-3150 passed and adopted by the City Council of the City on the 24th day of April, 1995, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa, this 5th day of May, 1995.



SHIRLEY A. BROWN, CITY CLERK



**CONTRACT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT
IN THE EASTLAND URBAN RENEWAL AREA
BY AND BETWEEN
THE CITY OF SIOUX CITY, IOWA
AND
LARRY L. BOOK AND BRUCE A. CRARY,
TRUSTEES OF THE FRED & MARTHA FAMILY TRUST
DATED DECEMBER 31, 1987.**

INTRODUCTION

This Agreement, consisting of this Introduction, Part I and Part II and Exhibits "A", "B", "C", "D", and "E" to Part I attached hereto and made a part hereof (which are together hereinafter called "Agreement"), made on or as of the 24TH day of April, 1995, be and between the City of Sioux City, Iowa, an Iowa Municipal Corporation, (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "City"), acting pursuant to Chapter 403 of the Code of Iowa, (hereinafter called "Urban Renewal Act"), and having its office at the Orpheum Electric Building, Interim City Hall, 520 Pierce Street, in the City of Sioux City, Iowa, and Larry L. Book and Bruce A. Crary, Trustees of the Fred & Martha Family Trust Dated December 31, 1987 Trust (hereinafter called "Redeveloper") and having an office for the transaction of business at 1104 Sixth Street in the City of Sioux City, and State of Iowa, WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, the City proposes to undertake a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the City, and in this connection is engaged in establishing or has heretofore established an urban renewal project known as the "Eastland Urban Renewal Project" (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City; and

WHEREAS, as of the date of this Agreement, there is under preparation or has heretofore been prepared by the City an urban renewal plan for the Project consisting of the Urban Renewal Plan and amendments thereto, (which plan, as so amended, and as it may hereafter be further amended from time to time pursuant to law, and as so constituted from time to time, is, unless otherwise indicated by the context, hereinafter called "Urban Renewal Plan"); and

WHEREAS, the City is the owner of or will acquire the property in the Project areas shown generally on Exhibit "C"; and

WHEREAS, the Redeveloper is the owner of/or will acquire the property in the Project area shown generally on Exhibit "D"; and

WHEREAS the City has offered to sell said property and the Redeveloper is willing to purchase said property and to redevelop the property for and in accordance with this Agreement; and

WHEREAS, the City believes that the redevelopment of the property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and

provisions of the applicable State of Iowa and local laws and requirements under which the Project has been undertaken.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

PART I**CONTRACT FOR SALE OF LAND FOR PRIVATE REDEVELOPMENT**

SECTION 1: Sale and purchase price. In consideration of the Redeveloper constructing improvements as described in the Preliminary Plans and the Narrative of the Redeveloper's Bid Proposal attached hereto as "Exhibit B of Part I" and by this reference made a part thereof on the property and paying the City as follows:

1. City shall vacate and convey the real estate described in "Exhibit C of Part I" (hereinafter referred to as the "property") to Redeveloper and Redeveloper shall pay to City the sum of \$1.00.
2. The City shall acquire and sell to Redeveloper, if Redeveloper after reasonable efforts is unable to do so, any portion of the property described in "Exhibit D of Part I". The purchase price for same shall be and include the total of all of the following:
 - (a) The City's actual cost of acquiring the property described in "Exhibit D";
 - (b) The relocation costs which the City shall have reason to pay the owners or occupants of the property described in "Exhibit D";
 - (c) Additional compensation in the amount of \$2,000 per parcel acquired by the City to offset administrative costs of the City;
3. Upon payment of the Purchase price for the Exhibit C and D properties (to the extent the City is required to acquire the Exhibit D properties) which shall be in cash or certified check, simultaneous with delivery of the Deed to the Redeveloper, and for other good and valuable consideration, all subject to the terms and conditions of this Agreement, the City shall sell to the Redeveloper and the Redeveloper shall purchase from the City the said properties. It is understood that the Purchase price, due to the City's acquisition policies and powers, may increase after the conveyance of the property and that Redeveloper shall pay the increased Purchase price resulting from the acquisition when the costs are incurred by the City.
4. The City shall not, however, proceed to acquire or to convey the property described in "Exhibit C or D" until such time as:
 - (a) City has given preliminary approval of the Preliminary Site Plan;
 - (b) Soil tests have been performed and the results are satisfactory to both City and Redeveloper.

SECTION 2: Conveyance of property.

- (a) **Form of deed.** The City shall convey to the Redeveloper title to the said property by City Deed (hereinafter called "Deed") substantially in the form attached hereto as "Exhibit A of Part I" and by this reference made a part hereof. Such conveyance and title shall be subject

to the conditions, covenants, and restrictions set forth or referred to elsewhere in the agreement; and to all conditions, covenants, restrictions, and requirements of the Urban Renewal Plan. Such conveyance shall be further subject to such drainage easements which City may require over and upon the Exhibit C and D properties. Delivery of the Deed shall not abrogate the other responsibilities and covenants of the parties under this Agreement.

- (b) **Time and place for conveyance.** The City shall convey the said property as described on Exhibits C and D as soon as reasonably possible. Such conveyance shall occur within ten (10) days after satisfaction of the following conditions:

- (1) The City has approved the Redeveloper's proposal for financing the project as provided in Section 303 hereof; and
- (2) The City has approved the Final Construction and Site Plans as provided in Section 301 hereof; and
- (3) The City has acquired title to the property as described in Exhibit D.

Upon satisfaction of the above conditions, the City shall immediately deliver to the Redeveloper notice of the conveyance date. By no later than the delivery of such notice, or as soon thereafter as an abstract may be created, the City shall deliver to the Redeveloper an abstract of title to the property. The Redeveloper shall notify the City in writing of any objections to title within ten (10) days of delivery of the abstract. The City shall take all steps reasonably necessary to cure defects in title prior to conveyance. The Redeveloper shall be entitled to possession of the abstract only on or after the delivery of title and possession of the property.

The Redeveloper shall pay the purchase price and shall take title and possession of the property and the City shall deliver the Deed and possession of the property on the conveyance date.

- (c) **Apportionment of current taxes.** The City shall pay a pro rata share of taxes (real and personal), based on the assessed value of the land and improvements included within the property for the fiscal year of closing (July 1 to June 30), which are due and payable in the next subsequent fiscal year, and all unpaid taxes for prior years. To determine the pro rata share of such current fiscal year's taxes payable to the next subsequent fiscal year by the respective parties, the following procedure shall be used:

- (1) The most recent real estate taxes, based on the assessed value of the land, shall be added together and then divided by 365 to determine the per day figure; and
- (2) The total number of days in said fiscal year commencing with the 1st day of July and ending with the day of closing shall be determined and said number multiplied by the per day tax figure and the product shall be the portion of the taxes payable by the City; and
- (3) The remaining portion of the taxes for said fiscal year and all subsequent taxes shall be the responsibility of the Redeveloper.

The City shall be credited towards its pro rata share all of those taxes which the City shall have caused to be paid as a result of the City's acquisition of any of the property. The Redeveloper shall thereafter be responsible for payment of all such taxes as they become due and owing to the taxing authorities. Upon written request of the Redeveloper, the apportionment of such taxes shall be subject to final adjustment within thirty (30) days after the date of the actual amount of such current taxes is ascertained.

- (4) In the event the City shall acquire the property through eminent domain procedures, pursuant to Iowa Code Chapter 6B, taxes shall be apportioned and paid in accordance with § 6B.2, Code of Iowa (1986 Acts).
- (d) **Apportionment of special assessments.** The City shall pay all special assessments or installments thereof which, if not paid, would become delinquent in the fiscal year of settlement, and all prior assessments and/or installments thereof. All other special assessments or installments thereof shall be paid by the Redeveloper.
- (e) **Recordation of deed.** If the City shall not already have done so, the Redeveloper shall promptly file the Deed for recordation among the land records of the Woodbury County Recorder's Office. The Redeveloper shall pay all costs (including the cost of the State documentary stamp tax, if any, on the Deed) for so recording the Deed and shall provide the City with a copy imprinted with the date, time, book and page numbers of recordation.

SECTION 3: Good faith deposit.

- (a) **Amount.** The Redeveloper is required to make a Good Faith Deposit (hereinafter referred to as "Deposit") for the completion of the obligations to be performed by the Redeveloper in the form of a certified check, or corporate surety bond from a surety acceptable to the City, or an unconditional and irrevocable letter of credit issued to the City from a lending institution rated "A" or above by Moody's and acceptable to the City in the following amounts:

At the time the conditions set forth in Section 1 (4) have been met a deposit in the amount of \$10,000.00.
- (b) **Interest.** If security is provided by certified check, the City shall deposit the check in an interest bearing account and shall credit such interest to the purchase price to be paid by Redeveloper.
- (c) **Retention by City.** Upon the City's termination of this agreement as provided in Sections 703(1) or 704 hereof, the deposit or the proceeds of the deposit, including all interest payable on such deposit or the proceeds thereof after such termination, shall be retained by the City as provided in Sections 703(1) or 704 hereof.
- (d) **Return to Redeveloper.** Upon either the termination of this agreement as provided in Section 702 or 703(2) hereof, the City shall return the deposit to the Redeveloper.

SECTION 4: Time for commencement and completion of improvements. The construction of the improvements by Redeveloper referred to in Section 301 hereof shall be commenced in any event on or before December 31, 1995, and except as otherwise provided in this agreement, shall be completed on or before December 31, 1998.

SECTION 5: Time for certain other actions.

- (a) **Time for site plan review pre-application conference.** The Redeveloper shall participate in the pre-application conference of the Site Plan Review process required by City ordinance by no later than one hundred twenty (120) days after approval of this agreement by the City. The Redeveloper shall contact the Planning Department of the City to schedule such conference.
- (b) **Time for submission of preliminary construction plans.** The Redeveloper shall submit its "Preliminary Construction Plans" (as defined in Section 301 hereof) to the City by no later than ninety (90) days after the approval by the City of the Site Plan.
- (c) **Time for city action on construction plans.** Within fourteen (14) days of submission of the Construction Plans or corrected Construction Plans by the Redeveloper as provided in subsections (b) and (d) of this section, the City shall approve or reject such plans as provided for in accordance with the provisions of Section 301 hereof. In the case of an initial submission of preliminary Construction Plans by Redeveloper the City's approval of same shall be contingent upon its approval of Final Construction Plans. Redeveloper shall be required to submit its Final Construction Plans within thirty (30) days of the contingent approval of Preliminary Construction Plans. Such Final Construction Plans shall be subject to the approval processes set forth in subsections (c) through (f) of this section.
- (d) **Time for submission of corrected construction plans.** Except as provided in subsection (e) of this section, the time within which the Redeveloper shall submit any new or corrected Construction Plans as provided for in Section 301 hereof shall be not later than five (5) days after the date the Redeveloper receives written notice from the City of the City's rejection of the Construction Plans referred to in the latest such notice.
- (e) **Maximum time for approved construction plans.** In any event, the time by which the Redeveloper shall submit Construction Plans which conform to the requirements of Section 301 hereof and are approved by the City, shall be not later than sixty (60) days after the time stated in Section 5(b) above.
- (f) **Time for city action on change in approved construction plans.** The time within which the City may reject any change in the approved Construction Plans, as provided in Section 302 hereof, shall be thirty (30) days after the date of the City's receipt of notice of such change.
- (g) **Time for submission of evidence of equity capital and mortgage financing.** The time for which the Redeveloper shall submit to the City evidence as to equity capital and any commitment necessary for mortgage financing, as provided in Section 303 hereof, shall be not later than three hundred and sixty-five (365) days after the approval of this agreement by the City.

