

8697

Doc. No. 8697
WOODBURY COUNTY, IOWA
Filed for Record

NOV 22 2004

STATE OF IOWA

Woodbury County

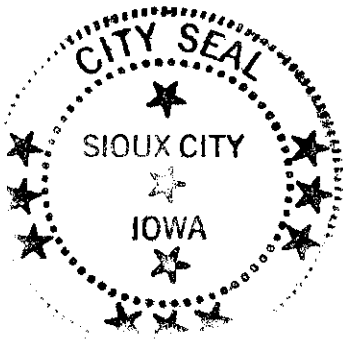
Time 3:00 AM Fee \$ 302.00 Pd
PATRICK F. GILL, Auditor & Recorder
By [Signature] Designee

CITY OF SIOUX CITY

Office of the City Clerk

I, Robert K. Padmore, 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 the Resolution 2004-0737 adopted by the City Council of the City on the 23rd day of August, 2004, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 24th day of August, 2004.



(SEAL)

[Signature]
ROBERT K. PADMORE
CITY CLERK

RESOLUTION NO. 2004-000737
with attachments

**RESOLUTION ACCEPTING THE PROPOSAL OF LAKEPORT COMMONS,
L.L.C. FOR THE PURCHASE OF CERTAIN LAND IN THE DONNER PARK
URBAN RENEWAL AREA AND APPROVING A DEVELOPMENT AGREEMENT**

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 Donner Park 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, Lakeport Commons, L.L.C. has submitted a proposal for the purchase of the following described property in the Donner Park Urban Renewal Area:

That portion of the West Half of the Southeast Quarter (W1/2-SE1/4) of Section Eight (Sec. 8), Township 88 North, Range 47, West of the 5th P.M., Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southwest corner of the NW1/4 –SE1/4 of said Sec. 8; thence North 00°03'55" West along the west line of said NW 1/4 –SE1/4 for a distance of 430.67 feet to the southeast corner of Outlot "D" of South Mayhew Replat; thence North 00°03'56" West along the east line of said Outlot "D" for a distance of 95.91 feet to the southeast corner of Outlot "C" of South Mayhew Replat; thence North 00°06'25" West along the east line of said Outlot "C" for a distance of 84.98 feet; thence South 55°34'01" East for a distance of 417.53 feet; thence North 34°25'59" East for a distance of 116.77 feet; thence North 87°53'46" East for a distance of 189.25 feet; thence South 54°47'38" East for a distance of 227.12 feet; thence South 57°37'06" East for a distance of 250.00 feet; thence South 76°00'56" East for a distance of 145.13 feet; thence North 85°59'50" East for a distance of 107.03 feet to the westerly Right-of-Way line of Primary Road No. U.S. 20-75; thence South 15°11'24" West along said Right-of-Way line for a distance of 495.50 feet; thence South 45°16'18" West along said Right-of-Way line for a distance of 487.15 feet; thence South 88°100'14" West for a distance of 103.21 feet; thence North 00°10'21" West for a distance of 659.60 feet; thence South 88°07'58" West for a distance of 662.35 feet to the Point of Beginning, containing 16.00 acres, subject to easements, if any, of record or apparent.

Those portions of Outlot B and Outlot C in South Mayhew Avenue Replat, Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southeast corner of said Outlot C; thence North 00°06'56" West along the east line of said Outlot C for a distance of 84.99 feet; thence North 55°34'01" West for a distance of 282.10 feet; thence northwesterly along a curve to the left having a radius of 865.00 feet; through a central angle of 15°54'56" for a distance along the arc of 240.28 feet, the chord of which bears North 63°31'05" West a distance of 239.51 feet to the south line of Brookshire Addition to the City of Sioux City; thence continuing along said south line, northeasterly along a non-tangent curve to the left having a radius of 832.00 feet; through a central angle of 04°33'33" for a distance along the arc of 66.20

feet, the chord of which bears North 84°01'45" West a distance of 66.19 feet; thence continuing along said south line, South 88°25'07" West for a distance of 72.05 feet to the east line of said Outlot B; thence South 02°50'59" East along said east line for a distance of 46.27 feet; thence southeasterly along a curve to the right having a radius of 625.00 feet, through a central angle of 08°56'18", for a distance along the arc of 97.50 feet, the chord of which bears South 77°13'37" East a distance of 97.40 feet; thence South 03°17'14" East for a distance of 315.28 feet to the south line of said Outlot C; thence North 88°10'01" East along said south line for a distance of 467.88 feet to the Point of Beginning, containing 2.84 acres, subject to easements, if any, of record or apparent.

East 406 feet of Outlot D in South Mayhew Avenue Replat, Sioux City, Woodbury County, Iowa; and

WHEREAS, pursuant to Resolution No. 2004-000564 passed and approved by the City Council on June 28, 2004, the City indicated its intent to accept said proposal of Lakeport Commons, L.L.C., 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

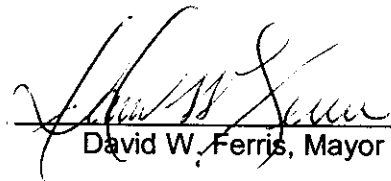
WHEREAS, a hearing was held on the proposals so submitted and the City Council is of the opinion and belief that it would be in the best interests of the City to accept the proposal of Lakeport Commons, L.L.C., for the purchase of said property and that accepting such proposal is in the public interests; and

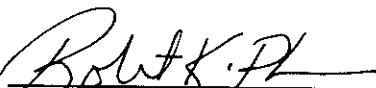
WHEREAS, a development agreement has been prepared for the purchase of said property pursuant to the terms of said proposal and should be approved as to form and content.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, IOWA, that the development agreement attached hereto providing for the sale of said property to Lakeport Commons, L.L.C., 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.

BE IT FURTHER RESOLVED that upon receipt of the consideration fixed in said development agreement and the costs incurred in this sale that the development agreement be delivered to Lakeport Commons, L.L.C.

PASSED AND APPROVED: August 23, 2004


 David W. Ferris, Mayor

ATTEST: 
 Robert K. Padmore, City Clerk

LAKEPORT COMMONS DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SIOUX CITY, IOWA

AND

LAKEPORT COMMONS, L.L.C.

EXHIBITS

Exhibit A:	Owned Property
Exhibit B:	City Property
Exhibit C	School Property
Exhibit D:	Schedule of Improvements
Exhibit E:	Form of City Property Deed
Exhibit F:	Developer's Bid Proposal
Exhibit G:	Preliminary Site Plan
Exhibit H:	Developer's Assessment Agreement
Exhibit I	Kohl's Assessment Agreement
Exhibit J:	Inspection Agreement

INTRODUCTION

This Agreement, consisting of this Introduction, Parts I, Part II and Exhibits "A", "B", "C", "D", "E", "F", "G", "H" and "I" to Part I attached hereto and made a part hereof (which are together hereinafter called "Agreement"), effective the 23rd day of August, 2004, made by 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 which is in force on the date of execution of this Agreement, (hereinafter called "Urban Renewal Act"), and having its office at City Hall, 405 Sixth Street, in the City of Sioux City, and State of Iowa, and Lakeport Commons, LLC (hereinafter called "Developer") and having an office for the transaction of business at 3918 Sylvian Way 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 "Donner Park 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, Developer has purchased or is in the process of purchasing the real estate described in the attached Exhibit "A" (the "Owned Property") and desires to construct commercial development thereon; and

WHEREAS, the City has offered to sell, and the Developer is willing to purchase, certain real estate currently owned by the City described on Exhibit "B" (the "City Property") for use as part of the Project; and

WHEREAS, the City will use its best efforts to acquire certain real estate from the Sioux City School District described on Exhibit "C" (the "School Property"); and

WHEREAS, if the City is successful in acquiring the School Property, the City has offered to sell the School Property, and the Developer is willing to purchase the School Property, for use as part of the Project; and

WHEREAS, the Owned Property, the City Property and the School Property shall collectively be known in this Agreement as the "Property"; and

WHEREAS, in conjunction with such development, the City and Developer will undertake a program of construction of improvements including, but not limited to, the extension of Lincoln Way and utilities from the Property to Sunnybrook Drive, as set forth in Exhibit "D", (the "Schedule of Improvements"), at substantial cost and benefit to the City and the Developer; and

WHEREAS, the Property is located within land which will benefit from the Donner Park Urban Renewal Area; and

WHEREAS, the City believes that the development 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 will be undertaken; and

WHEREAS, the parties desire to establish between themselves their various obligations, duties and responsibilities regarding the Project as set forth herein.

