

original
ground lease

11-4-2003

GROUND LEASE

between

CITY OF SIOUX CITY, IOWA
a municipality
Landlord

and

MIDWEST FRANCHISE-IOWA, LLC
a Nebraska limited liability company
Tenant

November 4, 2003

GROUND LEASE

CITY OF SIOUX CITY, IOWA
a municipality, Landlord
and
MIDWEST FRANCHISE-IOWA, LLC
a Nebraska limited liability company, Tenant

TABLE OF CONTENTS

GROUND LEASE SUMMARY 5
ARTICLE 1 - PREMISES AND TERM 6
 1. Premises 6
 2. Term 6
 3. Option to Extend Term..... 7
 4. Memorandum of Lease..... 7
ARTICLE 2 - POSSESSION AND CONTINGENCIES 7
 1. Possession, Contingencies and Recession..... 7
 2. Contingencies 8
ARTICLE 3 - RENT 9
 1. Annual Rent..... 9
 2. Rent to State of Iowa or Department of Transportation 9
ARTICLE 4 - TAXES AND UTILITIES 9
 1. Real Property Taxes 9
 2. Tax Protest Proceedings 10
 3. Utilities Expenses 10
ARTICLE 5 - COMMON AREA 10
 1. "Common Area" Defined..... 10
 2. Maintenance of Common Area 10
ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE 10
 1. Construction of Improvements 10
 2. Ownership of the Improvements 10
 3. Repairs and Maintenance 10
 4. Alterations and Improvements 11
 5. Separation Distance from Wells..... 11
ARTICLE 7 - LIENS..... 11
 1. Discharge of Liens; Contest 11
ARTICLE 8 - USE OF PREMISES 11
 1. Permitted Use 11
 2. Extended Hours of Operation..... 12
ARTICLE 9 - LIABILITY INSURANCE..... 12
 1. Tenant's Insurance 12
 2. Underground Storage Tank Insurance..... 12
 3. Tenant's Indemnification..... 12
 4. Landlord's Indemnification 12
ARTICLE 10 - PROPERTY INSURANCE..... 13

1. Tenant Insurance 13

ARTICLE 11 - DAMAGE AND DESTRUCTION 13

1. Abatement of Rent 13

2. Restoration of Improvements - Insured Loss 13

3. Restoration of Improvements - Uninsured Loss 14

ARTICLE 12 - CONDEMNATION 14

1. Complete Taking 14

2. Partial Taking 14

3. Allocation of Condemnation Award 15

4. Rent Reduction in Case of Partial Taking; Restoration 15

ARTICLE 13 - BANKRUPTCY 15

1. Continuation of Lease 15

ARTICLE 14 - ASSIGNMENT AND SUBLETTING 15

1. Assignment 15

2. Subletting 16

ARTICLE 15 - LEASEHOLD FINANCING BY TENANT 16

1. Leasehold Financing 16

2. Cooperation with Tenant’s Mortgagee 16

 A. Notice 16

 B. Right to Cure 16

 C. No Termination During Foreclosure or Cure 17

 D. New Lease 17

 E. Transfer after Foreclosure 18

 F. No Surrender or Modification Binding 18

 G. Assignment of Sublease 18

 H. Amendment to Lease 18

 I. Insurance Proceeds and Condemnation Awards 18

3. Liability of Tenant’s Mortgagee 19

ARTICLE 16 - REMEDIES IN THE EVENT OF DEFAULT 19

1. Remedies in the Event of Default by Tenant 19

2. Remedies in the Event of Default by Landlord 21

ARTICLE 17 - RIVER CHANGES 21

1. River Changes 21

ARTICLE 18 - NO OFFER 22

1. No Offer 22

ARTICLE 19 - QUIET ENJOYMENT AND TITLE 22

1. Covenant of Quiet Enjoyment 22

2. Right to Possession 22

3. Superior Encumbrances 22

4. Ownership; Authority 22

ARTICLE 20 - TRADE FIXTURES AND WAIVER OF LANDLORD’S LIEN 22

1. Ownership; Removal 22

2. Landlord’s Waiver 23

ARTICLE 21 - RESTRICTIVE COVENANTS 23

1. Landlord’s Covenants 23

2. Further Covenants 24

3. Remedies for Breach	24
4. Incorporation in Short Form Lease.....	24
ARTICLE 22 - ATTORNMENT/NON-DISTURBANCE	24
1. Attornment/Non-Disturbance.....	24
ARTICLE 23 - HAZARDOUS SUBSTANCE OR WASTE.....	24
1. Mutual Indemnity	24
ARTICLE 24 - NOTICES AND DEMANDS.....	25
1. Notices; Demands	25
ARTICLE 25 - ATTORNEYS' FEES	25
1. Paid to Prevailing Party.....	25
ARTICLE 26 - RIGHT OF FIRST REFUSAL TO PURCHASE.....	25
1. Right of First Refusal to Purchase.....	25
ARTICLE 27 - NO SECURITY INTEREST IN PREMISES.....	26
1. No Security Interest in Premises or Assignment by Landlord	26
ARTICLE 28 - GENERAL PROVISIONS	26
1. Binding Effect	26
2. Severability.....	26
3. Entire Agreement	26
4. Captions.....	26
5. Gender and Number	26
6. Approvals	27
7. No Waiver	27
8. Holdover.....	27
9. Time of Essence	27
10. Governing Law.....	27
11. Counterparts	27
12. No Third Party Rights	27
13. Unexecuted Lease.....	27
14. Estoppel Certificates	27
15. Due Authorization	28
16. Relationship of Parties	28
17. Incorporation of Exhibits	28

