

City of Scottsbluff, Nebraska

Monday, March 6, 2017

Regular Meeting

Item Reports2

Council to consider consent of the sale of the Lincoln House to Cimarron Real Estate Investments, LLC and the assumption of two Community Development Block Grant loans of \$100,000 and \$25,000.

Staff Contact: Nathan Johnson, City Manager

Cindy Dickinson

From: John A. Selzer <jaselzer@simmonsolsen.com>
Sent: Wednesday, March 01, 2017 1:54 PM
To: Cindy Dickinson
Cc: Nathan Johnson; Chris Burbach; Kent Hadenfeldt; John L. Selzer
Subject: RE: Lincoln House [IWOV-SOLF1.FID198803]

Cindy – the purchase agreement provides for the sale to Cimarron Real Estate Investments, LLC, a Colorado limited liability company. The contract has several contingencies including the assumption of the USDA/RD loan which I believe is the first mortgage lien. The assumption of the City CDBG Loan is not mentioned as a contingency but the contract does say that the amount of any other loan Buyer is able to assume will be credited against the purchase price.

I don't believe there is any legal reason the Council can't consent to the sale of the property and assumption of the loan. If the Council doesn't consent and the other contingencies are met and the sale goes forward, the CDBG loan would have to be paid. If the Council consents to the sale and loan assumption, the CDBG loan would be due and payable under its terms which would be in 2030. That decision is up to the Council.

When the CDBG loan is paid it is my understanding the money would become "program income" and is supposed to be used for CDBG programs in accordance with an approved plan for reuse of that income or returned to the Nebraska Department of Economic Development.

I do note that one of the other contingencies under the purchase agreement is the buyer being able to get an additional USDA loan (besides the assumption of the old USDA loan). If asked, I wouldn't think the City would want to subordinate to any additional loans. Consequently I would think any approval by the City and consent to the assumption would be conditional on the City's security position not changing.

Also, would you please check your file to make sure you have the Term Notes for this matter. There should be a \$25,000.00 Reuse Term Note and a \$100,000.00 CDBG Term Note. The documents sent by Jean only included copies of the "Construction Notes" which were due and payable when the construction was completed and were to be refinanced by execution of the Term Notes. Please send me copies of the signed Term Notes. If you can't find them let me know so we can get replacements.

John

John A. Selzer
Simmons Olsen Law Firm, P.C.
1502 2nd Avenue
Scottsbluff, NE 69361
(308) 632-3811; (308) 635-0907 (Fax)
email: jaselzer@simmonsolsen.com
Website



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March 1, 2017

Cindy Dickinson
City of Scottsbluff
1818 Avenue A
Scottsbluff, NE 69361

RE: Lincoln House Apartments

Dear Ms. Dickinson,

MDI Limited Partnership #48, the owner of Lincoln House Apartments, has entered into a purchase agreement with Cimarron Real Estate Investments, LLC (CREI). The purchase agreement is attached. CREI is planning to assume all debt and rehab the property. Therefore we are asking the City's consent to the sale of the property and also to the assumption of both Community Development Block Grant loans of \$100,000 and \$25,000.

This sale and rehab will assure that Lincoln House will continue to help fulfill the needs of the community for years to come. Thank you for your consideration.

Sincerely,

Jean Huwe
Vice President

AGREEMENT

This Agreement is made effective as of the date last signed below by and between Cimarron Real Estate Investments LLC, a Colorado limited liability company ("Buyer") and MDI Limited Partnership # 48, a Nebraska limited partnership ("Seller").

1. Description:

Seller sells to Buyer the following described real estate along with all permanent improvements on the real estate (the "Real Estate"):

Lot A, Block 12, a replat of lots one (1) through eighteen (18), Block 12,
Original Town Addition, Scottsbluff, Scotts Bluff County, Nebraska,

subject to all easements, restrictions, reservations and rights-of-way of record, and together with all Personal Property (defined in Section 9 below).

2. Purchase Price:

The purchase price is \$1,655,000. The purchase price is payable as follows:

a. A down payment of \$100,000.00 shall be paid by Buyer to Seller within 5 business days of full execution of this Agreement ("Down Payment"). Buyer agrees to deposit the Down Payment with Nebraska Title Company who will conduct the Closing. The Down Payment will become non-refundable only where this Agreement so provides, and upon Closing will be applied towards the Purchase Price.

b. At Closing Buyer will be credited with the actual outstanding balance due as of the Closing Date under United States Department of Agriculture/Rural Development ("USDA/RD") 515 Loan(s) secured by the Real Estate which Buyer assumes. Further, at Closing, Seller shall be credited with the amount of escrow or other deposit(s) or credit(s) Seller may have with any lender under any loan Buyer assumes or accounts USDA requires be transferred to Buyer, including for real estate tax and insurance escrows, replacement reserves and operating accounts, but specifically excluding tenant security deposits if part of any escrow or deposit held by a lender.

c. The balance of the Purchase Price, after prorations and allocations made consistently with this Agreement and shown on the Closing Statement, shall be paid to Seller in cash on the Closing Date.