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:

PART I

**ARTICLE I
SALE OF CITY PROPERTY AND
ACQUISITION, SALE AND CONVEYANCE OF SCHOOL PROPERTY**

SECTION 1: ACQUISITION AND SALE OF CITY PROPERTY. In consideration of the Developer constructing improvements as described in the Preliminary Plans and the Narrative of the Developer's Bid Proposal attached hereto as "Exhibit F of Part I" and by this reference made a part thereof on the Property and paying the City as follows:

- (a) The City shall use its best efforts to acquire from the Sioux City School District the School Property. The City shall vacate any existing streets and alleys within the City Property and the School Property and convey the City Property and the School Property and vacated streets and alleys to Developer and Developer shall pay to City the purchase price (hereinafter called "Purchase Price") for the City Property and the School Property as hereinafter determined.
- (b) The Purchase Price for the School Property and all vacated streets and alleys shall be the sum of One Dollar (\$1.00) and the purchase price for the City Property shall be the sum of Eleven Thousand Six Hundred and Eighty Dollars (\$11,680.00) and other considerations, and include the total of all of the following:
- (c) Upon payment of the Purchase Price, simultaneous with delivery of the Deed to the Developer, and for other good and valuable consideration, all subject to the terms and conditions of this Agreement, the City shall sell to the Developer and the Developer shall purchase from the City the City Property and the School Property.
- (d) The City shall not, however, proceed to convey the City Property and shall not acquire either through purchase or to convey the School Property until such time as:
 - (1) City has given preliminary approval of a Preliminary Site Plan ("Site Plan").
 - (2) The Developer controls the remainder of the site as shown on the Site Plan.

SECTION 2: CONVEYANCE OF CITY PROPERTY AND SCHOOL PROPERTY.

- (a) Form of deed. The City shall convey to the Developer title to the City Property and the School Property by City Deed (hereinafter called "Deed") substantially in the form attached hereto as Exhibit "E" of Part I" and by this reference made a part hereof and shall not reserve easements therein. 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. 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 City Property and the School Property 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 Developer's proposal for financing the public improvements as provided herein; and
 - (2) The City has approved the Site Plan as provided for in Section 301 hereof; and
 - (3) The City has acquired title to the School Property.

Then the City shall deliver to the Developer an abstract of title to the City Property and to the School Property. The Developer 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 deed execution. The Developer shall be entitled to possession of the abstract only on or after the delivery of possession of the deed.

The Developer shall pay the purchase price and shall take title and possession of the City Property and the School Property and the City shall deliver the Deed and possession of the City Property and the School Property on the conveyance date.

- (c) Apportionment of current taxes.
- (1) The City Property and the School Property are not now subject to real estate taxes. However, in the event any portion of the City Property and the School Property are currently subject to taxes, the taxes will be prorated to date of purchase.
 - (2) All subsequent taxes shall be the responsibility of the Developer.
- (d) Apportionment of special assessments. The City shall pay all special assessments or installments thereof on the City Property and the School Property 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 Developer.
- (e) Recordation of Deed. If the City shall not already have done so, the Developer shall promptly file the Deed for recordation among the land records of the Woodbury County Recorder's Section of the Woodbury County Auditor's Office. The Developer 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, roll and image numbers of recordation.

ARTICLE II RESPONSIBILITIES OF THE DEVELOPER

SECTION 1: AGREEMENTS OF DEVELOPER.

- (a) Developer agrees to cause to be constructed on the Property a commercial development of a minimum of Two Hundred Fifty Thousand (250,000) square feet of retail space including, but not limited to utilities, parking, landscaping, amenities and commercial structures in substantially the form set forth and described in the Developer's preliminary site plan attached as Exhibit "G" (the "Preliminary Site Plan") and in substantially the form set forth in the final site plan which Developer shall submit to the City for the City's review and approval by the City's Development Review Committee (the "Final Site Plan").

The City acknowledges that the Developer will sell a portion of the Property to Kohl's Department Store ("Kohl's") and Kohl's intends to cause to be constructed thereon a Kohl's store of approximately Eighty-eight Thousand (88,000) square feet of retail space (the "Kohl's Parcel"). The square footage of such Kohl's store as constructed shall not be in addition to the Two Hundred Fifty Thousand (250,000) square footage requirement set forth in paragraph (a) above but shall be considered a part of such Two Hundred Fifty Thousand (250,000) square footage requirement.

The City further acknowledges that the Developer may sell other portions of the Property to third parties for the construction of improvements or lease parcels with requirements that the tenant pay the taxes (the "Third Party Parcel").

Developer shall comply with the applicable laws of the State of Iowa and the Municipal Code of the City in its development and construction on the portion of the Property not sold to Kohl's or any other third party (the "Developer Parcel").

- (b) Developer agrees to design and construct off-site certain public improvements in substantially the form set forth and described in the Schedule of Improvements and the Site Plan, including but not limited to an extension of Sergeant Road and utilities from its intersection with Lakeport Road, east to Sunnybrook Drive; the extension of Lincoln Way and utilities from its intersection with Lakeport Road east to Sergeant Road extended; a new street south of Lincoln Way extended, west of South Cypress Street to be cul-de-saced at the rear of the Property; access improvements to Old Lakeport Road; associated landscaping along the rights-of-way (except for landscaping the area south of the Coon property, which the parties will provide for under separate contract within a reasonable time of the date hereof), and a regional detention pond. Developer shall commence the construction of the public improvements on or before November 1, 2004 and except as otherwise provided in this Agreement shall complete all such public improvements on or before December 1, 2005. However, in the event the installation of the traffic signal (hereinafter called the "traffic signal") is deferred as provided in Article III, Section 1(b) below, the installation of the traffic signal shall be completed on or before October 1, 2006.

- (c) Developer shall commence the construction of the remaining improvements referred to in Section 301 herein on or before April 1, 2005 and except as otherwise provided in this Agreement shall complete a minimum of One Hundred Ten Thousand (110,000) square feet of retail space on or before December 31, 2005 .
- (d) Developer shall enter into an assessment agreement in the form attached hereto as Exhibit "H" (the "Developer Assessment Agreement") which shall establish as the minimum value for real estate tax assessment purposes upon the Developer Parcel effective on the earlier of January 1 of the year following substantial completion of the improvements on the Developer Parcel or January 1, 2006, and continuing in effect for ten (10) years thereafter, the amount of Twenty Million Dollars (\$20,000,000.00). The Developer's Assessment Agreement shall also provide that in the event the installation of the traffic signal is deferred as provided in Article III, Section 1(b) below, the minimum value for real estate tax assessment purposes upon the Developer Parcel shall increase in the additional amount of Five Hundred Thousand Dollars (\$500,000.00) effective on the earlier of January 1 following substantial completion of the installation of the deferred traffic signal or January 1, 2007, and continuing in effect for ten (10) years thereafter.

The Developer may, upon the sale of any portion of the Developer Parcel, allocate to the Third Party Parcel a portion of the minimum value of land and improvements for the Developer Parcel and the minimum value set forth in paragraph (d) above shall be correspondingly reduced on a dollar for dollar basis for the amount allocated to the Third Party Parcel. Such allocation shall be in the form of an amendment to the original Developer Assessment Agreement and a new Assessment Agreement setting forth the minimum value of land and improvements allocated to the Third Party Parcel and such Assessment Agreement shall be entered into by the purchaser of the Third Party Parcel, the City and the Assessor. The amendment to the original Developer Assessment Agreement and the new Assessment Agreement for the Third Party Parcel shall be subject to the approval of the City and the City Assessor, which approval shall not be unreasonably withheld or delayed.

