


Roll 693 Image 2913-2948  
Document 2761 Type DEVAG Pages 36  
Date 8/27/2007 Time 12:45 PM  
Rec Amt \$182.00

PATRICK F GILL, AUDITOR AND RECORDER  
WOODBURY COUNTY IOWA 

Prepared By Patty Heagel and Return to: P.O. Box 447, Sioux City, Iowa 51102 Telephone No. (712) 279-6103.

AGREEMENT FOR PARKING FACILITY DEVELOPMENT

FOR PRIVATE REDEVELOPMENT IN THE

CENTRAL SIOUX CITY URBAN RENEWAL AREA

BY AND BETWEEN

THE CITY OF SIOUX CITY, IOWA

PO BOX 447, SIOUX CITY, IOWA 51102

AND

WARFIELD BUILDING, L.L.C.

P.O. BOX 1268, DAKOTA DUNES, S.D. 57049

Legal Description:

Middle Sioux City E 100 Ft Lots 1-2-3 Block 22; and

The West 50 feet of Lots 1, 2, & 3, Block 22, Middle Sioux City Addition, Sioux City, Woodbury County, Iowa.

**STATE OF IOWA**

**Woodbury County**

**CITY OF SIOUX CITY**


**Office of the City Clerk**

I, Lisa L. McCardle, 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 2007-0436 adopted by the City Council of the City on the 21<sup>st</sup> day of May, 2007, upon the call of yeas and nays thereof duly had and recorded.

Dated at Sioux City, Iowa this 22<sup>nd</sup> day of May, 2007



(SEAL)

  
\_\_\_\_\_  
LISA L. McCARDLE  
CITY CLERK

Complete and Return to  
MR. NOTH

(This Notice to be posted)

NOTICE AND CALL OF PUBLIC MEETING

Governmental Body: The City Council of Sioux City, Iowa.  
Date of Meeting: May 21, 2007  
Time of Meeting: 4:00 o'clock P.M.  
Place of Meeting: Council Chambers, City Hall, Sioux City, Iowa.

PUBLIC NOTICE IS HEREBY GIVEN that the above mentioned governmental body will meet at the date, time and place above set out. The tentative agenda for said meeting is as follows:

- Resolution approving an Agreement for Parking Facility Development and related Parking License Agreement (Parking License Agreement recorded at Roll 692 Image 7750-7769, on 7-26-07)

Such additional matters as are set forth on the additional 6 page(s) attached hereto.  
(number)

This notice is given at the direction of the Mayor pursuant to Chapter 21, Code of Iowa, and the local rules of said governmental body.



\_\_\_\_\_  
Lisa L. McCardle, City Clerk, Sioux City, Iowa

May 21, 2007

The City Council of Sioux City, Iowa, met in regular session, in the Council Chambers, City Hall, Sioux City, Iowa, at 4:00 o'clock P.M., on the above date. There were present Mayor Craig S. Berenstein, in the chair, and the following named Council Members:

Jason Geary, Brent Hoffman, David W. Ferris, and

James Rixner

Absent: None

\* \* \* \* \*

Council Member Brent Hoffman then introduced the following Resolution entitled "RESOLUTION APPROVING AN AGREEMENT FOR PARKING FACILITY DEVELOPMENT, AND RELATED PARKING LICENSE AGREEMENT", and moved that the same be adopted. Council Member Jason Geary seconded the motion to adopt. The roll was called and the vote was,

AYES: Jason Geary, Brent Hoffman, and David W. Ferris

NAYS: James Rixner

ABSTAIN: Craig S. Berenstein

Whereupon, the Mayor declared the resolution duly adopted as follows:

**RESOLUTION NO. 2007-0437**

**RESOLUTION APPROVING AN AGREEMENT FOR PARKING FACILITY DEVELOPMENT, AND RELATED PARKING LICENSE AGREEMENT**

WHEREAS, this Council found and determined that certain areas located within the City are eligible and should be designated as urban renewal areas under Iowa law, and approved and adopted the Combined Central Sioux City CBD Urban Renewal Project Area (the "Project Area"), which area is described in the Amended and Restated Urban Renewal Plan (the "Urban Renewal Plan") approved for such area by Resolution No. 87/T-5714 on August 10, 1987; and