GROUND LEASE SUMMARY

- A. Landlord: The Landlord is the City of Sioux City, Iowa in its capacity as Prime Landlord (i.e., fee owner) and as Sub Landlord (i.e., pursuant to a lease between the City of Sioux City, Iowa and the State of Iowa).
- B. Address for Notice and Rent Payment to Landlord: Attention: City Clerk, City Hall, 405 6th Street, Sioux City, Iowa 51101.
- C. Tenant: Midwest Franchise-Iowa, LLC, a Nebraska limited liability company authorized to do business in the State of Iowa.
- D. Address for Notice to Tenant: Attention: Roger Miller, 1602 W. 29th Street, P.O. Box 188, South Sioux City, Nebraska 68776.
- E. Premises: See Exhibits "A(1)" and "A(2)" attached hereto for the legal description of real estate located on the waterfront, Sioux City, Woodbury County, Iowa.
- F. Improvements: Buildings, parking areas, fixtures, recreation trails and sidewalks, docks, seawalls, marina excavation provided by the Tenant.
- G. Term: Forty (40) years from the Commencement Date.
- H. Commencement Date: That date on which the City has fee ownership of the entire Premises or fee ownership and a lease with the State of Iowa which is equal to the original term of the Lease with an option to extend the Lease for an additional term as provided in this Ground Lease, except as otherwise provided in Article 1(2).
- I. Option to Extend: The Tenant shall have one (1) option to extend the Lease term for an additional forty (40) years, except as otherwise provided in Article 1(3).
- J. Use: River marina and associated uses including gas sales; hotel or motel uses; restaurant, bar and associated entertainment uses; retail establishment and all legal uses. This use shall be exclusive to Tenant, its successors and assigns for the Premises and 2,500 feet surrounding the Premises.

GROUND LEASE

THIS GROUND LEASE (“Lease”) is made and entered into as of November _____ 2003, by and between the **CITY OF SIOUX CITY, IOWA**, a municipality (“Landlord”), having its principal place of business at 405 6th Street, Sioux City, Iowa 51101, and **MIDWEST FRANCHISE-IOWA, LLC**, a Nebraska limited liability company (“Tenant”), having its principal place of business at 1602 W. 29th Street, South Sioux City, Nebraska 68776.

WITNESSETH

ARTICLE 1 - PREMISES AND TERM

1. **Premises.** Landlord owns the land described on Exhibit “A(1)” hereto and is a tenant in a certain lease dated June 12, 1968, in which the State of Iowa, Iowa State Highway Commission is the landlord and the City of Sioux City, Iowa is the tenant together with a first amendment to said lease dated July 24, 1968 and Second Amendment to Lease dated November 24, 1971.

The City of Sioux City is currently negotiating a purchase of the real estate leased by the State of Iowa or, alternatively, a lease for the time allowed by law but no less than fifty (50) years.

This Lease shall attach to whatever interest the Landlord has in the Premises whether by lease, fee or otherwise for the Term and any options to extend the Term.

For and in consideration of the rents, taxes, insurance and other charges and expenses to be paid by the Tenant, and in consideration of the performance by Tenant of the covenants set forth herein, Landlord does hereby demise and lease to Tenant the Premises as shown on Exhibits “A(1)” and “A(2)” attached hereto consisting of approximately 22.6 acres of land and the rights appurtenant thereto (the “Premises”).

In addition, when the Landlord obtains control of the triangular area on the river bank and south of the southerly line on Exhibit “A(2)” to be more particularly described in a metes and bounds description which is an integral part of the Premises, that area shall be incorporated in the Lease description subject to completion of code procedures. City agrees that it will not offer to license, lease or grant an interest in said area to any third party except through the Iowa Code procedures for disposal of real estate.

2. **Term.** The term of this Lease shall commence on the date on which City of Sioux City has control of the entire Premises either in fee or under a Ground Lease with a term equal to the Lease hereunder with an option (the “Commencement Date”) and shall expire forty (40) years thereafter (the “Term”); provided, however, if the Commencement Date falls on a day other than the first day of a calendar month, then the Term shall expire forty (40) years from the last day of the month in which the Commencement Date occurs. In the event the City enters into a new fifty (50) year lease with the State of Iowa and does not acquire title, Tenant’s term shall continue for the full fifty (50) years. In the event of such fifty (50) year lease with the State, the following paragraph regarding an option shall not be applicable but Tenant shall have a right of first refusal to lease from the City

under the same terms and conditions as City may receive from any other bidder or interested person if it enters into a new lease with the State after fifty (50) years. Within thirty (30) days after the Commencement Date, Landlord and Tenant shall execute an Addendum to this Lease setting forth the actual Commencement Date and scheduled expiration date of the term. The executed Addendum of Lease shall be attached to this Lease and shall be a part hereof. In the event the City is not successful in either purchasing or negotiating a fifty (50) year lease, despite its best efforts, within one hundred twenty (120) days then the Lease shall commence at that time subject to the provision of Article 2(1) hereof.

3. **Option to Extend Term.** Provided it is not then in default under this Lease under any applicable cure period, Tenant shall have the option to extend the term for an additional period of forty (40) years by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term. In the event the City of Sioux City must give more than ninety (90) days notice to the State of Iowa to renew its lease term, Landlord shall so notify the Tenant ninety (90) days prior to the date on which it must so notify the State of Iowa of any exercise of an option to extend. The Rent during the Extension Term and payment schedule shall be negotiated between Landlord and Tenant based on rent Landlord is charging similar businesses for leased property (except those leases based on revenue such as the riverboat) and, if none is applicable, on the fair rental value in Sioux City, Iowa, for Ground Leases for similar businesses without consideration of the Improvements thereon since the Improvements have been supplied by the Tenant.