SECTION 6: Period of duration of covenant on use. The Covenant pertaining to the use of the property, set forth in Section 401 hereof, shall remain in effect for a period of twenty-one (21) years from the date of the Deed.

SECTION 7: Notices and demands. A notice, demand, or other communication under this agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, as follows:

- (i) In the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at:

Fred Davenport a/k/a Urban Realty
1104 6th Street
Sioux City, Iowa 51101

- (ii) In the case of the City, is addressed to or delivered personally to:

City Manager, City of Sioux City, Iowa
Interim City Hall, Orpheum Electric Building
520 Pierce Street
P.O. Box 447
Sioux City, Iowa 51102-0447

or at such other address, department, or individual with respect to either such party as that party may, from time-to-time, designate in writing and forward to the other as provided in this Section.

SECTION 8: Special provisions.

- (a) **Type of development.** Redeveloper agrees that the minimum improvements to be constructed on the property by the Redeveloper shall include:

- (1) Site utilities (including the sanitary sewer, storm sewer and water service lines from City mains).
- (2) Hard surface parking (to conform to the City code).
- (3) Landscaping.
- (4) A 150,000 square foot retail strip shopping establishment.

The foregoing construction shall be in accordance with the site plan attached hereto as "Exhibit E of Part I", or such site plan as may hereafter be approved by the City.

- (b) **Nonapplicability of Iowa Code § 614.24.** The Redeveloper agrees on behalf of itself and its successors and assigns that the City may bring an action based upon any claim arising or existing by reason of any term or provision of the Deed provided for herein, the conveyance

of this property without regard to the lapse of time and/or any term or provision of this agreement reserving or providing for any reversion, reverted interests or use restrictions into and on the property without complying with the requirements of Iowa Code § 614.24 that the City periodically record or re-record such reversions, reverted interests or use restrictions, and the Redeveloper agrees that neither it or its successors or assigns will assert the City's failure to comply with such § 614.24 as a defense to any such action.

- (c) **Required terms the redeveloper must include in any conveyance of its interest.** The Redeveloper shall refer to and incorporate the terms, conditions, restrictions, and requirements of the Deed provided for herein, of the Urban Renewal Plan, and of this agreement in any deed, will, conveyances or contract conveying part or all of its interest in the property, shall provide therein that the City can enforce the terms, conditions, restrictions, and requirements of such Deed, Urban Renewal Plan and this agreement against the Redeveloper's successors or assigns to the same extent it could against the Redeveloper; and shall indemnify the City for any damages, including attorney fees and the costs of litigation caused or occasioned by its failure to comply with this subsection of the agreement. Redeveloper may, without the further consent of the City, assign, in whole or in part, its interest in the property and/or its obligation to develop the property to Fred Davenport d/b/a Urban Realty. Further, under such assignment, Redeveloper may retain ownership of all or any part of the real estate.
- (d) The Redeveloper understands that it shall be necessary for the City to utilize tax increment revenues from the project area to finance any or all of the work to be performed by the City under this agreement. Redeveloper further agrees that in order for the City to finance its portion of the project, Redeveloper shall hereby establish minimum actual values of the land and completed improvements which will enable the City to fund its portion of the project through tax increment financing. Minimally, such minimum actual land values shall be: *Land - \$1,000,000.00; Improvements - \$4,424,250.00; Total - \$5,424,250.00.* Redeveloper shall not apply for tax abatement pursuant to Chapter 404, Code of Iowa, during such period as City shall have outstanding its bonds necessary for the financing of the City's portion of the project. Such minimum actual value is to be effective as follows:

 January 1, 1996 -- total minimum actual value of \$1,000,000.00
 January 1, 1997 -- total minimum actual value of \$5,424,250.00
- (e) Pursuant to the authority granted the City in subsection 3 of § 403.6, Code of Iowa, the Redeveloper shall have the right as an agent of the City to enter into any building or property within the proposed project area in order to make inspections, surveys, soundings or test borings. Such right shall be afforded Redeveloper for a 90 day period commencing with the execution of this agreement.
- (f) **Development Obligations & Reimbursements.**
 - (1) Redeveloper agrees that it shall, on behalf of City and in a timely manner, undertake the following obligations in conjunction with Redeveloper's redevelopment:

- (i) Complete construction of the turn lanes on Gordon Drive between Alice and Martha Streets;
 - (ii) Construct a 12 foot by 12 foot box culvert from Alice Street to Martha Street;
 - (iii) Remove all existing buildings from the Exhibit D property (except the existing building on the used car property). However, Redeveloper shall be responsible at Redeveloper's own cost and without reimbursement by City for all environmental remediation and/or mitigation upon the Exhibit D property.
 - (iv) Remove all trees from the Exhibit C and D properties.
 - (v) Grade the Exhibit C and D properties, including the backfill operation for the box culvert.
- (2) City shall reimburse Redeveloper for the cost of the foregoing obligations undertaken by Redeveloper subject to the following conditions:
- (i) Redeveloper shall obtain at least three bids from responsible bidders for the work to be performed.
 - (ii) As to each item set forth above (i.e. i through v), the City shall reimburse the actual cost of construction or the lowest bid, whichever is lower.
 - (iii) In no event shall the City reimburse Redeveloper for the work performed in i through v above more than the total amount of \$1,366,973.56 as set forth in Exhibit "F". Redeveloper shall pay all costs in excess of such amount.
 - (iv) For engineering services performed in conjunction with the construction of i through v above, the City shall reimburse Redeveloper the actual cost of such services or \$156,680.00, whichever is lower. Redeveloper shall pay all costs for such services in excess of such amount.
- (3) City shall rezone the Exhibit C and D property to BG, General Business Zoning.

SECTION 9: Incorporation of the construction plans into agreement: recordation.

- (a) The construction plans, drawings, specifications and related documents as finally approved by the City pursuant to Section 301 hereof, and any amendments thereto, as finally approved by the City pursuant to Section 302 hereof, shall be incorporated into this agreement as amendments thereto effective as of the date of such approvals. This agreement and the following documents:

- (1) The City Council Resolution Offering the property and Setting the Terms and Conditions for such Offering, Resolution No. 95/U-3040, dated March 20, 1995, including all exhibits and attachments thereto;
- (2) The Redeveloper's Bid Proposal in its entirety;
- (3) The approved Construction Plans and any approved amendments thereto;
- (4) The Resolution approving the sale of the property and approving this agreement, Resolution No. _____, dated _____, including all exhibits and attachments thereto;

shall be construed together and in harmony with one another in any interpretation of the entire agreement of the parties. A copy of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, Sioux City, Iowa.

The Redeveloper understands and acknowledges that this Resolution has not been adopted as of the date the Redeveloper executed this contract and hereby agrees and intends that the Resolution referred to hereby is that Resolution hereinafter formally adopted by the City by which it offers the property for redevelopment as an Urban Renewal Project in accordance with the Urban Renewal Act.

- (b) This agreement is hereby incorporated by reference in the Deed conveying the property. The Redeveloper shall immediately cause this agreement in its entirety to be recorded at its expense in the Woodbury County Recorder's Office (except the approved Construction Plans and any amendments thereto) and shall provide the City with a copy imprinted with the date, time, book and page numbers of recordation.

SECTION 10: Counterparts. This agreement is executed in five counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Redeveloper have caused the agreement to be duly executed as of the day first above written.

Attest:

CITY OF SIOUX CITY, IOWA

Shirley A. Brown
CITY CLERK.

By: R. G. Book
MAYOR

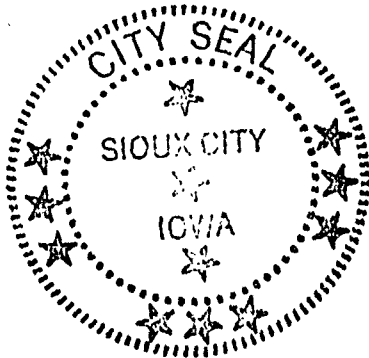
FRED & MARTHA FAMILY TRUST
DATED DECEMBER 31, 1987

Attest:

Barbara M. Levy

By: Larry L. Book Co-Trustee
Larry L. Book, Its Co-Trustee

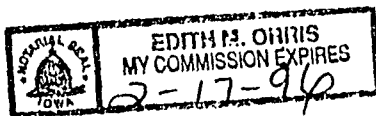
By: Bruce A. Crary Co-Trustee
Bruce A. Crary, Its Co-Trustee



STATE OF IOWA)
: SS
COUNTY OF WOODBURY)

BE IT REMEMBERED, on this 24th day of April, 1995, before me the undersigned, a Notary Public in and for Woodbury County, personally appeared Robert E. Scott and Shirley A. Brown, to me personally known, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively, of the City of Sioux City, Iowa; that the seal affixed hereto is the seal of the City of Sioux City, Iowa; that the said instrument was signed and sealed on behalf of said City of Sioux City, Iowa, and that the said Robert E. Scott and Shirley A. Brown acknowledged the execution of said instrument to be the voluntary act and deed of said City of Sioux City, Iowa, by it and by them voluntarily executed.

Edith M. Orris
NOTARY PUBLIC IN AND FOR WOODBURY COUNTY

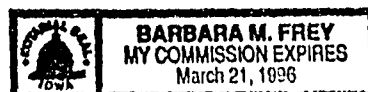


STATE OF IOWA)
: SS.
COUNTY OF WOODBURY)

On this 27th day of April, 1995, before me, the undersigned a Notary Public in and for said County and State, personally appeared Larry L. Book and Bruce A. Crary, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that the persons, as the fiduciaries, executed the instrument as the voluntary act and deed of the persons and of the fiduciaries.

(SEAL)

Barbara M. Frey
NOTARY PUBLIC IN AND FOR WOODBURY COUNTY



"EXHIBIT A OF PART I

KNOW ALL MEN BY THESE PRESENTS:

That the City of Sioux City, Iowa, a municipal corporation, of the County of Woodbury, and the State of Iowa, by its Mayor thereunto duly authorized, as hereinafter set forth, in consideration of the sum of _____ dollars (\$_____), in hand paid by _____, of the County of Woodbury and State of Iowa, does hereby release, remise, convey and quitclaim unto the said _____, all its right, title and interest in and to the following described premises situated in the County of Woodbury and State of Iowa, to wit:

It is specifically agreed that this Deed is subject to all of the terms, provisions, covenants, conditions and restrictions (including, but not limited to, the Grantor's right to re-entry contained in Section 704 thereof) contained in a certain Redevelopment Agreement entitled "Contract for Sale of Land for Private Redevelopment, Eastland Urban Renewal Project," executed by the Grantor and Grantee herein dated _____, 1995 which is on file in the Office of the Clerk of the City of Sioux City, Iowa, and which is recorded in the records of the Recorder of Woodbury County, Iowa, said Redevelopment Agreement being incorporated herein by this reference; and

It is specifically agreed that this Deed is also subject to all the terms, provisions, covenants, conditions and restrictions contained in the Official Urban Renewal Plan, as revised, amended, and modified and adopted by the City of Sioux City, Iowa, for the Eastland Urban Renewal Project which is on file in the Office of the City Clerk of the City of Sioux City, Iowa, and which is recorded in the records of the Recorder of Woodbury County, Iowa, said Urban Renewal Plan, as revised, amended and modified, being incorporated herein by this reference; and

It is specifically agreed that all the terms, provisions, covenants, conditions and restrictions contained in both said Urban Renewal Plan as amended and modified, and said Redevelopment Agreement, shall be and are hereby declared to be covenants running with the land, enforceable as therein set out or otherwise by the City of Sioux City, Iowa, regardless of whether or not title to all the land in the said Eastland Urban Renewal Project area may have been transferred to private parties. Such agreements and covenants shall run in favor of the Grantor, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

This Deed shall not be deemed to affect or impair any of the provisions or covenants of said agreement.