WHEREAS, pursuant to a Development Agreement for Sale of Land for Private Redevelopment dated November 27, 2006 (the "Development Agreement") between the City and Connelly, Tiehen & Sons, Inc., a South Dakota corporation, and an Assignment of Redevelopment Agreement dated February 23, 2007 from Connelly, Tiehen & Sons, Inc. to Warfield Building, L.L.C., an Iowa limited liability company (the Developer"), (together, the "Development Agreement"), the Developer has acquired certain real property located in the foregoing Project Area as more particularly described in Exhibit A annexed thereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, under the Development Agreement, the Developer has agreed to cause certain "minimum improvements" to be made to the Pierce Building located on the Development Property, consisting generally of roof replacement, tuckpointing, structural repairs, first floor window replacement, site utilities and landscaping (the "Minimum Improvements"); and

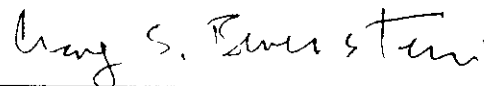
WHEREAS, it has been proposed that the City construct a parking ramp facility on real property adjoining the Development Property, a portion of which would then be licensed to the Developer, all in accordance with an Agreement for Parking Facility Development and an attached Parking License Agreement (together, the "Agreement"), the form of which is now before this Council; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 403 and 15A of the Iowa Code, taking into account the factors set forth therein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, IOWA:

Section 1. That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as may be approved by such officers with the advice of the City Attorney, and that from and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

PASSED AND APPROVED this 21<sup>st</sup> day of May, 2007.



\_\_\_\_\_  
Craig S. Berenstein, Mayor

ATTEST:




\_\_\_\_\_  
Lisa L. McCardle, City Clerk

CERTIFICATE

STATE OF IOWA )  
 ) SS  
COUNTY OF WOODBURY )

I, the undersigned City Clerk of Sioux City, Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of said Municipality showing proceedings of the Council, and the same is a true and complete copy of the action taken by said Council with respect to said matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of said agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by said law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no Council vacancy existed except as may be stated in said proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of said Municipality hereto affixed this 21<sup>st</sup> day of May, 2007.

  
\_\_\_\_\_  
Lisa L. McCardle, City Clerk, Sioux City, Iowa

SEAL  
DCORNELLA\S34673.1\WP\11114130



AGREEMENT FOR  
PARKING FACILITY DEVELOPMENT

THIS AGREEMENT FOR PARKING FACILITY DEVELOPMENT (hereinafter called "Agreement"), is made on or as of the 21<sup>st</sup> day of July, 2007, by and among the CITY OF SIOUX CITY, IOWA, a municipality (hereinafter called "City"), established pursuant to the Code of Iowa of the State of Iowa and acting under the authorization of Chapter 403 of the Code of Iowa, 2007, as amended (hereinafter called "Urban Renewal Act"), and WARFIELD BUILDING, L.L.C., an Iowa limited liability company having an office for the transaction of business at P.O. Box 1268, Dakota Dunes, South Dakota 57049 (the "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the clearance and reconstruction or rehabilitation of a slum and blighted area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Combined Central Sioux City CBD Urban Renewal Project Area (the "Project Area"), which area is described in the Amended and Restated Urban Renewal Plan (the "Urban Renewal Plan") approved for such area by Resolution No. 87/T-5714 on August 10, 1987; and

WHEREAS, pursuant to a Development Agreement for Sale of Land for Private Redevelopment dated November 27, 2006 between the City and Connelly, Tiehen & Sons, Inc., a South Dakota corporation, and an Assignment of Redevelopment Agreement dated February 23, 2007 from Connelly, Tiehen & Sons, Inc. to the Developer (together, the "Development Agreement"), the Developer has acquired from the City certain real property located in the foregoing Project Area as more particularly described in Exhibit A annexed hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, under the Development Agreement, the Developer has agreed to cause certain "minimum improvements" to be made to the Pierce Building located on the Development Property, consisting generally of roof replacement, tuckpointing, structural repairs, first floor window replacement, site utilities and landscaping (the "Minimum Improvements"); and

WHEREAS, the City is willing to construct a parking ramp facility on real property adjoining the Development Property, a portion of which would then be licensed to the Developer in accordance with this Agreement; and

WHEREAS, the City believes that the development of the Development Property and construction of the City Improvements described herein pursuant to this Agreement and the fulfillment generally of this Agreement, are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

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

#### ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to the other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement and all exhibits hereto, as the same may be from time to time modified, amended or supplemented.