3. Closing and Possession:

Possession shall be delivered to Buyer at the time of closing (the "Closing Date"). Closing shall take place the earlier of (a) December 1, 2017 or (b) within ten (10) business days following approval of the assumption of the USDA/RD 515 Loan and approval of the application

and award of tax credits by the Nebraska Investment Finance Authority ("NIFA") and fulfillment of all the conditions set forth in this Agreement, but in no event shall it be later than December 1, 2017. Buyer may extend the Closing Date to June 1, 2018 by written notice to Seller prior to December 1, 2017, accompanied by payment of an additional \$50,000 down payment made to Seller. The \$150,000 Down Payment shall be nonrefundable in the event the transactions under this Agreement do not close, for any reason other than (x) Seller's default under this Agreement, or (y) any of the conditions listed in subparagraphs 5(a) and 5(b)(iii) below not being satisfied, but shall be applied to the Purchase Price at Closing. The Closing shall take place at a location and time of day mutually agreeable to the parties. On the Closing Date, Seller shall deliver to Buyer a Special Warranty Deed conveying title free and clear of all liens and encumbrances except those matters of record listed as Exceptions in the Title Commitment referenced in Section 6 below and accepted by Buyer.

4. Due Diligence:

Following the execution of this Agreement, Buyer shall have a one hundred twenty (120) day period ("Due Diligence Period") to complete inspections and reviews of the Real Estate, Personal Property and operations of the Seller to determine the suitability of the transaction for the Buyer's intended use. In order to facilitate the Due Diligence Period and Buyer's financing efforts, Seller agrees to provide Buyer within fifteen (15) days (thirty days for items in d., i. and j.) after this Agreement is signed by both parties written documentation consisting of the following:

- a. Operating Statements. Income and expense statements for the prior two (2) years,
- b. Leases and Rent Roll. All leases for the Real Estate and the current rent roll with names of tenants, apartments rented, commencement and ending date of each lease, any tenant reimbursements, monthly rental rate and security deposit amounts and, in case of a vacant apartment, identification of the vacancy.
- c. Tax Statements. Copies of the last two years' federal tax returns and all property tax statements covering the Real Estate, together with copies of any notices with respect to taxes received by Seller after such tax statements were issued, and any notices of reappraisal of the Real Estate and the current mill levies.
- d. Contractual Documents. Copies of all contracts related to the use and operation of the Real Estate, including without limitation, any laundry leases, equipment purchases, trash contracts, exterminator contracts, roof, painting, siding or maintenance contracts, landscaping or sprinkler contracts, cable or telecommunications contracts, contracts regarding heating, plumbing or electrical equipment, and any warranties related thereto. At Buyer's request, Seller shall assign to Buyer at Closing any of the foregoing contracts that are assignable.
- e. Reports. Copies of all environmental, mechanical, structural or any reports related to the condition of the Real Estate, and construction drawings and as built plans relating to the Real Estate, to the extent within Seller's possession.

f. Personal Property. Inventory of the Personal Property and copies of Personal Property tax records.

g. Litigation. Copies of any on-going lawsuits filed or lawsuits threatened to be filed against Seller or the Real Estate, including without limitation, any administrative or governmental investigations of Seller or the Real Estate.

h. Insurance Policies. Copies of all existing insurance policies and any claims filed in the past two years.

i. Governmental. Copies of any documents or notices received from any governmental entity during the past two years regarding the Real Estate, including without limitation, fire department inspection, utility inspection, building code matters, zoning notices, and all documents and notices relating to the USDA/RD housing program.

j. Utilities. Copies of Seller's utility bills for the past two years.

If following the Due Diligence Period Buyer determines the Real Estate is not satisfactory, then Buyer shall have the right to terminate the Agreement by written notice to Seller within seven (7) days after expiration of the Due Diligence Period, in which event the Down Payment shall be returned to Buyer immediately. If Buyer does not timely provide Seller such notice, Buyer shall be deemed to have determined that due diligence items a. through j. referenced in this Section 4 are in all respects satisfactory to Buyer. Seller warrants the accuracy of the information contained in subparagraphs 4a. (Operating Statements), 4b. (Leases and Rent Roll), 4c. (Tax Statements), and 4f. (Personal Property). With regard to subparagraphs 4d., 4e., 4g., 4h., 4i. and 4j., Seller warrants that any documents so provided are true and complete copies of the documents; provided, however, Seller makes no representation as to the accuracy of any information contained in any third-party-prepared documents referenced in subparagraphs 4d., 4e., 4f., 4g., 4h., 4i. and 4j.

5. Conditions to Obligation to Close:

a. The obligations of Buyer at Closing are subject to the satisfaction of the following conditions:

(i) USDA/RD approval of Buyer assuming Seller's 515 Loan on the Real Estate and granting a new 538 Loan to be applied toward the Purchase Price;

(ii) Approval of the Buyer's tax credit application and an award of tax credits for the Real Estate by the NIFA;

(iii) The express condition that Buyer is able to negotiate, enter into an agreement and close on the purchase of real estate owned by Ben Apartments Limited Partnership, Burbank Apartments Limited Partnership, Cedar Hollow Apartments Limited Partnership, Koch Apartments Limited Partnership, Locust Apartments Limited Partnership, Meadow View Apartments Limited Partnership, Shannon Apartments Limited Partnership, Sheridan Apartments Limited Partnership, Tecumseh Place Limited Partnership, and Washington

Apartments Limited Partnership, all Nebraska limited partnerships ("Limited Partnerships"), which real estate also contains units of low income housing and is considered essential to the purchase of the Real Estate. It is contemplated by Buyer to close both transactions on the same date and at the same time;

(iv) the representations and warranties of the Seller set forth in the Agreement are true and correct in all material respects at and as of the Closing date;

(v) Seller shall have satisfied all of its obligations under this Agreement required to be satisfied on or prior to the Closing Date to the reasonable satisfaction of Buyer or such obligations shall have been waived by Buyer in writing.