This Deed is executed under and by virtue of the authority vested in the Mayor of Sioux City, Iowa, under the provisions of a certain Resolution No. _____, duly passed and approved on the

____ day of _____, 1995, under the provision of which and in accordance herewith, this Deed is executed.

IN WITNESS WHEREOF, the City of Sioux City, Iowa, has caused these Presents to be signed by its Mayor and the seal of said City duly attested by the City Clerk hereunto affixed this ____ day of _____, 1995.

ROBERT E. SCOTT, Mayor

Attest: _____
SHIRLEY A. BROWN, City Clerk

STATE OF IOWA)
 :SS
COUNTY OF WOODBURY)

On this ____ day of _____, 1995, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared Robert E. Scott, Mayor of the City of Sioux City, Iowa, and Shirley A. Brown, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year above written.

NOTARY PUBLIC IN AND FOR WOODBURY COUNTY

"EXHIBIT B OF PART I"

The exhibit is comprised of the Redeveloper's Proposal with all attached documents and Preliminary Plans and shall be added at the time of the City's selection of the Redeveloper and declaration of its intent to enter into the agreement.

"EXHIBIT C OF PART I"

The exhibit is comprised of land which is owned by the City for sale to Redeveloper.

"EXHIBIT D OF PART I"

The Exhibit is comprised of land which is owned or which shall be acquired by Redeveloper for use in the construction of the project.

"EXHIBIT E OF PART I"

The exhibit is comprised of a site plan of the project to be constructed by Redeveloper.

"EXHIBIT F OF PART I"

The exhibit is comprised of the cost break down for constructing public improvements.

URBAN REALTY

1104-6TH STREET
SIOUX CITY, IA. 51101
PHONE 712-252-5859

REAL ESTATE
• DEVELOPMENT
• LEASING
• APPRAISALS

April 24, 1995

Mr. Roger Caudron
Community Development Director
City of Sioux City
P.O. Box 467
Sioux City, IA 51102

RE: Proposed Development of Gordon Plaza (formerly Eastbrook) On Gordon Drive

Dear Roger:

As you know, we have been discussing this development with the City Council and the Manager over the last several years. It appears that we have our first national tenant for a portion of this site and so the need to move forward is now. We recently put plans out for bid on this project to determine firm cost estimates.

The primary expense connected with the development of this property has always been the containment of Bacon Creek. It has always been our position that we are responsible for the handling of our share of the runoff generated by our development. If that takes a 24 inch storm sewer, we will pay that share of the total cost. The reminder of the expense connected with putting Bacon Creek in a box culvert should, in our opinion, be born by the TIF District in which the project is located since most of the water in Bacon Creek comes from that district.. As you know from the City's own research, the Wal-Mart/Menards project has long since recovered its initial investment. With the addition of 50,000 square feet of retail stores now under construction, that one development alone can carry the City's share of this new development.

The "Redeveloper" involved in the assembly of property on the North side of Gordon Drive would like to propose the following as an outline for a Development Agreement to be entered into between the trust and the City of Sioux City.

City Responsibilities:

1. Complete construction of the turn lanes on Gordon Drive between Alice and Martha Streets, including entrances to the North to serve this site. These access points are shown on the attached site plan.

April 24, 1995

Mr. Roger Caudron, page 2

2. Construct the 12' by 12' box culvert from Alice Street to Martha Street.
3. Remove all of the Buildings except the Used Car Lot building that we will remove.
4. Remove all of the trees from the site.
5. Grade the site, including the property north of Green Avenue, together with the backfill operation for the box culvert. Install the retaining walls associated with the culvert construction as shown on the approved plans for the culvert and grading.

In order for us to develop a customer interested in a large retail location at this development, we will need to include property on the North side of Green Avenue. This is the only way to generate sufficient tax increment to fund the TIF Agreement. Therefore, the City's Responsibilities will have to include the following items.

6. Condemn and resell any properties that we cannot negotiate to buy on the open market. We believe you did this type of operation with Jerry Johnson on the Hamilton/Cub Foods project. We will have to demonstrate and document a good faith effort to acquire all of the properties before the City will be required to do anything.

7. Vacate and deed to the Redeveloper, at no cost, those portions of Green Avenue, Grand Avenue, Cornelia Street and appropriate alleys as shown in orange on the attached sketch.

8. Rezone all of the property contained in this development to "BG-General Business".

9. We estimate the total cost for this work, engineering and project related expenses to be approximately \$1,524,000.00

In exchange the Redeveloper of this site will agree to the following:

1. Sign an Assessment Agreement guaranteeing a minimum assessed valuation of FIVE MILLION FOUR HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED FIFTY DOLLARS (\$5,425,250.00) by January 1, 1997. This figure includes the existing \$500,000.00 of assessed valuation already on the property.

April 24, 1995

Mr. Roger Caudron, page 3


Of the \$5,424,250.00 for actual value, \$1,000,000.00 of this total would be for land value.

2. Develop a retail strip center, with approximately 150,000 square feet. The type of construction will be single story and most likely at this point be composed of retail and service business components.

Roger, please attach this letter, together with the remainder of the appropriate exhibits to our Development Agreement.

As always your help and cooperation in these types of projects are immensely appreciated.

Sincerely,



James C. Johnson

JCJ:ddw
enclosure

EXHIBIT C OF PART I

LEGAL DESCRIPTION FOR RIGHT-OF-WAY VACATIONS IN AREA OF GREEN AVE,
MILWAUKEE RR ROW, AND CORRECTIONVILLE RD.

1-All of that portion of Green Avenue abutting Block 4 of Hedges 2nd Table Addition to Sioux City, Iowa;

2-All of Grand Avenue abutting Blocks 1,2,3, and 4 of Hedges 2nd Table Addition to Sioux City, Iowa including the Grand Avenue/Cornelia Street intersection;

3-That portion of Cornelia Street abutting Blocks 3, 4, Lot 11 of Block 1, Lot 18 of Block 2, and the east/west alleys in Blocks 1, 2, and 4 all in Hedges 2nd Table addition to Sioux City Iowa, Grand Avenue, Green Avenue, and the unnamed 33 foot wide right-of-way abutting the former Chicago, Milwaukee and St. Paul Railroad right-of-way on the north and east.

4-The east/west alleys in Blocks 1,2, and 4 of Hedges 2nd Table Addition to Sioux City, Iowa; and

5-The unnamed 33 foot wide right-of-way lying north and east the former Chicago, Milwaukee and St. Paul Railroad right-of-way between Green Avenue and Correctionville Road.

EXHIBIT D OF PART I

HEDGES SECOND TABLE ADDITION TO SIOUX CITY, IOWA

BLOCK 1 Lot 11 & W 1/2 of Lot 12
 E 1/2 of Lot 12 and all of Lots 13 through 16
 Lots 17 and 18
 Lots 19 and 20

BLOCK 2 Lots 11 and 12
 Lots 13 and 14
 Lots 15 and 16
 Lot 17
 Lot 18

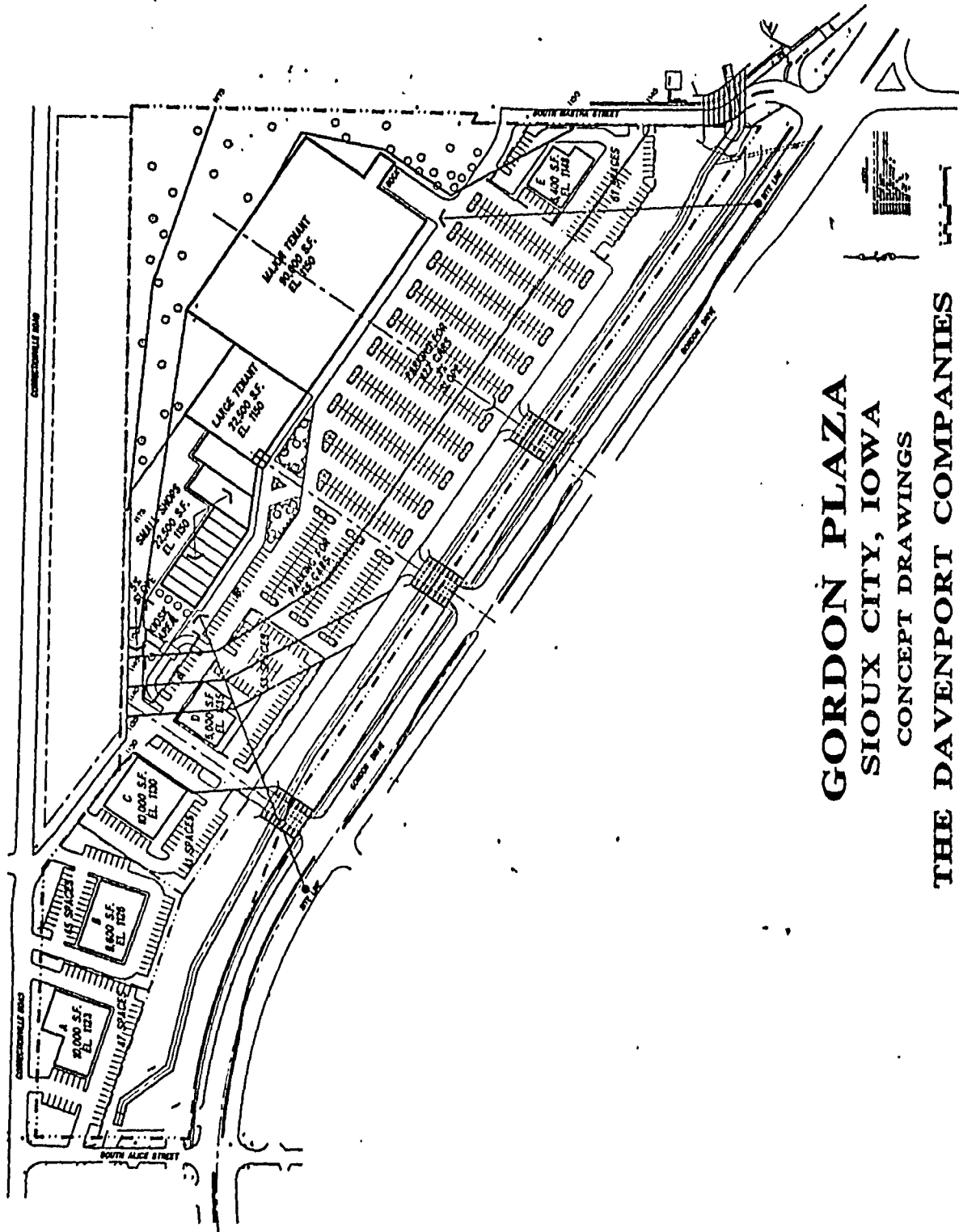
BLOCK 3

BLOCK 4 Lots 1 through 3
 Lots 4 and 5 and Lot 17
 Lots 6 and 7
 Lot 8
 Lots 9 through 12
 Lot 13
 Lots 14 and 15
 Lot 16
 Lots 18 through 20
 Lot 3, Auditor's Plat N 1/2 NW 35-89-47 and
 triangular tract abutting said Lot 3 on the West