Bonds shall mean the general obligation bonds or notes issued by the City for the purpose of paying costs of construction of the City Improvements.

City means the City of Sioux City, Iowa, or any successor to its functions.

City Improvements shall mean the construction of the Parking Facility by the City on the City's Adjacent Property, together with all related landscaping and site improvements.

City's Adjacent Property means the property upon which the Parking Facility shall be constructed, which is currently owned by the City and located adjacent to the Development Property, as more particularly described on Exhibit B and attached hereto and made a part hereof.

Code means the Code of Iowa, 2007, as amended.

Commencement Date means the date of the issuance by the City of an occupancy permit for the Parking Facility.

Developer means Warfield Building, L.L.C., an Iowa limited liability company, and its successors and assigns.

Event of Default means any of the events described in Section 8.1 of this Agreement.

Minimum Improvements shall mean the construction activities to be undertaken by the Developer on the Development Property, together with all related site improvements described in the Development Agreement.

Parking Facility means the structured parking ramp facility being constructed by the City on the City's Adjacent Property, as described in Exhibit C hereto.

Termination Date means the date of expiration of this Agreement, as established in Section 9.7 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City).

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

- (a) The City is a municipal corporation and political subdivision organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.
- (b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City

is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

Section 2.2. Representations and Warranties of Developer. The Developer makes the following representations and warranties:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Iowa, is qualified to do business in the State of Iowa and has all requisite corporate power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

(b) This Agreement has been duly and validly authorized, executed and delivered by the Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the articles of organization or operating agreement of the Developer or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

(d) There are no actions, suits or proceedings pending or threatened against or affecting the Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of the Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform its obligations under this Agreement or the Development Agreement.

(e) The Developer will cause the Minimum Improvements to be constructed and operated in accordance with the terms of Development Agreement, the Urban Renewal Plan and all local, State and federal laws and regulations.

(f) The construction of the Minimum Improvements will require a total investment of not less than \$1,700,000.

(g) The Developer has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). The Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and the Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

(h) The Developer has firm commitments for construction or acquisition and permanent financing for the Minimum Improvements in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Development Agreement.

(i) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the City Improvements.

(j) The Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be substantially completed by December 31, 2008.

### ARTICLE III. CONSTRUCTION OF CITY IMPROVEMENTS

Section 3.1. Construction of City Improvements. Subject to Unavoidable Delays, issuance of the Bonds as described in Section 3.2 hereof, and to compliance with all public bidding requirements applicable thereto, the City shall (i) reimburse the Developer for up to \$200,000 in design costs incurred by Developer in connection with the design of the Parking Facility, and documented to City's satisfaction and (ii) cause construction of the City Improvements to be undertaken and completed by the City by no later than December 31, 2007, or by such other date as the parties shall mutually agree upon in writing, all in accordance with the prevailing technical specifications, standards and practices of the City. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

Section 3.2. Financing of City Improvements. The City shall finance the costs of construction of the City Improvements to be undertaken and completed by it on such terms and conditions as it shall determine to be satisfactory. The Developer recognizes that the City Improvements will be financed largely from the proceeds of the sale of the Bonds by the City, and agrees that such Bonds may be sold at such time, on such terms and conditions, bear such interest rates, and mature at such times and in such amounts as the City shall determine to be reasonably acceptable to it. The City's obligation to issue said Bonds for such purposes shall be subject in all respects to Unavoidable Delays and to satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by the Code with respect to the issuance of general obligation bonds for such purposes.

Section 3.3. Maintenance. Maintenance of the Parking Facility shall be the responsibility of the City, and shall be provided at the same level as is currently provided by the City for comparable public parking facilities in other areas of the City.