4. **Memorandum of Lease.** On or about the Commencement Date, the parties shall execute and record a short form of this Lease in recordable form, which shall identify the parties and the Premises, specify the Term and any options to extend the Term. In no event shall this Lease be recorded in its entirety.

ARTICLE 2 - POSSESSION AND CONTINGENCIES

1. **Possession, Contingencies and Rescission.** Tenant shall be provided possession of the Premises upon the execution of this Lease.

The Tenant shall raze the existing structures and paving improvements as soon as feasible in its work plan and retain the scrap, if any there be. Tenant also has authority upon execution of this Lease to excavate, dredge and carry out activities it deems necessary to improve the marina area including using excavated material for fill on the Premises.

The parties agree that possession must be delivered and the work on the Improvements must begin as soon as possible because of weather factors, lowered river level and availability of workmen and equipment. Landlord shall proceed in good faith, time being of the essence, to negotiate the purchase of leased Premises from the State of Iowa or extension of the Lease with option as provided herein with the State of Iowa, removing the requirement that the State consent to future Improvements and consenting to the Improvements contemplated hereunder. Landlord shall also satisfy the exceptions set forth in the Supplemental Preliminary Title Opinion. Landlord shall obtain a termination of the Management Agreement with the State Conservation Commission dated June 5, 1968 if it is not the fee owner. In the event Landlord is not successful in purchasing or negotiating a fifty (50) year lease,

notwithstanding the best efforts of the City, then on or about July 23, 2018 when the July 24, 1968 lease with the State terminates, the City shall pay to Tenant, without demand, the sum of \$3,030,000.00 less any payments made by the City for Improvements (not to include asbestos related payments or services). Such payment is contingent upon Tenant constructing or causing to be constructed improvements as defined in the Development Agreement, except as otherwise provided in the following paragraph, upon the Premises of at least \$5,200,000.00 in actual cost of construction. Said costs shall be computed and agreed to by Landlord and Tenant upon completion of each phase, i.e., marina (Phase I) and restaurant (Phase II).

In the event the City has not purchased the Premises or entered into a fifty (50) year lease with the State on or before April 1, 2004, the Development Agreement will be amended to remove the obligation to build a hotel and the Assessment Agreement will be amended to terminate the tax obligation as to the hotel.

In consideration of the payment, Tenant shall deliver to City a Bill of Sale to the Improvements thereon, subject to any assignments or subleases Tenant may have made prior thereto. City shall assume the obligations under said assignments and subleases and Tenant shall be released from any and all obligations under the Redevelopment Agreement and Assessment Agreements related to the Premises and this Lease.

2. **Contingencies.**

In addition to the foregoing, Tenant's obligations are contingent on the following:

A. Tenant's obligations under this Lease are contingent on Tenant obtaining all necessary zoning, permits, approvals and certificates necessary or desirable from any federal, state, county, municipal or other governmental or quasi-governmental entity (collectively, "Governmental Authority") for Tenant's proposed Uses and for the construction, maintenance and operation of Tenant's proposed Uses on the Premises, including, without limitation, all signage Tenant deems appropriate and in accordance with City ordinances. The cost of securing the authorizations will be Tenant's expense. Landlord agrees to cooperate fully with Tenant in securing authorizations and permits and grants permission to Tenant to make application for authorization and permits in the name of the Landlord if necessary. Landlord agrees to execute any necessary documents in connection with Tenant's application for authorizations and permits. The determination of the necessity for obtaining authorizations and permits and the adequacy of the authorizations and permits granted will be within the sole discretion of Tenant.

B. Tenant's obligations under this Lease are further contingent on the Landlord and Tenant entering into a Development Agreement which is satisfactory to Tenant and Landlord in their sole discretion.

C. Tenant's obligations hereunder are contingent upon Landlord's, at its expense, providing an ALTA/ASCM survey of the Premises to the Tenant. Tenant shall have fifteen (15) days from the receipt of the survey to object to any encroachments and encumbrances shown on the survey which are unacceptable to the Tenant.

D. The Tenant's obligations are conditioned on Landlord's furnishing an abstract of title showing marketable title in Landlord in conformity with Iowa law and title standard of the Iowa State Bar Association of that portion of the Premises owned by the Landlord and for that portion of the Premises leased by the Landlord showing merchantable title in the Lessor in the Lease with the State and/or Department of Transportation in conformity with Iowa law and title standard of the Iowa State Bar Association. The Landlord shall make every reasonable effort to promptly perfect title.

E. The Landlord and Tenant shall comply with the terms of the Development Agreement when executed by the Landlord and Tenant. The Tenant's obligations are further contingent on the City's fulfillment of the requirements in Article 2, paragraph 1 thereof.

ARTICLE 3 - RENT

1. **Annual Rent.** Subject to the provisions of Articles 11 (Damage and Destruction) and 12 (Condemnation) of this Lease, Tenant agrees to pay Landlord during the Term, in advance on the first day of each calendar year, at the address set forth on the Summary page of this Lease or such other address as Landlord may specify in writing from time to time, an annual rent of Eighteen Thousand Dollars (\$18,000.00) per year. In case of late payment, Tenant shall pay a penalty of six percent (6%) per annum.

