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Doc. No. \_\_\_\_\_  
WOODBURY COUNTY, IOWA  
Filed for Record

MAR - 5 2003

STATE OF IOWA

CITY OF SIOUX CITY

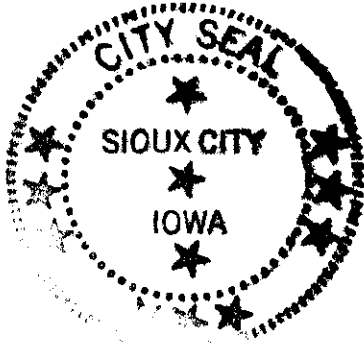
Time 3:00 PM Fee \$ 51.00 Pd  
PATRICK F. GILL, Auditor & Recorder  
By C. Murphy Designee

Woodbury County

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 2003-0171 adopted by the City Council of the City on the 20<sup>th</sup> day of February 2003, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 21<sup>st</sup> day of February 2003.



Robert K. Padmore  
ROBERT K. PADMORE  
CITY CLERK

(SEAL)

RESOLUTION NO. 2003 - 000171

RESOLUTION APPROVING A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN CIVIC PARTNERS AND THE CITY OF SIOUX CITY, IOWA

WHEREAS, the City of Sioux City, Iowa and Civic Partners did on November 19, 2001 enter into a Development Agreement in connection with the development of certain property in the Combined Central Sioux City – CBD Urban Renewal Area amended on June 10, 2002 and November 4, 2002 and;

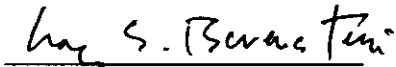
WHEREAS, Civic Partners have proposed that such Development Agreement be again amended, and;

WHEREAS, a copy of such Third Amendment to the Civic Partners Development Agreement is attached hereto and should be approved as to form and content.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, that the Third Amendment to Civic Partners Development Agreement between Civic Partners and the City of Sioux City, Iowa, as referred to in the preamble hereof, be and the same is hereby approved as to form and content.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized and directed to execute said Third Amendment to Civic Partners Development Agreement for and on behalf of the City.

PASSED & APPROVED: February 20, 2003

  
Craig S. Berenstein, Mayor

ATTEST:   
Robert K. Padmore, City Clerk

**THIRD AMENDMENT TO  
CIVIC PARTNERS DEVELOPMENT AGREEMENT**

THIS THIRD AMENDMENT made and entered into on February 20, 2003 by and between the City of Sioux City, Iowa, (hereinafter "City") and Civic Partners Sioux City L.L.C., (hereinafter "Redeveloper").

WHEREAS, the City and Redeveloper have, pursuant to Resolution No. 2001-1027 passed and approved November 19, 2001, entered into a Development Agreement for the redevelopment of a portion of the ~~V~~ Combined Central Sioux City - CD Urban Renewal Area; and  
recorded at Roll 523 Image 1778

WHEREAS, City and Redeveloper propose to amend said Development Agreement.

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

1. Section 4 of the Development Agreement shall be amended to read as follows:

SECTION 4: Time for commencement and completion of improvements. The construction of the improvements on Parcel 1 shall be commenced in any event on or before May 1, 2003 and except as otherwise provided in this Agreement, shall be completed on or before June 1, 2004. For the purposes of this Section 4, "commenced" shall mean the commencement of any on-site or off-site work in connection with the development of Parcel 1.

2. Section 7, subsection (i) of the Development Agreement shall be amended to read as follows:

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

Civic Partners Sioux City L.L.C.  
Attn: J. S. Clements  
3961 MacArthur Boulevard, Suite 212  
Newport Beach, CA 92660

With copies to:

Charles L. Corbett  
400 Security National Bank Bldg.  
423 - 6<sup>th</sup> Street  
P.O. Box 3527  
Sioux City, IA 51102

Charles M. Koosmann, AIA  
8 Afton Coulee Ridge  
Afton, MN 55001

3. Section 8, subsection (f), subsection (5) of the Development Agreement shall be amended to read as follows:

- (5) The City shall provide and pay for the design and construction of Fourth Street between Jones and Virginia Streets as shown in Exhibit "D" or any subsequent site plan to be approved by the City, together with all other public improvements which are to be completed in connection with

Fourth Street, including, but not limited to, sidewalks and historic lighting. Such street and associated public improvements shall be completed on or before June 1, 2004.