#### ARTICLE IV. PARKING LICENSE

Section 4.1. Grant of License. Upon request of the Developer at any time following issuance of the Bonds by the City, but by no later than the Commencement Date, the City and the Developer shall execute and enter into a Parking License Agreement substantially in the form attached hereto as Exhibit D and hereby made a part hereof, under which the City shall grant to the Developer an exclusive license to use the parking spaces located on the lower or basement level of the Parking Facility for the purpose of providing vehicle parking for tenants of the Pierce Building. The Developer's use of such spaces shall be subject in all respects to the limitations and provisions set forth in the Parking License Agreement.

#### ARTICLE V. COVENANTS OF THE DEVELOPER

Section 5.1. Maintenance of Development Property. The Developer will maintain, preserve and keep the Development Property in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions.

Section 5.2. Maintenance of Records. During the term of this Agreement the Developer will keep at all times proper books of record and account in which full, true and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of the Developer in accordance with generally accepted accounting

principles, consistently applied throughout the period involved, and the Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 5.3. Compliance with Laws. The Developer will comply with all laws, ~~rules and regulations relating to its businesses; other than laws, rules and regulations the~~ failure to comply with which or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of the Developer.

Section 5.4. Non-Discrimination. The Developer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age or disability. The Developer shall ensure that applicants for employment are considered, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, age or disability.

Section 5.5. Insurance. The Developer shall obtain and maintain builders' risk, property damage, and liability insurance coverages in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverage as the City may reasonably require, and shall provide evidence of such coverages to the City upon request.

Section 5.6. Other Obligations. The Developer's obligations under the Development Agreement, and any obligations assumed by the Developer in connection with the Developer's receipt of economic assistance from the State or any department thereof, shall be deemed to be obligations of the Developer under this Agreement. The Developer agrees to provide copies to the City of all loan or grant agreements entered into by the Developer with respect to such assistance or incentives received by the Developer.

## ARTICLE VI. ASSIGNMENT AND TRANSFER

Section 6.1. Status of the Developer; Transfer of Substantially All Assets. As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the Termination Date, the Developer will maintain its existence as a limited liability company and will not wind up or otherwise dispose of all or substantially all of its assets or assign its interest in this Agreement to any other party unless (i) the transferee partnership, corporation, limited liability company or individual

assumes in writing all of the obligations of the Developer under this Agreement and (ii) the City consents in writing thereto.

## ARTICLE VII. INDEMNIFICATION

### Section 7.1. Release and Indemnification Covenants.

(a) The Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article, the "indemnified parties") from, covenants and agrees that the indemnified parties shall not be liable for, and agrees to indemnify, defend and hold harmless the indemnified parties against, any loss or damage to property or any injury to or death of any person occurring at or about the Development Property or resulting from any defect in the Minimum Improvements.

(b) Except for any negligence on the part of the indemnified parties, or any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the indemnified parties, the Developer agrees to protect and defend the indemnified parties, now or forever, and further agrees to hold the indemnified parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Developer against the City to enforce its rights under this Agreement), or (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements.

(c) The indemnified parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

(e) The provisions of this Article shall survive the termination of this Agreement.



## ARTICLE VIII. REMEDIES

Section 8.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- (a) Failure by the Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of the Development Agreement;
- (b) Transfer of any interest in this Agreement by the Developer or other violation of the provisions of Article VI of this Agreement;
- (c) Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;
- (d) The Developer shall:
  - (A) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or
  - (B) make an assignment for the benefit of its creditors; or
  - (C) admit in writing its inability to pay its debts generally as they become due; or
  - (D) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or of the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against the Developer, and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment; or
- (e) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the

Developer pursuant to this Agreement or the Development Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in ~~Section 8.1~~ of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under subsections (d) or (e) of said Section 8.1) the giving of sixty (60) days' written notice by the City to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or if the Event of Default cannot reasonably be cured within sixty (60) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

(a) The City may suspend its performance under this Agreement and the Parking License Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement;

(b) The City may terminate this Agreement and the Parking License Agreement;

(c) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement; or

(d) The City shall be entitled to recover from the Developer, and the Developer shall re-pay to the City, an amount equal to the sum of the then-remaining rental payments to be made by the Developer under the Parking License Agreement, and the City may take any action, including any legal action it deems necessary, to recover all such amounts from the Developer.