The Buyer agrees to diligently pursue obtaining approval of the USDA/RD and NIFA and to enter into an agreement and close the purchase with the Limited Partnerships as well as meet the all the conditions listed above. However, in the event Buyer is unable to obtain the USDA/RD approval and award of NIFA tax credits, or purchase the real estate owned by the Limited Partnerships, then Buyer may elect to terminate this Agreement by written notice to Seller, in which event the Down Payment shall be returned to the Buyer immediately.

b. The obligations of Seller at Closing are subject to the satisfaction of the following conditions:

(i) Seller's general partners and any guarantors of any loans Buyer assumes at closing have been released from all liability thereunder by the lender;

(ii) Buyer shall have satisfied all of its obligations under this Agreement required to be satisfied on or prior to the Closing Date to the reasonable satisfaction of the Seller or such obligations shall have been waived by Seller in writing; and

(iii) Written approval of Seller's limited partners in a form and substance satisfactory to Seller's general partners.

6. Evidence of Title:

Within thirty (30) days of the execution of this Agreement, Seller shall furnish to Buyer a title insurance commitment binder respecting the Real Estate. Buyer shall have thirty (30) days after Buyer's receipt of such commitment (and thirty (30) days after receipt of any updated commitment disclosing any additional title exceptions) to notify Seller of any objections to any matter of record as shown on such commitment. Seller shall have a reasonable time to correct any title defects Buyer timely identifies to Seller and the Closing may be delayed accordingly. If Seller determines it is not practical to cure any title objection of which Buyer may notify Seller, Seller shall have the option to rescind this Agreement by so notifying Buyer in writing, whereupon the Down Payment shall be immediately returned to Buyer.

7. Prorations and Costs:

a. Taxes and Assessments. Seller shall pay all real estate taxes due for the tax year preceding the year in which the Closing occurs. The real estate taxes for the year in which the Closing occurs shall be prorated from January 1 of that year until the Closing Date and allocated to Seller, for which Buyer will be credited for such amount at Closing. All subsequent taxes

shall be the responsibility of Buyer. If the real estate taxes for the year of Closing have not been assessed, they shall be calculated on the basis of the immediately preceding year's real estate taxes. All installments of special assessments, if any, assessed against the Real Estate which would be delinquent if not paid as of the Closing Date, shall be paid in full by the Seller at or prior to the Closing Date. Buyer shall pay subsequent installments of such special assessments.

b. Payment of Expenses. All expenses for the Real Estate owing or incurred prior to the Closing Date shall be paid by Seller. Each of the parties shall pay the fees and expenses of their respective counsel, accountants and other experts and the other expense incident to the financing, negotiation and preparation of the Agreement and consummation of this transaction. Seller has engaged Affordable Housing Investment Brokerage, Inc., as a broker in connection with the sale of the Real Estate and Seller shall pay any fee incurred with such broker as a result of the sale under this Agreement.

c. Rents and Security Deposits. Rents shall be prorated between Buyer and Seller as of the Closing Date. It shall be assumed that all rents due as of the Closing Date have been paid to and received by Seller, unless Seller informs Buyer otherwise and provides an accounting prior to Closing. All rents collected by Buyer on or after the Closing Date but allocable to the period prior to the Closing Date shall be paid by Buyer to Seller. At Closing, Seller shall pay to Buyer all prepaid rents for any period past the month in which the Closing occurs. Seller shall also pay over to Buyer all security deposits paid by any tenant, subject to Seller's rights to apply security deposits to obligations owed by tenants who have vacated the Real Estate prior to Closing. At the Closing Seller shall transfer and assign and Buyer shall assume all leases and tenancies.

8. Risk of Loss:

Risk of loss for all improvements to the Real Estate shall remain with Seller until the Closing. In the event that any improvements are substantially destroyed prior to the Closing Date, either party may declare this Agreement null and void. In that event, the Down Payment shall be returned to Buyer immediately.

9. Personal Property:

a. Excepting only the Excluded Property, all personal property, fixtures, equipment, appliances, drapes and other items of personal property owned by Seller and located on the Real Estate ("Personal Property") are being sold and included in this sale. Attached to this Agreement and marked as Exhibit "A" is a Bill of Sale, Assignment and Assumption for transfer of the Personal Property to Buyer at Closing with the Schedule of such Personal Property to be completed following the Due Diligence Period.

b. Excluded Property. The following described property is specifically excluded from transfer under this Agreement:

(i) Refunds. Any refunds which the Seller may earn by canceling any contract to provide services to Seller or the Real Estate, except for contracts Buyer assumes and escrows and other accounts for which Seller is credited under subparagraph 2.b.

(ii) Property of Tenants and Property Manager. Any property owned by tenants or Costello Property Management, LLC, or other property manager, including the on-site property manager's computer.

(iii) Seller's Other Property. Any property of Seller not used in the operation of the Real Property, provided that Seller provides a list of such property to Buyer prior to the expiration of the Due Diligence Period.

(iv) Accounts. The balance of any Seller deposit account, except for accounts for which Seller is credited under subparagraph 2.b.

