

FILE NO. 002751
 FEE 81
 BOOK 584 PAGE 780

AMENDATORY AGREEMENT

95 JUN 12 AM 9:03

DRENDA ESAIAS
 PAGE CO. RECORDER
 CLEARING, IOWA

This Amendatory Agreement entered into 23 day of May, 1995 ("Effective Date") by and among Valley Farms, Inc., an Iowa corporation ("Valley Farms"), C & H Partnership, an Iowa general partnership ("C&H"), ACN Partnership, an Iowa general partnership ("ACN"), C & H Shenandoah Partners, L.P., an Iowa limited partnership ("Shenandoah Partners"), Dale V. Nelson ("DVN"), Thomas E. Colby ("TEC") and Clark A. Colby, Jr. ("CAC") (DVN, TEC and CAC being collectively the "Partners").

RECITALS

This Agreement is made with to the following facts and circumstances:

A. Valley Farms and C&H entered into a certain Option Agreement effective November 1, 1993 ("Option Agreement") pursuant to which C&H had the option to purchase the real estate described in Exhibit "A", attached hereto and by this reference made a part hereof ("Real Estate").

B. Valley Farms and C&H entered into a First Amendment to Option Agreement on April 28, 1994.

C. C&H exercised its option under the Option Agreement, subsequent to which Valley Farms conveyed the Real Estate to C&H by a corporate warranty deed filed on October 3,

1994, in Book 580, Page 241 of the Records of the County Recorder of Page County, Iowa.

D. The original partners of C&H were DVN and John T. Grandquist ("Grandquist").

E. TEC and CAC subsequently acquired Grandquist's interest in C&H as it related to the Real Estate.

F. Subsequent to receiving title to the Real Estate, C&H conveyed to Shenandoah Partners the real estate described in Exhibit "F", attached hereto and by this reference made a part hereof ("Apartment Building Site").

G. C&H subsequently conveyed to ACN the Real Estate excluding the Apartment Building Site ("Tract II").

H. DVN, TEC and CAC are the general partners of ACN and Shenandoah Partners and are substituted general partners of C&H.

I. Pursuant to subsection B of Article XIII of the Option Agreement, C&H is obligated, at its sole expense, to:

" . . . extend and complete the street running from Highway 59 on the south side of the Real Estate to the east boundary of the Real Estate."

The extension of said street shall hereinafter be referred to as the "Street".

J. The construction of the Street upon the south boundary of the Real Estate is of significant value to Valley Farms as it greatly increases the value of the real property

owned by Valley Farms south of the Real Estate. Accordingly, the obligation of C&H to construct the Street in a timely manner was a material portion of the total consideration received by Valley Farms in exchange for the Real Estate. Without such obligation, Valley Farms would not have conveyed the Real Estate to C&H.

K. ACN, having acquired Tract II, has assumed, without the consent of Valley Farms, C&H's obligation to construct the Street.

L. Ambiguities have arisen as to the obligations of each of the parties hereto with respect to the construction of the Street as required under the Option Agreement. The parties hereto desire to resolve said ambiguities, in writing, by this Amendatory Agreement.

AGREEMENT

In consideration of the foregoing Recitals which are incorporated into and are made a part of this Amendatory Agreement, and in further consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree, subject to the terms and conditions hereinafter set forth, as follows:

1. Construction of Street. ACN shall design and construct, at its sole expense, the Street over the southerly portion of the Real Estate. Said design and construction shall be in accordance with all specifications and requirements of the

City of Shenandoah, Iowa, ("City"). The Street shall extend from Highway 59 to the east boundary of the Real Estate, as specified in the Option Agreement, subject to City approval. In the event the City disapproves, the Street shall be designed and constructed, at ACN's sole expense, in a manner acceptable to both the City and Valley Farms; provided, however, that Valley Farms' acceptance may not be unreasonably withheld. The right-of-way for the Street shall be the same as the actual right-of-way for that portion of Seventh Avenue which lies immediately west of the Real Estate. ACN shall cause, at its sole cost and expense, the Street and right-of-way therefor to be dedicated to the City for public use not later than upon the completion of the construction thereof. The south boundary of the right-of-way for the Street shall be the south boundary of the Real Estate. ACN shall provide to Valley Farms copies of all specifications, drawings and applications for approval of the construction of the Street prior to the commencement of construction.

