

83-1

FIRST AMENDMENT TO THE DISPOSITION
AND DEVELOPMENT AGREEMENT BETWEEN
LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY
AND VILLAGE PLACE AT LONGMONT, L.P., A
COLORADO LIMITED PARTNERSHIP

This Amendment effective June 8, 1989, is the first amendment to the Disposition and Development Agreement of December 16, 1988, between the Longmont Downtown Development Authority (Authority) and Village Place at Longmont, L.P., a Colorado limited partnership (Developer).

Whereas, the Authority has entered into a contract with the owner of certain parcels of land which constitute part of the area for the development of the housing project; and

Whereas, said contract provides for the closing on such parcels in advance of closing on all of the remaining parcels of land constituting the entire area for the housing project; and

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Whereas, the Developer has by separate contracts with such owner and the Authority, agreed to participate in said closing and pay \$53,000.00, which is approximately one-half of the total purchase price.

Therefore, the Disposition and Development Agreement is amended as follows:

1. The total purchase price designated in Section 11 to be paid by the Developer to the Authority is changed from \$388,000.00 to \$335,000.00.

2. All other provisions of the Disposition and Development Agreement shall remain in full force and effect except as specifically provided otherwise herein.

LONGMONT DOWNTOWN
DEVELOPMENT AUTHORITY

VILLAGE PLACE AT LONGMONT, a
Colorado limited partnership

By: Ronald R. Billings
Chair

By: Thomas E Miller

Attest:

Virginia H. Pearson
Secretary



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DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN
LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY
AND
VILLAGE PLACE AT LONGMONT L.P.,
A COLORADO LIMITED PARTNERSHIP

Effective December 16, 1988



DISPOSITION AND DEVELOPMENT AGREEMENT

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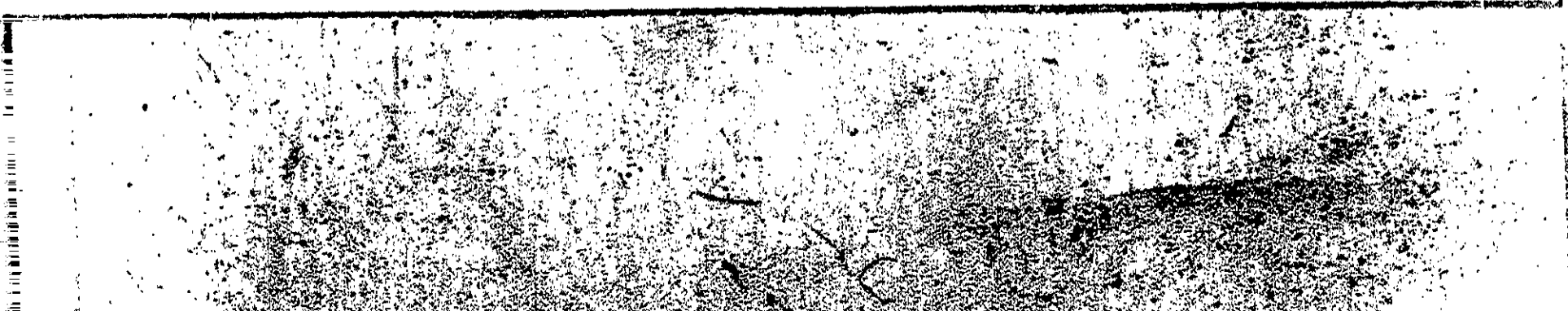
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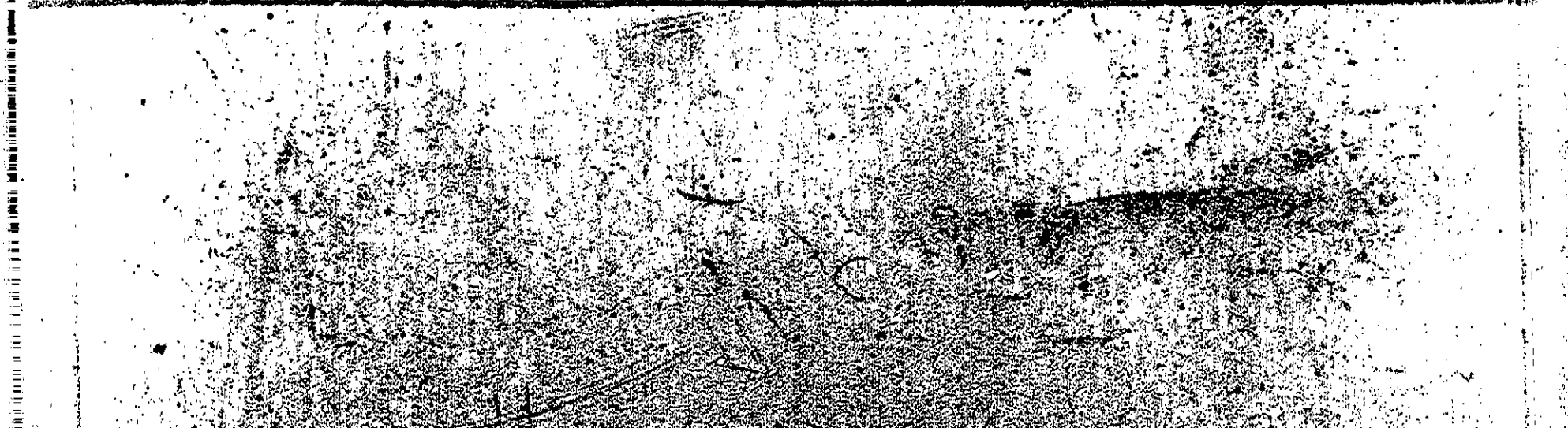
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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT effective December 16, 1988, entered into by and between the LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic ("Authority") and VILLAGE PLACE AT LONGMONT L.P., a Colorado limited partnership ("Developer").

RECITALS

A. In furtherance of the objectives of Title 31, Article 25, Part 8, Colorado Revised Statutes, the City of Longmont, Colorado (the "City") has approved, and the Authority is carrying out, a redevelopment program in downtown Longmont within the Longmont Downtown Redevelopment Area depicted on the map attached to this Agreement as Exhibit A. The redevelopment program is being carried out in accordance with the Master Plan of Development for Downtown Longmont, Colorado, dated July 28, 1987 (the "Plan").

B. The Authority has selected the Developer for the purpose of negotiating an agreement for the acquisition and redevelopment of certain real properties in the downtown area.

C. As part of the downtown redevelopment program in accordance with the Plan, the Authority has offered to acquire said certain properties and the Developer is willing to purchase same and construct certain Improvements (as defined in Article M (Definitions) of this Agreement) thereon according to terms and conditions set forth in this Agreement.



D. The Authority has taken into account the elements of the applicable state law in selling the properties to the Developer for redevelopment, uses, covenants and obligations assumed by the Developer as provided in this Agreement and in accordance with the Plan. The Authority has determined that such transactions are in the best interests of the community and the Authority, and in furtherance of the objectives of the Plan and the applicable state laws.

NOW, THEREFORE, in consideration of the premises, it is agreed as follows:

A. ACQUISITION

1. Subject Property. The property, which is the subject of this Agreement ("Property") consists of various parcels of properties, and is located in the area along Sixth Avenue between Main Street and Coffman Street in downtown Longmont. The Property is described on the attached Exhibit B.

2. Assignment of Real Estate Contracts. The Developer has entered into contracts for the acquisition of the various parcels of real estate, collectively constituting the Property. Developer shall deliver such contracts with all amendments, attachments, extensions and other related documents to the Authority within the time specified in the Schedule of Performance, which Schedule is attached as Exhibit C.

The contracts shall be assigned to the Authority by the Developer as provided in the Schedule of Performance; provided however, assumption of such contracts shall be subject to the



written approval of the Authority at its sole discretion. The Authority shall provide such written verification of assumption of the contracts to the Developer as provided in the Schedule of Performance.

Upon written verification of assumption of the contracts on the various parcels constituting the Property, the Authority agrees to purchase such parcels from the respective property owners within the time specified in the Schedule of Performance.

Notwithstanding any provision of this Agreement to the contrary, the Authority shall not have the obligation to acquire the Property unless and until the Authority has secured the financing it deems necessary, at its sole discretion, to enable it to perform in accordance with the requirements of this Agreement, Colorado statutes (31-25-801 et seq. C.R.S.), the Plan, and subject to the provisions of Section 41 (Authority Contingencies) herein.

The Authority acknowledges that such contracts are subject to existing listing, agency, brokerage or real estate commission contracts which shall also be assigned to the Authority by the Developer as provided herein.

The assignment of the contracts includes assumption of the benefits of the contracts as well as a delegation of the duties of such contracts to the Authority. After assignment, there shall be no further assignments of such contracts by the Authority without the written consent of the Developer so long as the Developer is not in default of this Agreement.

3. Title Information, Insurance and Condition of Property.

A. Title Information. Title commitments for an owner's title insurance policy (ALTA Form B-1970, or the latest revision) issued by Ticor Title Insurance Company designating the Developer as the proposed owner-insured concerning various parcels constituting the Property have been provided, or will be provided effective with the execution of this Agreement to the Authority by the Developer. Developer shall notify Authority in writing of all objections it may have to specific title matters contained in said reports that would interfere with the redevelopment, construction and use of the Property by Developer in accordance with this Agreement on or before the time specified in the Schedule of Performance. Copies of any revised title reports or commitments of title insurance received by the Authority concerning all or any portion of the Property shall be delivered to Developer as received by the Authority. Developer shall notify the Authority in writing within 15 days of receipt of the specific title matters in the said revised reports and commitments that would interfere with the redevelopment, construction and use of the Property by Developer in accordance with this Agreement. Failure of Developer to so notify the Authority in writing as aforesaid shall be presumptive of Developer's approval of such title reports or commitments, and Developer shall not be able to object to the contents of same thereafter.

B. Commitment of Title Insurance. Concurrently with the delivery of the legal description of the Property and within the time requirements of the Schedule of Performance, the Authority shall provide to Developer a commitment for title insurance policy (ALTA Form B-1970, or the latest revision) issued by Minnesota Title Insurance Company, or a local affiliate, designating the Developer as the proposed owner-insured in the amount of the purchase price. The commitment shall agree to insure marketable title to the Property, free and clear of all mechanic's liens, questions of survey, unrecorded interests, rights of parties in possession, or other exceptions not reasonably contemplated herein by the parties concerning the proposed development of the Property. The commitment shall contain such endorsements as Developer may reasonably require, including a zoning endorsement insuring Developer that the Property, as the date of closing, is zoned so as to enable Developer to construct, operate, and occupy the proposed development of the Property. The commitment shall be subject to such exceptions as are provided for in this Agreement, or created as part of Developer's development plans, approved by the Authority and the City or created only by Developer. The commitment shall also be subject to City codes, laws, regulations and requirements agreed upon by the Authority and Developer and any matters to which Developer has not objected as provided in this Section 3. It is the intent of the parties that such commitment contain no title exceptions which would interfere

substantially with the redevelopment, construction and use of the Property by Developer in accordance with this Agreement, the approved development plan, and the Plan.

The Authority hereby agrees that as of the effective date of this Agreement it will not initiate or join with any other party, except Developer, in any zoning changes, plats, replats, grant easements, rights of way, or other interests, or take any action that would in any way affect or cloud the title to the Property that prevents the intended development of the Property, except as provided in this Agreement.