The Developer shall cause Kohl's to enter into the form of Assessment Agreement attached as Exhibit "I" which shall establish as the minimum value for real estate tax assessment purposes upon the Kohl's Parcel effective on the earlier of January 1 of the year following substantial completion of the improvements on the Kohl's Parcel or January 1, 2006 and continuing in effect for 10 years thereafter the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) for the Kohl's Parcel. The Kohl's Assessment Agreement minimum valuation shall be included within the total Twenty Million Dollars (\$20,000,000.00) valuation set forth in paragraph (d) above and execution and approval of Kohl's Assessment Agreement shall reduce the remaining minimum assessment attributable to Developer's parcels not sold or leased to parties to an Assessment Agreement.

The Developer Assessment Agreement shall be contingent upon the City reimbursing the Developer for the costs of the Schedule of Improvements pursuant to the terms and conditions of this Agreement.

- (e) Developer shall file an acceptable subdivision plat of the Property. The Developer shall dedicate right-of-way to the City for that portion of Sergeant Road within the subdivision plat for this development and the City shall receive fee title relating thereto by the

dedication on the Plat. City agrees to accept storm sewers and other public utilities within the plat.

- (f) The Developer shall grant or cause to be granted at no cost to the City all easements necessary to extend public utilities, which shall be superior to the interest of any other lien and encumbrance.
- (g) The Developer shall set forth on the Plat the permanent utility easements as necessary, for the inspection and maintenance of public systems by the City, which shall be superior to the interest of any other lien and encumbrance. Locations of said easements shall be determined upon approval of Final Site Plan.
- (h) The Developer shall seek and obtain the necessary rezoning and right-of-way vacations.

**ARTICLE III
RESPONSIBILITIES OF THE CITY**

SECTION 1: AGREEMENTS OF CITY.

- (a) Developer intends to employ DeWild, Grant, Reckert and Associates Co. ("DGR") to perform inspections of the Project. In the event Developer fails to employ DGR or otherwise skilled engineers to conduct the inspections, the City, through execution of a standard form inspection agreement attached as Exhibit J" (the "Inspection Agreement") will perform the construction inspection of all public improvements in conjunction with the development of the Property to assure compliance with the municipal code and the City approved final plans.
- (b) The City shall reimburse Developer the actual costs of construction of the Schedule of Improvements (Exhibit D) provided, however, the actual costs of construction for the Schedule of Improvements that the City will pay to Developer shall not exceed the lesser of (i) the bids from the lowest responsible bidders received by Developer or (ii) Four Million One Hundred Thousand Dollars (\$4,100,000.00). In the event such reimbursement does not cover the actual cost of the installation of the traffic signal, the installation of the traffic signal shall be deferred until on or before October 1, 2006 as referenced in Article II, Section 1(b) above and the City shall also reimburse Developer the lesser of (i) the bid from the lowest responsible bidder received by Developer regarding the deferred traffic signal or (ii) One Hundred Twenty Thousand Dollars (\$120,000.00).

Developer shall use good faith efforts to obtain not less than three (3) competitive sealed bids from bidders selected by Developer for construction of the Schedule of Improvements to be opened in the presence of a designated City representative for each of the reimbursable items of the Schedule of Improvements.

Requests to the City for reimbursement of the costs of the Schedule of Improvements shall be made by the Developer on forms approved by the City. Such requests shall include detailed information on the quantity of work completed, unit costs, and totals. The City shall retain five percent (5%) of each payment requested until the City certifies and approves the completion of all work under this Agreement.

The City shall process and pay the Developer all approved requests within fifteen (15) days for receipt of the Developer's request for payment. The review of such requests, confirmation as to accuracy and completeness of the information provided, and confirmation of the completion of work for which payment is requested shall constitute approval to pay.

- (c) The City shall accept ownership of the regional detention pond, which shall be free and clear of all liens and encumbrances.

SECTION 2: INTENTIONALLY OMITTED.

SECTION 3: TIME FOR CERTAIN ACTIONS.

- (a) Time for site plan review pre-application conference. The Developer shall participate in the Site Plan process for each phase of construction.
- (b) Time for submission of construction plans. The Developer shall submit its "Construction Plans" (as defined in Section 301 hereof) to the City by no later than thirty (30) 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 Developer 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.
- (d) Time for submission of corrected construction plans. The time within which the Developer shall submit any new or corrected Construction Plans as provided for in Section 301 hereof shall be not later than fifteen (15) days after the date the Developer receives written notice from the City of the City's rejection of the Construction Plans referred to in the latest such notice.
- (e) Reserved.
- (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 fourteen (14) 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 Developer, if it has not already done so, 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 thirty (30) days after the approval of this Agreement by the City.

**ARTICLE IV
GENERAL PROVISIONS**

SECTION I: MISCELLANEOUS.

- (a) This Agreement shall be binding on the parties and their successors and assigns and shall be deemed effective as of August 23, 2004, the date of approval of this Agreement by a majority of the members of the City Council of the City of Sioux City by Resolution. The Developer shall be relieved of any and all liability under this Agreement as to any portion of the Property it sells to Kohl's or any other third party from and after the date of the conveyance of title such portion of the property; provided, however, Developer shall remain solely liable to cause the construction of the Schedule of Improvements. Kohl's sole obligation pursuant to this Agreement is to execute its respective assessment agreement as provided in Article II at the time it purchases the Kohl's parcel. Notwithstanding the Developer's sale of any portion of the Property to Kohl's or any other third party, the City shall continue to be liable to reimburse the Developer for the costs of the Schedule of Improvements as provided in this Agreement.
- (b) This Agreement shall be interpreted according to the laws of the State of Iowa. The Developer agrees that any legal action or proceeding against it with respect to this Agreement may be brought in the courts of Woodbury County, Iowa.
- (c) Any notice, demand, or communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by certified or registered mail return receipt, postage prepaid, or delivered personally as follows:

- 1. Developer, to: Lakeport Commons, L.L.C.
ATTN: Jerry J. Johnson
3918 Sylvian Way
Sioux City, Iowa 51104
- 2. City, to: City Clerk, City of Sioux City, Iowa
405 Sixth Street
P.O. Box 447
Sioux City, Iowa 51102-0447

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

Such notice shall be effective two (2) days after mailing certified or registered mail as hereinbefore provided or upon receipt if delivered personally.

- (d) Developer shall protect, indemnify and save harmless the City of Sioux City, Iowa, its officers, agents and employees from and against any and all loss, costs, damage and expenses, including court costs and reasonable attorney fees, occasioned by, or arising out of any accident or other occurrence causing or inflicting injury and/or damage to any person or property, including death, arising out of the Developer's performance of this Agreement (i) as to the Developer Parcel and (ii) during the construction of the Schedule of Improvements, as to any other portion of the Property upon which the Schedule of

Improvements is be constructed unless in either case such injuries to persons or damage to the property is due or claimed to be due to the negligence of the City, its officers, employees or agents.

SECTIONS 2 AND 3: INTENTIONALLY OMITTED.

SECTION 4: PERIOD OF DURATION ON COVENANT OF 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 or any renewal or extension thereof.

SECTION 5: SPECIAL PROVISIONS.

- (a) Required terms the Developer must include in any conveyance of its interest. The Developer 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, assignment or contract conveying part or all of its interest in the City 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 Developer's successors or assigns to the same extent it could against the Developer; 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.
- (b) Pursuant to the authority granted the City in subsection 3 of § 403.6, Code of Iowa, the Developer 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 Developer for a 90 day period commencing with the execution of this Agreement.
- (c) 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 shall be construed together and in harmony with one another in any interpretation of the entire Agreement of the parties, to-wit:
 - (1) The City Council Resolution Offering the City Property and Setting the Terms and Conditions for such Offering, including all exhibits and attachments thereto;
 - (2) The Developer's Bid Proposal in its entirety;
 - (3) The approved Construction Plans and any approved amendments thereto;
 - (4) The City Council Resolution approving the sale of the City Property and approving the Agreement, including all exhibits and attachments thereto.

The Developer understands and acknowledges that the Resolutions referenced above have not been adopted as of the date the Developer has or will execute this Agreement and hereby agrees and intends that the Resolution referred to in subparagraph 4 above is

that Resolution hereinafter formally adopted by the City by which it offers the City Property for redevelopment as an Urban Renewal Project in accordance with the Urban Renewal Act.