The term "Lease Year" as used herein shall mean each consecutive twelve (12) month period from and after the Commencement Date until the expiration of the Term; provided, however, if the Commencement date falls on a day other than the first day of a calendar month, then the first Lease Year shall be longer than one calendar year and shall end on the last day of the twelfth (12th) full calendar month after the Commencement Date. Each subsequent Lease Year shall end on the last day of that same calendar month. If the Commencement Date is other than the first day of a calendar month, the Annual Rent shall be prorated based upon the actual number of days from the Commencement Date to the end of that calendar year.

2. **Rent to State of Iowa or Department of Transportation.** The Landlord shall timely pay the rent due under any lease for part of the Premises and perform all terms and conditions of said lease.

ARTICLE 4 - TAXES AND UTILITIES

1. **Real Property Taxes.** From and after the Commencement Date, Tenant or Tenant's sublessees must pay, prior to delinquency, real estate taxes imposed during the Term upon or against the Premises and the Improvements thereon constructed by Tenant (the "Real Estate Taxes") as follows: Commencing with the January 1, 2004 valuation, which shall be payable on October 1, 2005, Tenant shall pay all real estate taxes on the Premises and any Improvements constructed by Tenant or its subtenants. Landlord shall pay all taxes on the land and improvements payable before October 1, 2005 and shall continue to pay taxes on such improvements of Landlords which existed prior to the Commencement Date. Upon termination of this Lease, Tenant shall be responsible for the taxes for the period in which it was in possession unless Landlord makes such taxes the responsibility of a successor tenant or there is an exemption.

2. **Tax Protest Proceedings.** Tenant shall have the right, at its own cost and expense, to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement or otherwise contesting the validity or amount of the real estate taxes assessed or levied upon the Premises and the Improvements, subject to any provisions of the Development Agreement. If required by law, Tenant may take such action in the name of the Landlord, who shall cooperate with the Tenant to such extent as Tenant may reasonably require.

3. **Utilities Expenses.** Tenant shall make all arrangements for obtaining utilities, with Landlord's cooperation, and during the Term shall pay for, all utilities and services furnished to or to be used on the Premises, including, without limitation, electricity, water, gas, sewer, telephone service, storm water utility and trash collection. Such charges and expenses shall be paid directly to the utility companies and other entities to which such charges and fees are payable.

ARTICLE 5 - COMMON AREA

1. **"Common Area" Defined.** The term "Common Area" as used herein means that area and facilities that is provided and designated from time to time for the general use and convenience of Tenant and other members of the general public. The Common Area includes recreation paths or pedestrian trails, associated landscape and parking areas.

2. **Maintenance of Common Area.** During the Term, Tenant shall maintain and repair, or cause to be maintained and repaired by Tenant's subtenants or designees, the Common Area and shall keep, or cause to be kept, the Common Area in good condition and repair throughout the Term, all at Tenant's cost and expense. The Tenant's obligation to maintain and repair, or cause to be maintained and repaired, the Common Area shall include, without limitation, providing day-to-day cleaning, sweeping and trash removal services therefor and snow and ice removal.

ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS

1. **Construction of Improvements.** The parties contemplate that Tenant will construct or cause to be constructed on the Premises a marina, a bar and restaurant and hotel or motel as well as retail establishments.

2. **Ownership of the Improvements.** During the Term, Tenant shall have title to the Improvements, which shall at all times remain the sole property of Tenant. Upon the expiration of the Term (and any extension thereof) or earlier termination of this Lease, the Improvements shall be appraised for their fair market value and the City shall pay Tenant for remaining value based on the fair market value. If Landlord elects to demolish the Improvements located on the Premises at the expiration of the Term or earlier termination of the Lease upon a finding that no value exists, Tenant shall not be obligated to pay toward the cost to Landlord of demolition of said Improvements.

3. **Repairs and Maintenance.** Tenant agrees that, subject to the provisions of Article 11 below, during the Term it will, at its expense, make all necessary repairs to the Improvements and maintain the Premises and the Improvements in good condition and repair.

Tenant will maintain the marina in operable condition except for conditions and circumstances outside its control, including but not limited to those in Article 17 hereof.

Tenant intends to use the existing underground storage tanks and lines now existing on the Premises and owned by Landlord which Landlord represents are in compliance with law and in good condition. Tenant will maintain the tanks and lines during the term of the Lease and renewal thereof.

4. **Alterations and Improvements.** Tenant shall have the right, at any time and from time to time during the Term, to add structures, to make improvements or alterations, structural or otherwise, to the Improvements, at its expense; provided, however, that the fair market value of all improvements on the Premises following each such change or alteration shall be at least equal to the fair market value of all Improvements on the Premises immediately prior to such change or alteration.

5. **Separation Distance from Wells.** Tenant shall conform with the "Separation Distance from Wells" as set forth on Exhibit "B" hereto.

ARTICLE 7 - LIENS

1. **Discharge of Liens; Contest.** If, at any time during the Term, any interest of Landlord in the Premises becomes subject to a lien for labor or materials furnished to Tenant in the construction, replacement or repair of the Improvements, within thirty (30) days after Tenant's receipt of written notice informing Tenant of the recording of such lien, Tenant shall cause the lien to be bonded or discharged, and shall otherwise save Landlord harmless on account thereof; provided, however, that if Tenant desires in good faith to contest the validity or correctness of any such lien it may do so, and Landlord shall reasonably cooperate to whatever extent may be necessary, provided only that Tenant shall indemnify Landlord against any costs, loss, liability or damage on account thereof.