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

#### ARTICLE IX. MISCELLANEOUS

Section 9.1. Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) In the case of the Developer, is addressed or delivered personally to the Developer at P.O. Box 1268, Dakota Dunes, South Dakota 57049; Attn: Manager; and

(b) In the case of the City, is addressed to or delivered personally to the City at City Hall, 405 - 6th Street, Sioux City, Iowa 51102, Attn: Mayor;

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

Section 9.2. 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 9.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.4. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 9.5. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 9.6. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9.7. Termination Date. Except as may be specifically provided herein, the provisions of this Agreement shall terminate and be of no further force or effect on and after June 30, 2058.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer has caused this Agreement to be duly executed in its name and behalf by its Manager, all on or as of the day first above written.



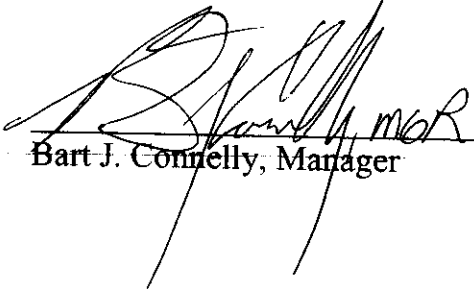
CITY OF SIOUX CITY, IOWA

By: Craig S. Berenstein  
Mayor Craig S. Berenstein

ATTEST:

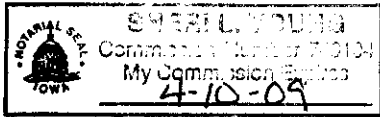
By: Lisa L. McCardle  
City Clerk Lisa L. McCardle

WARFIELD BUILDING, L.L.C.

By:   
Its: Bart J. Connelly, Manager

STATE OF IOWA )  
 ) SS  
COUNTY OF WOODBURY )

On this 24<sup>th</sup> day of July, 2007, before me a Notary Public in and for said County, personally appeared Craig Berenstein and Lisa L. McCardle to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Sioux City, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.



Sherill L. Young  
Notary Public in and for Woodbury  
County, Iowa

STATE OF IOWA )  
 ) SS  
COUNTY OF WOODBURY )

On this 24<sup>th</sup> day of July, 2007, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared Bart J. Connelly, by me personally known, who, being by me duly sworn, did say that he is the Manager of Warfield Building, L.L.C., an Iowa limited liability company, and that said instrument was signed on behalf of said limited liability company; and that the said Bart J. Connelly, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

Sally M. O'Donnell  
Notary Public in and for Woodbury County,  
Iowa



## EXHIBIT A

### DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property is described as consisting of all that certain parcel or parcels of land located in the City of Sioux City, County of Woodbury, State of Iowa, more particularly described as follows:

Middle Sioux City E 100 ft. Lots 1-2-3 Block 22; and the West 50 feet of Lots 1, 2 and 3, Block 22, Middle Sioux City Addition, Sioux City, Woodbury County, Iowa



## EXHIBIT B

### DESCRIPTION OF CITY'S ADJACENT PROPERTY

The City's Adjacent Property is described as consisting of all that certain parcel or parcels of land located in the City of Sioux City, County of Woodbury, State of Iowa, more particularly described as follows:

Lots 10, 11 and 12, Block 22, Middle Sioux City, Sioux City, Woodbury County, Iowa.

EXHIBIT C

CITY IMPROVEMENTS

The City Improvements shall consist of the construction, in accordance with the Schedule of Performance set forth below, of an approximately \_\_\_\_\_ space, two-level structured parking ramp facility on the City's Adjacent Property, as more particularly shown and in substantially the same configuration as the preliminary site plan attached hereto and made a part hereof.

Schedule of Performance

<u>Activity to be Completed</u>	<u>Completion Date</u>
Issuance of Permits for Construction	
Foundation Permits	
Building Permits	
Site Preparation Completed	
Substantial Completion	
Issuance of Occupancy Permit	

EXHIBIT D

PARKING LICENSE AGREEMENT

This Parking License Agreement ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between the CITY OF SIOUX CITY, IOWA, a municipal corporation (the "City"), and WARFIELD BUILDING, L.L.C. ("Warfield"), an Iowa limited liability company.