2. Utilities. The parties hereto acknowledge that the extension of the City water main and City sanitation sewer (collectively the "City Utilities") so as to service the Real Estate or the real property south of the Real Estate is not part of the obligation of C&H and ACN to construct the Street as herein set forth. However, it is conceivable that the City Utilities may have to be extended in the future within the

right-of-way of the Street in order to service the real property adjoining the Street. In the event either ACN or Valley Farms desires to extend the City Utilities, the party desiring to extend the City Utilities shall give the other written notice of its desire to do so. ACN and Valley Farms shall thereafter enter into negotiations regarding the sharing of the cost of so extending the City Utilities. If the parties are unable to reach an agreement regarding the sharing of the cost of extending the City Utilities, either party shall be entitled to extend the City Utilities within the right-of-way of the Street at that party's sole expense. If Valley Farms elects to extend the City Utilities, Valley Farms shall be entitled to do so without any payment or compensation of any type to ACN. However, it is specifically agreed that in the event either Valley Farms or ACN extends the City Utilities without participation by the other, no party, specifically including, without limitation, any party hereto or any of its successors, ("Subsequent User") may hook up to the City Utilities, as so extended, before paying to the party extending the City Utilities, or its successor, a "hook up fee". In the event the Street is extended from Highway 59 to the east boundary of the Real Estate by either Valley Farms or ACN, the hook up fee shall equal fifty percent (50%) of the cost of extending the City Utilities plus seven percent (7%) interest thereon, per annum,

from the date of completion of the extension of the City Utilities to the date of hook up.

3. Term. The actual physical construction of the Street shall commence no later than July 1, 1996, or the date on which final funds with respect to the forty-eight (48) units of Affordable Housing being constructed on the Apartment Building Site are released to Shenandoah Partners from escrow, whichever occurs first. The construction of the Street shall be completed no later than ninety (90) days after commencement of construction.

4. Liquidated Damages. The parties hereto acknowledge that the marketing of the real property owned by Valley Farms immediately south of the Real Estate is dependent upon the construction of the Street. Accordingly, ACN agrees to pay Valley Farms the sum of One Hundred Dollars (\$100) for each day (Saturdays, Sundays and holidays being specifically included) that the construction of the Street remains uncompleted beyond the completion date identified in §3 above. It is hereby agreed that such sum is the proper measure of liquidated damages that Valley Farms will sustain, per diem, by the failure to complete the construction of the Street in the time stipulated. This sum is not to be construed in any sense as a penalty.

5. Reconveyance and Completion of Street. It is agreed by all parties hereto that the construction of the Street

in a timely manner is of great value to Valley Farms. Accordingly, in the event the construction of the Street is not begun by August 16, 1996, ACN shall, if and when Valley Farms so elects, convey to Valley Farms by warranty deed the south 65 feet of the Real Estate, or the actual right-of-way required by the applicable government agency to extend Seventh Avenue, ("Right-Of-Way") free and clear of all encumbrances, in exchange for Ten Dollars (\$10), for the sole purpose of allowing Valley Farms the opportunity to construct the Street at ACN's sole expense. Said conveyance shall be in addition to the liquidated damages set out in §4 above. Liquidated damages shall no longer be incurred after the conveyance of the Right-Of-Way to Valley Farms. One Hundred percent (100%) of the liquidated damages incurred prior to the date of said conveyance shall be paid to Valley Farms contemporaneous with the delivery of the Warranty Deed for the Right-Of-Way.

Upon delivery of the Warranty Deed for the Right-Of-Way, Valley Farms may construct the Street and, in such event, shall be entitled, upon demand, to be reimbursed by ACN for all costs incurred by Valley Farms in connection with the construction of the Street. ACN agrees to pay to Valley Farms, upon demand, in addition to the liquidated damages, all costs to construct the Street incurred by Valley Farms plus interest thereon at the rate of 12% per annum from and after the date each cost of construction is paid by Valley Farms. In computing

the amount due by ACN to Valley Farms for the construction of the Street, ACN shall receive credit for an amount equal to the liquidated damages previously paid by ACN to Valley Farms less thirty percent (30%) of the total liquidated damages due by ACN to Valley Farms pursuant to the terms hereof.