(v) Certain Tenant and Other Obligations. Any financial obligation owed by a present or former tenant to Seller for unpaid rents or other financial obligations under any lease between Seller and such tenant, or under any rental assistance or other Seller agreement with USDA/RD. Buyer is not buying any such obligations, and Seller shall receive no credit therefore at Closing.

(vi) Cash and Accounts Receivable. All Seller's cash and accounts receivable as of the Closing Date.

10. Lead-Based Paint Disclosure:

Buyer acknowledges receipt of the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards, which is attached and marked as Exhibit "B." Buyer also acknowledges receipt of a Lead Warning Statement, which is attached and marked as Exhibit "C." Upon complete execution of this Agreement, Buyer and Seller shall complete and sign the Lead Based Paint Disclosure form attached to this Agreement.

11. Environmental Considerations:

Seller acknowledges that chemical contamination of the Real Estate from manmade causes may render the Real Estate unfit for Buyer's intended use. Accordingly, Seller represents and warrants, to the best of Seller's knowledge, that:

a. No sources of chemical contamination exist on the Real Estate which would obligate the Buyer for clean-up expenses under Federal or State environmental law and regulation.

b. There are no tanks, drums or other containers, structures or machinery buried beneath the surface of the Real Estate.

c. Seller's use and occupancy of the Real Estate has not contaminated the Real Estate, and has not violated any applicable statute, law, regulation, rule, ordinance, or other moratorium, or any permit, license, certificate, consent, or approval issued by any governmental or private authority having jurisdiction.

12. Covenants of the Parties:

Seller agrees and covenants with Buyer as follows:

- a. Seller is the owner of the Real Estate and Personal Property, and no other person or entities have any interest in the Real Estate except as shown on the title commitments and Personal Property.
- b. Seller has not done or performed, and Seller will not intentionally do or perform, any act which would in any way interfere with or adversely affect the ability of Seller to complete the conveyance required under this Agreement.
- c. Seller has received no notices, and to the best of its knowledge, no notices have been issued from any governmental authority indicating that the Real Estate is in violation of any zoning, building, environmental, fire or health codes or similar statutes.
- d. There is no actual or threatened, suit or claim resulting from any controversy which may adversely affect the Real Estate or its ownership.
- e. Currently there are no, and as of the date of Closing there shall be no, claims for construction liens or any unpaid amounts for any labor or material which would give rise to construction liens.
- f. No undertaking by Seller under this Agreement will constitute a default by Seller under agreements to which Seller is a party.
- g. Seller has not received any notice of any special assessments which affect the Real Estate, and to Seller's knowledge, no assessments are pending or contemplated.
- h. Seller has used all insurance settlement proceeds payable on account of loss resulting from insurable perils to repair and maintain the Real Estate and improvements thereon. The Seller has not kept or retained any insurance settlement proceeds for the use of the Seller other than to repair the Real Estate and its improvements.
- i. Prior to Closing, Seller will operate and manage the Real Estate in substantially the same manner as it has been operated and managed in the past and will maintain the physical condition of the Real Estate in the same condition as presently exists to the Closing Date, reasonable wear and tear excepted.
- j. There are no other pending agreements to sell the Real Estate to any third party and the Real Estate is not subject to any option, right of first refusal or other agreement under which any third party could claim an interest in the Real Estate.
- k. The person executing this Agreement on behalf of Seller is duly authorized to do so and, as so executed, this Agreement is binding on Seller.

Buyer covenants and agrees with Seller as follows:

a. This Agreement will be a valid and binding obligation on Buyer, enforceable against Buyer in accordance with its terms.

The foregoing covenants and agreements of the parties shall survive Closing for a period of one year from the Closing Date.

13. Non-Merger:

The provisions, covenants, representations and warranties of this Agreement shall survive the Closing and delivery of the Deed and shall not be merged into the Deed.

14. Default:

If either party shall default in the performance of this Agreement, the other party shall have all legal remedies available to them. In the event of a default, the defaulting party shall pay all costs and reasonable attorneys' fees incurred by the non-defaulting party as a result of the default.

15. Smoke Detectors:

Seller shall install all smoke detectors on the Real Estate as required by law.

16. Expenses of Sale Not Addressed:

Seller shall pay for the documentary stamp tax necessary to record the Deed as required by Nebraska Revised Statute §76-901. The cost of the owner's title insurance policy coverage shall be divided equally between Seller and Buyer. Buyer shall pay for the cost of recording the Deed. All closing costs of the title company for closing this transaction shall be equally divided between the parties.

17. Notices:

All notices or other communications which a party is required to give or may be given under this Agreement to the respective parties at the addresses listed below. Any such notices shall be in writing and shall be deemed to have been given if (i) delivered personally, (ii) delivered by courier or overnight delivery service (which provided for a method of tracking delivery) with delivery then considered effective on the date of such delivery, or (iii) delivered by certified or registered mail, return receipt requested, with delivery then considered effective on the first attempted delivery of the mailed notice.