WITNESSETH:

WHEREAS, the City will construct a structured parking ramp facility consisting of approximately \_\_\_\_\_ parking spaces (the "Parking Facility") on the City block located generally at the northeast corner of 3rd and Jones Streets in the City, with approximately \_\_\_\_\_ spaces being underground and \_\_\_\_\_ spaces being first level or surface parking, all as described with more particularity on Exhibit A attached hereto (the "Property"); and

WHEREAS, the City desires to grant to Warfield a license to use \_\_\_\_\_ (\_\_\_\_\_) parking spaces in the Parking Facility pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Term. The City hereby grants to Warfield the exclusive right to use \_\_\_\_\_ (\_\_\_\_\_) parking spaces located on the basement or lower level of the Parking Facility (the "Licensed Spaces"), commencing on the first day of the month following issuance of a Certificate of Occupancy for the Parking Facility and continuing for a term of fifty (50) years, subject, however, to the limitations set forth in this Agreement, and to City's receipt of certifications acceptable to it to the effect that the Parking Facility has an expected useful life of at least fifty (50) years.

2. Right to Use Licensed Spaces. The City hereby grants to Warfield the right to use the Licensed Spaces for vehicle parking, subject to the reasonable rules and regulations established by the City and as such may be changed from time to time. The City may make, modify and enforce reasonable rules and regulations relating to the parking of vehicles in the Parking Facility, and Warfield shall abide by such reasonable rules and regulations. Warfield shall promptly pay any fees or charges due the City

pursuant to such rules and regulations. The City will issue to Warfield the aforesaid number of parking stickers and/or access cards, each of which will authorize parking in the Parking Facility of a vehicle upon which the sticker is displayed, or the City will provide a reasonable alternative means of identifying and controlling vehicles authorized to be parked in the Parking Facility. The City may terminate this Agreement as to any space, person, card, sticker or credential for violation of its rules or regulations, upon thirty (30) days written notice to Warfield.

3. Rent. (a) As rental for the Licensed Spaces provided under this Agreement, Warfield agrees to pay the City an annual base rental fee equal to 102% of the aggregate amount of debt service due in each fiscal year on the Bonds issued by the City to construct the Parking Facility, less all amounts collected by the City during that fiscal year as tax increment revenues under Section 403.19 of the Code of Iowa in respect of the first \$4 million of taxable valuation assessed against the Parking Facility and the adjoining Pierce Building.

(b) In addition, the City shall annually determine, in conjunction with its approval of the City's operating budget, the operating, maintenance and capital expenditures required for the Parking Facility during the next fiscal year, and shall allocate a portion of said expenditures to the Licensed Spaces, which amount shall then be added to the annual base rental fee due under subsection (a) above. All such operating, maintenance and capital expenditures shall be determined by the City in a reasonable manner consistent with cost-effective management. The allocation of expenditures between the public spaces and the Licensed Spaces shall generally be based on the number of public spaces and Licensed Spaces within the Parking Facility unless, in the reasonable judgment of the City, a particular expenditure is substantially attributable to the use of either the public spaces or the Licensed Spaces, in which case up to 100% thereof may be allocated by the City to either the public spaces or the Licensed Spaces, as the case may be. In each instance, the City's allocation of such expenditures shall be conclusive. The City shall notify Warfield in writing, on or before May 1 of each year, of the amount thus determined to be payable by Warfield during the next fiscal year.

(c) The total annual amount due under this Section 3 shall be payable by Warfield in twelve (12) equal monthly installments during the applicable fiscal year on the first day of each month. Payments received after the 5th day of the month in which they are due shall be considered delinquent and a delinquency charge equal to five percent (5%) of the payment amount shall be added to the payment otherwise due.

(d) At any time during the term hereof, Warfield may pay to the City an amount determined by the City to be sufficient to pay when due, or upon optional redemption, all remaining debt service due on the portion of the Bonds. In such event, Warfield shall

thereafter be liable only for the annual share of operating, maintenance and capital expenditures which are allocated to the Licensed Spaces, as described above.

4. Real Estate Taxes. Warfield agrees to pay all real estate taxes that may be imposed upon any property subject to this Agreement by reason of Warfield's use of such property.

