

ROLL 300 PAGE 1421

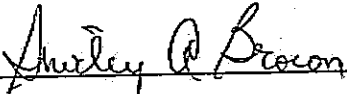
#12705 For \$ 41.00 each gal.
WOODBURY COUNTY, IOWA-Filed for Record
At 10:30 AM on Jan. 28, 1994
CHRISTINA HALL, RECORDER
By Christina Hall

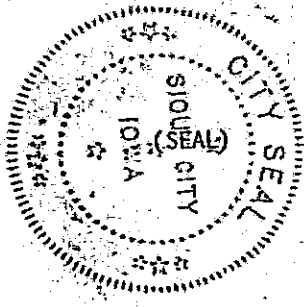
STATE OF IOWA
Woodbury County

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. 94/U-1716 passed and adopted by the City Council of the City on the 24th day of January, 1994, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa, this 24th day of January, 1994.


SHIRLEY A. BROWN, CITY CLERK



ROLL 300 PAGE 1421

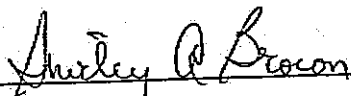
12705 Fee \$ 4.00 charged.
WOODBURY COUNTY, IOWA Filed for Record
At 10:30 AM on Jan. 28, 1994
By Christina Hall, RECORDER
By Christina Hall

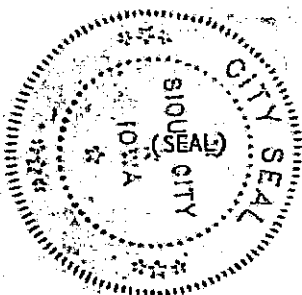
STATE OF IOWA
Woodbury County

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Dated at Sioux City, Iowa, this 24th day of January, 1994.


SHIRLEY A. BROWN, CITY CLERK



ROLL 306 PAGE 1422

RESOLUTION NO. 94/JU- 1716

RESOLUTION APPROVING A SECOND AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIOUX CITY, IOWA, AND FRED DAVENPORT, JR., DEVELOPER, FOR THE DEVELOPMENT OF A PORTION OF THE EASTGATE PROJECT (MENARDS).

WHEREAS, pursuant to Resolution No. 89/T-8000 passed and approved November 20, 1989, the City of Sioux City, Iowa, entered into a Development Agreement with Fred Davenport, Jr., Dial Realty, Inc. and Menards, Inc., for the development of the Eastgate Project; and

WHEREAS, such Development Agreement was subsequently amended pursuant to Resolution No. 91/T-9434 passed and approved January 7, 1991; and

WHEREAS, Fred Davenport, Jr. has submitted a Second Amendment to the Development Agreement, a copy of which amendment is attached hereto and by this reference incorporated herein, which provides for increased minimum assessable values, tax abatements, and an extension in construction periods for a portion of the Eastgate Project; and

WHEREAS, said Second Amendment to the Development Agreement 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 Second Amendment to the Development Agreement between the City of Sioux City, Iowa, and Fred Davenport, Jr. for the development of a portion of the Eastgate Project, as referred to in the preamble hereof, be and the same is hereby approved as to form and content.

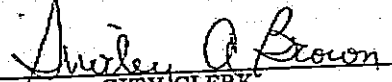
BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized and directed to execute said Second Amendment for and on behalf of the City of Sioux City, Iowa.

BE IT FURTHER RESOLVED that the City Clerk be and she is hereby authorized and directed to file a certified copy of such Second Amendment with the Woodbury County, Iowa, Recorder.

PASSED & APPROVED: JAN 24 1994


ROBERT E. SCOTT, MAYOR

ATTEST:


CITY CLERK
SHIRLEY A. BROWN



Attachment

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT made and entered into this 24th day of January, 1994, by and between the City of Sioux City, Iowa, hereinafter referred to as "CITY", and Fred Davenport, Jr., hereinafter referred to as "DAVENPORT".

RECITALS:

WHEREAS, DAVENPORT, together with Dial Realty, Inc., a Nebraska corporation, and Menard, Inc., a Wisconsin corporation, entered into one certain Development Agreement under date of November 14, 1989, and

WHEREAS, DAVENPORT is the owner of the remaining real property in the development and Dial Realty, Inc. and Menard, Inc. have no interest therein, and

WHEREAS, attached hereto is an Exhibit H (H-1 and H-2) describing the remaining real estate in the development, and

WHEREAS, DAVENPORT and CITY now desire to amend such agreement.