- (d) This Agreement is hereby incorporated by reference in the sale of the City Property. The City shall cause this Agreement in its entirety to be recorded in the Woodbury County Recorder's Section of the Woodbury County Auditor's Office (except the approved Construction Plans and any amendments thereto) and Developer shall reimburse the City for costs of recordation at the time of conveyance.
- (e) *Nonapplicability of Iowa Code Section 614.24.* The Developer 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 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 Section 614.24 that the City periodically record or re-record such reversions, reverted interests or use restrictions, and the Developer agrees that neither it or its successors or assigns will assert the City's failure to comply with such Iowa Code section as a defense to any such action.

PART II

ARTICLE I.

PREPARATION OF PROPERTY FOR DEVELOPMENT

SECTION 101: Work to be performed by City. The City shall not be required to prepare the Property for development.

SECTION 102: Reserved.

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 Developer, the City shall assist representatives of the Developer 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 Developer, the Developer shall permit the City and/or its representatives access to the Property and abutting property owned or conveyance by the Developer, 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 development 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 F of Part I hereof. As promptly as possible after the date of this Agreement, the Developer 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 Developer 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 Developer, must be consistent with and be a logical development of or reasonably inferable from Exhibit F 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 Developer 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 therefore, 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 Developer 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 3 of Part I hereof, after written notification to the Developer 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 Developer 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 3 of Part I hereof. All work with respect to the improvements to be constructed or provided by the Developer 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 Developer desires to make any change in the construction plans after their approval by the City, the Developer 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 Developer 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 Developer, setting forth in detail the reasons therefore, within the period specified in Section 3 of Part I hereof.

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 3 of Part I hereof, the Developer shall submit to the City evidence satisfactory to the City that the Developer has the equity, capital and commitments for mortgage financing necessary for the construction of the public improvements on the Property.

SECTION 304: Deleted.

SECTION 305: Commencement and completion of construction of improvements. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development 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 subsection (b) of the Responsibilities of The Developer section of Part I hereof and Sections 3 of Part I hereof . 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 Developer 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 Developer and until construction of all improvements has been completed, the Developer 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 Developer with respect to such construction.

SECTION 307: Certificates of completion.

- (a) Promptly after the Developer notifies the City, in writing, that it has completed the public improvements and a minimum of One Hundred Ten Thousand (110,000) square feet of retail space on the Property, the City shall inspect such improvements and square footage and if the City determines that the Developer has completed the public improvements and such square footage in accordance with the provisions of this Agreement relating solely to the obligation of the Developer to construct the public improvements and such square footage, the City will furnish the Developer with an appropriate instrument so certifying.

In the event the installation of the traffic signal is deferred as referenced in Article II, Section 1(b) and as provided for in Article III, Section 1(b) above, promptly after the Developer notifies the City, in writing, that it has completed the deferred traffic signal the City shall inspect such traffic signal and if the City determines that the Developer has completed the traffic signal in accordance with the provisions of this Agreement relating solely to the obligation of the Developer to construct the traffic signal, the City will furnish the Developer with an appropriate instrument so certifying.

Promptly after the Developer notifies the City, in writing, that it has completed the commercial development of a minimum of Two Hundred Fifty Thousand (250,000) square feet of retail space including, but not limited to utilities, parking, landscaping, amenities and commercial structures in substantially the form set forth and described in the Developer's Preliminary Site Plan, the City shall inspect such commercial development and if the City determines that the Developer has completed such commercial development in accordance with the provisions of this Agreement relating solely to the obligation of the Developer to construct such commercial development, the City will furnish the Developer with an appropriate instrument so certifying.

The fact that the Developer has secured an occupancy permit(s) pursuant to the building code of the City shall not entitle the Developer to a certificate of completion unless in fact the improvements required by this Agreement have been satisfactorily completed. The Developer shall be entitled to a certificate of completion when it has completed the improvements required by this Agreement. The City Manager or his designee, shall issue such Certificate of Completion.

- (b) Such certification by the City (and it shall so provide in the certification itself) be a conclusive determination of satisfaction of the agreements and covenants in this Agreement and in the conveyance with respect to the obligations of the Developer, 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 Developer 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 the other terms and conditions of this Agreement, the conveyance or the Assessment Agreement.
- (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 Developer may request a partial certificate of completion. If the Developer desires a partial certificate of completion the Developer 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 Developer has completed such part of the Improvements in accordance with the provisions of this Agreement relating solely to the obligation of the Developer to construct the improvements, the City shall furnish the Developer 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 of the agreements and covenants in this Agreement and in the conveyance with respect to the obligations of the Developer, and its successors and assigns, to construct the part of the improvements covered there.

In the event the Developer 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 of the agreements and covenants in this Agreement and in the conveyance with respect to the obligations of the Developer, 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 Developer's expense in the proper office for the recordation of Conveyance and other instruments pertaining to the part of the Property, including the conveyance. 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 Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer 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 Developer to take or perform in order to obtain such certification.

ARTICLE IV. RESTRICTIONS UPON USE OF PROPERTY

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

- (1) Devote the Property to, and only to, and in accordance with the uses specified in the Urban Renewal Plan; and
- (2) Not discriminate upon the basis of race, color, creed, religion, sex, national origin, ancestry or disability in the conveyance or rental or in the use or 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 Developer, 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 Developer 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 a leasehold 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 Developer 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 Developer 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 Developer 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 Developer. The Developer represents and agrees that its conveyance of the Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of orderly and sound development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of:

- (a) The importance of the development 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 development possible; and

The fact that a transfer of the stock or other ownership interest of whatever form in the Developer 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 Developer or to their degree of participation, is for practical purposes a transfer or disposition of the Property then conveyance by the Developer, the qualifications and identity of the Developer, and its stockholders or holders of other

ownership interest are of particular concern to the community and the City. The Developer further recognizes that these qualifications and identity are an important element in the City's decision to select the Developers proposal and enter into this Agreement.

SECTION 502: Prohibition against transfer of shares of stock or other ownership interest of whatever form; binding upon stockholders or holders of other ownership interests individually. For the foregoing reasons, the Developer 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 Developer 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. With respect to this provision, the Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority of the Corporation and its Board of Directors to agree to this provision on their behalf and to bind them with respect thereto. Such prohibition against transfer shall not be applicable to a transfer occasioned by the death of a stockholder.

SECTION 503: Prohibition against transfer of property and assignment of Agreement.

Also, for the foregoing reasons the Developer represents and agrees for itself, and its successors and assigns, that:

- (a) Except only as:
 - (1) By way of security for and only for (i) the purpose of obtaining financing necessary to enable the Developer 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 Developer is authorized to conveyance such improvements are completed,

the Developer (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 assignment or conveyance, 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 and except for conveyance of the Kohl's Property.

- (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 Developer (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 Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer 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 of the Property. Provided, that the fact that any transferees of, or any other successor in interest whatsoever to the Property, or any part thereof, shall, for whatever the reason, not have assumed such obligations or not 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 Developer 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 Developer 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 rent to the Developer 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 Developer 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 Developer, 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 Developer agrees that during the period between execution of this Agreement and completion of the improvements as certified by the City, (a) the Developer 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 Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information; and (b) the Developer 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 Developer, setting forth all of the stockholders or holders of the Developer 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 Developer, 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 Developer, 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 conveyance to the Developer and as a condition precedent thereto, and annually thereafter on the anniversary of the date of the conveyance until the issuance of a certificate of completion for all the Property

SECTION 505: Developer's right to preconveyance 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 Developer may enter into any agreement to conveyance, 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 rent for the Property, or the part thereof or the interest therein to be so transferred, prior to the issuance of such certificate(s). Developer may however, prior to issuance of such certificate, accept earnest money deposits for the conveyance 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 Developer nor any successor in interest to the Property or any part thereof (except for Kohl's in relation to the Kohl's Parcel) 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 funds only to the extent necessary for making the improvements. The Developer 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 Developer 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 Developer shall cause to be included in any mortgage agreement a requirement that whenever the mortgagee shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer 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 an interest in 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 an interest in the Property or such part from or through such holder or (b) any other purchaser at foreclosure conveyance 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 conveyance 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 Developer with respect to any breach or default by the Developer 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 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 the Property that the City shall have or be entitled to because of failure of the Developer 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 Developer 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 Developer 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 a conveyance hold interest, 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) mortgage debt (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 Developer 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 Developer, 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 Developer 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: Reserved.