HEALY'S TABLE ADDITION TO SIOUX CITY, IOWA, SECOND FILING

Lots 6 through 10 inclusive

EXHIBIT 'E', 1 OF 2



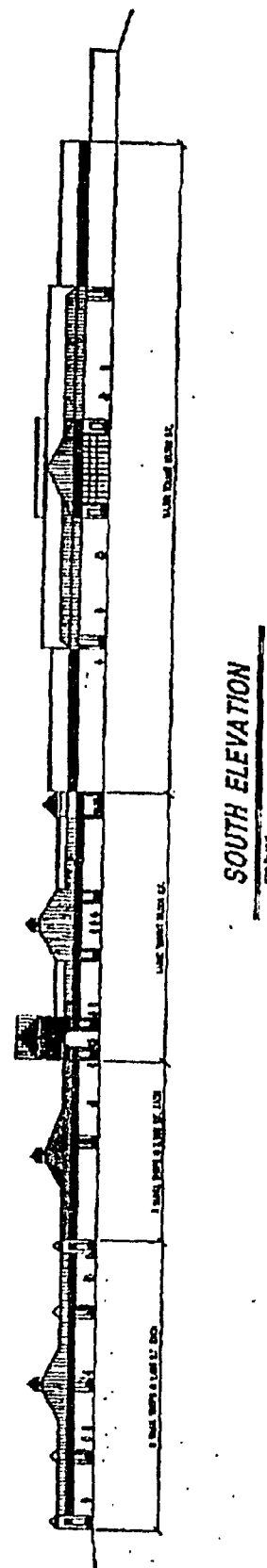
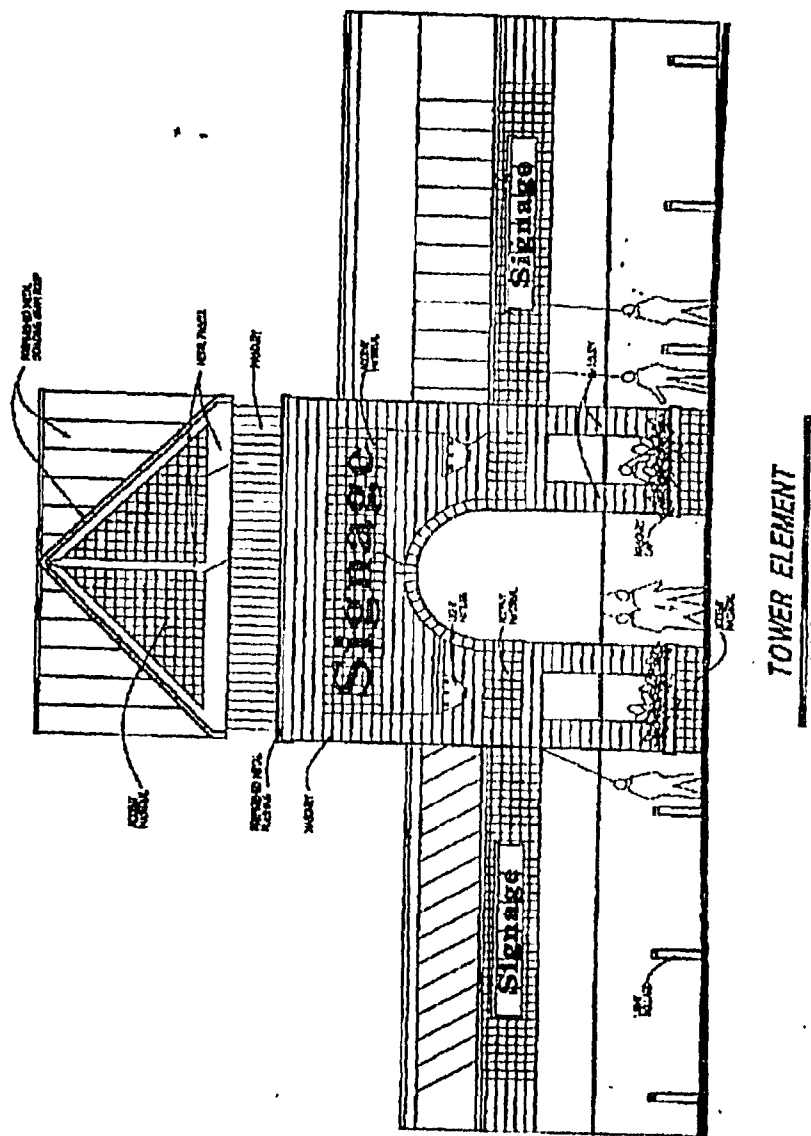
GORDON PLAZA
SIOUX CITY, IOWA

CONCEPT DRAWINGS

THE DAVENPORT COMPANIES

ROLL 326 IMAGE 1428

EXHIBIT 'E', 2 OF 2



**GORDON PLAZA
SIOUX CITY, IOWA
CONCEPT DRAWINGS**

Siouxland Engineering Associates, P.C.

204 W. 21ST STREET

SOUTH SIOUX CITY, NEBRASKA 68776

PH. 402-494-2143

FAX # 402-494-8821

1-800-447-2143

SEA

February 10, 1995

PROJECT CONSTRUCTION COST ESTIMATE
USING THE LOW BID RECEIVED FROM
DIXON CONSTRUCTION

BACON CREEK BOX CULVERT
MARTHA STREET TO ALICE STREET
in Sioux City, Iowa

Item No.	Description	Quantity Unit	Unit Price	Total
SCHEDULE I - WEST END				
PART I - SITE DEVELOPMENT:				
1.	Clear & Grubbing (entire site)	LS	\$ _____	\$ 20,000.00
2.	Dispose of Trees (entire site)	LS	\$ _____	\$ 25,000.00
3.	Remove & Dispose of buildings on site (includes floors and foundations) (entire site)	LS	\$ _____	\$ 68,625.00
4.	Saw Cut	115 LF	\$ 5.75	\$ 661.25
5.	Furnish & Place Dowels	78 EA	\$ 6.00	\$ 468.00
6.	Concrete Removal (Paving)	159 SY	\$ 7.00	\$ 1,113.00
7.	Furnish & Place Subgrade Prep	540 SY	\$ 2.25	\$ 1,215.00
8.	Furnish & Place Half Special Curb Inlet (if required by IDOT)	2 EA	\$ 950.00	\$ 1,900.00
9.	Furnish & Place 7" PCC Paving w/integral curb	421 SY	\$ 23.25	\$ 9,788.25
10.	Furnish & Place 10" PCC Paving w/integral curb	68 SY	\$ 28.75	\$ 1,955.00
11.	Furnish & Place Concrete Paving Header	81 LF	\$ 3.50	\$ 283.50

12. Furnish & Place 4" PCC Sidewalk	3480 SF	\$ 2.25	\$ 7,830.00
13. Furnish & Place Asphaltic Concrete	2.6 TN	\$ 80.00	\$ 208.00
TOTAL PART I		\$ 139,047.00	
Developer	\$139,047.00		
City	\$ 0.00		

PART II - BOX CULVERT:

1. Traffic Control	LS	\$	\$ 2,500.00
2. Remove & Dispose of existing concrete box culvert at Factory Road	LS	\$	\$ 5,000.00
3. Furnish & Place 12'x12' Reinforced Concrete Box Culvert	705 LF	\$ 430.10	\$303,220.50
4. Furnish & Place 12'x12' Reinforced Concrete End Section (one end section will be eliminated if Schedule II is awarded)	2 EA	\$4,558.40	\$ 9,116.80
5. Furnish & Install Expansion joints for 12'x12' box culvert	1 EA	\$3,300.00	\$ 3,300.00
6. Furnish & Place Poured-in-Place Reinforced Concrete, Wing Walls, Barrier Walls & Parapet	15 CY	\$ 275.00	\$ 4,125.00
7. Furnish & Place Rip-Rap	315 TN	\$ 21.25	\$ 6,693.75
8. Furnish & Place Grated Inlet	2 EA	\$ 693.00	\$ 1,386.00
9. Excavation & ditch filling not including box culvert excavation	32,000 CY	\$.81	\$ 25,920.00
10. Rubble removal (unanticipated)	200 CY	\$ 6.00	\$ 1,200.00
11. Furnish & Place 15" CMP	20 LF	\$ 16.50	\$ 330.00
12. Furnish & Place 18" CMP	30 LF	\$ 17.60	\$ 528.00

13. Connect 15" - 24" CMP to Box Culvert w/Concrete Reinforced Collar	4	EA	\$ 594.00	\$ 2,376.00
14. Furnish & Place reinforced concrete collar for extension of 15" - 24" CMP	4	EA	\$ 594.00	\$ 2,376.00
15. Furnish & Place 1 1/2" Subgrade Rock	390	TN	\$ 21.45	\$ 8,365.50
16. Furnish & Place Gravel	188	TN	\$ 7.00	\$ 1,316.00
17. Project Sign	2	EA	\$ 495.00	\$ 990.00
18. Seeding (entire site that is graded)	11.3	AC	\$ 448.00	\$ 5,062.40
19. TESTING	ALLOWANCE		\$	\$ 1,200.00
TOTAL PART II			\$ 385,005.95	
Developer	\$ 10,318.16			
City	\$374,687.79			

PART III - OVERFLOW CHANNEL:

1. Furnish & Place 8 - 4'x8' reinforced concrete box culverts	60	LF	\$1,292.50	\$ 77,550.00
2. Furnish & Place Guard Rail w/ required end sections	670	LF	\$ 13.25	\$ 8,877.50
3. Furnish & Place Terrace Block Retaining Wall (Versaloc, Keystone or equivalent)	3300	SF	\$ 11.50	\$ 37,950.00
4. Furnish & Place Bushes-5 gal. (Variegated Dogwood)	10	EA	\$ 25.00	\$ 250.00
5. Furnish & Place Bushes-5 gal. (Purple Leaf Sand Cherry)	10	EA	\$ 25.00	\$ 250.00
6. Furnish & Place 3/4" - 1 1/2" Landscaping Grade River Rock (2" thickness)	20	TN	\$ 30.00	\$ 600.00
7. Furnish & Place Weed Barrier Fabric	260	SY	\$ 2.00	\$ 520.00
TOTAL PART III			\$ 125,997.50	
Developer	\$ 0.00			
City	\$125,997.50			

PART IV - ADDITIONAL ITEM:

1. Remove & dispose of
abandoned concrete railroad
abutments (each side of street) LS \$ \$ 8,500.00

TOTAL PART IV \$ 8,500.00

Developer \$ 0.00
City \$ 8,500.00

TOTAL PARTS I THRU IV - SCHEDULE I \$ 658,550.45

SCHEDULE II - TOTAL PROJECT (ALICE STREET TO MARTHA STREET)

PART I - SITE DEVELOPMENT:

- | | | | |
|---|---------|----------------------|---------------------|
| 1. Clearing & Grubbing
(entire site) | LS | \$ <u> </u> | \$ <u>20,000.00</u> |
| 2. Dispose of trees
(entire site) | LS | \$ <u> </u> | \$ <u>25,000.00</u> |
| 3. Remove & Dispose of
buildings on site (includes
floors & foundations)
(entire site) | LS | \$ <u> </u> | \$ <u>71,820.00</u> |
| 4. Furnish & Place Subgrade
Prep | 1105 SY | \$ <u>2.25</u> | \$ <u>2,486.25</u> |
| 5. Furnish & Place 7" PCC
paving w/integral curb | 943 SY | \$ <u>23.25</u> | \$ <u>21,924.75</u> |
| 6. Furnish & Place 10" PCC
paving w/integral curb | 68 SY | \$ <u>28.75</u> | \$ <u>1,955.00</u> |
| 7. Remove & Dispose of
Asphalt | 350 SY | \$ <u>2.20</u> | \$ <u>770.00</u> |
| 8. Furnish & Place
Asphaltic Concrete | 18.6 TN | \$ <u>80.00</u> | \$ <u>1,488.00</u> |
| 9. Furnish & Place Concrete
Paving Header | 162 LF | \$ <u>3.50</u> | \$ <u>567.00</u> |
| 10. Furnish & Place 4" PCC
sidewalk | 9460 SF | \$ <u>2.25</u> | \$ <u>21,285.00</u> |

11. Furnish & Place Half Special curb inlet (if required by IDOT)	4	EA	\$ 950.00	\$ 3,800.00
12. Saw Cut	201	LF	\$ 5.75	\$ 1,155.75
13. Furnish & Place Dowels	133	EA	\$ 6.00	\$ 798.00
14. Concrete Removal (Paving)	228	SY	\$ 7.00	\$ 1,596.00
TOTAL PART I			\$ 174,645.75	

Developer \$ 174,645.75
City \$ 0.00

PART II - BOX CULVERT:

1. Traffic Control		LS	\$	\$ 3,000.00
2. Remove & dispose of existing box culvert at Factory Road		LS	\$	\$ 5,000.00
3. Furnish & Place 12'x12' reinforced concrete end section	1	EA	\$4,558.40	\$ 4,558.40
4. Furnish & Place Rip-Rap	215	TN	\$ 21.25	\$ 4,568.75
5. Rubble removal (unanticipated)	200	CY	\$ 6.00	\$ 1,200.00
6. Furnish & Place 12'x12' Reinforced Concrete Box Culvert	1956	LF	\$ 409.20	\$800,395.20
7. Furnish & Install Expansion Joints for 12'x12' box culvert	3	EA	\$2,750.00	\$ 8,250.00
8. Connection of new 12'x12' box culvert to existing box culvert at Martha St.		LS	\$	\$ 5,500.00
9. Connect to Box Culvert w/Concrete Reinforced Collar for 60" CMP	1	EA	\$ 990.00	\$ 990.00
10. Furnish & Place 1 1/2" Subgrade Rock	1645	TN	\$ 21.45	\$ 35,285.25
11. Furnish & Place Gravel	393	TN	\$ 7.00	\$ 2,751.00

12. Excavation & ditch filling not including excavation for box culvert	91,000	CY	\$.75	\$ 68,250.00
13. Remove & salvage existing 48" CMP	80	LF	\$ 5.50	\$ 440.00
14. Remove existing 54" CMP (incl. saw cut)	15	LF	\$ 17.60	\$ 264.00
15. Furnish & Place 60" CMP	42	LF	\$ 59.40	\$ 2,494.80
16. Furnish & Place 15" CMP	20	LF	\$ 16.50	\$ 330.00
17. Furnish & Place 18" CMP	30	LF	\$ 17.60	\$ 528.00
18. Connect 15" - 24" CMP to box culvert with reinforced concrete collar	4	EA	\$ 594.00	\$ 2,376.00
19. Furnish & Place reinforced concrete collar for extension of 15" - 24" CMP	4	EA	\$ 594.00	\$ 2,376.00
20. Project Sign	2	EA	\$ 495.00	\$ 990.00
21. Relocate existing rip-rap (approx. 50 TN)		LS	\$	\$ 825.00
22. Furnish & Place poured-in place reinforced concrete, wing walls, barrier walls & parapet	24	CY	\$ 275.00	\$ 6,600.00
23. Furnish & Place Grated Inlet	6	EA	\$ 693.00	\$ 4,158.00
24. Seeding	15.3	AC	\$ 448.00	\$ 6,854.40
25. Testing (Allowance)		LS	\$	\$ 2,500.00
TOTAL PART II			\$	\$ 970,484.80

Developer \$ 26,008.99
City \$ 944,475.81

PART III - OVERFLOW CHANNEL:

1. Furnish & Place 8 - 4'x8' reinforced box culverts	120	LF	\$1,212.20	\$145,464.00
2. Furnish & Place Bushes-5 gal. (Variegated Dogwood)	120	EA	\$ 25.00	\$ 3,000.00

3. Furnish & Place Bushes-5 gal. (Purple Leaf Sand Cherry)	115	EA	\$ 25.00	\$ 2,875.00
4. Furnish & Place 3/4" - 1 1/2" Landscaping Grade River Rock (2" thickness)	158	TN	\$ 30.00	\$ 4,740.00
5. Furnish & Place Weed Barrier Fabric	2005	SY	\$ 2.00	\$ 4,010.00
6. Furnish & Place Terrace Block Retaining Wall (Versaloc, Keystone or equivalent)	19,250	SF	\$ 11.50	\$221,375.00
7. Furnish & Place guard rail w/required end sections	2075	LF	\$ 13.25	\$ 27,493.75
8. Furnish & Place 4' Chain Link Fence	280	AC	\$ 18.00	\$ 5,040.00
TOTAL PART III			\$ 413,997.75	

Developer \$ 0.00
City \$ 413,997.75

PART IV - ADDITIONAL ITEM:

1. Remove & Dispose of abandoned concrete railroad abutments (each side of street)	LS	\$	\$ 8,500.00
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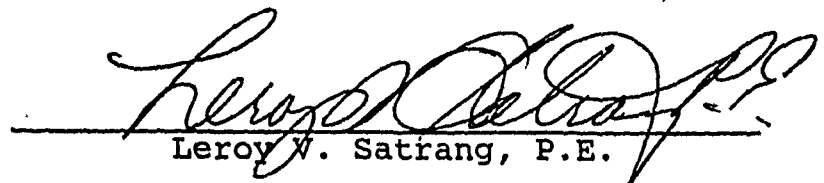
TOTAL PART IV \$ 8,500.00
Developer \$ 0.00
City \$ 8,500.00

TOTAL SCHEDULE II - PARTS I THRU IV \$ 1,567,628.30

Total Cost Split:

Developer \$ 200,654.74
City \$1,366,973.56

SIOUXLAND ENGINEERING ASSOCIATES, P.C.


Leroy W. Satrang, P.E.



Siouxland Engineering Associates
 204 W 21ST STREET
 SOUTH SIOUX CITY, NEBRASKA 68776
 PH 402-494-2143
 FAX # 402-494-8821
 1 800-447-2143

COMMUNITY DEVELOPMENT
 DEPARTMENT
 SIOUX CITY, IOWA

MAY 2 1995

REC'D

AGREEMENT BETWEEN CITY OF SIOUX CITY & DEVELOPER
 (FRED & MARTHA DAVENPORT FAMILY TRUST)
 PROJECT
 BACON CREEK BOX CULVERT
 SO. MARTHA STREET TO SO. ALICE STREET
 COST SHARING

Costs from bid received
 from Dixon Construction of
 Correctionville, Iowa:

SCHEDULE II	Total Cost	Developer	Maximum City Cost
Part I - Site Development	\$ 174,645.75	\$ 174,645.75	\$ 0.00
Part II - Box Culvert	\$ 970,484.80	\$ 26,008.99	\$ 944,475.81
Part III - Overflow Channel	\$ 413,997.75	\$ 0.00	\$ 413,997.75
Part IV - Additional Item	\$ 8,500.00	\$ 0.00	\$ 8,500.00
Subtotal	\$1,567,628.30	\$ 200,654.75	\$1,366,973.56

Costs as developed by SEA:

Preliminary Survey, Preliminary Design, Design, Design Plans, Specifications, Bidding	\$ 110,220.00	\$ 0.00	\$ 110,220.00
Construction Staking	\$ 28,620.00	\$ 0.00	\$ 28,620.00
Construction Inspection	\$ 21,520.00	\$ 0.00	\$ 21,520.00
Construction Engineering	\$ 10,840.00	\$ 0.00	\$ 10,840.00
Payment Processing	\$ 1,820.00	\$ 0.00	\$ 1,820.00
Cost Breakdown	\$ 3,680.00	\$ 0.00	\$ 3,680.00
Out-of-Pocket	\$ 3,320.00	\$ 0.00	\$ 3,320.00
Total	\$1,747,648.30	\$ 200,654.75	\$1,546,993.55

This cost-sharing background information was
 developed to be attached to the Development
 Agreement.

Attach.: Proposal Form from Dixon Construction

**CONTRACT FOR SALE OF LAND
FOR PRIVATE REDEVELOPMENT**

PART II

**ARTICLE I.
PREPARATION OF PROPERTY FOR REDEVELOPMENT**

SECTION 101: Work to be performed by City. The City shall be required to prepare the Exhibit C and D properties for redevelopment by the Redeveloper by performing the following acts:

See Part I, Section 8, Subsection f, Sub-subsections 1, 2 and 3.

SECTION 102: Redeveloper's responsibilities for certain other actions.

Maintenance of public utilities. Upon conveyance of the city-owned property to the Redeveloper, any city-owned sanitary sewers, storm sewers, and water mains located on the property and which exclusively serve the property purchased by the Redeveloper shall also become the property of the Redeveloper. The Redeveloper shall be responsible for the operation and maintenance of such sewers, water lines and utilities. Redeveloper shall not, however, take title to any city sanitary sewers, storm sewers or water mains which traverse the property for the purposes of serving premises other than the property purchased by the Redeveloper and City shall have a permanent easement for such utilities. The relocation of any such sewers, or utilities as deemed necessary by the Redeveloper shall be at no cost to the City.

**ARTICLE II.
RIGHTS OF ACCESS TO PROPERTY**

SECTION 201: Rights of access to property. Prior to the conveyance of the property by the City to the Redeveloper, the City shall assist representatives of the Redeveloper to have access to any part of the property at all reasonable times for the purpose of obtaining data and making various tests concerning the property necessary to carry out this agreement. After the conveyance of the property by the City to the Redeveloper, the Redeveloper shall permit the City and/or its representatives access to the property and abutting property owned or leased by the Redeveloper, at all reasonable times which any of them deems necessary for the purposes of this agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this section.

**ARTICLE III.
CONSTRUCTION PLANS, CONSTRUCTION OF IMPROVEMENTS,
AND CERTIFICATE OF COMPLETION**

SECTION 301: Plans for construction of improvements. Plans and specifications with respect to the redevelopment of the property and the construction of improvements thereon shall be in conformity with the Urban Renewal Plan, this agreement, all applicable state laws and local laws and regulations, and "Exhibit B of Part I" hereof. As promptly as possible after the date of this agreement, and, in any event no later than the time specified therefor in subsection (b) of Section 5

thereof, the Redeveloper shall submit to the City, for approval by the City, construction plans as defined below and the proposed construction schedule with respect to the improvements to be constructed by the Redeveloper on the property, in sufficient completeness and detail to show that such improvements and construction thereof will be in accordance with the provisions of the Urban Renewal Plan and this agreement.

The construction plans, submitted by the Redeveloper, must be consistent with and be a logical development of or reasonably inferable from "Exhibit B of Part I" hereof. The City shall, if the construction plans originally submitted conform to the provisions of the Urban Renewal Plan and this agreement, approve in writing such construction plans, and no further filing by the Redeveloper or approval by the City thereof shall be required under this requirement except with respect to any material change.