4. Section 8, subsection (f) of the Development Agreement shall be amended by adding a new subsection (6) to read as follows:

- (6) The City is providing certain financing as set forth in Section 8(f)(2) of the Agreement. The City and the Redeveloper agree that the City shall provide such financing (hereinafter, the "Contribution") in the form of a nonshareholder capital contribution by City to Redeveloper's affiliated member, Civic Sioux City Corporation ("Contributee"), pursuant to the terms of a contribution agreement between the City and the Contributee substantially in the form attached hereto as Exhibit "H" (the "Contribution Agreement"). The City and the Redeveloper acknowledge and agree that the Contribution Agreement shall be executed in a form and substance as shall be approved by the City's counsel consistent with the purposes and intention of the Agreement. Redeveloper shall take all actions necessary to cause Contributee to report its receipt of the Contribution as a nonshareholder contribution of capital under Section 118 of the Internal Revenue Code of 1986. Redeveloper shall cause Contributee to utilize the Contribution solely and only for the purposes set forth in the Agreement.

The City shall provide to the Project the payments provided for in the Agreement on such schedule and in such manner and amounts as shall be agreed to among the City, the Redeveloper and the construction lender for the Project. Amounts advanced by the City shall be subject to the terms of the Contribution Agreement whether advanced in a single or multiple payments. The Redeveloper agrees that the City may advance such payments directly to the construction lender on account for the Contributee.

Except as provided herein, the City neither undertakes nor assumes nor will have any responsibility or duty to the Redeveloper or to any third party with respect to the Contribution. The Redeveloper and all third parties shall rely upon its or their own judgment regarding such matters.

Nothing in this Third Amendment or the Agreement shall make the City responsible for making or completing capital or other repairs or replacements to the Project or require the City to expend funds to make or complete the same other than as contemplated in the Agreement. Representatives of the City may enter onto the Project during normal business hours (upon reasonable advance notice and subject to the rights of tenants under their leases) to inspect the progress of any capital repairs and replacements and the general condition of the Project.

5. In all other respects, the Development Agreement entered into by the parties on November 19, 2003, as amended June 10, 2002 and November 4, 2002, be and the same is hereby ratified, confirmed and approved.

CITY OF SIOUX CITY, IOWA

CIVIC PARTNERS SIOUX CITY L.L.C.

By: Craig S. Berenstein  
Craig S. Berenstein, Mayor

By: J.S. Clements J.S. Clements  
Its: an attorney in fact AS ATTORNEY in fact

ATTEST: Robert K. Padmore  
Robert K. Padmore, City Clerk

Date: 2-20-03

Date: 2-20-03

STATE OF IOWA )

: ss

COUNTY OF WOODBURY)

BE IT REMEMBERED, on this 20<sup>th</sup> day of February, 2003, before me the undersigned, a Notary Public in and for Woodbury County, personally appeared Craig S. Berenstein. 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 Craig S. Berenstein 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 WOODBURY



STATE OF Iowa )

: ss.

COUNTY OF Woodbury )

On this 20th day of February, 2003, before me, the undersigned a Notary Public in and for said County and State, personally appeared J.S. Clements, to me personally known, who being by me duly sworn, did say that he is its attorney in fact, 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 J.S. Clements 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.

(SEAL)

Melinda L. Trobaugh  
NOTARY PUBLIC IN AND FOR WOODBURY COUNTY



## AGENCY CONTRIBUTION AGREEMENT

This AGENCY CONTRIBUTION AGREEMENT ("Agency Contribution Agreement"), effective as of February \_\_, 2003, is entered into by and between the Redevelopment Agency of Sioux City (the "Contributor") and Civic Sioux Corporation, a California corporation (the "Recipient").

### RECITALS

A. On or about \_\_\_\_\_, the Contributor, Recipient and \_\_\_\_\_, L.P., a California limited partnership ("Partnership") entered into that certain Amended and Restated Development Agreement ("Development Agreement"). Under the Development Agreement, Agency agreed to make a non-shareholder capital contribution to Recipient in the amount of \$ \_\_\_\_\_ ("Contribution"). Capitalized terms not defined in this Agency Contribution Agreement shall have the meanings given to the in the Development Agreement

B. The Agency is making the Contribution in order to benefit the community by providing \_\_\_\_\_ and will fund an investment in that certain project located in Sioux City consisting of \_\_\_\_\_ on approximately 8.63 acres located at \_\_\_\_\_ (the "Project"). The proceeds of this Agency Contribution Agreement are to be used exclusively in order to advance the development of the Project.