SECTION 703: Termination by City prior to execution of conveyance.

- (1) In the event that:
- (a) Prior to conveyance of the Property to the Developer and in violation of this Agreement:
 - (i) The Developer (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 of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof;
 - (b) The Developer does not submit construction plans, as required by this Agreement, or 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 and such default or failure 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 Developer, 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 Developer on its guarantee.

- (2) In the event that at any time prior to delivery of the Property, the City is enjoined or prevented from leasing 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 Developer, shall be terminated, and neither the Developer or the City shall have any further rights against or liability to the other under this Agreement.

SECTION 704: Revesting possession in City upon happening of event subsequent to delivery to Developer. In the event that subsequent to delivery of the City Property and the School Property to the Developer and prior to completion of the improvements as certified by the City:

- (a) The Developer (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 Developer (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 Developer 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 of the Developer, or with respect to the identity of the parties in control of the Developer or the degree thereof, and such violation shall not be cured within sixty (60) days after written demand by the City to the Developer; or
- (d) The Developer, 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) Additionally, in the event of any default, failure, violation, or other action or inaction by the Developer specified in subsections (a), (b), (c) and (d) of this Section 704 or failure on the part of the Developer 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.

Then the City shall have the right to re-enter and take possession of the City Property and the School Property and to terminate and revest in the City the estate so conveyed Developer, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the City Property and the School Property to the Developer 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 Developer specified in subsections (a), (b), (c) (d) and (e) of this Section 704, such failure on the part of the Developer 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 conveyance and of all the rights and interests in and to the City Property and the School Property conveyance by the City to the Developer, and that such rights and interests of the Developer, and of any assigns or successors in interest to and in the City Property and the School Property shall revert to the City. Provided, that such condition subsequent and any reversion of the City Property and the School Property 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 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 reversion of the City Property and the School Property 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 or other transfer or mortgage. However, the foregoing provisions of this Section 704 shall not be applicable to the Kohl's Parcel.

Additionally, in the event of any default, failure, violation, or other action or inaction by the Developer specified in subsections (a), (b), (c) and (d) of this Section 704 or failure on the part of the Developer 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 City Property and the School Property or to enforce the completion bond, may declare a forfeiture of the retainage described in Article III, Section 1(b) hereof, and thereafter, it shall be entitled to the proceeds of such retainage without any deduction, off-set or recoupment whatsoever.

SECTION 705: Resale or reacquired property; disposition of proceeds. Upon the reversion in the City of the City Property and the School 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 City Property and the School 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 City Property and the School Property or part thereof in the Urban Renewal Plan. Upon such resale of the City Property and the School 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 City Property and the School Property or part thereof (but less any income derived by the City from the City Property and the School Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the City Property

and the School Property or part thereof (or, in the event the City Property and the School 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 City Property and the School Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the City Property and the School 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 Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the

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 Developer, 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 City Property and the School 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 Developer 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 Developer 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 Developer, 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 development, 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 caused 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 development or of the Developer 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 under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or 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 Developer, 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 Developer, 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 Developer or successor or on any obligation under the terms of this Agreement.

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

- (a) The Developer will not discriminate against any employee or applicant for employment because of age, race, color, religion, creed, sex, ancestry, national origin, or disability. The Developer 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 Developer 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 Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, 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 Developer 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 Developer 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 "Developer" shall be changed to "Contractor". To enable the City to determine compliance with these covenants, the Developer 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 Developer 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 Developer 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 possession to the Property from the City to the Developer 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 and shall be deemed effective as of August 23, 2004, the date of approval of this Agreement by a majority of the members of the City Council of the City of Sioux City by Resolution.

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.

THIS PORTION OF AGREEMENT INTENTIONALLY LEFT BLANK

SIGNATURE PAGE TO LAKEPORT COMMONS DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SIOUX CITY, IOWA

AND

LAKEPORT COMMONS, L.L.C.

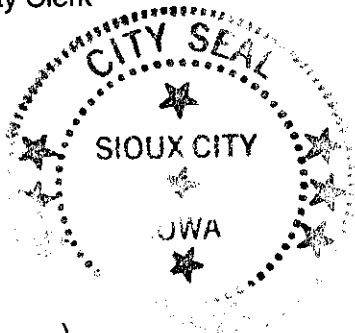
IN WITNESS WHEREOF, the City and the Developer have caused the Agreement to be duly executed as of the day first above written.

ATTEST:

CITY OF SIOUX CITY, IOWA

Robert K. Padmore
Robert K. Padmore, City Clerk

By: David W. Ferris
David W. Ferris, Mayor



LAKEPORT COMMONS, L.L.C.

By: Jerry J. Johnson
Jerry J. Johnson, its Manager

STATE OF IOWA)
: ss
COUNTY OF WOODBURY)

BE IT REMEMBERED, on this 15th day of November, 2004, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared David W. Ferris and Robert K. Padmore, 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 David W. Ferris and Robert K. Padmore 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.

Diane Bailey
NOTARY PUBLIC IN AND FOR THE STATE OF IOWA.



STATE OF IOWA)
 : ss.
COUNTY OF WOODBURY)

On this 1st day of November, 2004, before me, a Notary Public in and for the State of Iowa, personally appeared Jerry J. Johnson, to me personally known, who being by me duly (sworn or affirmed) did say that that person is the Manager of Lakeport Commons, L.L.C. and that said instrument was signed on behalf of the said limited liability company by authority of its Manager and the said Jerry J. Johnson acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Jenny Bertrand
NOTARY PUBLIC IN AND FOR THE STATE OF IOWA.



EXHIBIT 'H'

ASSESSMENT AGREEMENT

THIS AGREEMENT made on _____, 2004, by and between the City of Sioux City, Iowa, an Iowa municipal corporation, vested with urban renewal powers pursuant to Chapter 403 Code of Iowa, (hereinafter referred to as "City") and Lakeport Commons, L.L.C. (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of the real estate in Sioux City, Woodbury County, Iowa, as described in the attached Exhibit "A" (the "Property"); and

WHEREAS, City and Developer have undertaken a program of construction of public improvements and private improvements on or in conjunction with the development of the Property; and

WHEREAS, City and Developer have heretofore entered into a development agreement dated _____, 2004 concerning such construction of public improvements and private improvements; and

WHEREAS, pursuant to Section 403.6 Code of Iowa, the City and Developer desire to enter into a written agreement establishing the minimum actual value of land and improvements located or to be located upon the Property.

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:

1. For purposes of tax increment financing to be utilized by City in the performance of its responsibility under the Development Agreement, Developer agrees that the minimum actual value of the Property and the improvements located thereon shall be as provided in paragraph 2 hereof.

Developer may upon the sale of any portion of the Property allocate to the parcel purchased by a third party (the "Third Party Parcel") a portion of the minimum value of the land and improvements for the Property and the minimum actual value set forth in the paragraph "1" shall be correspondingly reduced on a dollar for dollar basis by the amount allocated to the Third Party Parcel. Such allocation shall be in the form of an amendment to this Assessment Agreement and a new assessment agreement setting forth the minimum value of land and improvements allocated to the Third Party Parcel and such assessment agreement shall be entered into by the purchaser of the Third Party Parcel, the City and the Assessor. The amendment to this Assessment Agreement and the new assessment agreement for the Third Party Parcel shall be subject to the approval by the City and the City Assessor, which approval shall not be unreasonably withheld or delayed.

2. The minimum actual value shall be (i) \$14,500,000 for the tax year commencing on the earlier of January 1 of the year following substantial

completion of the improvements on the Property and January 1, 2006, and (ii) in the event the reimbursement on the Schedule of Improvements, does not cover the actual cost of the installation of the traffic signal and the installation of the traffic signal is deferred, an additional \$500,000.00 on January 1, 2007 and continuing for ten years thereafter (the "Term of this Agreement"). The Developer may appeal or protest any valuation in excess of said minimum actual values; provided, however during the Term of this Agreement, Developer shall not through protest, appeal or any other method seek to reduce the value of the Property and the improvements located thereon for tax purposes below the aforesaid minimum actual value.