Such construction plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, be made within fourteen (14) days after the date of their receipt by the City. If the City so rejects the construction plans, in whole or in part, as not being in conformity with the Urban Renewal Plan or this agreement, the Redeveloper shall submit new or corrected construction plans which are in conformity with the Urban Renewal Plan and this agreement, within the time specified in Section 5 hereof, after written notification to the Redeveloper of the rejection.

The provisions of this section relating to approval, rejection and resubmission of corrected construction plans herein above provided with respect to the original construction plans shall continue to apply until the construction plans have been approved by the City: provided, that in any event the Redeveloper shall submit construction plans which are in conformity with the requirements of the Urban Renewal Plan and this agreement, as determined by the City, no later than the time specified in Section 5. All work with respect to the improvements to be constructed or provided by the Redeveloper on the property shall be in conformity with the construction plans as approved by the City.

The term "improvements", as used in this agreement, shall be deemed to have reference to the improvements, including landscaping, and signs as provided and specified in the construction plans once such plans are approved.

These construction plans shall include, but are not limited to, all plans and documents required for site plan review under the City's site plan ordinance together with detailed building elevations for each building face of the improvements, and floor plans for each level. The site plan ordinance review is a separate review process from the review of construction plans provided for in this agreement. Approval of construction plans pursuant to one does not constitute approval for purposes of the other.

SECTION 302: Changes in construction plans. If the Redeveloper desires to make any change in the construction plans after their approval by the City, the Redeveloper shall submit the proposed change to the City for its approval. If the construction plans for the property, as modified by the proposed change, conform to the requirements of Section 301 hereof with respect to such previously approved construction plans, the City shall approve the proposed change and notify the Redeveloper in writing of its approval. Such change in the construction plans shall, in any event, be deemed approved by the City unless they shall be rejected, in whole or in part, by written notice

thereof by the City to the Redeveloper, setting forth in detail the reasons therefor, within the period specified in Section 5.

SECTION 303: Evidence of equity capital and mortgage financing. As promptly as possible and, in any event, no later than the time specified in Section 5 thereof, the Redeveloper shall submit to the City evidence satisfactory to the City that the Redeveloper has the equity, capital and commitments for mortgage financing necessary for the construction of the improvements on the property.

SECTION 304: Deleted.

SECTION 305: Commencement and completion of construction of improvements. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the property, or any part thereof, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the property through the construction of the improvements thereon, and that such construction shall in any event be begun and completed within the periods specified in Sections 4 and 5. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the agreement itself, be to the fullest extent permitted by law and equity, binding for the benefit of the community and the City and enforceable by the City against the Redeveloper and its successors and assigns to or of the property or any part thereof or any interest therein.

SECTION 306: Progress Reports. Subsequent to conveyance of the property to the Redeveloper and until construction of all improvements has been completed, the Redeveloper shall make reports, in such detail and at such times, as may reasonably be requested by the City, as to the actual progress of the Redeveloper with respect to such construction.

SECTION 307: Certificate of completion.

- (a) Promptly after the Redeveloper notifies the City, in writing, that it has completed the improvements on the property, the City shall inspect the improvements and if the City determines that the Redeveloper has completed the improvements in accordance with the provisions of this agreement relating solely to the obligation of the Redeveloper to construct the improvements, the City will furnish the Redeveloper with an appropriate instrument so certifying. *The fact that the Redeveloper has secured an occupancy permit(s) pursuant to the building code of the City shall not entitle the Redeveloper to this certificate of completion unless in fact all improvements required by this agreement have been satisfactorily completed. The Redeveloper shall be entitled to a certificate of completion when it has completed all improvements required by this agreement.*
- (b) Such certification by the City (and it shall so provide in the certification itself) be a conclusive determination of satisfaction and termination of the agreements and covenants in this agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof, and, if the other agreements and covenants in this agreement obligating the Redeveloper in respect to the construction and completion of the improvements have

been fully satisfied, the City shall forthwith issue its certification provided for in this section. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of a mortgage, or any insurer of a mortgage, securing money loaned to finance the improvements, or any part thereof.

- (c) Upon completion of all elements of the improvements, except the landscaping, street trees or other similar common areas or facilities, which if incomplete shall not endanger the life or safety of any person who is to occupy a portion of the improvements prior to the issuance of a final partial certificate of completion, as defined below, or unreasonably interfere with access to or everyday use of such space by such person, the Redeveloper may request a partial certificate of completion. If the Redeveloper desires a partial certificate of completion the Redeveloper shall notify the City, in writing, that it has completed at least the necessary part of the improvements and describing the part completed for which it desires such certificate.

Promptly after the City receives such written request for a certificate of partial completion and architect's certificate, the City shall inspect the improvements and if the City determines that the Redeveloper has completed such part of the Improvements in accordance with the provisions of this agreement relating solely to the obligation of the Redeveloper to construct the improvements, the City shall furnish the Redeveloper with a certificate of partial completion so certifying.

Such certification by the City shall be (and it shall so provide therein) a conclusive determination of the satisfaction and termination of the agreements and covenants in this agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the part of the improvements covered there.

The issuance of such certificate of partial completion shall constitute the issuance of a certificate for purposes of Section 505 of this agreement and thereafter, the Redeveloper may consummate any conveyance, sale, lease or other transfer of all or any part of the improvements to which such certificate of partial completion applies.

Furthermore, after the issuance of such certificate of partial completion and any conveyance, sales, lease or other transfer of all or any part of the improvements covered therein, any exercise by the City of its right to re-enter and take possession of the property in accordance with Section 704 of this agreement shall be subject to the rights granted any such purchaser, lessee or transferee (or the mortgage of any such purchaser, lessee or transferee) in the instrument of such conveyance, sale, lease, other transfer or mortgage.

In the event the Redeveloper obtains one or more certificates of partial completion, its obligation to complete the improvements shall not be discharged until the City issues a final certificate of partial completion covering completion (to the same extent required for a certificate of partial completion) of all remaining portions of the improvements not covered in any prior certificates of partial completion. Said final certificate of partial completion shall be, and shall so certify therein, a conclusive determination of the satisfaction and termination of the agreements and covenants in this agreement and in the Deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the improvements.

- (d) The certifications provided for in this section shall be in such form as will enable each to be recorded at the Redeveloper's expense in the proper office for the recordation of deeds and other instruments pertaining to the part of the property, including the Deed. If the City shall refuse or fail to provide any such certification in accordance with the provisions of this section, the City shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the improvements or part thereof for which a certificate is requested in accordance with the provisions of this agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification.

ARTICLE IV. RESTRICTIONS UPON USE OF PROPERTY

SECTION 401: Restrictions on use. The Redeveloper agrees for itself, and its successors and assigns; and every successor in interest to the property, or any part thereof that the Redeveloper and such successors and assigns, shall:

- (a) Devote the property to, and only to, and in accordance with the uses specified in the Urban Renewal Plan; and
- (b) Not discriminate upon the basis of race, color, creed, religion, sex, national origin, ancestry or disability in the sale, lease, or rental or in the use of occupancy of the property or any improvements erected or to be erected thereon, or any part thereof.

SECTION 402: Covenants; binding upon successors in interest; period of duration. It is intended and agreed that the agreements and covenants provided in Section 401 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, the City and any successor in interest to the property, or any part thereof, and the owner of any other land (or of any interest in such land) in the project area which is subject to the land use requirements and restrictions of the Urban Renewal Plan against the Redeveloper, its successors and assigns and every successor in interest to the property, or any part thereof or any interest therein, and any party in possession or occupancy of the property or any part thereof. It is further intended and agreed that the agreement and covenant provided in subsection (1) of Section 401 hereof shall remain in effect until the date specified in Section 6 hereof unless this agreement provides that a particular covenant expires sooner; and that the agreements and covenants provided in subsection (2) of Section 401 hereof shall remain in effect without limitation as to time: Provided, that such agreements and covenants shall be binding on the Redeveloper itself, each successor in interest to the property, and every part thereof, and each part in possession or occupancy, respectively, only with respect to such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the property or part thereof. The terms "uses specified in the Urban Renewal Plan" and "land use" referring to provisions of the Urban Renewal Plan, or similar language, in this agreement shall include the land and all building, and other requirements or restrictions of the Urban Renewal Plan pertaining to such parcel.

SECTION 403: City rights to enforce. In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreement and covenants provided in Section 401 hereof, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City and its successors and assigns, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City or its successors or assigns has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. To enable the City to determine compliance with these covenants, the Redeveloper and its successors and assigns and tenants hereby grant the City the right, without securing a subpoena, to inspect during reasonable business hours all records and documents of such Redeveloper and its successors, assigns or tenants which may be reasonably related thereto, and should the City reasonably have to apply to court to obtain a subpoena for such records and documents, the Redeveloper or its successors, assigns or tenants, shall be liable for all costs, including litigation expenses and attorneys' fees incurred by the City. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in the equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE V. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

SECTION 501: Representations as to Redeveloper. The Redeveloper represents and agrees that its purchase of the property, and its other undertakings pursuant to this agreement, are, and will be used, for the purpose of orderly and sound redevelopment of the property and not for speculation in land holding. The Redeveloper further recognizes that, in view of:

- (a) The importance of the redevelopment of the property to the general welfare of the community;
- (b) The substantial financing and other public aids that have been made available by law and by the City for the purpose of making such redevelopment possible; and
- (c) The fact that a transfer of the stock or other ownership interest of whatever form (except a limited partnership interest) in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such stock or other ownership interest respect to the parties in control of the Redeveloper or to their degree of participation, is for practical purposes a transfer or disposition of the property then owned by the Redeveloper, the qualifications and identity of the Redeveloper, and its stockholders or holders of other ownership interest (except a limited partnerships interest and except as provided in Part I, Section 8, subsection c) are of particular concern to the community and the City. The Redeveloper further recognizes that these qualifications and identity are an important element in the City's decision to select the Redeveloper's proposal and enter into this agreement.

SECTION 502: Prohibition against transfer of shares of stock or other ownership interest of whatever form (except a limited partnership interest); binding upon stockholders or holders of

other ownership interests (except a limited partnership interest) individually. For the foregoing reasons, the Redeveloper represents and agrees for itself, its stockholders or holders of other ownership interests, and any successor in interest of itself and its stockholders or holders of other ownership interests respectively, that: Prior to completion of the improvements as certified by the City, and without the prior written approval of the City, there shall be no significant change in the ownership of such stock or other ownership interest of whatever form or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation or other entity, corporate or other amendments, significant issuance of additional or new stock or other ownership interest of whatever form or classification of stock or other ownership interest of whatever form or otherwise (except as provided in Part I, Section 8, subsection c). With respect to this provision, the Redeveloper and the parties signing this agreement on behalf of the Redeveloper represent that they have the authority to agree to this provision on their behalf and to bind the Trust with respect thereto.

SECTION 503: Prohibition against transfer of property and assignment of agreement. Also, for the foregoing reasons the Redeveloper represents and agrees for itself, and its successors and assigns, that:

(a) Except only:

- (1) By way of security for and only for (i) the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the property, or any part thereof, to perform its obligations with respect to making the improvements under this agreement, and (ii) any other purpose authorized by this agreement, and
- (2) As to any individual parts or parcels of the property on which the improvements to be constructed thereon have been completed, and which, by the terms of this agreement, the Redeveloper is authorized to convey or lease as such improvements are completed. The Redeveloper (except as so authorized) has not made or created, and that it will not, prior to the proper completion of the improvements as certified by the City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this agreement or the property, or any part thereof or any interest therein, or any agreement to do any of the same, without the prior written approval of the City except as provided in Section 505 hereof.