6. Personal Liability. By execution hereof, the Partners hereby assume personal liability, jointly and severally, for all obligations of C&H and ACN to Valley Farms as set forth in the Option Agreement and this Amendatory Agreement.

7. Force Majeure. C&H, ACN and the Partners shall not be liable for any failure to perform as a result of their, or their contractors', inability to obtain raw materials, parts or supplies through usual and regular sources (or on a timely basis), interruption of transportation, delays in delivery, government regulation, labor disputes, strikes, war, fire, flood, accidents, or other causes beyond their control making it impossible for them to perform.

8. No Release. Notwithstanding any provision herein to the contrary, Valley Farms, by execution hereof, does not release C&H, or any of its original general partners, in whole or in part, from any of their obligations under the Option Agreement, specifically including, without limitation, the construction of the Street in a timely manner and does hereby expressly retain and preserve all rights and remedies to enforce

the obligations of C&H against C&H and its previous and current general partners, including but not limited to Grandquist.

9. Miscellaneous. The following miscellaneous provisions shall apply to this Amendatory Agreement:

9.1 Notices. All notices or other communications required or permitted to be given, pursuant to the terms of this Amendatory Agreement, shall be in writing and shall be deemed to be duly given when received if delivered in person or by facsimile and confirmed by mail, or when mailed by certified mail (return receipt requested) or express mail, postage prepaid, as follows:

If to Valley Farms: Mrs. Clara Jane Matthews
c/o Valley Farms, Inc.
P.O. Box 26
513 West Sheridan Avenue
Shenandoah, IA 51601

With copy to: Lawrence J. Beckman, Esq.
Smith Peterson Law Firm
35 Main Place, Suite 300
P.O. Box 249
Council Bluffs, IA 51502

If to any other party: Mr. Walter F. Schroeder
c/o ACN Partnership
304 - 15th Street
Des Moines, IA 50309

or at such other address as the party to whom notice is to be given furnishes in writing to the other party in the manner set forth above.

9.2 Entire Agreement. The Option Agreement and this Amendatory Agreement sets forth the entire understanding of the parties with respect to the Street and said agreements may not be changed except in writing signed by each party hereto.

- 9.3 Construction and Interpretation. This Amendatory Agreement shall be construed and interpreted in accordance with the laws of the State of Iowa.
- 9.4 Specific Performance. Without limiting the remedies of any party, the obligations hereunder of the parties shall be subject to a decree for specific performance by any court having jurisdiction.
- 9.5 Binding Effect, Benefits. This Amendatory Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; nothing in this Amendatory Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Amendatory Agreement.
- 9.6 Counterparts. This Amendatory Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 9.7 Partner Is Agent of Partnership as to Partnership Business. DVN, TEC and CAC, by execution hereof, acknowledge that each, independently, has authority to act on behalf of C&H, ACN and Shenandoah Partners and that the execution hereof by DVN, TEC and CAC, or any of them, on behalf of said partnerships binds said partnerships to the terms hereof.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the dates adjacent their respective signature lines.

VALLEY FARMS, INC.

DATE: 5-23-95

BY: *Clara Jane Matthews*
CLARA JANE MATTHEWS, PRESIDENT

DATE: 5-23-95

BY: *Dale E. Matthews*
DALE E. MATTHEWS, SECRETARY

C & H PARTNERSHIP

DATE: 5-26-95

BY: *Dale V. Nelson*
DALE V. NELSON, GENERAL PARTNER

ACN PARTNERSHIP

DATE: 5-26-95

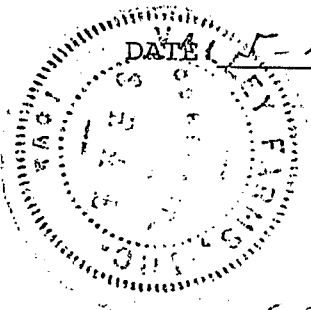
BY: *Dale V. Nelson*
DALE V. NELSON, GENERAL PARTNER