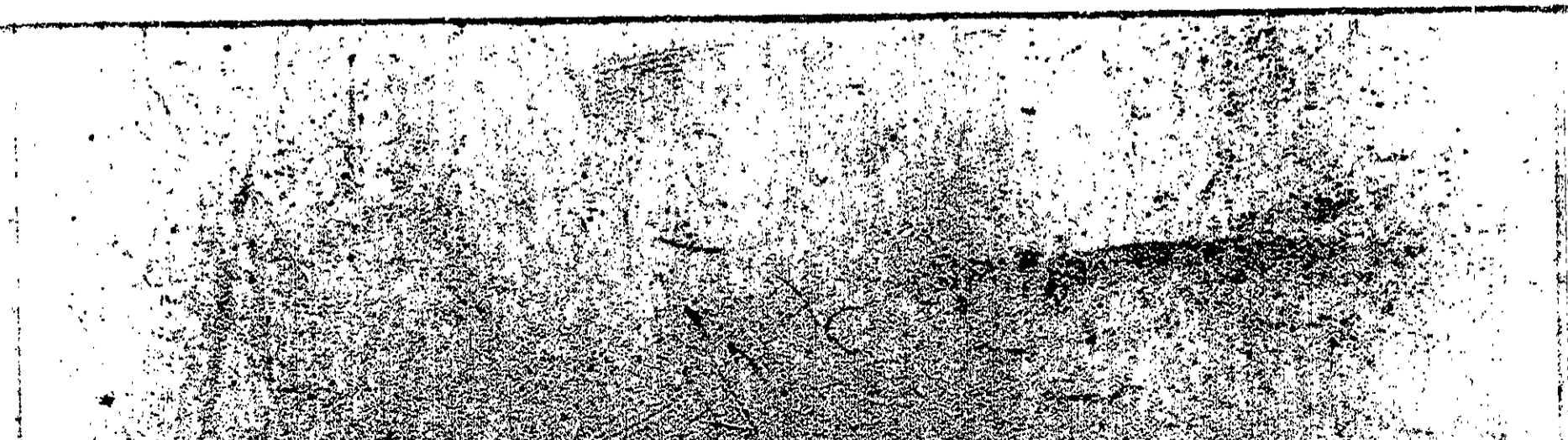
If title is not reasonably acceptable to Developer for any reason other than those excepted above, and written notice of specific defect(s) is given by Developer to the Authority within 15 days of delivery of the title commitment to Developer, Authority shall use reasonable efforts to correct said defect(s) prior to the date of closing on the Property as provided in the Schedule of Performance. If the Authority is unable to correct said defect(s), or does not initiate actions required to correct same, on or before date of closing, at Authority's option and upon written notice to Developer not later than ten days before date of closing, the date of closing shall be extended 90 days for the purpose of correcting said defect(s), or to take measures reasonably necessary to correct same. If title is not rendered reasonably acceptable as provided in this Section 3B, at Developer's option, and upon written notice to the Authority by the Developer within ten days of the Authority's failure to

correct such defects, or initiation of steps to effect such correction, together with notice of termination of this Agreement by Developer to Authority, this Agreement shall be terminated, and the Letter of Credit, as provided in Section 13, shall be returned to Developer, and both parties shall be released from all obligations under this Agreement.

C. Title Insurance. At closing on the Property, the Authority shall provide and deliver to Developer the title policy required by this Agreement insuring that the title is vested in Developer as of the date of closing and naming the Developer as the insured. The title insurance policy shall, to the extent reasonably available by the title insurance company, include as additional insureds the final bonding or underwriting authority or company providing financing to the Developer for the Redevelopment Project, the Authority, the City and the Longmont Housing Authority, all as to their respective interests in the Property.

D. Survey and FEMA Letter. In accordance with the Schedule of Performance, the Developer shall provide a survey, reasonably acceptable to the Authority of the Property. The Authority shall provide a Federal Emergency Management Agency ("FEMA") Letter of Belief that the Property is not situated in a flood plain within the time required by the Schedule of Performance.

4. Testing. Upon assumption of the real estate contracts by the Authority as provided in Section 2, the Authority shall



permit the Developer to enter all parcels of the Property that the Authority owns or has contractual interest in and all publicly or privately owned parcels to which the Authority is reasonably able to obtain permission for entry for soils testing, hazardous waste testing and to perform other tests and surveys, and to assemble data as the Developer may require. Such entry by the Developer shall be subject to the provisions of the said real estate contracts. The Developer shall designate the test locations within the time specified in the Schedule of Performance. The Developer shall commence and complete such testing for each parcel of the Property within the time specified in the Schedule of Performance. Copies of all test reports obtained on the Property shall be provided to the Authority by the Developer.

5. Demolition, Clearance and Hazardous Waste. The Developer shall be responsible for soil corrections and the demolition, clearance and removal of all existing improvements from the Property and the public rights-of-way to the extent necessary to complete Improvements in accordance with this Agreement and the approved plans. The Authority shall pay a maximum amount of \$35,000.00 for a share of the costs of demolition, clearance and removal of such existing improvements. If the presence of Hazardous Materials is determined to exist, the Developer shall be responsible for the removal, storage, decontamination or disposal of any Hazardous Materials in compliance with Applicable Laws. The term "Hazardous Materials"

shall mean substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901-6987; Section 25-5-502 C.R.S., or any materials or substances designated as hazardous under any other Applicable Law. Such soil corrections, demolition, clearance and removal or disposal of any Hazardous Materials and toxic wastes shall be completed in accordance with the Schedule of Performance, and shall be subject to the accommodation of certain business entities within the Property, including by illustration only, the Mail Room.

6. Site Plan - Vacations - Sixth Avenue Plaza. On July 20, 1988, the Developer received approval from the City of a Conditional Use Site Plan ("Site Plan") for the redevelopment housing project ("Redevelopment Project") as described in Section 10. The Site Plan, and Resolution PZR-88-15 approving such Plan, are attached to this Agreement as Exhibit D. On August 9, 1988, the City enacted Ordinance O-88-40, a conditional ordinance vacating portions of the alley and Sixth Avenue in the vicinity of the Redevelopment Project, which ordinance has been approved pursuant to the Site Plan. Such ordinance is incorporated in this Agreement by reference. The Developer shall comply with the conditions of the Site Plan within the time requirements of the Schedule of Performance.

In accordance with the Site Plan and Colorado's "Public Mall Act of 1970", the City has established procedures for the creation of the Sixth Avenue Plaza ("Plaza"). Development of the Plaza is an integral part of the Redevelopment Project and shall be commenced and completed according to the Schedule of Performance.

The Authority and the Developer shall cooperate with the City in all reasonable respects to effect the creation of the Plaza exclusive of any payment of damages assessed and actually awarded to any party pursuant to the Public Mall Act process.

Conceptual plans for construction of the Plaza have been reviewed by the City and are attached hereto as Exhibit E. Within the time requirements of the Schedule of Performance, the Authority shall construct, or cause to be constructed, at its cost, the Plaza in accordance with plans and specifications finally approved by the City. Upon completion, the Plaza and adjacent parking facilities shall be maintained by the Developer in compliance with an agreement and maintenance standards between the City and Developer, which agreement is attached as Exhibit F.

Operation and uses of the Plaza shall be prescribed by the City and included in this Agreement by this reference.

7. Access to Property. Subsequent to the conveyance of the Property by the Authority to Developer, the Developer shall permit representatives of the Authority, City, public utility company, or public agency access to the Property at all reasonable times which any of them may deem reasonably necessary.

Further, the Authority for itself, the City, public utility company, or any other public agency, at its sole risk and expense, reserves the right to enter the Property or any part thereof at all reasonable times and with as little interference as possible, for the purposes of development, construction, reconstruction, maintenance, repair or service of the public improvements or public facilities located on or off the Property in accordance with easements and rights-of-way. Any such entry shall be made after notice to Developer. Any damage to the Property or injury occurring on the Property or improvements thereon resulting from such entry shall be repaired promptly at the sole expense of the Authority, City, public agency or utility responsible for the damage. No compensation shall be payable to the parties nor shall any charge be made in any form by the other party hereto for the access provided for in this Section 7, except as provided herein regarding restoration of the Property.

8. Access to Records. The Authority and Developer shall cooperate with each other in allowing the viewing, copying or possessing of soils, drainage and other engineering and planning reports and reports of any other nature pertaining to the Property in the possession or under the control of any of the parties.

9. No Liens. The parties hereby covenant and agree that they shall not place any liens, attachments or claims upon the Property or cause same to be placed upon the Property in



relationship to the respective rights of access to the Property provided for in this Agreement.

Subsequent to the effective date of this Agreement, the Authority shall not make or cause to be made any total or partial sale, assignment, conveyance, trust or power, or transfer in any other manner or form with respect to the Property, part thereof or interest therein, or any contract to do any of the same if the same would survive the Closing herein, without the prior written approval of Developer, which approval shall not be unreasonably withheld; provided, however, the foregoing restrictions shall not apply to reasonable requirements imposed by the Authority's financing or Developer's financing or transactions of the Authority regarding acquisition or conveyance of the Property in accordance with this Agreement. Notwithstanding the foregoing, the parties shall provide notice to each other, as the case may be, of the reasonable requirements imposed by their respective financing programs prior to the application of such requirements.

In the event that any lien, attachment or claim upon the Property is made that is or may be disputed and such disputed claim can be insured against or secured by appropriate means, then the party causing such claim shall not be in breach of this Agreement until such time as final resolution of the disputed claim cannot be effected to the reasonable satisfaction of the non-defaulting party.

10. Site Plan - Redevelopment Project. Prior to redevelopment of the Property in accordance with the Schedule of

Performance, the Developer, with the cooperation of the Authority if necessary, shall proceed as required to satisfy the conditions of the Site Plan. The parties agree to cooperate, to provide information and to execute all requisite documents and applications as reasonably required to facilitate satisfaction of the conditions. The parties agree to act expeditiously in all respects required to accomplish the foregoing, in accordance with the Schedule of Performance.

To the extent required by the City, the Developer and Authority, in accordance with their respective interests in the Property, shall dedicate, as appropriate, all public streets, alleys, rights-of-way and easements required to properly carry out and maintain the Plan, the Site Plan, and construction of the Improvements on the Property and construction of the public improvements on the Plaza. The Authority shall be responsible for compliance with the requirements or procedures of the City's Public Improvements Review Committee.

Within the time requirements in the Schedule of Performance, the Developer shall construct the Improvements on the Property, according to the terms and concepts contained in the Site Plan attached hereto as Exhibit D. The Developer shall construct a 72 unit housing project, specifically designed for the elderly, and approximately 1600 square feet of commercial improvements (Redevelopment Project). At least twenty percent (20%) of the housing units shall be for low income households as defined in Article M.

B. SALE AND PURCHASE

11. Purchase Price. The purchase price for the Property (which the Authority and the City Council of the City of Longmont have determined to be fair value pursuant to state statutes) to be paid by the Developer to the Authority shall be \$388,000.00.

12. Payment of Purchase Price. The total amount of the purchase price, plus or minus closing adjustments, shall be paid in cash, certified funds or other funds or instruments acceptable to the Authority and paid at closing.

13. Letters of Credit. Upon the effective date of this Agreement, Developer shall deliver to the Authority an Irrevocable Letter of Credit in a form similar to that attached as Exhibit F in the amount of \$25,000.00 to be effective until closing. Upon closing of the Property, Developer shall deliver to the Authority a second Irrevocable Letter of Credit in a form similar to Exhibit F in the amount of \$25,000.00 to be effective until issuance of a Certificate of Completion as provided in Article E of this Agreement. The Irrevocable Letter of Credit shall secure the performance of Developer and payment of some of the damages which may be incurred by the Authority in the event of default by Developer. Such damages may consist of, among other things and by way of illustration only, substantial delay in the completion of the Redevelopment Project; the cost of engaging other developers to redevelop the Property; administrative and legal expenses; the loss of the social, cultural, commercial and tax benefits that may have accrued to

the City and its residents had the default not occurred; and impairment of the Authority's financing plans or obligations for the redevelopment of the Property.

14. Closing. Closing shall be held at the Authority office unless otherwise agreed by the parties. Closing shall take place on the date designated in the Schedule of Performance or at such earlier or later time as agreed to by the parties in writing.

15. Deed. The Authority shall convey title to the Property to Developer by special warranty deed ("Deed") in a form similar to that attached hereto as Exhibit G. The Authority shall convey to Developer fee simple, merchantable title to the Property free and clear of all liens, assessments, or encumbrances, except those requirements and exceptions arising by reason of: (1) the Plan; (2) the Site Plan for development of the Property; (3) Applicable Laws; (4) this Agreement; (5) Developer's acts (or acts of Developer's successors or assigns); (6) approval of Developer (its successors or assigns), or the bond or underwriting authority or company financing Developer's obligations under this Agreement, which approval shall not be unreasonably withheld as to any minor defect which does not affect the use of or marketability of the Property or financing of the Redevelopment Project; (7) rights-of-way or easements for utilities; (8) taxes in the year of closing and subsequent years; or (9) those exceptions allowed by agreement of the parties. Possession of the Property shall be delivered to Developer by the Authority at the time of closing.

16. Adjustments. Taxes and assessments, if any, shall be apportioned at closing and in accordance with the provisions of the real estate contracts referred to in Section 2 (Assignment of Real Estate Contracts). Each party shall pay its customary closing costs.

17. Recordation of Documents. The Authority shall record this Agreement with the Boulder County Clerk and Recorder, and pay all costs related thereto. The originally recorded Agreement shall be maintained in the offices of the Authority after recording. Upon closing on the Property, Developer shall promptly record the Deed as aforesaid in Boulder County, Colorado, and pay all recording costs related thereto, including without limitation, the State Documentary Fee. All amendments to this Agreement shall be similarly recorded and maintained by the Authority.

C. AUTHORITY PERFORMANCE

18. Cooperation with Developer. The Authority shall cooperate with the Developer in all reasonable respects necessary to effect the construction of Improvements on the Property. Such cooperation shall include by illustration only: creation, construction, maintenance and use of the Plaza; relocation of utilities; cooperation with public and private entities to effect Developer's financing for construction of the Redevelopment Project; acquisition of water and sewer taps; and vacation and/or dedication of public rights-of-way and easements.