3. Developer agrees that it shall not seek, nor shall the City grant, tax abatement during the Term of this Agreement, the result of which reduces the minimum actual value below the amount set forth in paragraph 1 above.
4. This Agreement is contingent upon the City reimbursing the Developer for the costs of the construction of the Schedule of Improvements pursuant to the terms and conditions of the Development Agreement; and as, to the additional \$500,000.00, the City's reimbursing for the traffic signal pursuant to Article II, Section 1(b) of the Development Agreement.
5. This Agreement shall be binding on the parties, the City's successors and assigns and Developers successors and assigns as the owner of the Property.
6. This Agreement shall be interpreted according to the laws of the State of Iowa.

IN WITNESS WHEREOF, the City and Lakeport Commons, L.L.C. have caused this Agreement to be duly executed as of the day first above written.

CITY OF SIOUX CITY, IOWA

LAKEPORT COMMONS, L.L.C.

David W. Ferris, Mayor

Jerry J. Johnson, Developer

ATTEST: _____
Robert K. Padmore, City Clerk

STATE OF IOWA)
COUNTY OF WOODBURY)

BE IT REMEMBERED, on this ____ day of _____, 2004, before me the undersigned, a Notary Public in and for Woodbury County, personally appeared David W. Ferris and Robert K. Padmore, 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 David W. Ferris and Robert K. Padmore 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.

Notary Public In And For Woodbury County

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 2004, before me, the undersigned a Notary Public in and for said County and State, personally appeared _____ and _____, to me personally known, who being by me duly sworn, did say that they are the _____ and _____ respectively, of said corporation executing the within and foregoing instrument, that
(no seal has been procured by the said) corporation; that said instrument was
(the seal affixed thereto is the seal of said)
signed (and sealed) on behalf of said corporation by authority of its Board of Directors; and that the said _____ and _____ as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.

Notary Public In And For Woodbury County

ASSESSOR'S CERTIFICATE

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made upon it, certifies that the actual value assigned to the land and improvements upon completion shall not be less than (i) \$14,500,000.00 on the earlier of January 1 of the year following substantial completion of the improvements on the Property and January 1, 2006 and (ii) an additional \$500,000.00 on January 1, 2007, all subject to the terms of the Development Agreement.

Mel Obbink, City Assessor

EXHIBIT 'I'

ASSESSMENT AGREEMENT

THIS AGREEMENT made on _____, 2004 by and between the City of Sioux City, Iowa, an Iowa municipal corporation, vested with urban renewal powers pursuant to Chapter 403, Code of Iowa, (hereinafter referred to as "City") and Kohl's Department Stores, Inc., a Delaware corporation (hereinafter referred to as "Kohl's")

WHEREAS, Kohl's is the owner of the real estate in Sioux City, Woodbury County, Iowa, as described in the attached Exhibit "A"; and

WHEREAS, City and Lakeport Commons, L.L.C. (the "Developer") have undertaken a program of construction of public improvements and private improvements on or in conjunction with the development of the Property; and

WHEREAS, City and Developer have heretofore entered into a development agreement dated _____ (the "Development Agreement") concerning such construction of public improvements and private improvements; and

WHEREAS, pursuant to Section 403.6, Code of Iowa, the City and Kohl's desire to enter into a written agreement establishing the minimum actual value of land and improvements located or to be located upon the Property.

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:

1. For the purposes of tax increment financing to be utilized by City in the performance of its responsibility under the development agreement, Kohl's agrees that the minimum actual value of the Property and the improvements located thereon shall be \$5,500,000.
2. Such minimum actual values shall be for the tax year commencing on the earlier of January 1 of the year following substantial completion of the improvements on the Property and January 1, 2006, and continuing for ten years thereafter (the "Term of this Agreement"). Kohl's may appeal or protest any valuation in excess of said minimum actual values; provided, however, during the Term of this Agreement, Kohl's shall not through protest, appeal or any other method seek to reduce the value of the Property and the improvements located thereon for tax purposes below the aforesaid minimum actual value.
3. Kohl's agrees it shall not seek, nor shall the City grant, tax abatement during the Term of this Agreement, the result of which reduces the minimum actual value below the amount set forth in paragraph 1 above.

- 4. This Agreement is contingent upon the City reimbursing the Developer for the costs of the construction of the Schedule of Improvements pursuant to the terms and conditions of the Development Agreement.
- 5. This Agreement shall be binding on the parties, their successors and assigns. Kohl's successors and assigns as the owner of the Property.
- 6. This Agreement shall be interpreted according to the laws of the State of Iowa.

IN WITNESS WHEREOF, the City and Kohl's. have caused this Agreement to be duly executed as of the day first above written.

CITY OF SIOUX CITY, IOWA

KOHL'S DEPARTMENT STORES, INC.

David W. Ferris, Mayor

By: _____
Name: _____
Title: _____

ATTEST: _____
Robert K. Padmore, City Clerk

ATTEST: _____
Richard D. Schepp, Secretary

8697

Doc. No. 8697
WOODBURY COUNTY, IOWA
Filed for Record

NOV 22 2004

STATE OF IOWA

Woodbury County

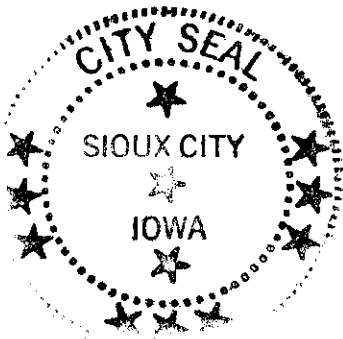
Time 3:00 AM Fee \$ 302.00 Pd
By Patrick F. Gill Auditor & Recorder
By [Signature] Designee

CITY OF SIOUX CITY

Office of the City Clerk

I, Robert K. Padmore, 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 the Resolution 2004-0737 adopted by the City Council of the City on the 23rd day of August, 2004, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 24th day of August, 2004.



(SEAL)

Robert K. Padmore
ROBERT K. PADMORE
CITY CLERK

RESOLUTION NO. 2004-000737
with attachments

**RESOLUTION ACCEPTING THE PROPOSAL OF LAKEPORT COMMONS,
L.L.C. FOR THE PURCHASE OF CERTAIN LAND IN THE DONNER PARK
URBAN RENEWAL AREA AND APPROVING A DEVELOPMENT AGREEMENT**

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 Donner Park 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, Lakeport Commons, L.L.C. has submitted a proposal for the purchase of the following described property in the Donner Park Urban Renewal Area:

That portion of the West Half of the Southeast Quarter (W1/2-SE1/4) of Section Eight (Sec. 8), Township 88 North, Range 47, West of the 5th P.M., Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southwest corner of the NW1/4 –SE1/4 of said Sec. 8; thence North 00°03'55" West along the west line of said NW 1/4 –SE1/4 for a distance of 430.67 feet to the southeast corner of Outlot "D" of South Mayhew Replat; thence North 00°03'56" West along the east line of said Outlot "D" for a distance of 95.91 feet to the southeast corner of Outlot "C" of South Mayhew Replat; thence North 00°06'25" West along the east line of said Outlot "C" for a distance of 84.98 feet; thence South 55°34'01" East for a distance of 417.53 feet; thence North 34°25'59" East for a distance of 116.77 feet; thence North 87°53'46" East for a distance of 189.25 feet; thence South 54°47'38" East for a distance of 227.12 feet; thence South 57°37'06" East for a distance of 250.00 feet; thence South 76°00'56" East for a distance of 145.13 feet; thence North 85°59'50" East for a distance of 107.03 feet to the westerly Right-of-Way line of Primary Road No. U.S. 20-75; thence South 15°11'24" West along said Right-of-Way line for a distance of 495.50 feet; thence South 45°16'18" West along said Right-of-Way line for a distance of 487.15 feet; thence South 88°100'14" West for a distance of 103.21 feet; thence North 00°10'21" West for a distance of 659.60 feet; thence South 88°07'58" West for a distance of 662.35 feet to the Point of Beginning, containing 16.00 acres, subject to easements, if any, of record or apparent.