5. Improvements to Parking Facility. Warfield may make enhancements to the basement or lower level of the Parking Facility and may construct a doorway connection to the adjoining Pierce Building from the basement or lower level. Warfield also may erect signs indicating that the Licensed Spaces are devoted exclusively to the use of Warfield and any sub-licensees. Warfield agrees to obtain the City's prior written consent and approval of plans and specifications before removing any existing improvements or beginning construction of its doorway to the Pierce Building and any signage and other enhancements. City shall not unreasonably withhold its approval. All construction shall be pursuant to building permit and shall meet all applicable codes. Plans and specifications for all proposed improvements shall be delivered to the City Manager of the City. The City shall have twenty (20) business days in which to review and approve any plans and specifications submitted. If plans and specifications are not rejected by City within twenty (20) business days, they shall be deemed approved. At termination of this Agreement, all such improvements shall be removed by Warfield at Warfield's expense or shall become City's property.

6. Limitations. Warfield's rights under this Agreement are subject to limitations, as follows:

a) The City may interrupt Warfield's use of the Parking Facility in its discretion for repairs, maintenance, safety, casualty or any other reason it deems sufficient. In the event any Licensed Spaces are not available because of events or contingencies wholly within the control of the City, the rent shall abate pro rata during the time said spaces are unavailable and the City shall refund such amount to Warfield. The City shall provide reasonably close (as the City shall determine) replacement parking during any periods of such interrupted use.

b) At any time the City determines that the Parking Facility or a substantial portion thereof has been destroyed, damaged or rendered unsafe or otherwise inappropriate for use, and cannot be repaired and returned to a serviceable condition under the then-approved fiscal year's budget for the Parking Facility, it may terminate this Agreement upon written notice to Warfield.

c) This Agreement provides for a mere license of use as described herein within the Parking Facility while the City uses the first level or surface area of the Parking Facility for public parking of vehicles. It does not obligate the City to continue such use of the first level or surface area of the Parking Facility or to provide any particular level of service therein; provided, however, that if the City materially reduces the level of service to the Parking Facility, Warfield may terminate this Agreement.

7. Damage or Destruction. If the Parking Facility, or any part thereof, shall be destroyed or rendered unusable, either in whole or in part, by fire or other casualty and the City does not exercise its rights to terminate this Agreement under Subparagraph 6(b), the City shall within 60 days of such fire or other casualty repair and restore the Parking Facility to its previous condition, unless prevented from doing so based upon causes or factors beyond the City's reasonable control. Until fully restored and repaired, any monthly rental obligation shall be abated in the same proportion as the unusable portion of the Licensed Spaces. This Agreement shall continue in full force and effect during said restoration.

8. Surrender of Possession. Upon expiration of the term of this Agreement, whether by lapse of time or otherwise, Warfield shall promptly and peacefully surrender use of the Licensed Spaces and return all parking access and/or identification cards to the City.

9. Renewal Option. Warfield shall have the option to renew this Agreement for two (2) additional five (5) year terms upon the same terms and conditions of this Agreement. Warfield shall provide written notice to the City of Warfield's intent to renew this Agreement at least ninety (90) days prior to the end of the applicable term.

10. Sub-license. During the term of this Agreement, Warfield may sub-license the use of the Licensed Spaces to other parties who are tenants (or employees of tenants) of Warfield in the adjoining Pierce Building. All such use shall remain subject to the City's rights under the law and this Agreement. Notwithstanding any such sub-license, Warfield shall remain liable for all payments due and performance of its obligations under this Agreement.

11. City Default - Warfield Remedies. The occurrence of one or more of the following events shall constitute a material default and breach of this Agreement by the City:

- (i) the failure of the City to comply with any of the terms and conditions of this Agreement within sixty (60) days after written notice of such failure has been given by Warfield to the City;
- (ii) the Parking Facility has not been completed and a Certificate of Occupancy has not been issued by \_\_\_\_\_, 20\_\_\_\_, subject to unavoidable delays for such things as natural disasters, war, civil unrest or labor disruptions.