19. Acquisition of Property. Subject to the conditions precedent to the Authority's obligations described in Section 41 (Authority Contingencies), the Authority covenants and agrees that it shall use its best efforts to purchase the various parcels constituting the Property, and convey same to the Developer for the purchase price provided for in this Agreement.

20. Development of Plaza. The Authority shall develop or cause the development of the Plaza as provided in Section 10.

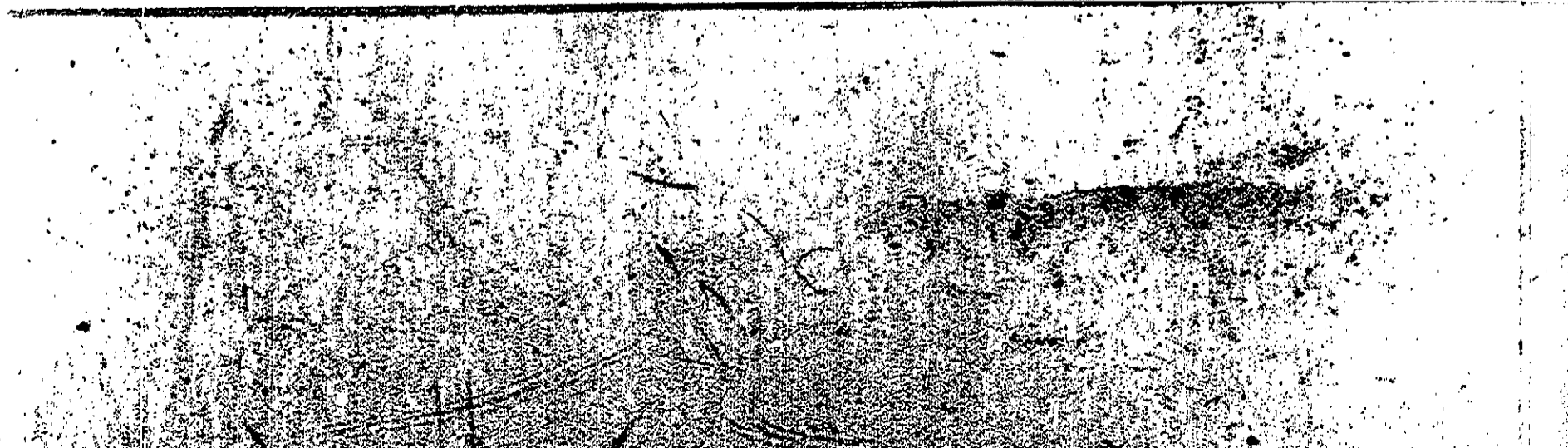
21. Authority Representations. The Authority represents to the Developer that it has been duly established in accordance with Colorado statutes. The Authority also represents to Developer that it has all of the powers of a Colorado downtown development authority. The City may assume all of the Authority's obligations in this Agreement pursuant to dissolution of the Authority according to state statutes.

D. DEVELOPER PERFORMANCE

22. Covenants to Commence and Complete Construction. Subject to the satisfaction of the conditions precedent to Developer's obligations in Section 41 (Developer Contingencies), the Developer agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, and the Deed shall contain covenants on the part of Developer for itself and such successors and assigns, that Developer shall promptly begin and diligently prosecute to completion the redevelopment of the Property through construction of the Improvements thereon in accordance with this Agreement,

agreements and requirements incorporated herein, the Site Plan, and the Plan. Such construction shall commence and be completed within the time requirements of the Schedule of Performance, subject to the provisions of this Agreement. It is intended and agreed, and the Deed shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall be binding for the benefit of the City and the Authority and enforceable as provided in Section 47 (Authority Remedies) of this Agreement by the Authority, its successors and assigns, and in the event of dissolution of the Authority as provided by law, the City, against Developer and its successors and assigns to or of the Property, or any part thereof, or any interest therein. Copies of all deeds, instruments of conveyance and other applicable documents subject to the requirements and restrictions herein, shall be provided to the Authority commensurate with the effective date of such documents.

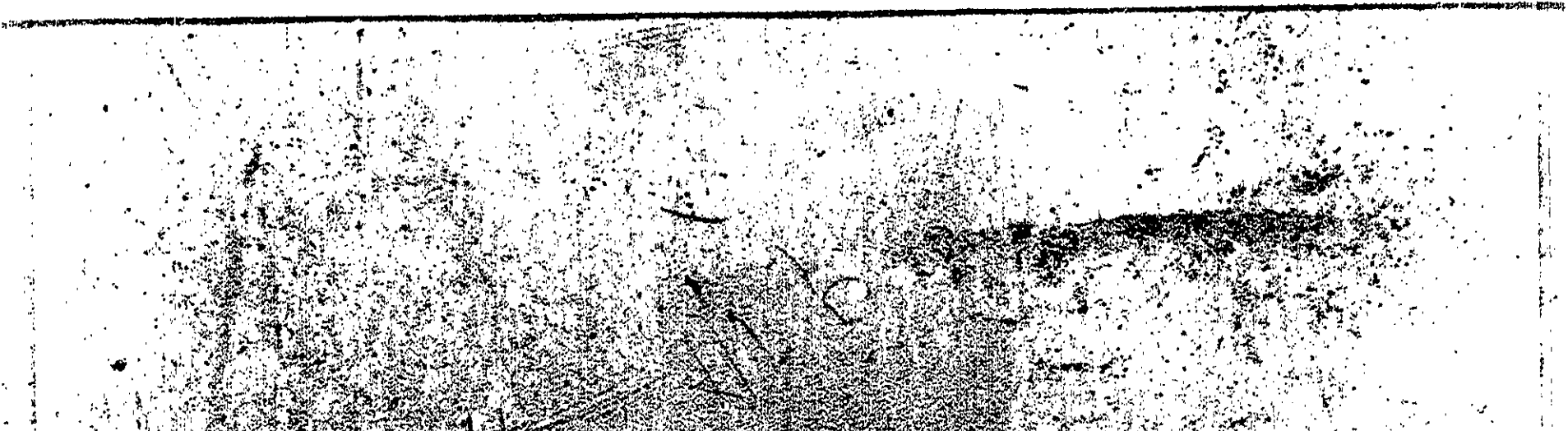
23. Total Development of Property. Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Property or any part thereof, and the Deed shall contain covenants on the part of Developer for itself and such successors and assigns, that Developer, its successors and assigns, shall construct Improvements on the Property containing not less than a 72 unit housing project and approximately 1600 square feet of commercial facilities, with at least 20% of the housing units available for low income persons,



in accordance with this Agreement, the Schedule of Performance, the Site Plan, and the Plan. Such total development of the Property shall be completed not later than 13 months from the date of closing; subject, however, to Article I (Enforced Delay In Performance).

24. Share of Return on Equity. To the extent allowed by Applicable Laws, including without limitation, laws related to the exemption from federal and/or state income taxes of the Authority's financing, and subject to a legal opinion of qualified bond counsel selected by the Authority, Developer shall share with the Authority on an equal basis all annual net proceeds in excess of 12% of Developer's initial equity in the amount of \$481,632.00 in the Redevelopment Project, or such other amount of Developer's equity in the Redevelopment Project as agreed upon by the parties. The Developer shall provide annual audited financial statements to the Authority and all other financial documents and records reasonably requested by the Authority to verify the financial conditions of the Redevelopment Project and the annual net proceeds of the Developer referred to in this Section 24.

25. Property Tax Increment. The Developer hereby warrants and covenants that the anticipated incremental ad valorem property taxes on the Property and Improvements shall be sufficient to enable the Authority to meet its financial obligations or to finance its reasonable costs related solely to the Redevelopment Project. In the event said incremental



property taxes are not sufficient to meet the Authority's debt financing or financial obligations related to the Redevelopment Project on an annual basis, the Developer shall pay to the Authority on an annual basis such sum of money equal to the said ad valorem property tax increment deficit; subject however, to an opinion of qualified bond counsel selected by the Authority, as to the legality, propriety, or affect upon the exemption from federal and/or state income taxes of the Authority's financing or bond issues, of such payment.

26. Identity of Developer and Prohibitions Against Assignment and Transfer. The Developer recognizes that, in view of:

(1) the importance of the redevelopment of the Property to the general welfare of the community and the City; and

(2) the substantial financing and other public improvements, commitments and amenities that have been made available by law and by the City and the Authority for the purpose of making such redevelopment possible; and

(3) the fact that a transfer of interest in the Developer or of a part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or evidence of ownership interest or with respect to the identity of the parties in control of the Developer or the degree thereof, is for practical purposes a transfer or disposition of the Property then owned by the Developer; and

(4) the Authority and the City have placed significant reliance upon the abilities and experience of the Developer to develop, construct, operate and manage this Redevelopment Project;

the qualifications and identity of the Developer are of particular concern to the Authority and the City. The Developer further recognizes that it is because of such qualifications and identity that the Authority is entering into this Agreement with the Developer, and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all obligations and covenants to be performed under this Agreement. For the foregoing reasons, Developer hereby makes the following representations to the Authority:

A. Identity of Developer. The Developer is a Colorado Limited Partnership, known as Village Place at Longmont, L.P. REM Development, Inc., a Minnesota corporation, is the general and managing partner. As of the effective date of this Agreement, the Developer shall attach to this Agreement as Exhibit H the Developer's Statement for Public Disclosure, which statement shall include all information about the Developer entity as reasonably required by the Authority.

B. Representations as to Redevelopment. The Developer represents and agrees that its purchase of the Property and its actions pursuant to this Agreement are and shall be used for the purpose of redevelopment of the Property for a housing

project and a commercial facility, and not for speculation in landholding or for any other purpose.

C. Prohibition Against Transfer of Interest In or Obligations Of the Developer. The Developer represents, warrants and agrees for itself, and its successors and assigns, that:

(1) As of the effective date of this Agreement, the parties who are responsible for the conduct and control of the business and management of the general partner of the Developer (REM Development, Inc.) are the persons identified in the Developer's Statement for Public Disclosure, (Exhibit H).

(2) Prior to the issuance by the Authority of the Certificate of Completion as provided in Article E, and without the prior written approval of the Authority, which approval shall not be unreasonably withheld:

(a) Except for death or disability, no entity or persons other than those so identified in Exhibit H shall have any responsibility or authority for the conduct and control of the business or the management of the affairs of the Developer, or its general partner, REM Development, Inc.

(b) No person shall be admitted as a new member or partner (not applicable to limited partners) in substitution or in addition to the general partner in control of the business or the management of the affairs of the Developer; provided, however, such additional parties may be added with the prior written approval of the Authority.



(c) There shall be no sale or other transfer of ten percent (10%) or more of the shares of interest of any partner or associate of the Developer, not including, however, limited partners. There shall not be any other similarly significant change with respect to the identity of the parties in control of any such partnership, whether by increased shares or capitalization, merger, amendments, issuance of additional or new shares or interests or classification of stock, or otherwise, without the prior written approval of the Authority, (not applicable to limited partners). The Developer and the parties signing this Agreement on behalf of the Developer represent that they have the authority to agree to the provisions of this Section 26 on behalf of such partnership and to bind them with respect thereto.

(d) There shall not be any voluntary dissolution, or merger or consolidation with any other entity, of the Developer.

(e) Upon dissolution of the Developer, no distribution shall be made to any general partner not bound by this Agreement.

(3) The term "person", as used herein, includes any individual, partnership, corporation, association or any other form of personal, development, or business entity.

D. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer further represents and agrees for itself, and its successors and assigns, that:

(1) Except only

(a) by way of security for the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to purchasing the Property, constructing the Improvements under this Agreement with the approval of the Authority, and any other purposes authorized by this Agreement, and

(b) as to any individual parts of the Property on which the Improvements to be constructed thereon have been completed, and which, by the terms of this Agreement, the Developer is authorized to lease as such Improvements are completed,

the Developer (except as so authorized) has not made or created, and that it will not, prior to the issuance of a Certificate of Completion, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Authority.

(2) The Authority shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably

determined by the Authority, necessary and adequate to fulfill the obligations assumed in this Agreement by the Developer (or, in the event the transfer is of or related to part of the Property, such obligations to the extent that they relate to such part);

(b) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form to be recorded in Boulder County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all of the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part). Provided, that the fact that any transferee of, or any other successor in interest whatsoever to, the Property, or any part thereof, whatever the reason, shall not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Authority of, or with respect to, the Property or the construction of the Improvements. It is the intent of this provision and this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent



specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Property or any part hereof, or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies or controls provided in or resulting from the Agreement with respect to the Property and the construction of the Improvements that the Authority would have if there had been no such transfer or change;

(c) There shall be submitted to the Authority for review and comment all instruments and other legal documents involved in effecting transfer; and, if approved by the Authority, its approval shall be indicated to the Developer in writing;

(d) The consideration payable for the transfer by the transferee or on its behalf shall not exceed an amount representing the actual cost (including carrying charges) to the Developer of the Property (or allocable to the part thereof or interest therein transferred) and the Improvements, if any, thereon. It is the intent of this provision to preclude assignment of the Agreement or transfer of the Property or any parts thereof for profit prior to the completion of the Improvements, and to provide that in the event any such assignment or transfer is made, and is not cancelled, the Authority shall be entitled to increase the purchase price to the Developer by the amount that the consideration payable for the

assignment or transfer is in excess of the amount that may be authorized pursuant to this subdivision (d). Such consideration shall, to the extent it is in excess of the amount so authorized, belong to and immediately be paid to the Authority;

(e) The Developer and its transferee shall comply with such other conditions as the Authority may require in order to achieve and safeguard the purposes of Colorado statutes and law, the Plan and the Authority's financing plan for the Redevelopment Project.