(b) The City shall be entitled to require, except as otherwise provided in this agreement, as conditions to any such approval that:

- (1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this agreement by the Redeveloper (or, in the event the transfer is of or relates to part of the property, such obligations to the extent that they relate to such part).

- (2) Any proposed transferee, by instrument, in writing, satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Redeveloper under this agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event the transfer is of or relates to part of the property, such obligations, conditions, and restrictions to the extent that they relate to such part): Provided, that the fact that any transferees of, or any other successor in interest whatsoever to, the property, or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this agreement or agreed to in writing by the City) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls with respect to the property or the construction of the improvements; it being the intent of this, together with other provisions of this agreement, that (to the fullest extent permitted by the law and equity and excepting only in the manner and to the extent specifically provided otherwise in this agreement) no transfer of, or change with respect to, ownership in the property or any part thereof, or any interest therein, however, consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this agreement with respect to the property and the construction of the improvements that City would have had, had there been no such transfer or change.
- (3) There shall be submitted to the City for review all instruments and other legal documents involved in effecting transfer; and if approved by the City, its approval shall be indicated to the Redeveloper in writing.
- (4) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Redeveloper of the property (or allocable to the part thereof or interest therein transferred) and the improvements, if any, theretofore made thereon by it; it being the intent of this provision to preclude assignment of the agreement or transfer of the property (or any parts thereof other than those referred to in subsection (a)(2) of this Section 503) for profit prior to the completion of the improvements and to provide that in the event any such assignment or transfer is made (and is not canceled), the City shall be entitled to increase the purchase price to the Redeveloper by the amount that the consideration payable for the assignment or transfer is in excess of the amount that may be authorized pursuant to this subsection (b)(4), and such consideration shall, to the extent it is in excess of the amount so authorized, belong to and forthwith be paid to the City.
- (5) The Redeveloper and its transferee shall comply with such other conditions as the City may find desirable in order to achieve and safeguard the purposes of the Urban Renewal Act and the Urban Renewal Plan.

Provided, that in the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by this agreement or otherwise with respect to the construction of the improvements, from any of its obligations with respect thereto.

SECTION 504: Information as to stockholders or holders of other ownership interests. In order to assist in the effectuation of the purposes of this Article V and the statutory objectives generally, the Redeveloper agrees that during the period between execution of this Agreement and completion of the improvements as certified by the City, (a) the Redeveloper will promptly notify the City in writing of any and all significant changes whatsoever in the ownership of stock or other ownership interest of whatever form, legal or beneficial, or of any other act or transaction involving or resulting in any significant change in the ownership of such stock or other ownership interest of whatever form or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information; and (b) the Redeveloper shall, at such time or times as the City may request, furnish the City with a complete statement, subscribed and sworn to by the president or other executive officer of the Redeveloper, setting forth all of the stockholders or holders of the Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such stock or other ownership interest of whatever form their names and the extent of such interest, all as determined or indicated by the records of the Redeveloper, by specific inquiry made by any such officer, of all parties who on the basis of such records own 10 percent or more of the stock or other ownership interest of whatever form in the Redeveloper, and by such other knowledge or information as such officer shall have. Such lists, data, and information shall in any event be furnished the City immediately prior to the delivery of the Deed to the Redeveloper and as a condition precedent thereto, and annually thereafter on the anniversary of the date of the Deed until the issuance of a certificate of completion for all the property

SECTION 505: Redeveloper's right to prelease or presell part or all of the property. Prior to the issuance by the City of the certificate provided for in Section 307 hereof as to completion of construction of the improvements, the Redeveloper may enter into any agreement to sell, lease, or otherwise transfer, after the issuance of such certificate, the property or any part thereof or interest therein, which agreement shall not provide for payment of or on account of the purchase price or rent for the property, or the part thereof or the interest therein to be so transferred, prior to the issuance of such certificate(s). Redeveloper may however, prior to issuance of such certificate, accept earnest money deposits for the sale, lease or otherwise transfer of the property.

ARTICLE VI. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

SECTION 601: Limitation upon encumbrance of property. Prior to the issuance of a certificate of completion or certificate of partial completion by the City, neither the Redeveloper nor any successor in interest to the property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the property (or in the part thereof to be covered by such certificate of partial completion), whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the property; except for the purposes of obtaining (a) funds only to the extent necessary for making the improvements; and (b) such additional funds, if any, in an amount not to exceed the purchase price paid by the Redeveloper to the City. The Redeveloper shall notify the City in advance of any financing, secured

by mortgage or other similar lien instrument, it proposes to enter into with respect to the property, or any part thereof, and in any event it shall promptly notify the City of any encumbrance or lien that has been created on or attached to the property, whether by voluntary act of the Redeveloper or otherwise along with name(s) and address(es) of the representative(s) of such mortgage or lien holder(s) to receive notice(s) required by this agreement. The Redeveloper shall cause to be included in any mortgage agreement a requirement that whenever the mortgagee shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations under such mortgage agreement, the mortgagee shall at the same time forward a copy of such notice or demand to the City at the address shown in Section 7 hereof.

SECTION 602: Mortgagee not obligated to construct. Notwithstanding any of the provisions of this agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this agreement (including any such holder who obtains title to the property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this agreement to construct or complete the improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder; Provided, that nothing in this section or any other section or provision of this agreement shall be deemed or construed to permit or authorize any such holder to devote the property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in Section 8 hereof.

SECTION 603: Copy of notice of default to mortgagee. Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper in its obligations or covenants under this agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this agreement at the last address of such holder shown in the records of the City.

SECTION 604: Mortgagee's option to cure defaults. After any breach or default referred to in Section 603 hereof, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage; Provided, that if the breach or default is with respect to construction of the improvements, nothing contained in this section or any other section of this agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this agreement, the improvements on the property or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the improvements relating to the property or applicable part thereof shall be entitled, relating to the property or applicable part thereof shall be entitled, upon written request made to the City, to a certification or certifications by the City to such effect in the manner provided in Section 307 of this agreement, and any such certification shall, if so requested by such holder, mean and provide that any remedies or rights with respect to recapture of or reversion or revesting of title to the property that the City shall have or be entitled to because of failure of the Redeveloper or any successor in interest to the property, or any

part thereof, to cure or remedy any default with respect to the construction of the improvements on other parts or parcels of the property, or because of any other default in or breach of this agreement by the Redeveloper or such successor, shall not apply to the part or parcel of the property to which such certificate relates.

SECTION 605: City's option to pay mortgage debt or purchase property. In any case, where, subsequent to default or breach by the Redeveloper under this agreement, the holder of any mortgage on the property or part thereof:

- (a) Has, but does not exercise, the option to construct or complete the improvements relating to the property or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or
- (b) Undertakes construction or completion of the improvements but does not complete such construction within the period as agreed upon by the City (which period shall in any event be at least as long as the period prescribed for such construction or completion in this agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do, the City shall have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or in the event ownership of the property (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to it of the property or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the property; (iv) the costs of any improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence and every mortgage instrument made prior to completion of the improvements with respect to the property by the Redeveloper or successor in interest shall so provide.

SECTION 606: City's option to cure mortgage default. In the event of a default or breach prior to the completion of the improvements by the Redeveloper, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or holder of, any mortgage or other instrument creating an encumbrance or lien upon the property or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by this agreement, operation of law, or otherwise, to reimbursement from the Redeveloper of all costs and expenses incurred by the City, together with interest on such costs and expenses at the highest rate of interest then allowable by law, in curing such default or breach and to a lien upon the property (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement; Provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) the then existing mortgages on the property authorized by this agreement.

SECTION 607: Mortgage and holder. For the purposes of this agreement the term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the property, or any part thereof, as security for a loan. The term "holder" in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

ARTICLE VII. REMEDIES

SECTION 701: In general. Except as otherwise provided in this agreement, in the event of any default in or breach of this agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

SECTION 702: Termination by Redeveloper prior to conveyance. In the event that:

- (a) The City does not tender conveyance of the property or possession thereof in the manner and condition, and by the date provided in this agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Redeveloper; or
- (b) On or before the time provided in subsection (g) of Section 5 hereof, the Redeveloper shall furnish evidence satisfactory to the City that it has been unable, after and despite diligent effort, to obtain equity capital and/or mortgage financing for the construction of the improvements on a basis and on terms that would generally be considered satisfactory by builders or contractors for improvements of the nature and type provided in such construction plans, and the Redeveloper shall after having submitted such evidence and if so requested by the City, continue to make diligent efforts to obtain financing for a period of sixty (60) days after such request, but without success.

In the event the Redeveloper requests termination of the contract under the provisions of this subsection, the Redeveloper shall disclose to the City all persons and institutions to whom it applied for assistance in financing the construction of the improvements and hereby consent to, authorizes and directs all such persons and institutions to disclose in confidence to the City all documents submitted by the Redeveloper in connection with such request for financing and all reasons why such assistance or financing was denied. If after investigation, the City determines that:

- (i) Redeveloper could not obtain financing, in part, because its financial condition at the time it submitted its proposal to the City was materially different than the adverse to that disclosed to the City in the documents submitted by the Redeveloper as part of said proposal; or
- (ii) Redeveloper could not obtain financing because of other transactions it has entered or liabilities it has incurred after the date it submitted its proposal to the City which resulted in this agreement.

Then the Redeveloper shall not be excused from performance without default under this subsection.

SECTION 703: Termination by City prior to conveyance.

(a) In the event that:

- (1) Prior to conveyance of the property to the Redeveloper and in violation of this agreement:
 - (i) The Redeveloper (or any successor in interest) assigns or attempts to assign this agreement or any rights therein, or any rights in the property; or
 - (ii) There is any change in the ownership or distribution of the stock or other ownership interest of whatever form (except a limited partnership interest) of the Redeveloper or with respect to the identity of the parties in control of the Redeveloper or the degree thereof.
- (2) The Redeveloper does not submit construction plans, as required by this agreement, or (except as excused under subsection (b) of Section 702 hereof) evidence that it has the necessary equity capital and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in this agreement therefore; or
- (3) The Redeveloper does not pay the purchase price and take title to the property upon tender of conveyance by the City pursuant to this agreement, and if any default or failure referred to in subsections (b) and (c) of this Section 703 shall not be cured within thirty (30) days after the date of written demand by the City.

Then this agreement, and any rights of the Redeveloper, or any assignee or transferee, in this agreement, or arising therefrom with respect to the City or the property, shall, at the option of the City, be terminated by the City, in which event, the City may proceed against Redeveloper on its guarantee.

- (b) In the event that at any time prior to conveyance of the property, the City is enjoined or prevented from conveying such property by any order or decision or act of any judicial, legislative or executive body having authority in the premises, then this agreement, and any rights and obligations of the Redeveloper, shall be terminated, and the City shall return or release the deposit, and neither the Redeveloper or the City shall have any further rights against or liability to the other under this agreement.
- (c) In the event the City shall unilaterally terminate this agreement of its own violation, other than as set forth in subparagraph (1) above, the City shall reimburse Redeveloper for administering, planning and architectural services incurred between the date Redeveloper was selected by the City and the date of the City's termination.