Landlord and Tenant covenant each with the other not to permit any judgment, attachment and/or lien to be filed against the Property except for any permitted liens. Should any judgment, attachment and/or lien of any nature be filed against the Property, the party from whose fault or alleged debt such lien arises shall within 30 days after notice, cause such judgment, attachment and/or lien to be removed by substitution of collateral, bonding or otherwise.

Notwithstanding the foregoing, Tenant reserves the right to obtain leasehold financing for the purpose of construction, replacement and repair of the Improvements from time to time.

ARTICLE 8 - USE OF PREMISES

1. **Permitted Use.** The Premises shall be used for the purpose of conducting thereon the business of a marina and for incidental purposes related thereto, a bar and restaurant, hotel/motel, retail establishments or for any other legal purposes; provided that the Premises shall not be used in such manner as to knowingly violate any applicable law, rule, ordinance or regulation of any

governmental body or the terms and provisions of a proposed 50 year lease between Landlord and the State of Iowa in the attached form, Exhibit "C", until the City acquires ownership.

2. **Extended Hours of Operation.** Tenant shall have the right (but not the duty) to operate its businesses, or any part thereof, at the Premises up to twenty-four (24) hours per day in its discretion.

ARTICLE 9 - LIABILITY INSURANCE

1. **Tenant's Insurance.** Tenant agrees that on or before the date of possession, it will obtain, for the mutual benefit of Landlord, Landlord's lessor and Tenant, commercial general liability insurance covering the Premises from an insurance company authorized or admitted to do business in the state in which the Premises are located. Such insurance shall provide coverage of at least Two Million Dollars (\$2,000,000) combined single limit for death or injury to one or more persons and property damage, and shall name Landlord and Landlord's lessor as an additional insured thereunder. Tenant agrees to maintain such insurance in full force and effect during the Term, at its sole cost and expense. Tenant shall provide Landlord and Landlord's lessor with a certificate of the company issuing the policy, certifying that the same is in full force and effect. Tenant may, at its option, bring its obligation to insure hereunder under a "blanket" policy of insurance; provided, however, that the interests of Landlord and Landlord's lessor shall be as fully protected thereby as if Tenant obtained individual policies of insurance.

2. **Underground Storage Tank Insurance.** Tenant shall procure underground storage tank insurance as provided by Iowa Code Chapter 455G.

3. **Tenant's Indemnification.** During the Term, Tenant agrees to protect, defend (with counsel reasonably satisfactory to Landlord), indemnify and save Landlord harmless from and against all claims, costs, expenses and liability arising from (a) Tenant's possession, use, control or management of the Premises, (b) any condition upon the Premises resulting from a breach or default in the performance of any covenant or agreement on Tenant's part to be performed hereunder, (c) the negligence of Tenant or its employees, agents, licensees, contractors, or sublessees, or (d) injury or damage to persons or property in or on the Premises; provided, however, that any such claim, cost, expense or liability shall not be attributable in whole or in part to the willful act or omission or negligence of Landlord or its agents, employees, licensees, or contractors or to a breach or default by Landlord hereunder or to use of the Common Area by the public who are not customers or invitees of Tenants, its assigns or sub-tenants.

4. **Landlord's Indemnification.** During the Term, Landlord agrees to protect, defend (with counsel reasonably satisfactory to Tenant), indemnify and save Tenant harmless from and against all claims, costs, expenses and liability arising from:

A. Any condition upon the Premises resulting from a breach or default in the performance of any covenant or agreement on the Landlord's part to be performed hereunder or prior to the term of this Lease.

B. Any claim affecting the Premises arising from acts or omissions of the Landlord, including but not limited to claims by prior tenants.

C. Negligence of the Landlord or its employees, agents, licensees or contractors.

ARTICLE 10 - PROPERTY INSURANCE

1. **Tenant Insurance.** Tenant will, at its cost and expense, obtain and maintain so-called "All Risk" property insurance with a code upgrade endorsement, with an insurance company authorized or admitted to do business in the state in which the Premises are located, for the mutual benefit of Tenant, its mortgagee and Landlord, covering the Improvements in an amount equal to one hundred percent (100%) of the full replacement cost thereof (provided replacement cost insurance is reasonably available), excluding foundation and excavation costs. As often as any such policy expires or terminates, a renewal or replacement policy providing similar coverage shall be obtained by Tenant. In the event of fire or other casualty, proceeds of any such policy shall be payable to Tenant, its mortgagee and Landlord, as their respective interests may appear, in accordance with the terms of this Lease. Tenant shall provide Landlord with a certificate of the company issuing the policy, certifying that the same is in full force and effect. Tenant may, at its option, bring its obligations to insure hereunder within the coverage of a "blanket" policy of insurance; provided, however, that the interest of Landlord shall thereby be as fully protected as if Tenant obtained individual policies of insurance.

ARTICLE 11 - DAMAGE AND DESTRUCTION

1. **Abatement of Rent.** If the Improvements or any part thereof are damaged or destroyed by fire, this Lease shall continue in full force and effect but the Tenant's rent shall be abated proportionate of the area damaged or destroyed bears to the whole.

2. **Restoration of Improvements - Insured Loss.** If the substantial damage to or destruction of the Improvements is caused by a peril covered under the property insurance policy required to be maintained by Tenant under Section 10 above, then, within a reasonable period of time after the date of the damage or destruction, Tenant shall proceed to repair, restore and replace the Improvements and shall have available to it all proceeds from such property insurance. During the period of time between the date of the damage and destruction and the commencement of the restoration, Tenant shall maintain and keep the Premises in a clean, safe and sanitary condition (which shall include, as

applicable, removing rubble and placing fencing around any affected building located on the Premises).