In the absence of a specific written agreement between the Authority and the Developer to release the Developer from any or all of its obligations under this Agreement, no such transfer or approval by the Authority shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations.

Prior to the issuance by the Authority of the Certificate of Completion, the Developer may enter into any agreement to sell, lease or otherwise transfer the Property or any part thereof, or interest therein, after the issuance of such Certificate. However, such agreement shall not provide for payment of or on account of the purchase price or rent for the Property, or the part thereof or the interest therein to be so transferred, prior to the issuance of such Certificate.

The foregoing prohibitions of transfer of Property shall not apply to leases which the Developer enters into for any or all of

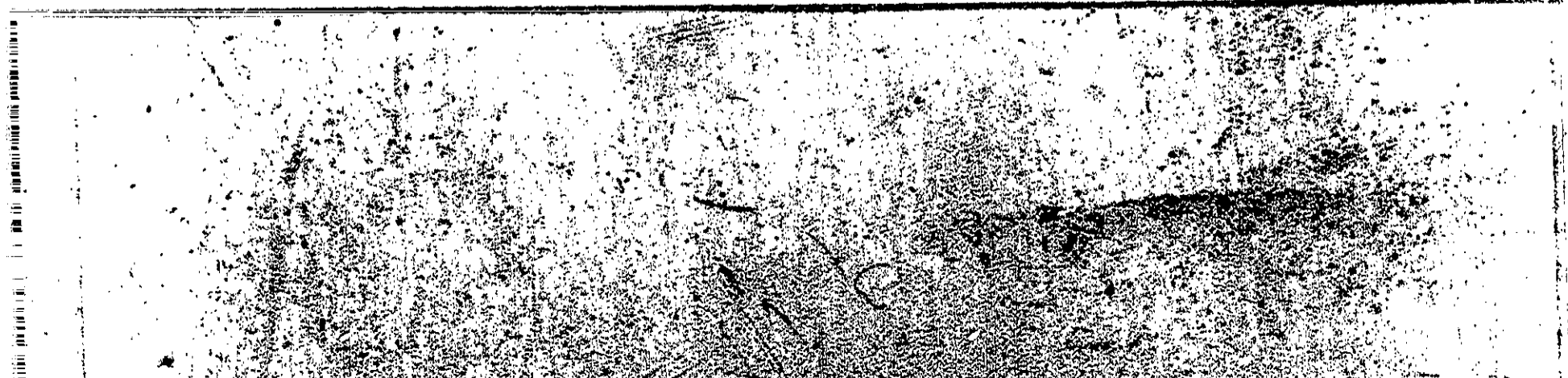


the 72 housing units , or for any or all of the commercial space, effective after the issuance of the Certificate of Completion.

E. Information as to Interest Holders. In order to effect the purposes of this Section 26, and to assist the Authority with its ability to obtain financing, the Developer agrees that during the period between execution of this Agreement and issuance of a Certificate of Completion:

(1) To the extent that changes in ownership are not in violation of this Section 26, the Developer shall promptly notify the Authority in writing of any changes in the ownership of interests, legal or beneficial, (not applicable, to limited partners) in the Developer entity. Such notice is also required of any other act or transaction involving or resulting in any change in the ownership of such interest or in the relative distribution thereof, or with respect to the identity of the parties in control of the Developer or the degree thereof, of which it or any of its parties have been notified or otherwise have knowledge or information.

(2) The Developer shall, pursuant to providing information required for Exhibit H (Developer's Statement for Public Disclosure), as the Authority may reasonably request, furnish the Authority with a complete verified statement by the president or other executive officer of REM Development, Inc., or other corporations serving as general partner of the Developer's entity, setting forth all of the stockholders of the corporation and the extent of their respective holdings. Such statement



shall likewise be provided in the event any other parties have a beneficial interest in such stock in their names and the extent of such interest, all as determined or indicated by the records of such corporation or corporations, by specific inquiry made by any such officer, of all parties who on the basis of such records own ten percent or more of the stock in such corporation or corporations, and by such other knowledge or information as such officer shall have. Such lists, documents, data and information shall in any event be furnished the Authority upon the effective date of this Agreement, and not less than annually thereafter on the anniversary of the effective date of this Agreement until the issuance of a Certificate of Completion for all of the Property. Such information shall also be provided by the Developer to the Authority on such other occasions as reasonably requested by the Authority.

E. CERTIFICATE OF COMPLETION

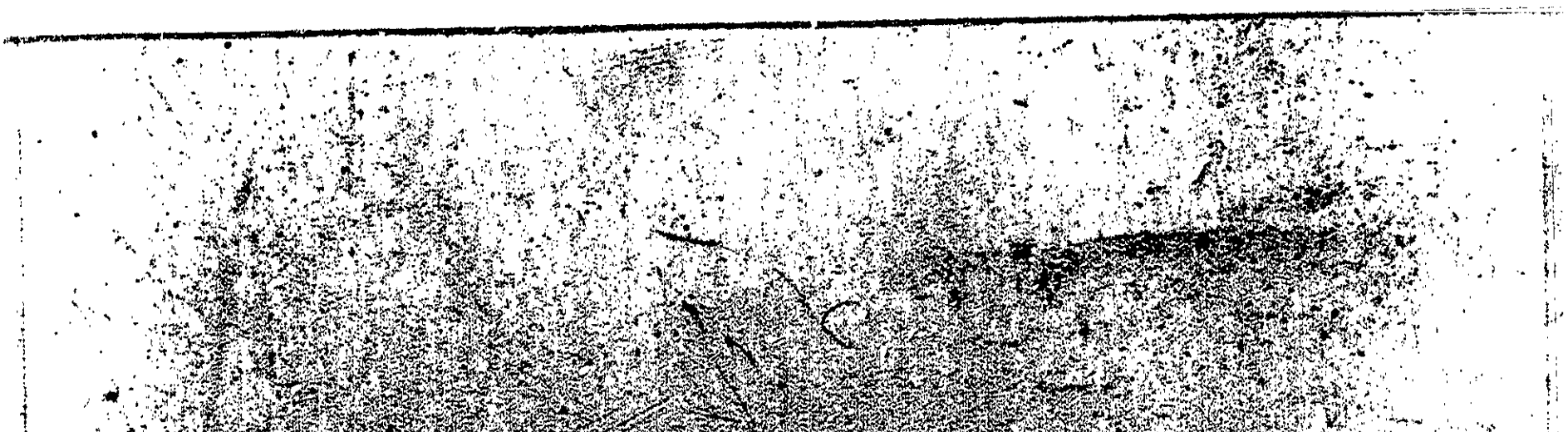
27. Completion of Improvements. When the Redevelopment Project and the Improvements are completed in accordance with this Agreement, the Plan and the Site Plan and a certificate of occupancy has been obtained by Developer as provided in the Longmont Municipal Code, upon the request of Developer, the Authority shall certify to Developer that such Improvements have been completed in accordance with the foregoing. Such certification shall be in the form similar to that attached to this Agreement as Exhibit I ("Certificate of Completion"). With such request, the Developer shall provide the Authority with a

current title report on the Property. The Developer shall furnish adequate security (as determined by the Authority) for, or defend the Authority, regarding any litigation related to encumbrances, claims, or liens on the Property, including costs and expert and reasonable attorneys' fees.

28. Effect. The tendering of a Certificate of Completion shall be a conclusive determination of satisfaction and termination of the requirements, conditions and covenants in this Agreement and the Deed with respect to the obligations of the Developer under this Agreement, relating to the Property, including the obligation to construct the Redevelopment Project Improvements. Notwithstanding the foregoing, the tendering of a Certificate of Completion shall not be a termination of any restrictions, events or requirements that specifically survive this Agreement. Further:

(a) any party purchasing or leasing the Property or any parcel thereof upon which said Improvement(s) have been completed shall not incur any obligation to the Authority with respect to the construction of the Improvements relating to the Property or any parcel thereof;

(b) neither the Authority nor any other party shall thereafter have, or be entitled to exercise, with respect to the Property or any parcel, any right or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of this Agreement or covenants and conditions unless:



(1) such default or breach is with respect to the covenants contained and referred to in Article F (Restrictions on Use of Property), and

(2) the right, remedy or control relates to such default or breach.

Nothing in this Section 28 shall be construed to imply any obligation of any tenant of the Property or part thereof to construct any Improvements upon the Property.

29. Notice. If the Authority shall refuse or fail to provide any Certificate of Completion in accordance with the provisions of this Section, the Authority shall, within 14 days from the date the Developer requested the Certificate, provide the Developer with a written statement, indicating specifically in which respect(s) the Developer failed to complete the Improvements in accordance with the provisions of this Agreement, the Plan, the Site Plan, and any Applicable Laws. The statement shall also describe what measures or acts will be necessary, in the reasonable opinion of the Authority, for the Developer to take or perform in order to obtain the Certificate of Completion. Upon such performance by the Developer to the reasonable satisfaction of the Authority, the Certificate of Completion shall be issued.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the purchase of all or

any part of the Property, or on all of the Improvements or any part thereof.

F. RESTRICTIONS ON USE OF PROPERTY

30. Restrictions on Use. Developer covenants and agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part or parcel thereof, and the Deed or transfer document shall contain covenants on the part of Developer for itself, and such successors and assigns, that Developer, and such successors and assigns, shall devote the Property to, and only in accordance with, the uses specified in the Plan, the Deed, the Site Plan, and this Agreement. By way of explanation only and not limitation, such uses are a housing project containing not less than 72 units, with at least 20% of such units available for low income persons, and approximately 1600 square feet of commercial Improvements.

31. Nondiscrimination. Developer covenants and agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part or parcel thereof, that it shall not discriminate against or engage in the segregation of any person, or group of persons, on account of sex, race, color, religion, age, handicap, creed, marital status, national origin or ancestry or any other protected class as provided by federal or state laws. This covenant applies to the acquisition of the Property, construction of Improvements and to the sale, lease, sublease, transfer, use, occupancy, management, tenure or enjoyment of the Property, or any parcels thereof, or



Improvements thereon. The Developer, for itself or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion or parcel thereof, or any Improvements thereon; subject, however, to the bona fide restrictions allowable as to age requirements and financial restrictions of tenants necessary to qualify tenant participation in the low income tenancies to be made available pursuant to applicable governmental housing authority requirements.

G. COVENANTS BINDING UPON SUCCESSORS

IN INTEREST; DURATION

It is intended and agreed, and the Deed shall so expressly provide, that the agreements and covenants provided in Article F and Article G of this Agreement shall be covenants running with the land. The Deed shall also provide that the covenants shall, in any event, without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Authority, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, against Developer, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in

possession or occupancy of the Property or any part thereof. It is further intended and agreed that the agreements and covenants provided in said Article F and Article G shall remain in effect until the Property has been totally developed as required in Section 23 (Total Development of Property), or for the life of bonds or any other financial obligations issued or incurred by the Authority as part of its financing, or related to this Agreement and the Redevelopment Project, whichever is sooner; provided, however, such date shall not exceed twenty-five years from the date of closing on the Property and delivery of the Deed, at which time such agreements and covenants shall terminate. Notwithstanding the foregoing, the covenants in Section 31 (Nondiscrimination) shall remain in effect without limitation as to time.