SECTION 704: Revesting title in City upon happening of event subsequent to conveyance to Redeveloper. In the event that subsequent to conveyance of the property to the Redeveloper and prior to completion of the improvements as certified by the City:

- (a) The Redeveloper (or successor in interest) shall default in or violate its obligations with respect to the construction of the improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the improvements) after written demand by the City so to do; or
- (b) The Redeveloper (or successor in interest) shall fail to pay real estate taxes or assessments on the property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within sixty (60) days after written demand by the City so to do; Provided, that if the Redeveloper shall provide a bond or other surety or an escrow account in an amount sufficient to pay such tax or assessment or to remove or discharge such lien or encumbrance and shall commence an appropriate action or proceeding to contest the validity or amount of the same before the expiration of said sixty (60) days, it shall be deemed to have made provision; or
- (c) There is, in violation of this agreement, any transfer of the property or any part thereof, or any change in the ownership or distribution of the stock or other ownership interest of whatever form (except a limited partnership interest and except as provided in Part I, Section 8, subsection c) of the Redeveloper, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by the City to the Redeveloper; or
- (d) The Redeveloper, except as provided in Part I, Section 8, subsection c, in violation of this agreement, assigns or attempts to assign this agreement or any rights therein or any rights in the property or improvements thereon for which no certificate of completion has been issued.
- (e) The Redeveloper may transfer ownership of outlots designated on the site plan provided such transfer is subject to the other provisions of this agreement and construction on such outlot is completed within a period of time to be agreed upon in writing by the City.

Then the City shall have the right to re-enter and take possession of that portion of the property and to terminate and re-vest in the City the estate conveyed by the Deed to the Redeveloper, it being the intent of this provision, together with other provisions of this agreement, that the conveyance of the property to the Redeveloper shall be made upon a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in subsections (a), (b), (c) and (d) of this Section 704, such failure on the part of the Redeveloper to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subsections, the City at its option may declare a termination in favor of the City of the title and of all the rights and interests in and to the property conveyed by the Deed to the Redeveloper, and that such title and all rights and interests of the Redeveloper, and of any assigns or successors in interest to and in the property, shall revert to the City; Provided, that

such condition subsequent and any revesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by this agreement and (ii) any rights or interests provided in this agreement for the protection of the holders of such mortgages; and Provided, further, that after the issuance of a partial certificate of completion and any conveyance, sale, lease or other transfer of all or any part of the improvements covered by such certificate or partial completion (or the mortgaging thereof by any such purchaser, lessees or other transferees), that such condition subsequent and revesting of title as a result thereof in the City shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way, the rights granted any such purchaser, lessee, other transferee or mortgagee in the instrument of such conveyance, sale, lease, other transfer or mortgage.

Additionally, in the event of any default, failure, violation, or other action or inaction by the Redeveloper specified in subsections (a), (b), (c) and (d) of this Section 704 or failure on the part of the Redeveloper to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated in such subsections, the City at its option, and whether or not it exercises its right to re-enter and take possession of the property or to enforce the completion bond, may declare a forfeiture of the deposit required in Section 3 thereof, and thereafter, it shall be entitled to the proceeds of such deposit without any deduction, off-set or recoupment whatsoever.

SECTION 705: Resale or reacquired property; disposition of proceeds. Upon the revesting in the City of title to the property or any part thereof as provided in Section 704, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the property or part thereof (subject to such mortgage liens and leasehold interests as in Section 704 set forth and provided) as soon and in such manner as the City shall find feasible and consistent with the objectives of such law and of the Urban Renewal Plan to a qualified and responsible party or parties (as determined by the City) who shall assume the obligation of making or completing the improvements or such other improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for such property or part thereof in the Urban Renewal Plan. Upon such resale of the property, the proceeds thereof shall be applied:

- (a) First, to reimburse the City, on its own behalf or on the behalf of the City, for all costs and expenses incurred by the City, including but not limited to salaries of personnel in connection with the recapture, management, and resale of the property or part thereof (but less any income derived by the City from the property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the property or part thereof (or, in the event the property is exempt from taxation or assessment for such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges, as determined by the City Assessor as would have been payable if the property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the property or part thereof at the time of revesting of title thereto in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the property or part thereof; and any amounts otherwise owing the City by the Redeveloper and its successor or transferee; and

- (b) Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to (1) the sum of the purchase price paid by it for the property (or allocable to the part thereof) and the cash actually invested by it in making any of the improvements on the property or part thereof, less (2) any gains or income withdrawn or made by it from this agreement or the property.

Any balance remaining after such reimbursements shall be retained by the City as its property.

SECTION 706: Other rights and remedies of City; no waiver by delay. The City shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Article VII, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Redeveloper, and (except for such individual parts or parcels upon which construction of that part of the improvements required to be constructed thereon has been completed, in accordance with this agreement, and for which a certificate of completion as provided in Section 307 hereof is to be delivered, and subject to such mortgage liens and leasehold interests as provided in Section 704 hereof) its successors in interest and assigns, in the property, and the revesting of title thereto in the City; Provided, that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article VII shall not operate as a waiver of such rights or deprive it of or limit such rights in any way; it being the intent of this provision that the City should not be constrained to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedy because of concepts of waiver, laches, or otherwise. No waiver in fact made by the City with respect to any specific default by the Redeveloper under this section shall be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Redeveloper under this section or with respect to the particular default except to the extent specifically waived in writing.

SECTION 707: Enforced delay in performance for causes beyond control of party. For the purposes of any of the provisions of this agreement, neither the City nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the preparation of the property for redevelopment, or the beginning and completion of construction of the improvements, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to acts of God, acts of the public enemy, acts of the Federal Government, acts of the other, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City with respect to the preparation of the property for redevelopment or of the Redeveloper with respect to construction of the improvements, as the case may be, shall be extended for the period of the enforced delay as determined by the City; Provided, that the party seeking the benefit of the provisions of this section shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

SECTION 708: Rights and remedies cumulative. The rights and remedies of the parties to this agreement, whether provided by law or by this agreement, shall be cumulative, and the exercise by

either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party.

SECTION 709: Party in position of surety with respect to obligations. The Redeveloper, for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, indulgence, or modification of terms of contract.

ARTICLE VIII. MISCELLANEOUS

SECTION 801: Conflict of interests; City representatives not individually liable. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this agreement, nor shall any such member, official, or employee participate in any decision relating to this agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Redeveloper or successor or on any obligation under the terms of this agreement.

SECTION 802: Equal employment opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the improvements provided for in this agreement:

- (a) The Redeveloper will not discriminate against any employee or applicant for employment because of age, race, color, religion, creed, sex, ancestry, national origin, or disability. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- (b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, creed, sex, ancestry, national origin or disability.
- (c) The Redeveloper will include the provisions of paragraph (a) and (b) of this section in every contract or purchase order, and will require the inclusion of these provisions in every

subcontract entered into by any of its contractors, so that such provisions shall be binding upon each such contractor, subcontractor or vendor, as the case may be. The Redeveloper will take such action with respect to any construction contract, subcontract, or purchase order as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first three lines of this section shall be changed to read "During the performance of this contract, the contractor agrees as follows," and the term "Redeveloper" shall be changed to "Contractor". To enable the City to determine compliance with these covenants, the Redeveloper and its successors and assigns and tenants hereby grant the City the right, without securing a subpoena, to inspect during reasonable business hours all records and documents of such Redeveloper or its successor, assigns or tenants which may be reasonably related thereto, and should the City reasonably have to apply to court to obtain a subpoena for such records and documents, the Redeveloper or its successors, assigns or tenants, shall be liable for all costs, including litigation expenses and attorney's fees incurred by the City.

SECTION 803: Provisions not merged with Deed. None of the provisions of this agreement are intended to or shall be merged by reason of any deed transferring title to the property from the City to the Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this agreement.

SECTION 804: Titles of articles and sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 805: Agreement binding on successors in interest. This agreement shall apply to and bind the successors in interest of the parties.

SECTION 806: Definition of day and extensions for non-working days. Any reference to a number of days in this agreement shall be to a number of consecutive calendar days. In the event the last date for performing any act required by this agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the first subsequent working day.

SECTION 807: Abutting owners access. Redeveloper shall provide to owners of property abutting the real estate reasonable access to their properties.

RESOLUTION ACCEPTING THE PROPOSAL OF THE FRED AND MARTHA FAMILY TRUST FOR THE PURCHASE OF CERTAIN LAND IN THE EASTLAND URBAN RENEWAL AREA AND AUTHORIZING SALE OF SAID PROPERTY.

WHEREAS, in furtherance of the objectives of Chapter 403 of the Code of Iowa, the City of Sioux City, Iowa, has undertaken a program of redevelopment of blighted areas in the City, and in this connection has instituted the Eastland Urban Renewal Area; and

WHEREAS, Chapter 403 of the Code of Iowa authorizes the City to invite proposals from all interested parties for the purchase of land in an urban renewal area by publishing public notice of its intent to receive and accept any such proposal; and

WHEREAS, the Fred and Martha Family Trust has submitted a proposal for the purchase of the following described property in the Eastland Urban Renewal Area:

1-All of that portion of Green Avenue abutting Block 4 of Hedges 2nd Table Addition to Sioux City, Iowa;

2-All of Grand Avenue abutting Blocks 1, 2, 3, and 4 of Hedges 2nd Table Addition to Sioux City, Iowa, including the Grand Avenue/Cornelia Street intersection;

3-That portion of Cornelia Street abutting Blocks 3, 4, Lot 11 of Block 1, Lot 18 of Block 2, and the east/west alleys in Blocks 1, 2, and 4 all in Hedges 2nd Table addition to Sioux City, Iowa, Grand Avenue, Green Avenue, and the unnamed 33 foot wide right of way abutting the former Chicago, Milwaukee and St. Paul Railroad right of way on the north and east.

4-The east/west alleys in Blocks 1, 2 and 4 of Hedges 2nd Table Addition to Sioux City, Iowa; and

5-The unnamed 33 foot wide right of way lying north and east of the former Chicago, Milwaukee and St. Paul Railroad right of way between Green Avenue and Correctionville Road; and

WHEREAS, pursuant to Resolution No. 95/U-3040 passed and approved by the City Council on March 20, 1995, the City indicated its intent to accept said proposal of the Fred and Martha Family Trust, established a date and time for the submission of proposals by other interested parties, established a date and time for a hearing accepting such proposals, and authorized the publication of notice of such invitation, intent and hearing; and

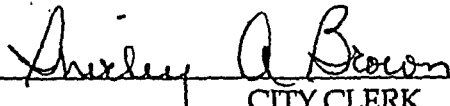
WHEREAS, a hearing was held on the proposals so submitted and the City Council is of the opinion and belief that it would be in the best interests of the City to accept the proposal of the Fred and Martha Family Trust for the sale of said property, a copy of the proposal being attached hereto and by this reference incorporated herein; and, that accepting such proposal is in the public interests; and

WHEREAS, a Contract for Sale of Land for Private Redevelopment pursuant to the terms of said proposal should be approved as to form and content.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, IOWA, that the Contract for Sale of Land for Private Redevelopment attached hereto providing for the sale of said property to the Fred and Martha Family Trust is hereby approved as to form and content and the Mayor and City Clerk be and they are hereby authorized and directed to execute same for and on behalf of the City of Sioux City, Iowa.

PASSED & APPROVED: APR 24 1995


ROBERT E. SCOTT, MAYOR

ATTEST: 
CITY CLERK
SHIRLEY A. BROWN