In the event of a material default under subsection (ii) hereof, Warfield shall have the right to terminate this Agreement upon written notice to the City and each party shall have no further obligations to the other under this Agreement. In the event of a material default under subsection (i) hereof, Warfield shall have the right to terminate this Agreement upon written notice to the City and notwithstanding whether Warfield exercises such right to terminate, Warfield shall have available all legal and equitable remedies to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

12. Warfield Default - City Remedies. The occurrence of one or more of the following events shall constitute a material default and breach of this Agreement by Warfield:

- (i) the failure by Warfield to comply with any of the provisions set forth in Paragraph 3 related to the payment of rental fees for parking; or
- (ii) the failure of Warfield to comply with any of the other terms and conditions of this Agreement within sixty (60) days after written notice of such failure has been given by the City to Warfield.

In the event of any such material default by Warfield, the City shall have the right to terminate this Agreement upon written notice to Warfield and notwithstanding whether the City exercises such right to terminate, the City shall have available all legal and equitable remedies necessary to collect any payments due under this Agreement or to enforce performance and observance of any obligation, agreement or covenant of Warfield under this Agreement.

13. Non-Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained unless so provided in writing by the parties.

14. Indemnification. The parties to this Agreement shall bear all responsibility and liability for the negligence, fault and willful conduct of their own agents, employees, contractors and invitees. The parties hereby agree to indemnify and hold each other harmless against and from any and all claims for damages or injury arising from the fault, negligence or willful conduct of their own agents, employees, contractors or invitees. ~~Notwithstanding the above, the City assumes no responsibility whatsoever for any loss, injuries or damages to persons utilizing the Licensed Spaces, or to any vehicles or their contents utilizing the Licensed Spaces pursuant to this Agreement.~~

15. Costs and Attorney's Fees. If either party brings any legal action against the other party for claims, arising out of or relating to this Agreement, the prevailing party shall be entitled to a reasonable sum for attorney's fees (including in the case of the City the value of any services rendered by the City Legal Department) and costs incurred in such suit.

16. Severability. If any term of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to a person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term of this Agreement shall be valid and enforceable to the full extent permitted by law.

17. No Partnership. Nothing herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of principal and agent or of any partnership or joint venture between the parties hereto.

18. Successors and Assigns. The City shall have the right to assign, mortgage or otherwise encumber all of its right, title and interest in the Property and the Parking Facility at any time without notice to Warfield, but subject to this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, administrators and assigns.

19. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

20. Notices. All notices under this Agreement must be delivered in person or mailed by registered or certified mail, return receipt requested, postage prepaid, to the parties at their addresses set forth below:



City of Sioux City  
Attn: City Manager  
405 - 6th Street  
Sioux City, Iowa 51102

Warfield Building, L.L.C.  
Attn: Bart J. Connelly, Manager  
P.O. Box 1268  
Dakota Dunes, South Dakota 57049

21. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

22. Representation and Warranty. Both parties represent, warrant and acknowledge that they have full authority to comply with all provisions contained in this Agreement, that this Agreement is being executed with full corporate authority and that the persons whose signatures appear hereon are duly authorized to execute this Agreement.

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

THE CITY OF SIOUX CITY, IOWA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

WARFIELD BUILDING, L.L.C.

By: \_\_\_\_\_

Its: **Bart J. Connelly, Manager**

STATE OF IOWA )  
 ) ss:  
COUNTY OF WOODBURY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public, personally appeared ~~CRAIG BERENSTEIN and LISA L. MCCARDLE~~, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Sioux City, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Resolution No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that CRAIG BERENSTEIN and LISA L. MCCARDLE acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

STATE OF IOWA )  
 ) ss:  
COUNTY OF WOODBURY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared Bart J. Connelly, by me personally known, who, being by me duly sworn, did say that he is the Manager of Warfield Building, L.L.C., an Iowa limited liability company, and that said instrument was signed on behalf of said limited liability company; and that the said Bart J. Connelly, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for Woodbury County,  
Iowa

## EXHIBIT A

### DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property is described as consisting of all that certain parcel or parcels of land located in the City of Sioux City, County of Woodbury, State of Iowa, more particularly described as follows:

Middle Sioux City E 100 feet Lots 1-2-3, Block 22; and the West 50 feet of Lots 1, 2 and 3, Block 22, Middle Sioux City Addition, Sioux City, Woodbury County, Iowa.