H. LIMITATION UPON ENCUMBRANCE OF PROPERTY;

RIGHTS OF MORTGAGEES

32. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, as certified by the Authority, pursuant to Article E (Certificate of Completion) of this Agreement, neither the Developer nor its successors and assigns to the Property or any part or parcel thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, or any part or parcel thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien (except tax liens not due and payable and liens imposed by acts of governmental authorities) to

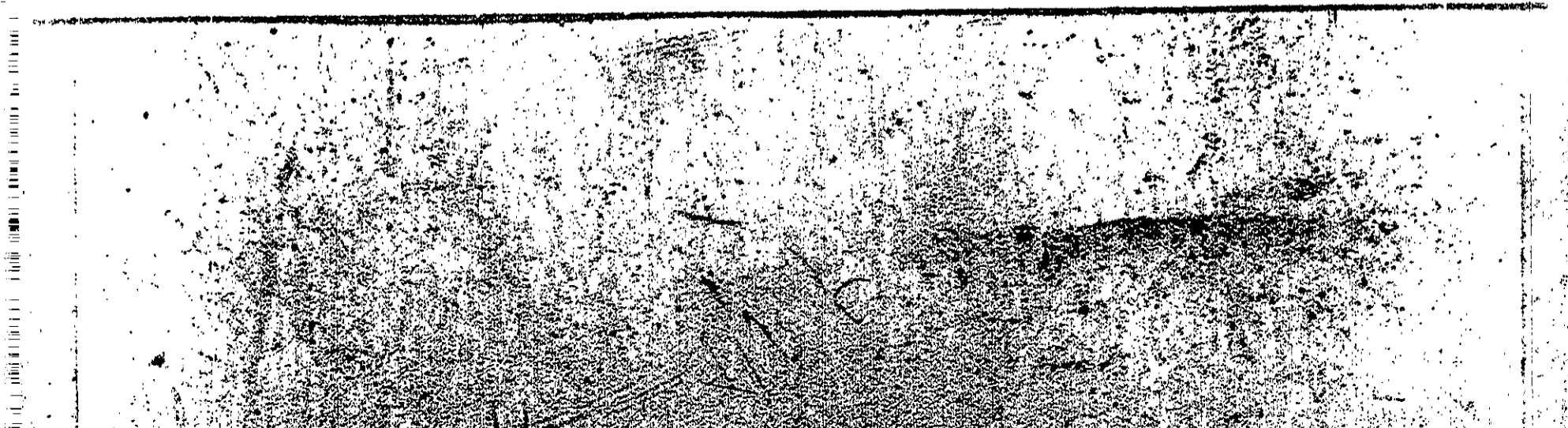
be made on or attached to the Property, except for the purposes of obtaining:

(a) funds only to the extent necessary for constructing the Improvements, including "hard" and "soft" costs as defined in Article M (Definitions); and

(b) such additional funds, if any, in an amount not to exceed the purchase price of the applicable parcel of the Property (except where Developer provides security or an escrow Agreement satisfactory to the Authority for any funds in excess of such purchase price) paid by the Developer to the Authority. The Developer shall notify the Authority in writing and obtain the Authority's approval in writing (which approval shall not be unreasonably withheld and provided in a timely manner) prior to any financing, secured by a deed of trust or any other form of lien or security instrument, it proposes to enter into with respect to the Property, or any portion or parcel thereof. In any event, the Developer shall promptly notify the Authority in writing of any encumbrance or lien (of which the Developer has knowledge) that has been imposed upon the Property, whether by voluntary act of the Developer or otherwise. For the purpose of such mortgage financing as may be made pursuant to this Agreement, the Property, at the option of the Developer, may be divided into several parts or parcels, provided that such subdivision is not inconsistent with the requirements, purposes and provisions of the Plan, the Site Plan, and this Agreement.

33. Mortgagee Not Obligated to Construct. Notwithstanding any of the covenants or provisions of this Agreement or the Deed, including, but not limited to, those that are intended to be covenants running with the land, the holder ("Holder") of any mortgage or encumbrance authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; provided, however, that nothing in this Section 33 or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such Holder or its nominee to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or permitted in the Plan, this Agreement, Applicable Laws, any Deed or in the Site Plan. For purposes of this Agreement, a Holder shall include any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, or the title-holding nominee of such holder. A Holder shall not include any other party who thereafter obtains title to the Property or such part from or through such Holder or its nominee, or any other purchaser at foreclosure sale other than the holder of the mortgage itself or its nominee.

34. Copy of Notice of Default. The Authority shall deliver written notice to the Developer with respect to any alleged breach or default by the Developer under this Agreement. The Authority shall at the same time forward a copy of such notice or



demand to each Holder of any mortgage authorized by this Agreement at the last address of such Holder shown in the records of the Authority. The Developer shall provide the Authority with the identity and address of the Holder of any mortgage.

Each mortgage authorized by this Agreement and the Authority in writing shall provide that a copy of any written notice mailed or delivered to the Developer, with respect to any alleged breach or default by the Developer, shall be mailed or delivered at the same time to the Authority.

35. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section 43 (Developer's Events of Default), each Holder (insofar as the rights of the Authority are concerned) shall have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Property encumbered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its deed of trust. Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in this Agreement shall be deemed to permit or authorize the Holder or its nominee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect Improvements or construction already completed) without first having expressly assumed the Developer's obligation to the Authority as follows:

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(a) no later than 60 days after expiration of the time for the Developer to cure said breach or default under this Agreement, a Holder shall give written notice to the Authority of its intention to undertake or continue the construction or completion of the Improvements in accordance with this Agreement;

(b) a Holder or nominee shall undertake such work within 60 days after obtaining possession of the Property through foreclosure proceedings or through a deed in lieu of foreclosure or any other legal procedure. Nothing herein shall preclude the Authority from exercising its rights of re-entry pursuant to Section 48 (Power of Termination; Revesting Title in the Authority) if a Holder or its nominee fails to diligently proceed, as reasonably determined by the Authority, with foreclosure proceedings or completion of the Improvements. If a Holder or its nominee shall timely give such notice and undertake the obligations of such work:

(i) a Holder, its nominee, or any purchaser from a Holder or its nominee approved by the Authority pursuant to the terms hereof shall not be bound to begin and complete such work within the times set forth in the Schedule of Performance but shall be allowed a reasonable time, as agreed between the Authority and Holder, to obtain possession of the applicable parcel of the Property, and a reasonable time, not to exceed 30 days, after obtaining such possession to begin such work, and a reasonable time, not to exceed six months or the construction

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period provided in this Agreement, whichever is less, to complete such work; and

(ii) the Authority and Holder or its nominee shall agree upon a reasonable schedule for obtaining possession of the Property and beginning and/or completing such work.

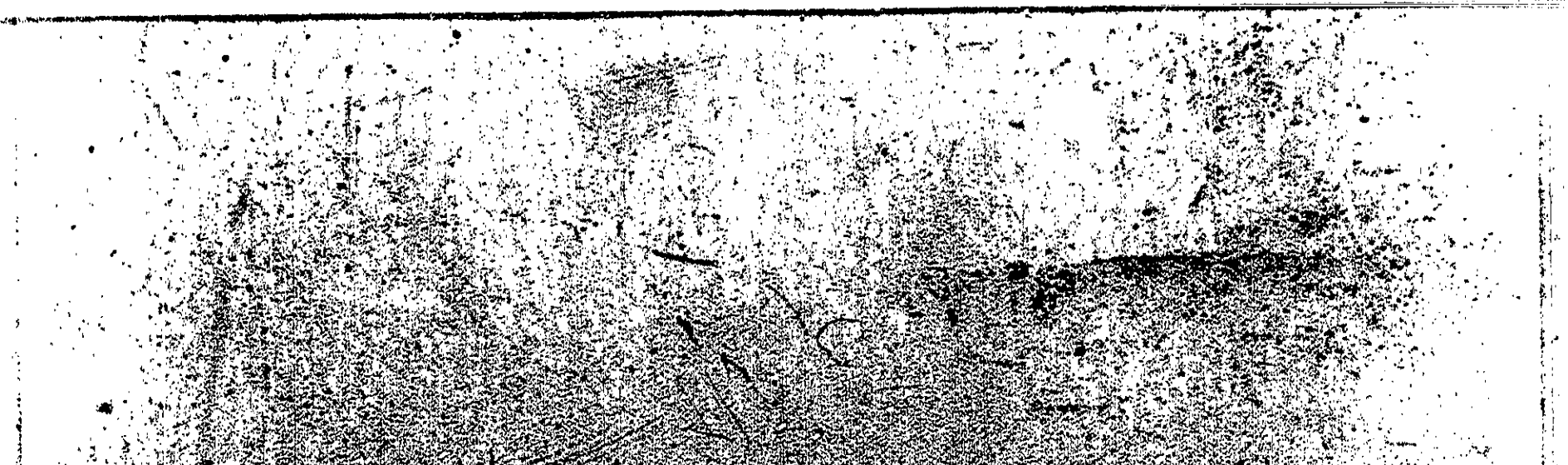
Any such Holder who shall properly complete the Improvements relating to the Property or applicable part thereof shall be entitled, upon written request by such Holder, to a Certificate of Completion by the Authority to such effect in the manner provided in Article E (Certificate of Completion) of this Agreement. Any such Certificate of Completion shall mean and provide, if so requested by such Holder, that any remedies or rights with respect to recapture, reversion, or revesting of title to the Property that the Authority shall have or be entitled, because of failure of the Developer or any successor in interest to the Property, or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts of the Property, or because of any default in or breach of this Agreement by the Developer or such successor, shall not apply to the part of the Property to which such Certificate of Completion releases.

36. Authority's Option to Pay Mortgage Debt or Purchase Property. In any case where, subsequent to default or breach by the Developer (or assign or successor in interest) under this Agreement, the Holder of any mortgage or deed of trust on the Property or part thereof:

(a) has, but fails to exercise, the option to construct or complete the Improvements relating to the Property or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of 30 days after the Holder has been notified or informed of the default or breach (or if such failure cannot be cured in said period), the Holder has failed to commence to cure such failure within such period; or

(b) undertakes construction or completion of the Improvements but does not complete such construction within the period agreed upon by the Authority and such Holder (which period shall in any event be at least as long as the period prescribed for such construction of the Improvements in this Agreement), and such default shall not have been cured within 30 days after written demand by the Authority to do so.

If such default cannot be cured in said period, the Holder has failed to commence to cure such default or, having properly commenced to cure has failed to diligently proceed with such curative action for a period of 30 days, the Authority shall (and every mortgage or deed of trust instrument made prior to completion of the Improvements with respect to the Property by the Developer or successor in interest shall so provide) have the option of paying to the Holder the amount of the mortgage debt secured thereby, or, in the event ownership of the Property (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, the Authority shall be entitled, at its



option, to a conveyance to it of the Property or parcel thereof upon payment to such Holder of an amount equal to the sum of:

(i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); and

(ii) all expenses, including reasonable legal fees and statutory costs, with respect to the foreclosure; and

(iii) the costs of Improvements approved by the Authority made by such Holder not included within subparagraphs (i) and (ii), immediately above; and

(iv) the costs of improvements reasonably necessary to conserve or protect the Property approved by the Authority made by such Holder less the mortgage debt referred to in (i) above.

37. Authority's Option to Cure Mortgage Default. In the event of a default or breach prior to completion of the Improvements by the Developer or any successor in interest, of any obligations to the Holder of any mortgage encumbering the Property or part thereof, the Authority may, at its option, cure such default or breach within 30 days after the time provided by this Agreement or by law for the Developer to remedy or cure (or if such default cannot be cured in said period, the Holder [or Developer] has failed to commence to cure such default within such period), in which case the Authority shall be entitled, in

addition to and without limitation upon any other rights or remedies to which it shall be entitled by this Agreement, by operation of law or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses, including without limitation the Authority's reasonable legal fees and consulting fees, incurred by the Authority in curing such default or breach, and to a lien upon the Property (or the part thereof to which the mortgage encumbrance or lien relates) for such reimbursement; provided, that any such lien shall be subject always to the lien of any then existing mortgage or deed of trust on the Property authorized by the Agreement.

38. Substitute Developer. The Authority may permit a Holder to appoint a substitute Developer to fulfill or complete, as appropriate, the Developer's obligations hereunder, provided that the Authority approves the Developer in writing upon being satisfied such Developer can perform as required by this Agreement, Applicable Laws, the Site Plan and the Plan.

I. ENFORCED DELAY IN PERFORMANCE

Notwithstanding anything in this Agreement to the contrary, for purposes of any of the provisions of the Agreement, neither the Authority nor the Developer, as the case may be, nor any assign or successor in interest, shall be considered in breach of, or in default of, its obligations with respect to this Agreement or the commencement of construction or completion of the Improvements, or progress with respect to the Schedule of Performance, in the event of enforced delay in the performance of

such obligations due to causes beyond its control and without its fault or negligence. Such causes may include but are not restricted to, acts of nature, acts of the public enemy, acts of the federal, state or local government, acts of the other party, acts of third parties not under the control of Developer or Authority or City (including the effect of any obligation or either party over which such party has no control), acts or orders of courts, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors or materialmen due to such causes. For purposes of this section, the term "acts" shall also include "failures to act". It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Authority or of the Developer with respect to the terms of this Agreement, as the case may be, shall be extended for a period of the enforced delay. A party seeking the benefit of the provisions of this Article I shall, within 10 days after such party learns of any such enforced delay, first notify any other party thereof in writing in the manner provided for herein of the cause or causes thereof, and claim the right to an extension for the period of the enforced delay.

39. Perpetuities. Because of the public policies served by this Agreement and that time is of the essence in the performance of the respective obligations of the Authority and the Developer, it is the intent of the parties that this Agreement shall not be



subject to the perpetuities rule and shall not be invalidated thereby. Notwithstanding the foregoing, if such rule is applied to this Agreement, then this Agreement shall finally terminate 21 years following the death of the last surviving issue presently alive of the Chairman of the Authority.