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

I. AMENDMENT NO. 1: Paragraph I.D.4) is hereby stricken from the original Development Agreement and is replaced by the following new paragraph I.D.4):

- 4) DAVENPORT shall have, on or before December 31, 1994, entered into a standard form assessment agreement which is acceptable to the CITY establishing a minimum assessable value of \$3,000,000 for the improvements to be constructed upon the real estate legally described in the attached Exhibit H (H-1 and H-2). Such assessment agreement shall establish a minimum assessable value of \$305,200.00 for the underlying real estate described in Exhibit H (H-1 and H-2). If DAVENPORT shall fail to exercise in a timely manner the assessment agreement provided for herein, then CITY may substitute this Second Amendment as an assessment agreement between the parties. Such minimum assessable value shall be for a period of not less than seventeen (17) years.

II. AMENDMENT NO. 2: Paragraph IV. of the original Development Agreement is hereby amended by adding the following new subparagraph C:

- C. CITY shall form an Urban Revitalization District on or before July 1, 1994, which shall include the real estate described in Exhibit H (H-1 and H-2) attached hereto, which tract of unimproved real estate is located between the property owned by Wal-Mart and the property owned by Menard's as referred to on the original site plan. CITY agrees to abate all taxes based upon the new assessed valuation of the real property and improvements placed thereon for the construction period commencing and completing with the dates set forth in Paragraph I.D.3), hereof and three (3) full years thereafter, in accordance with Chapters 403 and 404 of the Iowa Code.

III. AMENDMENT NO. 3: Paragraph I.D.3) is hereby stricken from the original Development Agreement and is replaced by the following new paragraph I.D.3):

- 3) DAVENPORT shall cause to be constructed or shall construct on the real estate described in Exhibit H (H-1 and H-2) a commercial structure substantially the size and configuration set forth in the site plan attached hereto as Exhibit I, with such construction being commenced no later than April 1, 1994, and being completed and an occupancy permit obtained for the use thereof on or before December 31, 1994. Failure of DAVENPORT to either commence or complete such construction within the aforesaid time period shall not toll or extend the period of tax abatement provided for in Paragraph II.C. hereof.

IV. RATIFICATION: That in all other respects the said Development Agreement entered into by the parties under date of November 14, 1989, as amended hereby, be and the same is hereby ratified, confirmed and approved.

CITY OF SIOUX CITY, IOWA

By

R.E. SCOTT

Attest:

Shirley A. Brown

City Clerk

SHIRLEY A. BROWN

FRED DAVENPORT, JR.

300-1424

- C. CITY shall form an Urban Revitalization District on or before July 1, 1994, which shall include the real estate described in Exhibit H (H-1 and H-2) attached hereto, which tract of unimproved real estate is located between the property owned by Wal-Mart and the property owned by Menard's as referred to on the original site plan. CITY agrees to abate all taxes based upon the new assessed valuation of the real property and improvements placed thereon for the construction period commencing and completing with the dates set forth in Paragraph I.D.3), hereof and three (3) full years thereafter, in accordance with Chapters 403 and 404 of the Iowa Code.

III. AMENDMENT NO. 3: Paragraph I.D.3) is hereby stricken from the original Development Agreement and is replaced by the following new paragraph I.D.3):

- 3) DAVENPORT shall cause to be constructed or shall construct on the real estate described in Exhibit H (H-1 and H-2) a commercial structure substantially the size and configuration set forth in the site plan attached hereto as Exhibit I, with such construction being commenced no later than April 1, 1994, and being completed and an occupancy permit obtained for the use thereof on or before December 31, 1994. Failure of DAVENPORT to either commence or complete such construction within the aforesaid time period shall not toll or extend the period of tax abatement provided for in Paragraph II.C. hereof.

IV. RATIFICATION: That in all other respects the said Development Agreement entered into by the parties under date of November 14, 1989, as amended hereby, be and the same is hereby ratified, confirmed and approved.

CITY OF SIOUX CITY, IOWA

By

R.E. Scott

Attest:

Shirley A. Brown

city clerk

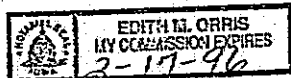
SHIRLEY A. BROWN

FRED DAVENPORT, JR.

STATE OF IOWA, WOODBURY COUNTY, ss:

On this 24th day of January, 1994, 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 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/her voluntary act and deed for the purposes herein expressed.