3. **Restoration of Improvements - Uninsured Loss.** If the substantial damage to or destruction of the Improvements is caused by a peril or perils not covered under the property insurance policy required to be maintained by Tenant under Section 10 above, then, within thirty (30) days after the occurrence of the damage or destruction, Landlord may elect to pay the amount required to repair, restore and replace the Improvements and shall give Tenant written notice of its election to do so. Upon receipt of the required funds, Tenant shall proceed with due diligence to repair, restore and replace the Improvements. If Landlord elects not to pay the required amount, Landlord shall give Tenant written notice thereof within thirty (30) days after the occurrence of the said damage or destruction and Tenant shall then have fifteen (15) days to elect to pay the required amount itself. Tenant shall give Landlord written notice of its election within such fifteen (15) day period. If Tenant elects to pay the amount itself, then Tenant shall, at its option, be permitted to extend the Term, if necessary, so that the Term, including any available options to extend, will expire ten (10) years after the date of completion of the repair, replacement or restoration, and such extended term shall be on the same terms and conditions as were in effect just prior to the expiration of the preceding Term. If Tenant elects to extend the Term pursuant to this Section 11, it shall give Landlord written notice thereof within the same fifteen (15) day period during which Tenant has the right to elect to pay the cost of the repairs. If neither party elects to pay the required amount, then, upon the expiration of the fifteen (15) day election period set forth above, this Lease shall terminate.

As used herein, "substantial damage" shall mean damage amount to fifty percent (50%) or more of the fair market value of the Improvements at the time of the loss.

ARTICLE 12 - CONDEMNATION

1. **Complete Taking.** If, at any time during the Term, the whole is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation", then this Lease shall terminate as of the earlier of the date that title vests in the condemner or the date that the condemner takes possession of the property so taken ("Date of Taking"). In such event, Annual Rent and other charges payable hereunder shall be prorated and paid to the date of termination.

2. **Partial Taking.** If, at any time during the Term, any part of the Improvements, or twenty percent (20%) or more of the parking spaces located on the Premises, or any part of a driveway or other access way which is reasonably necessary for access to the business on the Premises is taken for the purposes set forth in Section 12.1, Tenant shall have the right to terminate this Lease as of the Date of Taking, by giving written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. In such event, Annual Rent, all additional rent and all other charges payable hereunder shall be prorated and paid to the date of termination. In such event, the Landlord and Tenant agree to negotiate for no more than fourteen (14) days after the

condemnation date, the possible substitution of the parking spaces on City-owned land abutting the Premises prior to lease termination.

3. **Allocation of Condemnation Award.** If the whole or a part of the Premises is taken by condemnation, Landlord shall have the unqualified right to pursue its remedies against the condemner for the full value of Landlord's fee interest and other property interests in and to the Premises. Similarly, Tenant shall have the unqualified right to pursue its remedies against the condemner for the full value of Tenant's leasehold interest, the value of the Improvements and any other property interests in and to the Premises. If the laws of the state in which the Premises are located allow or require the recovery from the condemner to be paid into a common fund or to be paid to Landlord only, and if such recovery is so paid into a common fund or to Landlord only, then the recovery so paid shall be apportioned between the parties according to the value of their respective property interests as they existed on the date of the condemnation. The provisions of this Article 12 shall survive any termination of this Lease.

4. **Rent Reduction in Case of Partial Taking; Restoration.** If, at any time during the Term, a part of the Premises is taken by condemnation and Tenant is not entitled to or does not exercise its right to terminate, this Lease shall continue in full force and effect, except that the Annual Rent shall be reduced as of the Date of Taking, so that for the remainder of the Term Tenant shall pay only such portion of the Annual Rent as the rental value of the part remaining after condemnation bears to the rental value of the entire Premises at the date of condemnation.

ARTICLE 13 - BANKRUPTCY

1. **Continuation of Lease.** If, at anytime during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against Tenant, whether or not such proceedings result in an adjudication against Tenant, or should a receiver of the business or assets of Tenant be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the Annual Rent and additional rent reserved hereunder continues to be paid to Landlord when due and the other terms, covenants and conditions of this Lease on the part of Tenant to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms. The provisions set forth in this Section 13.1 are intended to reflect current bankruptcy laws and the agreement of the parties hereto. If such bankruptcy laws change during the Term of this Lease, the provisions set forth in this Section 13.1 shall prevail to the extent allowed by the bankruptcy court.

ARTICLE 14 - ASSIGNMENT AND SUBLETTING

1. **Assignment.** Tenant may assign this Lease, in whole or in part, with the prior written consent of Landlord; provided, however, that any assignee of this Lease shall be subject to all of the rents, terms and conditions of this Lease. Further, in the event that Tenant requests that the Assignee be allowed to enter into a separate Assessment Agreement as provided in the Development

Agreement, Landlord has the right to approve the assignment which approval shall not be unreasonably withheld.

2. **Subletting.** Tenant or its assignee shall have and is hereby given the unqualified right to sublet the Premises, subject to all of the rents, terms and conditions of this Lease and Landlord's lease with the State, if any. Further, in the event that Tenant requests that the Sub-Tenant be allowed to enter into a separate Assessment Agreement as provided in the Development Agreement, Landlord has the right to approve the subletting which shall not be unreasonably withheld.