Those portions of Outlot B and Outlot C in South Mayhew Avenue Replat, Sioux City, Woodbury County, Iowa, described as follows:

Beginning at the southeast corner of said Outlot C; thence North 00°06'56" West along the east line of said Outlot C for a distance of 84.99 feet; thence North 55°34'01" West for a distance of 282.10 feet; thence northwesterly along a curve to the left having a radius of 865.00 feet; through a central angle of 15°54'56" for a distance along the arc of 240.28 feet, the chord of which bears North 63°31'05" West a distance of 239.51 feet to the south line of Brookshire Addition to the City of Sioux City; thence continuing along said south line, northeasterly along a non-tangent curve to the left having a radius of 832.00 feet; through a central angle of 04°33'33" for a distance along the arc of 66.20

feet, the chord of which bears North 84°01'45" West a distance of 66.19 feet; thence continuing along said south line, South 88°25'07" West for a distance of 72.05 feet to the east line of said Outlot B; thence South 02°50'59" East along said east line for a distance of 46.27 feet; thence southeasterly along a curve to the right having a radius of 625.00 feet, through a central angle of 08°56'18", for a distance along the arc of 97.50 feet, the chord of which bears South 77°13'37" East a distance of 97.40 feet; thence South 03°17'14" East for a distance of 315.28 feet to the south line of said Outlot C; thence North 88°10'01" East along said south line for a distance of 467.88 feet to the Point of Beginning, containing 2.84 acres, subject to easements, if any, of record or apparent.

East 406 feet of Outlot D in South Mayhew Avenue Replat, Sioux City, Woodbury County, Iowa; and

WHEREAS, pursuant to Resolution No. 2004-000564 passed and approved by the City Council on June 28, 2004, the City indicated its intent to accept said proposal of Lakeport Commons, L.L.C., 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

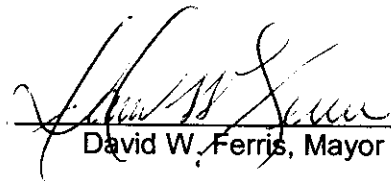
WHEREAS, a hearing was held on the proposals so submitted and the City Council is of the opinion and belief that it would be in the best interests of the City to accept the proposal of Lakeport Commons, L.L.C., for the purchase of said property and that accepting such proposal is in the public interests; and

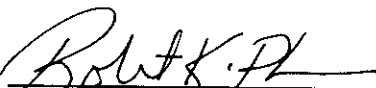
WHEREAS, a development agreement has been prepared for the purchase of said property pursuant to the terms of said proposal and should be approved as to form and content.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, IOWA, that the development agreement attached hereto providing for the sale of said property to Lakeport Commons, L.L.C., 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.

BE IT FURTHER RESOLVED that upon receipt of the consideration fixed in said development agreement and the costs incurred in this sale that the development agreement be delivered to Lakeport Commons, L.L.C.

PASSED AND APPROVED: August 23, 2004


 David W. Ferris, Mayor

ATTEST: 
 Robert K. Padmore, City Clerk

LAKEPORT COMMONS DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SIOUX CITY, IOWA

AND

LAKEPORT COMMONS, L.L.C.

EXHIBITS

Exhibit A:	Owned Property
Exhibit B:	City Property
Exhibit C	School Property
Exhibit D:	Schedule of Improvements
Exhibit E:	Form of City Property Deed
Exhibit F:	Developer's Bid Proposal
Exhibit G:	Preliminary Site Plan
Exhibit H:	Developer's Assessment Agreement
Exhibit I	Kohl's Assessment Agreement
Exhibit J:	Inspection Agreement

INTRODUCTION

This Agreement, consisting of this Introduction, Parts I, Part II and Exhibits "A", "B", "C", "D", "E", "F", "G", "H" and "I" to Part I attached hereto and made a part hereof (which are together hereinafter called "Agreement"), effective the 23rd day of August, 2004, made by 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 which is in force on the date of execution of this Agreement, (hereinafter called "Urban Renewal Act"), and having its office at City Hall, 405 Sixth Street, in the City of Sioux City, and State of Iowa, and Lakeport Commons, LLC (hereinafter called "Developer") and having an office for the transaction of business at 3918 Sylvian Way 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 "Donner Park 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, Developer has purchased or is in the process of purchasing the real estate described in the attached Exhibit "A" (the "Owned Property") and desires to construct commercial development thereon; and

WHEREAS, the City has offered to sell, and the Developer is willing to purchase, certain real estate currently owned by the City described on Exhibit "B" (the "City Property") for use as part of the Project; and

WHEREAS, the City will use its best efforts to acquire certain real estate from the Sioux City School District described on Exhibit "C" (the "School Property"); and

WHEREAS, if the City is successful in acquiring the School Property, the City has offered to sell the School Property, and the Developer is willing to purchase the School Property, for use as part of the Project; and

WHEREAS, the Owned Property, the City Property and the School Property shall collectively be known in this Agreement as the "Property"; and

WHEREAS, in conjunction with such development, the City and Developer will undertake a program of construction of improvements including, but not limited to, the extension of Lincoln Way and utilities from the Property to Sunnybrook Drive, as set forth in Exhibit "D", (the "Schedule of Improvements"), at substantial cost and benefit to the City and the Developer; and

WHEREAS, the Property is located within land which will benefit from the Donner Park Urban Renewal Area; and

WHEREAS, the City believes that the development 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 will be undertaken; and

WHEREAS, the parties desire to establish between themselves their various obligations, duties and responsibilities regarding the Project as set forth herein.

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:

PART I

**ARTICLE I
SALE OF CITY PROPERTY AND
ACQUISITION, SALE AND CONVEYANCE OF SCHOOL PROPERTY**

SECTION 1: ACQUISITION AND SALE OF CITY PROPERTY. In consideration of the Developer constructing improvements as described in the Preliminary Plans and the Narrative of the Developer's Bid Proposal attached hereto as "Exhibit F of Part I" and by this reference made a part thereof on the Property and paying the City as follows:

- (a) The City shall use its best efforts to acquire from the Sioux City School District the School Property. The City shall vacate any existing streets and alleys within the City Property and the School Property and convey the City Property and the School Property and vacated streets and alleys to Developer and Developer shall pay to City the purchase price (hereinafter called "Purchase Price") for the City Property and the School Property as hereinafter determined.
- (b) The Purchase Price for the School Property and all vacated streets and alleys shall be the sum of One Dollar (\$1.00) and the purchase price for the City Property shall be the sum of Eleven Thousand Six Hundred and Eighty Dollars (\$11,680.00) and other considerations, and include the total of all of the following:
- (c) Upon payment of the Purchase Price, simultaneous with delivery of the Deed to the Developer, and for other good and valuable consideration, all subject to the terms and conditions of this Agreement, the City shall sell to the Developer and the Developer shall purchase from the City the City Property and the School Property.
- (d) The City shall not, however, proceed to convey the City Property and shall not acquire either through purchase or to convey the School Property until such time as:
 - (1) City has given preliminary approval of a Preliminary Site Plan ("Site Plan").
 - (2) The Developer controls the remainder of the site as shown on the Site Plan.

SECTION 2: CONVEYANCE OF CITY PROPERTY AND SCHOOL PROPERTY.

- (a) Form of deed. The City shall convey to the Developer title to the City Property and the School Property by City Deed (hereinafter called "Deed") substantially in the form attached hereto as Exhibit "E" of Part I" and by this reference made a part hereof and shall not reserve easements therein. 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. 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 City Property and the School Property 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 Developer's proposal for financing the public improvements as provided herein; and
 - (2) The City has approved the Site Plan as provided for in Section 301 hereof; and
 - (3) The City has acquired title to the School Property.

Then the City shall deliver to the Developer an abstract of title to the City Property and to the School Property. The Developer 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 deed execution. The Developer shall be entitled to possession of the abstract only on or after the delivery of possession of the deed.

The Developer shall pay the purchase price and shall take title and possession of the City Property and the School Property and the City shall deliver the Deed and possession of the City Property and the School Property on the conveyance date.