J. CONTINGENCIES

40. Developer Contingencies. The following shall be conditions precedent to the obligations of the Developer:

(a) Within the time required in the Schedule of Performance, the Authority obtains financing, to its sole satisfaction, to enable it to fulfill its obligations under this Agreement (The Authority's proposed financing plan is attached as Exhibit J); or

(b) Within the time specified in the Schedule of Performance, the Developer obtains financing on terms and conditions satisfactory to Developer, in its sole discretion, sufficient to enable it to fulfill its obligations under this Agreement (The Developer's proposed financing plan is attached as Exhibit K); or

(c) Acceptance by the Authority of the assignment of the real estate contracts by the Developer for the purchase of the various parcels of property which, upon assemblage, constitute the Property, and the closings on such parcels by the Authority in accordance with the Schedule of Performance; or

(d) Provision for water and sanitary sewer utilities service by the City for the Redevelopment Project according to the Schedule of Performance.

If the Developer elects to terminate this Agreement by reason of any of the matters set forth in this Section 40, it shall give written notice of such election to terminate to the Authority within 30 days following the date specified in the Schedule of Performance for the satisfaction of such matter, subject to Section 45 (Grace Periods), whereupon this Agreement shall be terminated. Upon termination, the parties shall not have any further benefits or obligations under this Agreement.

41. Authority Contingencies. The following shall be conditions precedent to the obligations of the Authority:

(a) Within the time specified in the Schedule of Performance, the Authority obtains financing sufficient to perform its obligations hereunder on terms and conditions satisfactory to the Authority in its sole discretion; or

(b) Within the time specified in the Schedule of Performance, the Developer obtains financing to its sole satisfaction, to enable it to perform its obligations under this Agreement; or

(c) The Developer performs any and all of its obligations, requirements, covenants and agreements under this Agreement; or

(d) The Authority closes on the real estate contracts in accordance with terms and conditions it has approved upon

acceptance of the assignment of such contracts from the Developer.

If the Authority elects to terminate this Agreement by reason of any of the matters set forth in this Section 41, it shall give written notice of such election to terminate to the Developer within 30 days following the date specified in the Schedule of Performance for the satisfaction of such matter, subject to Section 45 (Grace Periods), whereupon this Agreement shall be terminated. Upon termination, the parties shall not have any further obligations or benefits under this Agreement.

42. Satisfaction or Waiver of Contingencies.

(a) Within 10 days of satisfaction of any or all these contingencies, written notice of such satisfaction shall be delivered by the party in whose favor the contingency has been satisfied to the other party.

(b) The parties may waive any or all of these contingencies by delivering written notice thereof to each other within the time requirements of the Schedule of Performance regarding satisfaction of the contingencies.

K. EVENTS OF DEFAULT AND REMEDIES

43. Developer's Events of Default. The following shall be events of default of the Developer:

(a) The Developer fails to perform or adhere to any condition, covenant, obligation, requirement, duty or responsibility provided or required in this Agreement

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specifically or by reasonable implication, as determined by the Authority.

(b) The Developer does not pay the purchase price of \$388,000.00 and acquire title to each respective parcel of the Property in accordance with the Schedule of Performance and this Agreement upon tender of a Deed to the Developer by the Authority pursuant to this Agreement; or

(c) Prior to issuance of the Certificate of Completion for the Property or a parcel of the Property to the Developer, and in violation of the Agreement:

(1) The Developer (or assigns or successors in interest) assigns or attempts to assign the Agreement, or any rights therein, or the Property, or any rights therein; or

(2) There is any change in the ownership of the Developer or with respect to the identity of the parties in control of the Developer.

(d) The Developer, or general partner of the Developer, files a petition seeking relief or protection under any federal or state bankruptcy or insolvency law, or such a petition is involuntarily filed.

(e) The Developer fails to comply with or violates Applicable Laws as provided in Section 80.

44. Authority's Events of Default. The following shall be events of default of the Authority: The Authority fails to perform or adhere to any condition, covenant, obligation, requirement, duty or responsibility provided or required in this

Agreement specifically or by reasonable implication, as determined by the Developer.

45. Grace Periods. In the event of any failure of contingencies, conditions, defaults or breaches of this Agreement or any of its terms and conditions by any party, or any successor to such party, such party (its successors and assigns) shall, upon written notice from the other, proceed immediately to cure or remedy such contingency, condition, default or breach, and, in any event, such failure of contingency, condition, default or breach shall be cured within 30 days after receipt of such notice, or such cure shall be commenced and diligently pursued if curing cannot be completed within such specified period. Notwithstanding the foregoing, the grace period provided herein shall not apply to the Authority's obligation to respond to a request for a Certificate of Completion pursuant to Article E. In the event that the failure of a contingency, condition, default or breach of this Agreement or any of its terms or conditions is cured or such cure is commenced and diligently pursued to completion as provided in this Section 45, then for all purposes of this Agreement, there shall not be deemed to be a failure of contingency, condition, default or breach of this Agreement, or of any of its terms or conditions with respect to such matter that is cured or is in the process of being cured.

46. Developer Remedies. In the event of any default or breach of this Agreement by the Authority not cured within the time specified in Section 45 (Grace Periods), the Developer may

elect to terminate this Agreement, or seek to specifically enforce this Agreement by the Authority. Notwithstanding any other provisions in this Agreement, there shall be no other remedies available to the Developer.

47. Authority Remedies. In the event of any default or breach of this Agreement by the Developer (or its permitted successors or assigns), not remedied pursuant to Section 45 (Grace Periods), the Authority shall have the following remedies:

(a) Forfeiture of the Developer's initial \$25,000.00 Letter of Credit required by Section 13; provided, however, this remedy shall only be available to the Authority in the event the Developer's breach or default occurs prior to closing on the Property, or failure of the Developer to close in default of the Agreement; and

(b) Forfeiture of the Developer's subsequent \$25,000.00 Letter of Credit required by Section 13; provided, however, this remedy shall only be available to the Authority in the event the Developer's breach or default occurs subsequent to closing on the Property and prior to the issuance of a Certificate of Completion in accordance with Article E; and

(c) An action for damages; provided, however, the amount of such damages shall be limited to \$250,000.00; and

(d) An action to exercise the Authority's power of termination and revesting of title to the Property as described in Section 48 (Power of Termination; Revesting Title in the Authority); or

(e) Termination of this Agreement; or

(f) An action to specifically enforce this Agreement.

48. Power of Termination; Revesting Title in the Authority.

If subsequent to conveyance of the Property or any part thereof to the Developer and prior to completion of the Improvements as certified by the Authority pursuant to Article E (Certificate of Completion):

(a) the Developer (or its successors and assigns) defaults in or violates its obligations with respect to the construction of the Improvements for the Property or a parcel thereof (including without limitation the use, nature or type of construction and the dates for the beginning and completion thereof) or abandons or substantially suspends construction work and that there is no reasonable likelihood of completion in a timely fashion, as reasonably determined by the Authority, and if reasonable steps to cure, end or remedy any such default, violation, abandonment or suspension are not undertaken pursuant to Section 45 (Grace Periods); or

(b) the Developer (or its successors and assigns) fails to pay, insure or provide security for the payment of real estate taxes or assessments on the Property, or any part thereof, when due (provided, however, the Developer shall have the right to protest such taxes or assessments as provided in Section 72), or places thereon any encumbrance or lien not permitted by this Agreement, or suffers any levy or attachment to be made, or any materialman's or mechanic's lien, or any unpermitted encumbrance

or lien to attach, and such liens have not been discharged, insured or secured, or provision, satisfactory to the Authority, made for such payment or removal within 30 days after written demand by the Authority to do so; or

(c) there is, in violation of the Agreement, any transfer of the Property, or any part thereof, or any change in the ownership of the Developer or with respect to the identity of the parties in control of the Developer or the degree thereof, and such violation is not cured according to Section 45 (Grace Periods); or

(d) there is a material violation or default of this Agreement; or

(e) an action or proceeding of any nature in bankruptcy or insolvency, voluntarily or involuntarily by or against the Developer, or its general partner, or their respective successors or assigns.

The Authority shall have the right to terminate and re-enter, as described in Section 49 (Procedure for Exercise of Power of Termination and Revesting), and take possession of the Property and to re-vest in the Authority any estate conveyed or transferred to Developer under this Agreement. It is the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Property to the Developer shall be made upon, and the Deed shall contain a condition subsequent to the effect that, in the event of any default, failure, violation, or other action or inaction by the Developer

specified in this Section 48, failure on the part of the Developer, its successors and assigns, to remedy, end or abrogate such default, failure, violation or other action or inaction, within the period and in the manner stated herein, shall entitle the Authority, at its option, to declare a termination in favor of the Authority of the title, and of all rights and interests in and to the Property conveyed by the Deed to the Developer, and that such title, and all rights and interests in and to the Property, shall revert in the Authority; provided, that such condition subsequent and any re-entry and re-vesting of title as a result:

(1) shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (i) the lien or any mortgage which specifies the Authority's rights to revert title in the financing documents and which is authorized or permitted by the Agreement, and (ii) any rights or interests provided in the Agreement for the protection of the Holder(s) of such mortgage; and

(2) shall not apply to individual parts of the Property on which the Improvements to be constructed thereon have been completed in accordance with the Agreement and for which a Certificate of Completion has been issued as provided in Article E (Certificate of Completion), if any.

49. Procedure for Exercise of Power of Termination and Revesting. The process of the power of termination, described in Section 48, by the Authority to re-enter the Property, or

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parcels thereof, and re-vest title in the Authority, may be exercised in the following manner:

(a) Notice of the exercise of the power of termination shall be recorded in Boulder County. Copies of such notice shall be provided by certified mail, return receipt requested, to all parties with a recorded interest in the Property, as contained in the records of the Clerk and Recorder of Boulder County, as of the date of determination by the Authority of an event of default or breach of this Agreement, Deed or other instrument of conveyance of the Property.

(b) The Authority shall file a petition with the District Court, seeking an order vesting title to the Property in the Authority. Service of process shall be in accordance with the Colorado Rules of Civil Procedure.

(c) If the Developer, its successors and assign, or any party with a recorded interest, responds to the Petition, such response shall be limited only to the issue of the occurrence of default or breach of this Agreement, Deed or other instrument of conveyance of the Property.

(d) In the event the Developer, its successors or assigns, or any party in interest, contests the petition as limited herein, discovery shall be completed seventy-five (75) days from the date of filing the Petition and the matter shall be set for determination by the Court not later than 90 days from the date of filing the Petition, subject to the Court's calendar.

(e) In the event the Developer, its successors and assigns, or any party with a recorded interest, does not contest the Petition within the time provided in the Colorado Rules of Civil Procedure, the Authority shall be entitled to the order sought in its petition without delay.

(f) The Authority and the Developer agree that the intent of Sections 48 and 49 is, upon default of this Agreement by the Developer, its successors or assigns, and failure to remedy or cure as provided in Section 45, to afford the Authority the opportunity to re-enter the Property and effect re-vesting of title without delay to allow the Authority to proceed with resale of the Property for redevelopment.

50. Resale of Reacquired Property; Disposition of Proceeds.
Upon the re-vesting in the Authority of title to the Property, or any part thereof, the Authority shall, pursuant to its responsibilities under law, use its good faith efforts to resell the Property or part thereof (subject to the rights of the Holder of any mortgage and leasehold interests as set forth in this Agreement) as soon and in such manner as the Authority shall find feasible and consistent with the objectives of this Agreement, Applicable Laws and of the Plan, to a qualified and responsible party or parties (as determined by the Authority) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Authority in accordance with the uses specified for such Property

or part thereof. Upon such resale of the Property, the proceeds thereof shall be applied:

(a) First, to reimburse the Authority and the City for all reasonable costs, fees, and expenses of any nature whatsoever incurred by the Authority and the City regarding the Redevelopment Project and the Plaza including, but not limited to, reasonable legal fees and salaries of personnel, staff and consultants; acquisition costs of the various parcels constituting the Property; all costs of development of the Plaza; all costs associated with development and construction of the Redevelopment Project; all costs and expenses incurred in the recapture, repair, management, and resale of the Property (but less the purchase price and any income derived from the Property in connection with such management); the amount of any funds expended, including reasonable attorney's fees and costs, by the Authority and the City in discharging or removing any liens or encumbrances levied against the Property due to acts, obligations, or defaults of Developer or its successors, transferees, or contractors, whether or not such liens are legally enforceable against the Property after such re-entry (and nothing in this Agreement shall be construed as a waiver of any statutory or common law exemptions against execution and levy); expenditures made or obligations incurred by the Authority with respect to making or completion of the Improvements on the Property; any amounts otherwise owing to the Authority by Developer or its successors or transferees; all costs and

expenses of any nature whatsoever (such as by illustration only, fees of the investment banker and bond counsel, interest, capitalized interest) regarding financial or financing obligations of the Authority related to the Redevelopment Project; and the balance due on any debt of a general, or special improvement district or any other public entity formed for the purpose of providing public improvements related to or within the Redevelopment Project and the Plaza;

(b) Second, to reimburse Developer, its successors or transferee, up to the amount equal to:

(1) the portion of the total purchase price paid by it for the Property (or allocable to the parcels or parts thereof); and

(2) the cash actually invested by it in making any of the Improvements on the Property, less:

(a) any gains or income withdrawn or made by Developer from the Property and any parcels, except for those parcels or portions of the Property for which a Certificate of Completion has been issued, and

(b) less the appraised value of any parcel (excluding Improvements) of any phase for which a Certificate of Completion has been issued.