ARTICLE 15 - LEASEHOLD FINANCING BY TENANT

1. **Leasehold Financing.** Landlord acknowledges and agrees that Tenant may from time to time during the Term, without the consent of Landlord, mortgage or otherwise finance and encumber, whether by leasehold deed of trust or mortgage, collateral assignment of this Lease, lease/sublease-back, assignment/leaseback and/or direct ownership of the Improvements, any and/or all of its leasehold estate hereunder, and property and rights in and to the Premises granted to it under this Lease, as security for the payment of an indebtedness (any and all of which are herein referred to as a "Leasehold Mortgage" and the holder thereof is herein referred to as "Tenant's Mortgagee"). The terms "Leasehold Mortgage" and "Tenant's Mortgage" shall mean one or more mortgages as the case may be. Any such Leasehold Mortgage shall be a lien only upon Tenant's leasehold estate hereunder and Tenant's interest in the Premises, but shall not be a lien upon the fee title to the Premises, upon Landlord's interests in this Lease, or upon Landlord's reversionary interest in the Improvements as provided in Section 5.2. Tenant's Mortgagee or its assigns may enforce such Leasehold Mortgage and acquire title to the leasehold estate and Tenant's interest in the Premises in any lawful way, and in connection therewith Tenant Mortgagee may take possession of and rent the Premises.

2. **Cooperation with Tenant's Mortgagee.** Landlord and Tenant agree that, so long as any Leasehold Mortgage is a lien on the leasehold estate created hereby and Tenant's interest in the Premises, that notwithstanding anything to the contrary contained in this Lease:

A. **Notice.** If Tenant or Tenant's Mortgagee under Leasehold Mortgage shall have delivered to Landlord prior written notice of the address of Tenant's Mortgagee, Landlord shall mail to Tenant's Mortgagee a copy of any notice of termination and/or default to Tenant given under this Lease, concurrently with giving such notice to Tenant.

B. **Right to Cure.** In the event of any default by Tenant under the provisions of this Lease, Tenant's Mortgagee shall have the same periods as are given Tenant for remedying such default, plus, in each case, an additional period of thirty (30) days, and in such event Tenant's Mortgagee, without prejudice to its rights against Tenant, shall have the right to cure such default within the applicable grace periods provided for herein whether such default consists of the failure to

pay the Annual Rent or the failure to perform any other obligation of Tenant hereunder, and Landlord shall accept such performance by Tenant's Mortgagee as though the same had been done or performed by Tenant.

C. No Termination During Foreclosure or Cure. In the event of any default by Tenant, and if prior to the expiration of the applicable cure period specified in Section 15.2(B), Tenant's Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease, or by entry on the Premises by foreclosure or otherwise, then Landlord shall not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Premises or similarly enforce performance of this Lease so long as Tenant's Mortgagee is with all due diligence and in good faith engaged in the curing of such default, provided, no extension beyond expiration of the thirty (30) day grace period specified in Section 15.2(B) shall be granted where default consists of failure to make timely payment of the Annual Rent or other monetary sums due hereunder. Tenant's Mortgagee shall not be required to continue such possession of foreclosure proceedings if the default that was the reason therefor has been cured.

D. New Lease. In the event of the termination of this Lease as a result of Tenant's default under this Lease, or if Tenant as debtor in possession, or any trustee for Tenant's bankruptcy estate in any bankruptcy proceedings, shall reject this Lease, then Landlord shall provide Tenant's Mortgagee with written notice that this Lease has been terminated or rejected, as the case may be, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other defaults of Tenant, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Premises with Tenant's Mortgagee or its nominee (provided such nominee has a net worth of at least One Million Five Hundred Thousand Dollars (\$1,500,00.00) and reasonable experience in the same or similar business enterprises) effective as of the date of termination or rejection, as the case may be, at the Annual Rent, and upon the terms, covenants and conditions (but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

i. Tenant's Mortgagee or its nominee (provided such nominee is reasonably financially capable of carrying out Tenant's obligations under this Lease) shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which are and/or would have at the time of execution and delivery thereof been due pursuant to this Lease but for such termination;

ii. Tenant's Mortgagee or its nominee shall agree to remedy any of Tenant's defaults of which Tenant's Mortgagee was notified by Landlord's notice(s) of termination and/or default or otherwise which are reasonably susceptible of being so cured by Tenant's Mortgagee or its nominee, and it is hereby agreed that all monetary defaults are susceptible of cure.

iii. Any New Lease made pursuant to this subparagraph (D) shall be prior to any lien, charge or encumbrance on the Premises which was junior and subordinate to such Leasehold Mortgage prior to the termination of this Lease and the tenant under such New Lease shall have the same right, title and interest in and to the Premises as Tenant had under this Lease.

E. Transfer after Foreclosure. This Lease may be assigned, with the consent of Landlord which consent shall not be unreasonably withheld, to Tenant's Mortgagee, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to Tenant's Mortgagee in lieu thereof, or thereafter by Tenant's Mortgagee to any third party, and Tenant's Mortgagee shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession of the Premises or in ownership of the leasehold estate created hereby.

F. No Surrender or Modification Binding. No surrender (except a surrender upon the expiration of the Term or upon termination by landlord pursuant to the provisions of this Lease, including the notice provisions of Section 15.2(A) and the cure provisions of Section 15.2(B) by Tenant to Landlord of this Lease, or of the Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Tenant shall be valid or effective, and neither this Lease nor any of the terms hereof may be amended, modified, changed or canceled and no consent of Tenant to any of the foregoing shall be valid or effective without the prior written consent of Tenant's Mortgagee (which consent shall not be unreasonably withheld or delayed).

G. Assignment of Sublease. Landlord consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Premises to the holder thereof, effective upon any default under such Leasehold Mortgage.

