

COMPARED

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JOHN J. HANCOCK  
RECORDER

✓ 4667

INST #	4667
RECORDING FEE	15.00
AUDITOR FEE	
RMA FEE	

*Return to* Spence Title Services, Inc.  
1905 Harney Street, Suite 210  
Omaha, NE 68102

PREPARED BY: Heartland Title, 1320 S. 119th St., Omaha, NE 68144; Linda Decker; (402) 333-7700

**AGREEMENT**

This Agreement is entered into this 13<sup>th</sup> day of September, 1996, by and between Owen Industries, Inc., an Iowa corporation with its principal place of business located at 5th & Avenue H, Carter Lake, IA 51510 (hereinafter "Grantor") and Ho-Chunk, Inc., a Winnebago Tribal corporation, with its principal place of business located at Winnebago, Nebraska (hereinafter "Grantee").

**RECITALS**

WHEREAS, Grantor has entered into a certain Purchase Agreement dated April 15, 1996, by this reference incorporated herein as if fully set forth, agreeing to sell to Grantee Lots 11 and 12, of Owen Parkway, an addition to the City of Carter Lake, in Pottawattamie County, Iowa (hereafter the "Sale Parcel"); and it is Grantee's intention to construct a hotel on said property.

WHEREAS, the parties have previously agreed to certain covenants, specified in the above-referenced Purchase Agreement, with regard to the Sale Parcel; and this is an amendment to those covenants.

WHEREAS, Grantor has retained ownership of Lots 1, 2, 3, 4, 5, 9 and 10, respectively, of Owen Parkway, an addition to the City of Carter Lake, in Pottawattamie County, Iowa (hereafter the "Retained Lots"); and Grantor may, in the future, sell one (1) or more of said lots.

WHEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree to the following:

1. Grantor agrees that with regard to any future sale by Grantor of any one or more of the Retained Lots, Grantor will set forth in each and every Purchase Agreement, and the covenants to be specified therein, with regard to each of such Retained Lots, a restrictive covenant specifying that each and every purchaser will not in any way use such property to construct a hotel, motel or any form of commercial lodging upon the same.

2. The parties agree that this restrictive covenant granted herein by Grantor runs in favor of Grantee only, and specifically does not run with the land with regard to the Sale Parcel as previously identified.

3. The parties further agree that with regard to the enforcement of this restrictive covenant, the right to enforce the same is hereby assigned by Grantor to Grantee. Therefore, any violation of this restrictive covenant by a purchaser of any of the Retained Lots previously

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identified, shall be enforced by Grantee only with Grantee being solely responsible for all attorneys' fees and costs associated with each and every enforcement of this restrictive covenant.

DATED this 13<sup>th</sup> day of September, 1996.

OWEN INDUSTRIES, INC.

By: *R.E. Owen*  
Its President

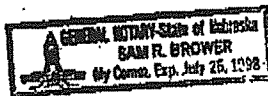
HO-CHUNK, INC.

By: *Sam R. Brower*  
Its President

STATE OF NEBRASKA )  
                              ) ss.  
COUNTY OF DOUGLAS )

Before me, a notary public qualified for said county, personally came R.E. Owen, President of Owen Industries, Inc., an Iowa corporation, known to me to be the same and identical person who signed the foregoing instrument and acknowledge the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on the last day and year above written.



*Sam R. Brower*  
Notary Public

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STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

Before me, a notary public qualified for said county, personally came Lance Morgan, President of Ho-Chunk, Inc., a Winnebago Tribal corporation, known to me to be the same and identical person who signed the foregoing instrument and acknowledge the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal on the last day and year above written.



(03)nlsc\amendmat.gov

Linda L. DeGier  
Notary Public

97-11465