C. Recipient has agreed to contribute the Contribution to Partnership, the owner of the Project.

The Contributor wishes to make the Contribution to Recipient, with the understanding that Recipient will in turn contribute the Contribution and this Agency Contribution Agreement to the Partnership in order that the Contribution and the proceeds therefrom are used to advance the Project.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and for other valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

#### 1. Contribution.

(a) Subject to the terms and conditions of this Agency Contribution Agreement, the Contributor hereby contributes the Contribution and all proceeds to be derived therefrom to the Recipient, as a non-shareholder capital contribution, as of February \_\_, 2003 (the "Contribution Date").

The Contribution is made free and clear of all objections, liens, pledges, claims, rights of first refusal, security interests, mortgages or other encumbrances of any nature whatsoever.

2. **Conveyance Instruments.** In order to effectuate the Contribution, the parties have, or will soon hereafter, execute and deliver, or cause to be executed and delivered, all such documents or instruments of assignment, transfer or conveyance as the parties and their counsel shall deem necessary or appropriate to effectuate the Contribution. The Recipient or its successor(s) in interest to the Contribution shall bear the costs of effectuating such Contribution.

3. **Representations and Warranties of Contributor.** As of the Contribution Date, the Contributor represents and warrants to the Recipient that:

(a) There is no litigation, dispute, action or claim against any person, whether pending or threatened, pertaining to the Contribution.

(b) Contributor is the owner of the Contribution and Contributor and each of the parties executing this Agreement on behalf of the Contributor, has the authority to execute this Agreement, contribute the Contribution to the Recipient and perform the obligations of Contributor created by this Agreement without the consent or approval of any other person(s).

(c) Each and every representation and warranty hereinabove made by Contributor is true and correct and does not omit to state a material fact as of the date made and each representation and warranty shall survive the performance of the parties' obligations under this Agency Contribution Agreement.

4. **Representations and Warranties of Recipient.** As of the Contribution Date, the Recipient represents and warrants to the Contributor that:

(a) Recipient shall contribute the Contribution and this Agency Contribution Agreement to the Partnership.

(b) Recipient shall treat the Contribution as a non-shareholder capital contribution under Section 118 of the Internal Revenue Code of 1986.

(c) Recipient acknowledges and agrees that the proceeds of this Agency Contribution Agreement are to be used in order to benefit the public by providing \_\_\_\_\_ to the community, and the proceeds of this Agency Contribution Agreement are to be used exclusively in order to advance the purposes of the Project.

(d) Recipient shall not use this Agency Contribution Agreement or any proceeds therefrom to pay dividends, salaries or other amounts owing to Recipient's members or manager.

(e) Each and every representation and warranty hereinabove made by Recipient is true and correct and does not omit to state a material fact as of the date made and each representation and warranty shall survive the performance of the parties' obligations under this Agreement.

6. **Receipt of Cash or Other Proceeds.** If at any time after the date hereof, Recipient receives any cash or other proceeds that are derived or become available from this Agency Contribution Agreement, Recipient shall be obligated hereunder to immediately make a special distribution of such cash or other proceeds to the Contributor for return to the Agency pursuant to Contributor's agreement with the Agency.

7. **Broker's Commission.** Each party acknowledges and represents to the other party that they have not utilized the services of any broker with respect to this transaction. Contributor and Recipient shall each defend, indemnify and hold harmless the other from all claims of brokers, agents or finders in connection with this transaction by each broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party respecting the transaction contemplated hereunder.



8. **Cooperation with the Recipient.** Contributor agrees to join Recipient in the execution of any and all necessary documents in connection with the Contribution, so long as such actions are at the sole expense and obligation of the Recipient.

9. **Governing Law.** This Agency Contribution Agreement, and all rights and obligations created by it, shall be interpreted in accordance with the laws of the State of \_\_\_\_\_, and the court in the County of \_\_\_\_\_ shall be the forum for any action arising hereunder.

10. **Limitation on Liability of the Recipient and Others.** No recourse under or upon any obligation or covenant of this Agency Contribution Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against: (i) any Member of the Recipient; or (ii) any corporate general partner, member, incorporator, shareholder, officer or director of any Member of the Recipient, as the case may be.

11. **Binding.** This Agency Contribution Agreement inures to the benefit of, and is binding on the parties, their respective heirs, personal representatives, successors and assigns.

12. **Entire Agreement.** This document when executed by Contributor shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, and agreements, whether oral or written. Any subsequent amendment, including an oral modification supported by new consideration, must be reduced to writing and signed by both parties before it will be effective.

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IN WITNESS WHEREOF, the parties hereto have executed this Agency Contribution Agreement as of the date first above written.

**CONTRIBUTOR:**

**RECIPIENT:**