DATE: 6-1-95

BY: *Thomas E. Colby*
THOMAS E. COLBY, GENERAL PARTNER

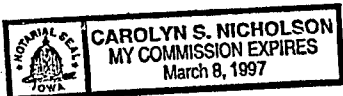
DATE: 6-1-95

BY: *Clark A. Colby, Jr.*
CLARK A. COLBY, JR., GENERAL PARTNER



STATE OF IOWA)
) ss.
COUNTY OF Polk)

On this 26th day of May, 1995, before me, the undersigned, a notary public in and for the State of Iowa, personally appeared DALE V. NELSON, to me personally known, who being by me duly sworn did say that the person is one of the General Partners of ACN Partnership, C & H Partnership, and C & H Shenandoah Partners, L.P., and that said instrument was signed on behalf of the partnerships by authority of the partners, and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnerships, by them and by the partner voluntarily executed. Further, DALE V. NELSON acknowledged that he executed the instrument as his individual act and deed.

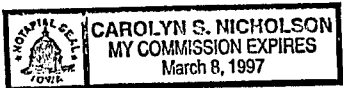


Carolyn S. Nicholson

NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA)
) ss.
COUNTY OF Polk)

On this 1st day of ^{June}~~May~~, 1995, before me, the undersigned, a notary public in and for the State of Iowa, personally appeared THOMAS E. COLBY, to me personally known, who being by me duly sworn did say that the person is one of the General Partners of ACN Partnership and C & H Shenandoah Partners, L.P., and that said instrument was signed on behalf of the partnerships by authority of the partners, and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnerships, by them and by the partner voluntarily executed. Further, THOMAS E. COLBY acknowledged that he executed the instrument as his individual act and deed.



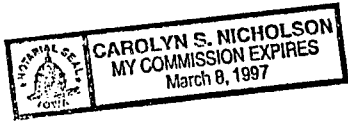
Carolyn S. Nicholson

NOTARY PUBLIC IN AND FOR SAID STATE

STATE OF IOWA)
) ss.
COUNTY OF Polk)

On this 1st day of ^{June}~~May~~, 1995, before me, the undersigned, a notary public in and for the State of Iowa, personally appeared CLARK A. COLBY, JR., to me personally known, who being by me duly sworn did say that the person is one of the General Partners of ACN Partnership and C & H Shenandoah Partners, L.P., and that said instrument was signed on behalf of

the partnerships by authority of the partners, and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnerships, by them and by the partner voluntarily executed. Further, CLARK A. COLBY, JR. acknowledged that he executed the instrument as his individual act and deed.



Carolyn S. Nicholson

NOTARY PUBLIC IN AND FOR SAID STATE

EXHIBIT "A"

A parcel of land located in the Northwest Quarter of the Southwest Quarter, Section 19, Township 69 North, Range 39 West of the 5th P.M., in the City of Shenandoah, Page County, Iowa, more particularly described as follows:

Beginning at the Southwest corner of Lot 16, Nishna Valley 2nd Addition, City of Shenandoah, Iowa; thence South along the East line of Lots 2, 3 and 4 of the irregular survey of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of 19-69-39 a distance of 565.05 feet to the Northeast corner of Lot 5 of the irregular survey of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of 19-69-39; thence N 89°21'54" E a distance of 966.50 feet; thence N 00°16'35" E a distance of 565.09 feet; thence S 89°21'54" W along the South line of Nishna Valley 2nd Addition a distance of 969.23 feet; to the point of beginning. Containing 12.55 acres more or less.

EXHIBIT "F"

A parcel of land located in Parcel "A" of the Northwest Quarter of the Southwest Quarter of Section 19, Township 69 North, Range 39 West of the 5th P.M., in the City of Shenandoah, Page County, Iowa, as shown by Survey recorded in Book 578, Page 912, in the office of the Page County Recorder, more particularly described as follows:

Beginning at the Northwest Corner of said Parcel "A", thence N89°21'54"E along the North line of said Parcel "A", a distance of 470 feet; thence South a distance of 355 feet; thence S89°21'54"W a distance of 470 feet, thence North along the west line of said Parcel "A" a distance of 355 feet to the point of beginning.

LJB/F-Valley.bp05.2295

Filed for Record this 12 day of June, 1995, at 9:03 o'clock A.M.
BRENDA ESAIAS Page County Recorder Document Number 2751 Fee \$ 81⁰⁰