- a. If to the Seller:
MDI Limited Partnership #48

C/O General Partner
1600 University Ave., STE 212
Saint Paul, MN 55014-3825

- b. If to the Buyer:
Cimarron Real Estate Investments LLC
c/o John K. Sollenberger
P.O. Box 272469
Fort Collins, CO 80525

18. General Provisions:

a. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns; provided, however, no assignment of all or any portion of this Agreement shall relieve any party of its obligations under this Agreement.

b. The parties agree to execute and deliver any and all documents which may be reasonably necessary to effectuate the intent and purposes of this Agreement.

c. Time is of the essence. No waiver of any breach of any provision of this Agreement will be deemed a waiver of any other breach of this Agreement. No extension of time for performance of any act will be deemed an extension of the time for performance of any other act.

d. This Agreement may be executed in one or more counterparts, each of which may be considered as an original. Once all parties have signed a counterpart of this Agreement, this Agreement shall be binding on all parties the same as if one Agreement had been signed by all parties.

e. This Agreement shall be construed according to the laws of Nebraska.

f. This Agreement contains the entire agreement of the parties. This Agreement may be amended only in writing signed by all parties.

19. "As Is" Sale

Buyer and Seller hereby expressly agree that the Real Estate and Personal Property is sold on a strictly "as is" basis subject only to Seller's express warranties under this Agreement. Buyer acknowledges that this Agreement provides Buyer adequate rights of inspection and due diligence such that Buyer will have opportunity prior to Closing to become familiar with the Real Estate to the extent Buyer deems necessary or desirable to determine the condition of the Real Estate and Personal Property. Except as expressly provided otherwise in this Agreement, and except for the warranty of title in the Deed, Seller hereby expressly disclaims any and all warranties and representations, express or implied, as to the state of the Real Estate or Personal Property, its boundaries, condition, quality, quantity, character, size or

description or suitability or fitness for any use, whether existing or contemplated, matters of zoning or survey, compliance with any other law, and in any other respects. Buyer and Seller also expressly acknowledge that the Purchase Price provided for in this Agreement reflects these "as is" sale terms.

20. Purchase Price Allocation:

Not later than five (5) business days before the Closing, the parties shall agree to allocate the gross Purchase Price allocable to Personal Property and to Real Estate. Such allocations shall be set forth on Exhibit D hereto.

21. Confidential Information:

In the event the transaction hereunder does not close, Buyer shall return all information Seller provided Buyer hereunder, and all copies thereof. Buyer shall cause any third party to whom Buyer provided such information to comply herewith and hold all such information in strict confidence. This Section shall survive termination of this Agreement.

[SIGNATURE PAGES FOLLOW]

Date: Oct. 27, 2016

Cimarron Real Estate Investments LLC, a Colorado
limited liability company, Buyer

By: _____


John K. Sollenberger
Its: Manager

Date: 11-3-2016, 2016

MDI Limited Partnership #48, a Nebraska limited partnership, Seller

By: 

Gary L. Stenson

Its: ~~General Partner~~

GLS PROPERTIES, LLC, GENERAL PARTNER
BY: GARY L. STENSON, ITS CHIEF MANAGER

LOAN AGREEMENT

\$125,000.00

Date: December 17, 1998

THIS LOAN AGREEMENT ("Agreement") is made as of the date above indicated by and between MDI Limited Partnership #48, A Nebraska Limited Partnership ("Borrower") and The City of Scottsbluff, Nebraska ("Lender").

RECITALS:

A. The Nebraska Department of Economic Development (the "Department") is authorized to disburse certain funds received by the State of Nebraska from the United States Government as Community Development Block Grant ("CDBG") funds for the purposes and in accordance with the requirements set forth in the federal statutes and regulations.

B. Based on information furnished by Borrower and Lender, the Department and Lender have entered into CDBG Contract No. 98-10-105 (the "Grant Contract") for the disbursement of up to \$100,000.00 of CDBG funds ("CDBG Funds") to the Lender.

C. Lender also has available to loan to qualified borrowers certain Rental Rehabilitation Revolving Loan Funds in the amount of \$25,000.00 ("Reuse Funds").

D. Borrower has requested a loan of the CDBG Funds and the Reuse Funds (the "Loan") for the purpose of financing the renovation of the Lincoln Hotel building in Scottsbluff, Nebraska (the "Project") which building is located on the following described real estate:

Lots A, B and C, Block 12, Replat of Lots 1 through 18, Block 12, Original Town Addition to the City of Scottsbluff, Scotts Bluff County, Nebraska, according to the recorded plat thereof

(the "Real Property").

E. Lender and Department have approved the Loan pursuant to the terms of this Agreement and the Grant Contract.

NOW, THEREFORE, the parties hereto agree as follows:

1. Loan. Subject to the terms and conditions of this Agreement, Lender agrees to lend to Borrower the sum of \$125,000.00 to finance the Project. Of this amount the sum of \$25,000.00 will be a loan of Reuse Funds and \$100,000.00 will be a loan of CDBG Funds. Lender's obligation to loan the CDBG Funds is conditional

upon Lender receiving the CDBG Funds under the Grant Contract.

2. Construction Loan Advances; Construction Notes.

A. Draw Down Requests. Loan advances will be made upon written draw down requests from Borrower to Lender's Community Development Division which shall be accompanied by copies of invoices and other documentation Lender may request with regard to the costs incurred in connection with the Project.

B. Loan of Reuse Funds. The Reuse Funds will be loaned by Lender to Borrower prior to any loan of CDBG Funds.

C. Loan of CDBG Funds. The loan of CDBG Funds represents 3.41% of the total cost of the Project. The CDBG Funds will be advanced by Lender as the Project progresses provided that the total cumulative amount of CDBG Funds advanced at any time shall not be greater than 3.41% of the Project costs actually incurred as of that time unless the Department waives this requirement.