- (c) Apportionment of current taxes.
- (1) The City Property and the School Property are not now subject to real estate taxes. However, in the event any portion of the City Property and the School Property are currently subject to taxes, the taxes will be prorated to date of purchase.
 - (2) All subsequent taxes shall be the responsibility of the Developer.
- (d) Apportionment of special assessments. The City shall pay all special assessments or installments thereof on the City Property and the School Property 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 Developer.
- (e) Recordation of Deed. If the City shall not already have done so, the Developer shall promptly file the Deed for recordation among the land records of the Woodbury County Recorder's Section of the Woodbury County Auditor's Office. The Developer 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, roll and image numbers of recordation.

**ARTICLE II
RESPONSIBILITIES OF THE DEVELOPER**

SECTION 1: AGREEMENTS OF DEVELOPER.

- (a) Developer agrees to cause to be constructed on the Property a commercial development of a minimum of Two Hundred Fifty Thousand (250,000) square feet of retail space including, but not limited to utilities, parking, landscaping, amenities and commercial structures in substantially the form set forth and described in the Developer's preliminary site plan attached as Exhibit "G" (the "Preliminary Site Plan") and in substantially the form set forth in the final site plan which Developer shall submit to the City for the City's review and approval by the City's Development Review Committee (the "Final Site Plan").

The City acknowledges that the Developer will sell a portion of the Property to Kohl's Department Store ("Kohl's") and Kohl's intends to cause to be constructed thereon a Kohl's store of approximately Eighty-eight Thousand (88,000) square feet of retail space (the "Kohl's Parcel"). The square footage of such Kohl's store as constructed shall not be in addition to the Two Hundred Fifty Thousand (250,000) square footage requirement set forth in paragraph (a) above but shall be considered a part of such Two Hundred Fifty Thousand (250,000) square footage requirement.

The City further acknowledges that the Developer may sell other portions of the Property to third parties for the construction of improvements or lease parcels with requirements that the tenant pay the taxes (the "Third Party Parcel").

Developer shall comply with the applicable laws of the State of Iowa and the Municipal Code of the City in its development and construction on the portion of the Property not sold to Kohl's or any other third party (the "Developer Parcel").

- (b) Developer agrees to design and construct off-site certain public improvements in substantially the form set forth and described in the Schedule of Improvements and the Site Plan, including but not limited to an extension of Sergeant Road and utilities from its intersection with Lakeport Road, east to Sunnybrook Drive; the extension of Lincoln Way and utilities from its intersection with Lakeport Road east to Sergeant Road extended; a new street south of Lincoln Way extended, west of South Cypress Street to be cul-de-saced at the rear of the Property; access improvements to Old Lakeport Road; associated landscaping along the rights-of-way (except for landscaping the area south of the Coon property, which the parties will provide for under separate contract within a reasonable time of the date hereof), and a regional detention pond. Developer shall commence the construction of the public improvements on or before November 1, 2004 and except as otherwise provided in this Agreement shall complete all such public improvements on or before December 1, 2005. However, in the event the installation of the traffic signal (hereinafter called the "traffic signal") is deferred as provided in Article III, Section 1(b) below, the installation of the traffic signal shall be completed on or before October 1, 2006.

- (c) Developer shall commence the construction of the remaining improvements referred to in Section 301 herein on or before April 1, 2005 and except as otherwise provided in this Agreement shall complete a minimum of One Hundred Ten Thousand (110,000) square feet of retail space on or before December 31, 2005 .
- (d) Developer shall enter into an assessment agreement in the form attached hereto as Exhibit "H" (the "Developer Assessment Agreement") which shall establish as the minimum value for real estate tax assessment purposes upon the Developer Parcel effective on the earlier of January 1 of the year following substantial completion of the improvements on the Developer Parcel or January 1, 2006, and continuing in effect for ten (10) years thereafter, the amount of Twenty Million Dollars (\$20,000,000.00). The Developer's Assessment Agreement shall also provide that in the event the installation of the traffic signal is deferred as provided in Article III, Section 1(b) below, the minimum value for real estate tax assessment purposes upon the Developer Parcel shall increase in the additional amount of Five Hundred Thousand Dollars (\$500,000.00) effective on the earlier of January 1 following substantial completion of the installation of the deferred traffic signal or January 1, 2007, and continuing in effect for ten (10) years thereafter.

The Developer may, upon the sale of any portion of the Developer Parcel, allocate to the Third Party Parcel a portion of the minimum value of land and improvements for the Developer Parcel and the minimum value set forth in paragraph (d) above shall be correspondingly reduced on a dollar for dollar basis for the amount allocated to the Third Party Parcel. Such allocation shall be in the form of an amendment to the original Developer Assessment Agreement and a new Assessment Agreement setting forth the minimum value of land and improvements allocated to the Third Party Parcel and such Assessment Agreement shall be entered into by the purchaser of the Third Party Parcel, the City and the Assessor. The amendment to the original Developer Assessment Agreement and the new Assessment Agreement for the Third Party Parcel shall be subject to the approval of the City and the City Assessor, which approval shall not be unreasonably withheld or delayed.

The Developer shall cause Kohl's to enter into the form of Assessment Agreement attached as Exhibit "I" which shall establish as the minimum value for real estate tax assessment purposes upon the Kohl's Parcel effective on the earlier of January 1 of the year following substantial completion of the improvements on the Kohl's Parcel or January 1, 2006 and continuing in effect for 10 years thereafter the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00) for the Kohl's Parcel. The Kohl's Assessment Agreement minimum valuation shall be included within the total Twenty Million Dollars (\$20,000,000.00) valuation set forth in paragraph (d) above and execution and approval of Kohl's Assessment Agreement shall reduce the remaining minimum assessment attributable to Developer's parcels not sold or leased to parties to an Assessment Agreement.

The Developer Assessment Agreement shall be contingent upon the City reimbursing the Developer for the costs of the Schedule of Improvements pursuant to the terms and conditions of this Agreement.

- (e) Developer shall file an acceptable subdivision plat of the Property. The Developer shall dedicate right-of-way to the City for that portion of Sergeant Road within the subdivision plat for this development and the City shall receive fee title relating thereto by the

dedication on the Plat. City agrees to accept storm sewers and other public utilities within the plat.

- (f) The Developer shall grant or cause to be granted at no cost to the City all easements necessary to extend public utilities, which shall be superior to the interest of any other lien and encumbrance.
- (g) The Developer shall set forth on the Plat the permanent utility easements as necessary, for the inspection and maintenance of public systems by the City, which shall be superior to the interest of any other lien and encumbrance. Locations of said easements shall be determined upon approval of Final Site Plan.
- (h) The Developer shall seek and obtain the necessary rezoning and right-of-way vacations.

**ARTICLE III
RESPONSIBILITIES OF THE CITY**

SECTION 1: AGREEMENTS OF CITY.

- (a) Developer intends to employ DeWild, Grant, Reckert and Associates Co. ("DGR") to perform inspections of the Project. In the event Developer fails to employ DGR or otherwise skilled engineers to conduct the inspections, the City, through execution of a standard form inspection agreement attached as Exhibit J" (the "Inspection Agreement") will perform the construction inspection of all public improvements in conjunction with the development of the Property to assure compliance with the municipal code and the City approved final plans.
- (b) The City shall reimburse Developer the actual costs of construction of the Schedule of Improvements (Exhibit D) provided, however, the actual costs of construction for the Schedule of Improvements that the City will pay to Developer shall not exceed the lesser of (i) the bids from the lowest responsible bidders received by Developer or (ii) Four Million One Hundred Thousand Dollars (\$4,100,000.00). In the event such reimbursement does not cover the actual cost of the installation of the traffic signal, the installation of the traffic signal shall be deferred until on or before October 1, 2006 as referenced in Article II, Section 1(b) above and the City shall also reimburse Developer the lesser of (i) the bid from the lowest responsible bidder received by Developer regarding the deferred traffic signal or (ii) One Hundred Twenty Thousand Dollars (\$120,000.00).

Developer shall use good faith efforts to obtain not less than three (3) competitive sealed bids from bidders selected by Developer for construction of the Schedule of Improvements to be opened in the presence of a designated City representative for each of the reimbursable items of the Schedule of Improvements.

Requests to the City for reimbursement of the costs of the Schedule of Improvements shall be made by the Developer on forms approved by the City. Such requests shall include detailed information on the quantity of work completed, unit costs, and totals. The City shall retain five percent (5%) of each payment requested until the City certifies and approves the completion of all work under this Agreement.