If the parties cannot agree upon a value pursuant to appraisals submitted by their respective appraisers, the value shall be determined by a third appraisal. The parties shall share equally the cost of said third appraisal.

Any balance remaining after such reimbursement shall be retained by the Authority as its property.

51. Other Rights and Remedies of Authority. The Authority shall have the right to institute such actions or proceedings as deemed necessary for effecting the purposes of the default and remedies provisions in this Agreement, including without limitation, the right to execute and record or file among the public records in Boulder County a written declaration of the termination of all the right, title and interest of Developer, its successors and assigns, in the Property. However, these remedies shall not apply to such parcels of the Property or portions thereof for which a Certificate of Completion has been issued, and subject to such mortgage and deed of trust liens and leasehold interests, if any, as provided in this Agreement.

52. No Waiver by Delay. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way. Any waiver in fact made by such party with respect to any specific default by the other party under this Agreement shall not be considered or treated as a waiver of the rights with respect to any other defaults by the other party under this Agreement or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the parties that this provision shall enable each party to avoid the risk of being limited in the exercise of the remedy

provided in this Agreement by waiver, laches, or otherwise in the exercise of such remedy at a time when it may still hope to resolve the problems created by the default involved.

53. Rights and Remedies Cumulative. Except as specifically provided otherwise in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by any other party. No waiver made by either such party with respect to any obligations of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver regarding the particular obligation of the other or condition to its own obligation beyond those expressly waived in writing, or a waiver in any respect in regard to any other rights of the party making the waiver of any other obligations of the other party.

54. Party in Position of Surety with Respect to Obligations. The Developer, and its successors and assigns, which may become obligated or liable under this Agreement, hereby waive, to the fullest extent permitted by law or equity, all claims or defenses otherwise available by reason of becoming a surety under provisions of this Agreement regarding all claims and defenses based upon extension of time, indulgence or modification of the terms of this Agreement.

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55. Plans and Data. If the Developer does not proceed with the purchase of the Property or development thereof, and if this Agreement is terminated pursuant to applicable remedies provisions herein by the Authority, Developer shall deliver to the Authority all plans, documents and data concerning the Property or any part thereof which are in the possession, control, available to, or owned by Developer. The Authority shall have ownership thereof and be entitled to use or transfer such materials to any other parties for use in development of the Property. The Authority may withhold monies due Developer under Section 50 (Resale of Reacquired Property; Disposition of Proceeds) until Developer has delivered all plans and data to the Authority pursuant to the requirement herein. Notwithstanding anything herein to the contrary, this provision shall not apply to plans or data concerning all or a portion of the Property for which a Certificate of Completion has been issued.

L. GENERAL PROVISIONS

56. Assignment to Trustee; Pledge of Payments. The Authority represents and Developer acknowledges, that the Authority may have assigned its rights to receive any and all payments from the Developer under this Agreement to a trustee or a third party as part of the Authority's financing. The Developer further acknowledges that as a result thereof, any and all monies payable by the Developer to the Authority under this Agreement are pledged to the payment of the principal of, premium, if any, and interest on notes or bonds issued by the

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Authority, or other instruments representing financial obligations of the Authority. If there is a default under the Agreement between the Authority and trustee or third party, this Agreement may be enforced by the trustee or third party on behalf of noteholders or bondholders or beneficiaries of the Authority's financial obligations to the extent and in the manner set forth therein.

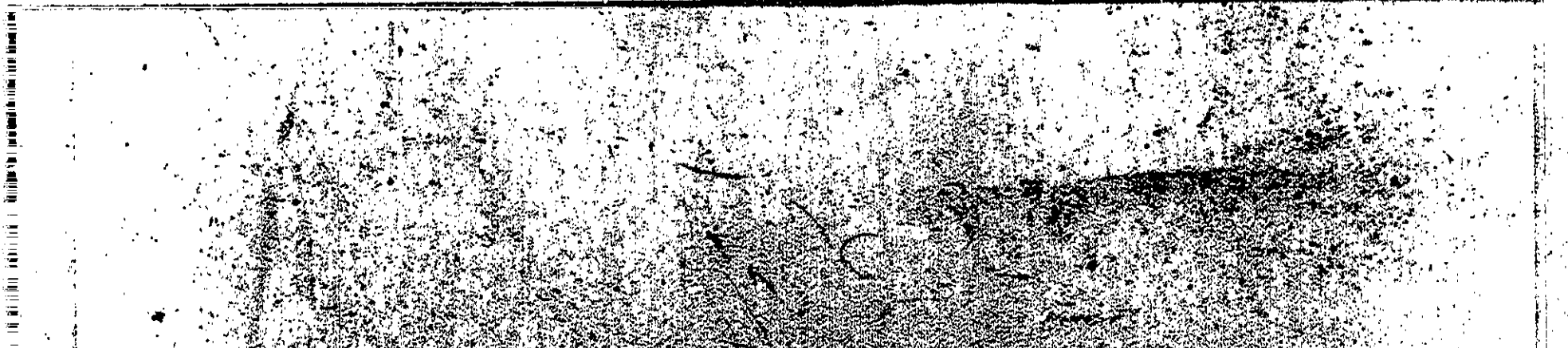
57. Conflicts of Interest. No one of the following shall have any personal interest, direct or indirect, in this Agreement: a member of the governing body of the Authority or of the City; an agent or employee of the Authority or of the City who exercises responsibility concerning the Redevelopment Project; or an individual or firm retained by the City or the Authority who has performed consulting services in connection with the Redevelopment Project. None of the said persons or entities shall participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, entity or association in which he/she is directly or indirectly interested.

58. Nonliability of Authority Officials and Employees. No member, official, employee, representative, consultant, attorney, agent or associate of the Authority shall be personally liable to Developer, a successor in interest, or assign, in the event of any default or breach of this Agreement by the Authority or for any amount of money or damages or on any obligation, which may be

due to Developer or successor or assign under the terms of this Agreement.

59. Indemnification.

(a) The Developer and the Authority (to the extent the Authority is allowed by law) shall indemnify and save harmless the other, their members, officials, administrators, employees, consultants, agents, attorneys, associates, or representatives for and from any claims, demands, payments, suits, actions, recoveries and judgments of every name or description brought or recovered against them or either or any of them for or on account of any injuries to or death of any person or any other loss or damages to person or property received or sustained by any person or persons whosoever by reason of the occupancy or activity of Developer or Authority or their agents, servants, employees, partners or contractors, on or about the Property, or because of any act of commission or omission under this Agreement by the Developer or the Authority. Developer and Authority shall pay, settle, compromise and procure the discharge of any and all such claims and all such losses, damages, expenses, liabilities and obligations, and shall defend at their own cost and expense all claims, demands, suits and actions made or brought against the Authority or Developer, their said members, officials or representatives, or any of them for or upon any such claim. In case either Developer or Authority shall fail, neglect or refuse to comply with any provisions of this Section 59, Developer or the Authority, or their said representatives, or any additional



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named insureds, may at its or their option, but without obligation to do so, in order to protect itself or themselves or any additional named insured from any liability, defend any such claim, demand, suits or actions and pay, settle, compromise and procure the discharge thereof. In such case, Developer or the Authority shall repay the other or such other party in the full amount of all such loss, damage and expense, including all experts' and reasonable attorneys' fees paid or incurred by the Authority or Developer or their said representatives, for such additional named insured. The Authority and Developer, or their said representatives, may collect the same in whole or in part in any lawful manner from each other. The indemnification obligation of this section shall be in no way restricted by any limitation on the amount or type of damages (except restrictions on the amount and type of damages which apply to the Authority), compensation or benefits payable by or for Developer or the Authority or any of their agents, employees, servants or partners, or contractors under any workmen's compensation acts, disability benefit acts, or any other employee benefit act. The successors in interest and not Developer shall be responsible for the provisions of this section if said successors have succeeded Developer to the Property or part thereof and the obligations related thereto under this Agreement in accordance with the provisions of Section 26 (Identity of Developer and Prohibitions Against Assignment and Transfer).

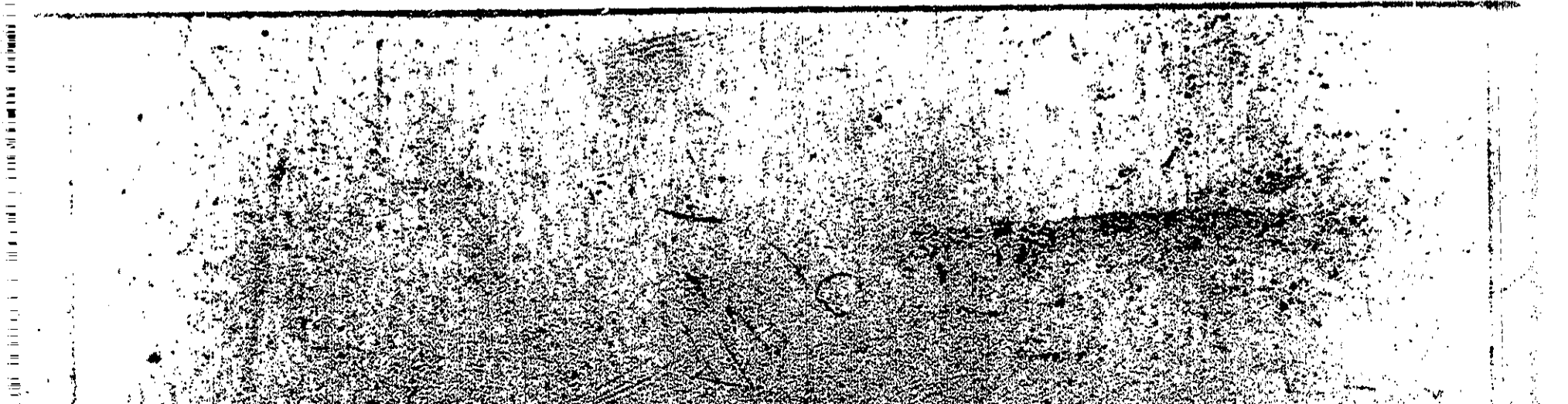
(b) The parties understand and agree that the Authority does not waive or intend to waive by this section, or any other section or provision of this Agreement, the monetary limitations (presently \$150,000.00 per person and \$400,000.00 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101 et seq. C.R.S., as may be amended, or otherwise available to the Authority, it's representatives, agents, employees and officials.

60. Notices to Parties. No notice hereunder shall be sufficient to affect any rights, remedies or obligations of any party hereto, unless such notice is in writing and delivered to the person or persons whose rights, remedies or obligations are sought to be affected, except that any such written notice which is mailed by prepaid U.S. certified mail, return receipt requested, or by personal delivery, addressed to the respective and appropriate party as follows (or to such other address as either party shall designate to the other in writing), and shall be deemed so sufficient upon such mailing:

Developer: Village Place at Longmont, L.P.
c/o REM Development Inc.
6921 York Avenue South
Edina MN 55435
ATTN: Richard C. Krier

with a copy to: Hopp Carlson & Beckman
John D. Hindorff, Atty.
2130 Mountain View Avenue, Suite A
Longmont, CO 80501

Authority: Longmont Downtown Development Authority
528 Main Street
Longmont, CO 80501



with copies to:

Windholz & Haddock
James A. Windholz, Atty.
1650 38th Street, Suite 103W
Boulder, CO 80301

City Attorney
City of Longmont
Civic Center Complex
408 Third Avenue
Longmont, CO 80501

61. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement, including any amendments.

62. No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party hereto, except the City of Longmont, appropriate utility companies or governmental entities as provided elsewhere in this Agreement.

63. No Vested Rights. This Agreement shall not create any vested property rights in the Developer. Such rights shall only inure to the benefit of the Developer pursuant to the applicable City ordinance.

64. Agreement Survives Closing. This Agreement shall survive the closing or conveyance of the Property by the Authority to Developer in accordance with all of the terms and provisions herein.

65. Survival of Obligations. Notwithstanding the termination of this Agreement with respect to any part of the Property, the obligations of the parties hereto with respect to any part for which this Agreement shall not have been terminated, or with respect to any Improvement to be constructed on any such

part pursuant to this Agreement, shall continue and survive said termination.