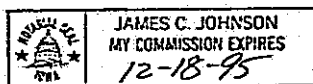
IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa the day and year above written.



Edith M. Orris
Notary Public

STATE OF IOWA, WOODBURY COUNTY, ss.

On this 5th day of DECEMBER, 1994, before me, the undersigned, a notary public in and for said county and state, personally appeared Fred Davenport, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



James C. Johnson
Notary Public

STATE OF IOWA, WOODBURY COUNTY, ss:

On this 24th day of January, 1994, 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 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/her voluntary act and deed for the purposes herein expressed.

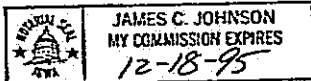
IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa the day and year above written.



Edith M. Orris
Notary Public

STATE OF IOWA, WOODBURY COUNTY, ss.

On this 5th day of DECEMBER, 1994, before me, the undersigned, a notary public in and for said county and state, personally appeared Fred Davenport, Jr., to me known to be the identical person named in and who executed the within and foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.



James C. Johnson
Notary Public

LEGAL DESCRIPTION ROLL 300 PAGE 1427
MAIN TRACT

A tract of land being part of the Southwest One-Quarter of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian, Woodbury County, Iowa, with said part being also part of Tax Lots 6, 7, 8 and 9, and being more particularly described as follows:

Commencing at the Southwest corner of the Southwest One-Quarter of the Southwest One-Quarter of Section 31; thence North 00°14'30" West, along the West line of the Southwest One-Quarter of Section 31, a distance of 136.01 feet to a point on the Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive); thence South 88°41'58" East, along said Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive), a distance of 363.03 feet; thence North 00°04'08" West a distance of 259.01 feet to the Point of Beginning; thence North 00°04'08" West a distance of 387.92 feet; thence South 89°55'52" West a distance of 18.50 feet; thence North 00°08'25" West a distance of 120.00 feet; thence North 89°55'52" East a distance of 432.60 feet; thence South 00°08'25" East a distance of 20.00 feet; thence South 16°56'43" East a distance of 182.20 feet; thence North 89°55'52" East a distance of 36.00 feet; thence South 00°04'08" East a distance of 310.88 feet; thence South 89°55'52" West a distance of 267.02 feet; thence South 00°04'08" East a distance of 158.82 feet to a point on the Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive); thence South 78°46'00" West, along said Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive), a distance of 66.26 feet; thence North 00°04'08" West a distance of 170.85 feet to the Point of Beginning, and containing 254,828 square feet or 5.8501 acres, more or less. Subject to restrictive covenants and easements of record.

LEGAL DESCRIPTION
OUTLOT "A"

A tract of land being part of the Southwest One-Quarter of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian, Woodbury County, Iowa, with said part being also part of Tax Lots 6, 7, 8 and 9, and being more particularly described as follows:

Commencing at the Southwest corner of the Southwest One-Quarter of the Southwest One-Quarter of Section 31; thence North 00°41'30" West, along the West line of the Southwest One-Quarter of Section 31, a distance of 136.01 feet to a point on the Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive); thence South 88°41'58" East, along said Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive), a distance of 535.90 feet; thence North 00°00'00" East, along the Westerly Right-of-Way line of State Highway No. 12 (Gordon Drive), a distance of 94.58 feet to a point on the Northerly Right-of-Way line of said State Highway No. 12 (Gordon Drive); thence North 78°46'00" East, along said Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive), a distance of 64.13 feet to the Point of Beginning; thence North 00°04'08" West a distance of 158.82 feet; thence North 89°55'52" East a distance of 267.02 feet; thence South 00°04'08" East a distance of 156.00 feet to a point on the Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive); thence, along said Northerly Right-of-Way line of State Highway No. 12 (Gordon Drive) the following bearings and distances: (1) North 87°29'00" West a distance of 159.26 feet, (2) North 87°36'00" West a distance of 47.00 feet, and (3) South 78°46'00" West a distance of 62.14 feet to the Point of Beginning, and containing 40,504 square feet or 0.9299 acres, including 0.1338 acres of easement, more or less. Subject to restrictive covenants and easements of record.