D. Construction Notes. The loan of Reuse Funds and the loan of CDBG Funds shall be represented initially by construction notes, in a form satisfactory to Lender, in the amount of \$25,000.00 and \$100,000.00 respectively, to be executed by Borrower (herein referred to as the "Reuse Construction Note" and the "CDBG Construction Note" and together as the "Construction Notes"). Notwithstanding the stated principal amount of the Construction Notes, Borrower will be liable under the Construction Notes only for amounts of principal actually advanced.

E. Due Date of Construction Notes; Term Notes. The Construction Notes will be due upon the earliest of the following (the "Refinance Date"):

- (i) Full advancement of the Loan;
- (ii) Completion of the Project; or
- (iii) September 25, 2000

Upon the Refinance Date, the principal amount owing under the Reuse Construction Note shall be refinanced by the execution of a term note by Borrower (the "Reuse Term Note") and the principal amount owing under the CDBG Construction Note shall be refinanced by the execution of a second term note by Borrower (the "CDBG Term Note"). The Reuse Term Note and the CDBG Term Note are herein collectively referred to as the "Term Notes". The Construction Notes and the Term Notes are collectively referred to herein as the "Promissory Notes".

3. **Interest Rate and Repayment Terms.** No interest shall be owing under the Construction Notes. The Construction Notes shall be due on the Refinance Date. On the Refinance Date the amount owing under the Construction Notes shall be refinanced by the Term Notes. Interest shall be owing under the Term Notes from the Refinance Date at the rate of 1% per annum not compounded. The principal balance of the Term Notes and the interest accrued thereon shall be due and payable in one lump sum 30 years from the Refinance Date. Borrower may, at any time, prepay all or any part of the Loan without penalty. Payments received shall be applied first to the payment of interest owing and the balance to principal.

4. **Application of Payments.** Payments received on the Loan shall be applied to repayment of both the Reuse Funds and the CDBG Funds with each fund receiving the proportion of the payment which is the same percentage as the outstanding Loan amount advanced from that fund bears to the total outstanding Loan amount. For example, if the outstanding Loan amount is \$125,000.00 with \$25,000.00 (20%) owing under the Reuse Term Note and \$100,000.00 (80%) owing under the CDBG Term Note, then 20% of any payment received shall be applied first to repayment of Reuse Term Note and 80% of the payment shall be applied to repayment of the CDBG Term Note.

5. **Deed of Trust.** To secure repayment of the Loan, Borrower agrees to execute and deliver to Lender a Deed of Trust, in a form satisfactory to Lender, covering the Real Property (the "Deed of Trust") which Deed of Trust shall grant to Lender a second lien on the Real Property subject only to a first mortgage/deed of trust lien in favor of USDA/Rural Development.

6. **Covenants.** So long as any indebtedness of the Borrower to the Lender owing under this Agreement or the Promissory Notes remains outstanding and unpaid, unless Lender otherwise consents in writing, Borrower covenants and agrees as follows:

(a) Borrower agrees to pay punctually the principal and interest owing under the Promissory Notes according to their terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of this Agreement.

(b) Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or at any time owing by Borrower to the Lender or any other lender.

(c) Borrower agrees at all times to maintain the Real Property in good condition and repair to the effect that Lender's security will be adequately protected. Lender shall have the right to inspect the Real Property at any reasonable time upon giving 24 hours prior written notice to the Borrower.

(d) Borrower agrees to maintain adequate hazard insurance policies on the Real Property insuring against fire and extended coverage and such other hazards as may be deemed appropriate in amounts and forms sufficient to prevent the Borrower from becoming a co-insurer and issued by a company satisfactory to Lender with acceptable loss payee clauses in favor of the Lender. The insurance coverage shall not be less than the total of the balance owing under the Promissory Notes and any debts secured by liens with priority over the Deed of Trust.

(e) Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its property prior to the date on which penalties are attached, except that the Borrower will not be required to pay any such tax, assessment or governmental charge which is being contested by it, in good faith and by appropriate proceedings.

(f) Borrower agrees to remain qualified and authorized to own property and do business in the State of Nebraska.

(g) Borrower agrees to pay all fees, expenses and charges with respect to the Loan or in any way connected therewith, including, but not limited to, title insurance and survey costs, recording and filing fees, documentary stamp, and any other taxes, fees and expenses payable in connection with this transaction and with the enforcement of this Agreement and the Promissory Notes.

(h) Borrower agrees to indemnify and save the Lender harmless against any and all liabilities with respect to, or resulting from, any delay in discharging any obligations of the Borrower.

(i) Borrower agrees, if at any time Borrower defaults on any provision of this Agreement, to pay to Lender in addition to any other amounts that may be due from the Borrower, an amount equal to the costs and expenses of collection, enforcement or correction or waiver of the default incurred by the Lender.

(j) On request by Lender, Borrower will furnish to Lender evidence satisfactory to Lender, that Borrower has complied fully with all applicable zoning and building laws, ordinances and regulations, and all other applicable federal, state and municipal law requirements.

(k) Borrower agrees to comply with all applicable environmental protection and land use and development laws, ordinances and regulations of all federal, state

and local governmental authorities and agencies having jurisdiction.

(l) Borrower agrees to sign such documents and to take such actions as are necessary to enable Lender to have a second lien on the Real Property second only to a mortgage/deed of trust lien in favor of USDA/Rural Development.