66. Insurance. During any period prior to closing on the Property when Developer enters the Property or is engaged in preliminary work on the Property or any portion thereof, and during the period of time following closing on the Property and ending upon the date when a Certificate of Completion for the Property has been issued, Developer shall furnish or cause to be furnished to the Authority certificates of insurance as follows:

(a) Not less than THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00) in the aggregate for property damage, designating the Authority and the City as additional insureds; and

(b) Not less than THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00) in the aggregate for personal injury or death; and

(c) General liability and errors and omissions insurance with minimum limits of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) per each person and FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) per each occurrence, plus an additional amount sufficient to pay related attorneys' fees and defense costs, designating the Authority and the City as additional insureds; and

(d) Comprehensive automobile liability insurance with minimum limits for bodily injury and property damage of not less than ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) per each

person and FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) per each occurrence, plus an additional amount sufficient to pay related attorneys' fees and defense costs, with respect to each of Developer's owned, hired or non-owned vehicles assigned to or used in performance of this Agreement, designating the Authority and the City as additional insureds; or

(e) In lieu of the insurance requirements of subsections (c) and (d), herein, the Developer shall provide a Combined Single Limit (CSL) insurance policy of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), plus an additional amount sufficient to pay related attorneys fees and defense costs, designating the Authority and the City as additional insureds.

Verification of such insurance coverage shall be provided by the Developer upon the effective date of this Agreement and attached hereto as Exhibit L; provided however, such insurance binders and/or policies shall be subject to approval of the City's Risk Manager.

67. Independent Contractors. With respect to this Agreement, the Authority and Developer are and shall remain independent contractors and shall not be the servant, agent, associate, employee, representative, partner or joint venturer of the other.

68. Construction. The titles to the Articles and Sections are for reference only and neither broaden or confine the scope, content or intent of the articles, sections or paragraphs. This Agreement shall be construed in accordance with the laws of the State of Colorado.

69. Integrated Contract. It is intended by the parties that this Agreement be an integrated contract but that invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

70. Binding Effect. This Agreement shall be binding upon the parties hereto, their successors and assigns, as allowed within this Agreement.

71. Counterparts. This Agreement is executed in three counterparts, each of which shall constitute one and the same instrument.

72. Reassessment Appeals. Developer shall not appeal any determination of assessed valuation of all or any portion of the Property made by the Boulder County Assessor for ad valorem property tax purposes without prior notice of at least 15 days to the Authority. The Developer shall not appeal such determination of assessed valuation of the Property for any ad valorem property taxes, if such appeal will adversely affect (as determined by the Authority) the generation of taxes necessary to meet the Authority's financial obligations (including by illustration only payment of notes or bonds) incurred as a result of this Agreement, the Redevelopment Project, and the development of the Plaza.

73. Good Faith of Parties. In performance of the Agreement or in considering any requested extension of time, the parties agree that each will act in good faith and will not act

unreasonably, arbitrarily, capriciously or unreasonably withhold any approval required by the Agreement. The parties also agree to use their best efforts and due diligence in the performance of all provisions of this Agreement.

74. Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of the Deed transferring possession or title to the Property from the Authority to the Developer or any successor in interest, and the Deed shall not be deemed to affect or impair the provisions and covenants of the Agreement. If there are conflicts between the language of the Deed or this Agreement, the Agreement shall prevail.

75. Jointly Drafted. The Agreement shall be construed and interpreted as if jointly drafted by the parties hereto.

76. Amendments. This Agreement is the entire agreement of the parties as to the subject matter herein and supersedes and replaces all prior agreements and may be amended only in writing fully subscribed by the parties hereto or their successors or assigns.

77. Authority of Signatures. The parties executing this Agreement on behalf of the parties hereto covenant and warrant that each is authorized to execute this Agreement on behalf of the party so represented.

78. Exhibits, Documents and References Merged. All exhibits and documents attached or to be attached to this Agreement and all other matters included in this Agreement by

reference or reasonable implication shall be deemed to be expressly integrated herein.

79. Recordation of Documents. The Authority shall record this Agreement, and any other documents required herein or by Applicable Laws to be recorded upon execution by all parties, with the Boulder County Clerk and Recorder, and pay all costs related thereto. Amendments to this Agreement shall also be recorded as provided herein.

80. Compliance with Applicable Laws. Developer, its successors or assigns, shall comply with all City of Longmont codes, laws, ordinances, rules, regulations and requirements and all county, state (and its subdivisions) and federal laws, codes, rules, regulations and requirements ("Applicable Laws") regarding demolition of the Property, construction of Improvements on the Property, use of the Property, and all other obligations, requirements and matters related to this Agreement. Notwithstanding any other penalty imposed by the entity enforcing such Applicable Laws, failure to comply with Applicable Laws shall constitute an Event of Default by the Developer.

81. Schedule of Performance. The Authority and Developer covenant with each other and agree to perform in accordance with the Schedule of Performance attached hereto as Exhibit C subject to all provisions of this Agreement. No change shall be made to said Schedule except as provided in Section 76 (Amendments).

82. Costs and Legal Fees. If any party initiates legal proceedings to enforce any provision of this Agreement or

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resulting from the default of this Agreement by the other party, the prevailing party shall pay all costs, reasonable legal fees, and expert fees of such action.

83. Progress Reports. Upon the effective date of this Agreement, the parties shall provide reports to each other of the progress and status of their respective contingencies, conditions, duties, obligations and all matters related thereto. Such reports shall be either verbal or written as requested by the receiving party, and shall be provided monthly or within five days after request by such recipient.

M. DEFINITIONS

(a) The term "commencement of construction" means the undertaking of a continuous course of action by the Developer to begin and complete construction of the Improvements depicted in the Site Plan for the Redevelopment Project (or the approved components thereof) including, but not limited to, the following: commencement of site work, obtaining of building permits for construction of such Improvements, including evidence that all fees and costs associated therewith have been paid or waived as required for the Developer to secure its financing, as provided in Section 40 (Developer Contingencies); excavation of the Property for footings, foundations and/or caissons, utilities and/or infrastructure as shown on the approved Site Plan or components thereof; and any other reasonable evidence that the work being performed is that required by such plans for actual construction of the Improvements. Actions such as assembly and

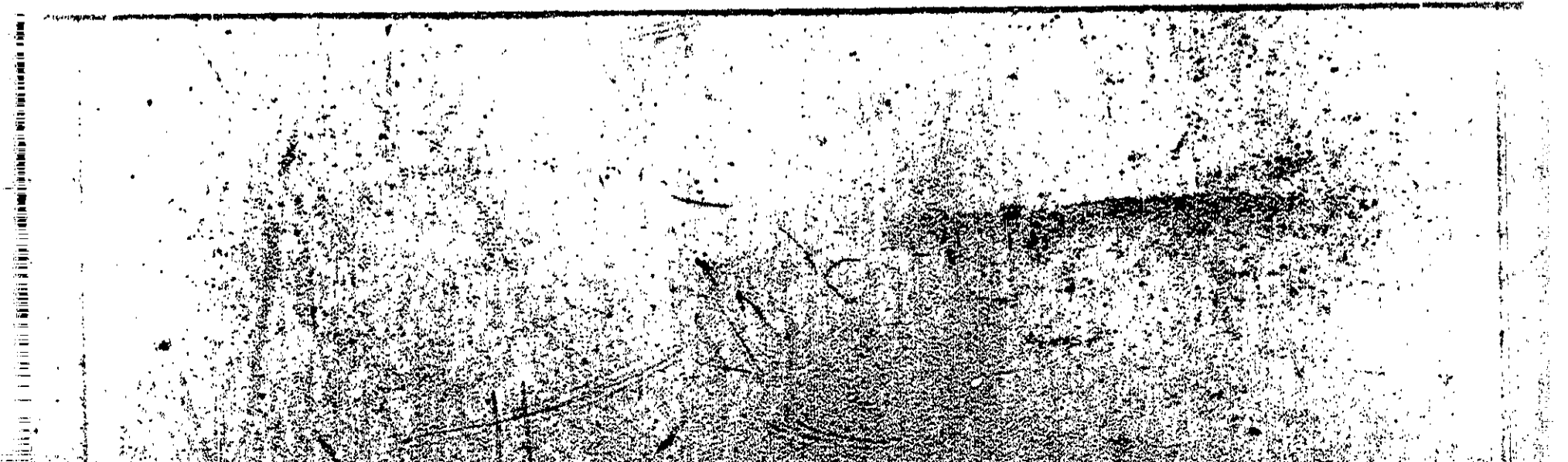
move-in of equipment or mere delivery of construction materials to the Property shall not constitute "commencement of construction for the purposes of this Agreement.

(b) The term "completion of the Improvements" means the completion and entire construction, including finishing and complete installation (except for minor items of cosmetic and mechanical adjustment) of all of the Improvements, and related matters, including public amenities, as required in the Site Plan for the Property, any parcel thereof, required to be produced in a completed form by the Developer as specified in the Site Plan, and approved in accordance with the Agreement.

(c) The term "Improvements" means all of the private and public improvements Developer is required to construct under the Agreement as provided and specified in the Site Plan for the Redevelopment Project submitted by Developer and approved in accordance with this Agreement.

(d) The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien upon the Property, or any part thereof, as security for a loan.

(e) The term "hard costs" shall include any and all costs and expenses actually incurred by Developer for labor, materials, and equipment necessary or convenient for demolition, clearance, excavating, grading, landscaping, constructing, providing tenant finish, reports, testing, inspections, or otherwise physically converting the Property, as received by Developer, to a finished state as contemplated by this Agreement,



including but not limited to: (i) provision of utility services and other public improvements, whether on or off site, necessary or convenient thereto; (ii) the gross costs of enforceable general or special construction contract therefor that has been reduced to writing, and the additional charges for change orders, discharge of mechanics' lien, and similar contract extras authorized by such contract; and (iii) any utility tap or other hook-up fees actually paid by Developer.

(f) The term "soft costs" shall include any and all reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers or other consultants; real property taxes and assessments; direct salary and overhead expenses; development administration and overhead charge not to exceed 15% of the costs of the Redevelopment Project actually paid to the Developer; permit charges; costs for operation of Improvements during leasing; marketing costs, commissions, and other costs of initial Redevelopment Project leasing; all interest, loan fees, and other costs of obtaining and maintaining financing; and other commercially recognized costs that are incurred in connection with the ownership, development, operation and marketing of the Redevelopment Project; provided that there shall be no duplication of any soft cost item.

(g) The term "parties" means the Longmont Downtown Development Authority and Village Place at Longmont L.P., a



Colorado Limited Partnership, and their respective successors and assigns.

(h) The term "Longmont Downtown Development Area" means the area designated within the Plan where the Authority has authorization to conduct redevelopment projects and programs in accordance with such Plan.

(i) The term "Redevelopment Project" means redevelopment of the area in the vicinity of Sixth Avenue between Main and Coffman Streets into a 72 unit housing project, specifically designed for the elderly, 20% of which shall be for low income residents, and approximately 1600 square feet of commercial facilities.

(j) The term "Property" shall mean the parcels of real property described in Exhibit B hereto, which the Developer shall construct Improvements upon in accordance with the development plans approved by the Authority and the City and other terms of this Agreement.

(k) The term "Plan" means the Master Plan of Development for Downtown Longmont Colorado dated July 28, 1987.

(l) The term "Low Income" means 60% of the median income for Boulder County, Colorado as defined annually by the United States Department of Housing and Urban Development.

Executed by the parties effective the date provided above.

Authority: LONGMONT DOWNTOWN DEVELOPMENT AUTHORITY

BY: W. Kent Wilg
Chair

ATTEST:

Virginia H. Pearson
Secretary

Developer: VILLAGE PLACE AT LONGMONT L.P.
a Colorado Limited Partnership

BY: Thomas E Miller
TITLE: President

ATTEST:

Craig R Miller
Secretary

EXHIBITS

- Exhibit A** **Map of Longmont Downtown Development Authority**
- Exhibit B** **Parcel Descriptions of Property**
- Exhibit C** **Schedule of Performance**
- Exhibit D** **Site Plan**
- Exhibit E** **Concept Plaza Plan**
- Exhibit F** **Contract and Maintenance Standards for Parking and Plaza**
- Exhibit F1** **Form of Letters of Credit**
- Exhibit G** **Form of Deed**
- Exhibit H** **Developer's Statement for Public Disclosure**
- Exhibit I** **Form of Certificate of Completion**
- Exhibit J** **Proposed Financing Plan of Authority**
- Exhibit K** **Proposed Financing Plan of Developer**
- Exhibit L** **Insurance Binder or Verification**

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ALL EXHIBITS ARE ON FILE AT THE
OFFICE OF THE LONGMONT DOWNTOWN
DEVELOPMENT AUTHORITY, 528 MAIN STREET,
LONGMONT, COLORADO 80501. TELEPHONE
NUMBER 651-8484.