LEGAL DESCRIPTION
OUTLOT "B"

A tract of land being part of the Southwest One-Quarter of the Southwest One-Quarter of Section 31, Township 89 North, Range 46 West of the 5th Principal Meridian, Woodbury County, Iowa, with said part being also part of Tax Lots 6, 7, 8 and 9, and being more particularly described as follows:

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LEGAL DESCRIPTION ROLL 300 PAGE 1427
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EXHIBIT I

PRELIMINARY SITE PLAN EASTGATE SHOPPING CENTER
SIOUX CITY, IOWA
SARGENT & ASSOCIATES
ROBERT MCKENNA ASSOCIATES
SIOUX CITY, IOWA 50201

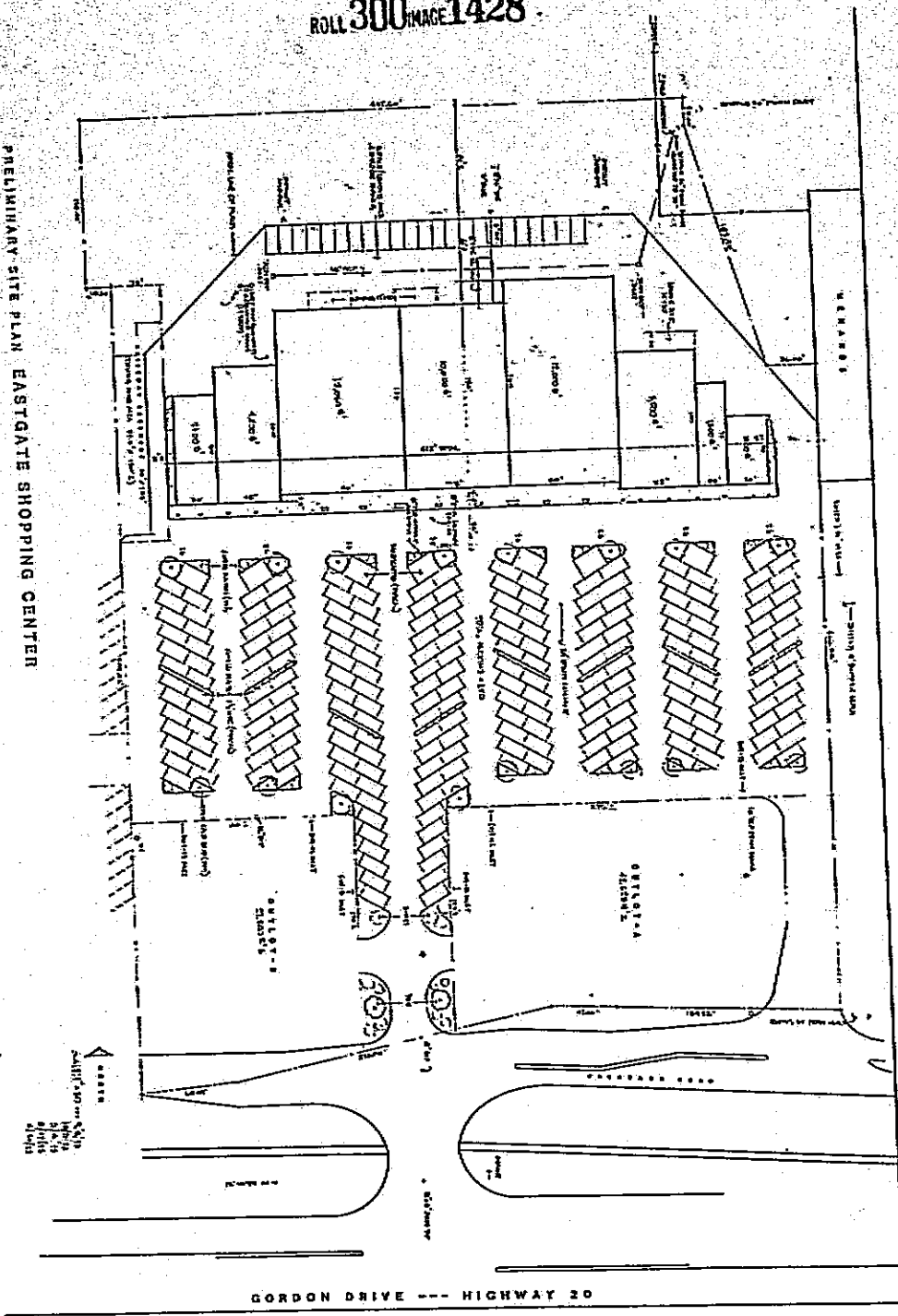


EXHIBIT I