(m) Borrower shall notify Lender in writing of any substantial change in its financial condition or if the security for the Loan or its repayment ability is significantly impaired.

(n) Borrower agrees not to sell, lease, convey or otherwise dispose of any of its property or assets except in the ordinary course of business.

(o) Borrower will not enter into any agreement or other commitment, the performance of which would constitute a breach of any of the covenants contained in this Agreement.

(p) Principals of the Borrower will not permit without the written permission of the Lender any material change in the ownership, structure, control or operation of the Borrower.

(q) Borrower will comply with all requirements of the Grant Contract.

7. **Representations and Warranties.** Borrower represents and warrants to Lender that:

(a) Borrower is a limited partnership duly organized and existing under the laws of the State of Nebraska and has the power to own property and carry on its business as now being conducted, and is duly registered and qualified to do business in the State of Nebraska, and in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such registration and qualification necessary.

(b) MetroPlains Properties, Inc. (the "General Partner") is a Minnesota Corporation and is the General Partner of the Borrower. The General Partner is a corporation duly organized and existing in good standing under the laws of the State of Minnesota, and has the power to own property and to carry on its business as now being conducted, and

is duly qualified to do business in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business make such qualification necessary.

(c) Borrower has full power and authority to enter into this Agreement, to make the borrowing hereunder, to execute and deliver the Promissory Notes, and to grant a lien on the Real Property as provided in the Deed of Trust and to incur the obligations provided for in this Agreement, the Promissory Notes and the Deed of Trust, all of which have been duly authorized.

(d) This Agreement, the Deed of Trust and any other written agreement with Lender, and the Promissory Notes when issued and delivered pursuant to this Agreement and for value received, constitute the valid and legally binding obligations of the Borrower and are enforceable in accordance with their terms.

(e) There is no litigation or proceeding pending against the Borrower or the General Partner, or to the knowledge of the Borrower threatened, which if decided adversely to the Borrower or the General Partner, would have a material effect on their financial condition or business.

(f) All financial statements, schedules and other written documents relating to the financial condition of the Borrower or General Partner, which have been submitted by Borrower to Lender are correct and there has been no material adverse change in the financial condition of the Borrower or General Partner as shown by such statements, schedules or documents.

(g) Borrower has good and marketable title to its assets.

(h) Borrower and General Partner have filed all tax returns which are required and paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the Borrower or General Partner, or other property, by any taxing agency. No tax liability has been asserted by the Internal Revenue Service or any other taxing agency, for taxes materially in excess of those already provided for and the Borrower and General Partner know of no basis for any such deficiency assessment.

(i) Borrower warrants that the proceeds of the Loan will be used as set forth in this Agreement.

8. **Conditions on Lending**. The obligation of the Lender to make the loan advances under this Agreement is subject to the following conditions precedent:

(a) The Borrower shall have executed and delivered to Lender the Deed of Trust and the Construction Notes, and the Lender shall have a lien on the Real Property with the priority as herein provided.

(b) At the time of making any loan advance, including the initial advance hereunder:

(i) Borrower shall have complied with and shall then be in compliance with all terms, covenants and conditions of this Agreement, which are binding upon it;

(ii) There shall exist no Event of Default as defined in this Agreement; and

(iii) The representations, covenants and warranties contained in this Agreement shall be true with the same effect as though such representations, covenants and warranties had been made at the time of making the advance.

(c) Lender shall have received a certified copy of papers evidencing all corporate action taken by the General Partner to authorize the execution, on behalf of Borrower, of this Agreement, the Deed of Trust and the Promissory Notes, as the Lender shall reasonably require.

(d) Lender shall have received a copy of the Partnership Agreement of Borrower and copies of the General Partner's Articles of Incorporation, By-Laws and Certificates of Good Standing.

9. **Events of Default**. The occurrence of any one or ore of the following events will constitute an "Event of Default" by the Borrower under this Agreement:

(a) Nonpayment when due, whether by acceleration or otherwise, of any payment of principal or interest due and owing on the Promissory Notes, which default remains uncured for 15 days after the due date.

(b) Any representation or warranty made by Borrower herein shall prove to have been incorrect in any material respect when made.

(c) A breach or failure of performance by Borrower of any other provision of this Agreement or the Deed of Trust which is not remedied within 15 days after written notice of the same from Lender.

(d) The Borrower or General Partner:

(i) Filing a petition in bankruptcy for the approval of a plan of reorganization or arrangement under the Bankruptcy Act as it now exists or may be amended, or an admission seeking a relief therein provided;

(ii) Being unable to admit in writing its ability to pay its debts when they become due;

(iii) Making an assignment for the benefit of creditors;

(iv) Having a receiver appointed, voluntarily or otherwise, for its property;

(v) Being adjudged a bankrupt;

(vi) Suspending business;

(vii) Permitting a judgment in the amount of \$500.00 or more to be obtained against it which is not promptly paid or promptly appealed and secured pending appeal;

(viii) Becoming insolvent, however, otherwise evidenced; or

(ix) Defaulting in payment or acceleration of any indebtedness owed by the Borrower or General Partner.

(e) A change occurs in the condition or affairs (financial or otherwise) of Borrower or the General Partner which in the opinion of the Lender impairs the Lender's security or increases its risk with respect to repayment of the Loan.

(f) An event occurs which constitutes a default under the Deed of Trust or any agreement intended to secure repayment of the Loan.

Upon the occurrence of an Event of Default which is not cured within the applicable cure period, all indebtedness of Borrower to Lender, at the option of Lender, shall immediately become due and

payable without presentation, demand, protest or notice of any kind, all of which are hereby expressly waived.

10. **Miscellaneous.**

A. **Costs and Fees.** The Borrower shall reimburse Lender, upon demand, for all costs and expenses (including without limitation attorney's fees to the extent allowed by law) paid or incurred by Lender in connection with the enforcement of this Agreement, the Promissory Notes or the Deed of Trust or the collection of any indebtedness of the Borrower to the Lender hereunder or under the Promissory Notes, whether or not suit is filed with respect thereto.

B. **Right of Set Off.** With reference to all indebtedness and liabilities of Borrower to Lender, the Lender may, at any time before or after default, exercise its right to set off all or any portion of the indebtedness owing by Borrower to Lender hereunder against any liability or indebtedness of the Lender to Borrower (whether owned by Borrower alone or in conjunction with any other person or entity, provided that the Borrower has a beneficial interest therein) without notice to the Borrower.

C. **Cumulative Rights and No Waiver.** Each and every right and remedy granted to Lender under this Agreement, the Promissory Notes and the Deed of Trust or any other document delivered in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of Lender to exercise, and no delay in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any right preclude any other future exercise thereof, or the exercise of any other right. No modification or waiver of any provision of this Agreement or of the Promissory Notes or the Deed of Trust, nor any consent to the same shall be effective unless it is in writing and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case will entitle the Borrower to any other or further notice or demand in similar or other circumstances.

D. **Notices.** Any notice required or permitted to be given hereunder may be given by mailing the same by regular mail, with sufficient postage prepaid for first class delivery, addressed as follows:

Notice to Borrower:	MDI Limited Partnership #48
	Spruce Tree Centre
	1600 University Ave. Suite 212
	St. Paul, MN 55104-3825

Notice to Lender:

City of Scottsbluff, Nebraska
1818 Avenue A
Scottsbluff, NE 69361
Attn: City Clerk

E. Severability. The invalidity of any one or more of the covenants, phrases, clauses, sentences or paragraphs of this Agreement, the Deed of Trust, or the Promissory Notes, shall not affect the remaining portions of this Agreement, the Deed of Trust, the Promissory Notes or any other document or instrument executed and delivered in connection herewith or any part thereof, and in case of any such invalidity, this Agreement, the Deed of Trust, the Promissory Notes, or any other document or instrument executed or delivered in connection herewith or therewith, shall be construed as if such invalid covenant, phrase, clause, sentence or paragraph had not been inserted.

F. Applicable Law. This Agreement, the Promissory Notes, and the Deed of Trust and the rights and obligations of the parties hereunder and thereunder shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

G. Survival of Representations and Warranties. All agreements, representations and warranties made by Borrower hereunder or in any other document or certificate delivered to Lender in connection with the transactions contemplated by this Agreement will survive the delivery of this Agreement, the Promissory Notes and the Deed of Trust and will continue in full force and effect so long as the Loan is unpaid.

H. Paragraph Headings. All headings used in this Agreement are for convenience only and will not affect the construction of this Agreement.

I. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

J. Legal Dispute; Jurisdiction. IN THE EVENT ANY DISPUTE OF ANY KIND AMONG OR BETWEEN THE PARTIES TO THIS AGREEMENT RESULTS IN LITIGATION, THE PARTIES CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEBRASKA AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE PROMISSORY NOTES AND THE DEED OF TRUST, SHALL BE LITIGATED IN SUCH COURTS.

K. **Binding Effect.** This Agreement shall be binding upon the successors and assigns of the parties hereto. Borrower may not transfer or assign its rights under this Agreement without the prior written consent of the Lender.

L. **Personal Liability of Partners.** No partner of Borrower, either general or limited, will have any personal liability for repayment of the Loan or for performance of any of Borrower's obligations hereunder.

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

By MDI LIMITED PARTNERSHIP #48,
A Nebraska Limited Partnership,
METROPLAINS PROPERTIES, INC., A
Minnesota Corporation, General
Partner,

By 
Lawrence W. Olson, President

CITY OF SCOTTSDUFF, NEBRASKA,

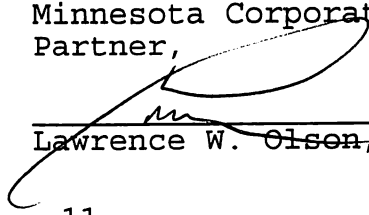
By 

Title: Mayor

WAIVER OF JURY

IN THE EVENT ANY DISPUTE OF ANY KIND AMONG OR BETWEEN THE PARTIES TO THIS AGREEMENT RESULTS IN LITIGATION, TO THE EXTENT ALLOWED BY LAW, THE PARTIES STIPULATE AND AGREE THAT ANY COURT PROCEEDINGS WILL BE HELD BEFORE A JUDGE AND THE PARTIES SPECIFICALLY WAIVE, TO THE EXTENT ALLOWED BY LAW, ANY RIGHT THEY HAVE TO A TRIAL BY JURY.

By MDI LIMITED PARTNERSHIP #48,
A Nebraska Limited Partnership,
METROPLAINS PROPERTIES, INC., A
Minnesota Corporation, General
Partner,

By 
Lawrence W. Olson, President

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CITY OF SCOTTSBLUFF, NEBRASKA,

By

Mark Muni

Title:

Mayor

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