H. Amendment to Lease. In connection with any leasehold financing, Landlord agrees to execute any and all amendments or modifications of this Lease reasonably requested by such lender, provided that no such amendment or modification shall decrease the Annual Rent or any other monetary sums due from or payable by Tenant hereunder or otherwise have an adverse effect on Landlord's rights, benefits and privileges under this Lease, or create any additional obligations, or burdens upon Landlord (excluding non-material obligations or burdens) not required by the terms of this Lease.

I. Insurance Proceeds and Condemnation Awards. Notwithstanding any other provision in this Lease, in the event of any casualty to or condemnation of the Premises or any portion thereof during such time as any Leasehold Mortgage is unsatisfied, all insurance proceeds and/or condemnation awards (if greater than \$100,000.00) shall be deposited with an independent third party financial institution selected by Leasehold Mortgagee to act as escrow agent. Any such institution shall have assets in excess of One Hundred Million Dollars (\$100,000,000.00), and Leasehold Mortgagee shall have the right to appoint itself escrow agent.

i. Subject to the following paragraph, Tenant shall as fully as possible repair and reconstruct the Improvements to their condition before the casualty or condemnation, and Tenant shall be responsible for any deficiency between the amount of the proceeds or award and the cost to so restore. The escrow agent shall pay Tenant and its agents from the escrow account for such restoration in accordance with usual and customary disbursement requirements for construction loans, including upon being presented evidence (i) that the billed-for services have been performed, (ii) that the remaining escrowed amount is sufficient to complete restoration, and (iii) that the Premises has been kept free of mechanics' liens.

ii. If a substantial portion of the Premises is subject to the casualty or condemnation and (i) Landlord and Tenant agree that restoration is impracticable, or (ii) such casualty or condemnation occurs during the final three (3) years of the Lease Term, then in either instance, Tenant shall have the right to terminate this Lease, in which event the proceeds or award shall be payable as follows: first, to Leasehold Mortgagee in the amount of any outstanding amounts secured by the Leasehold Mortgage; second, the balance to Landlord and Tenant as governed by the terms of this Lease, unless otherwise provided by State law.

3. **Liability of Tenant's Mortgagee.** Except as set forth above, no Tenant's Mortgagee shall become personally liable for the performance or observance of any covenants or conditions to be performed or observed by Tenant unless and until Tenant's Mortgagee obtains possession of the Premises or becomes the owner of Tenant's interest hereunder upon the exercise of any remedy provided for in any Leasehold Mortgage or by law. Thereafter, Tenant's Mortgagee shall be liable for the performance and observance of such covenants and conditions only so long as Tenant's Mortgagee remains in such possession or for the time period it owns such interest

ARTICLE 16 - REMEDIES IN THE EVENT OF DEFAULT

1. **Remedies in the Event of Default by Tenant.** . In the event of a default by Tenant in the payment of any sum due and payable to Landlord hereunder, if the default is not cured within thirty (30) days after Tenant's receipt of written notice thereof from Landlord, or, in the event of a non-monetary default, if the default is not cured within sixty (60) days after Tenant's receipt of written notice thereof, or, if the default cannot reasonably be cured within such sixty (60) day period, if Tenant does not commence to cure the default within such sixty (60) day period, or does not thereafter continue its efforts with due diligence, then, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such breach, with or without notice or demand, Landlord may:

A. Without terminating this Lease, reenter the Premises with or without process of law and take possession of the same and expel or remove Tenant and all other parties occupying the Premises, and at any time and from time to time relet the Premises or any part thereof for the account of Tenant, for such term, upon such conditions and at such rental as Landlord may deem proper. In such event, Landlord may receive and collect the rent from such reletting and shall apply it against

any amounts due from Tenant hereunder, including, without limitation, such expenses as Landlord may have incurred in recovering possession of the Premises, placing the same in good order and condition, altering or repairing the same for reletting, and all other expenses, commission and charges, including attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and reletting. Landlord may execute any Lease made pursuant hereto in Landlord's name or in the name of Tenant, as Landlord may see fit, and the Tenant thereunder shall be under no obligation to see to the application by Landlord of any rent collected by Landlord, nor shall Tenant have any right to collect any rent thereunder. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required to be paid by Tenant up to the date of Landlord's reentry, and thereafter Tenant shall pay to Landlord, until the end of the Term, the amount of all rent and other charges required to be paid by Tenant hereunder, less the net proceeds of such reletting as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or otherwise. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant for the total rent hereunder by any reentry or other act, unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease.

B. Terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, reenter the Premises with or without process of law and take possession of the same, and expel or remove Tenant and all other parties occupying the Premises. In such event, Landlord shall thereupon be entitled to recover from Tenant:

i. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

ii. The worth at the time of award of the amount by which (a) the unpaid rent which would have been earned after termination until the time of award exceeds (b) the amount of such rental loss Tenant proves could have been reasonably avoided; plus

iii. The worth at the time of award of the amount by which (a) the unpaid rent for the balance of the Term after the time of award, exceeds (b) the amount of such rental loss that Tenant proves could be reasonably avoided; plus

iv. Any other amount reasonably necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom.

As used in Subsections (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the rate of six percent (6%) per annum. As used in Subsection (iii) above, the

“worth at the time of award” is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

2. **Remedies in the Event of Default by Landlord.** The occurrence of any of the following will constitute a “Landlord Default”:

A. Any failure by Landlord to pay any amounts due Tenant hereunder or under the Development Agreement when due, provided such failure continues for 30 days after Tenant's written notice thereof to Landlord; and

B. A failure by Landlord to perform any of its other obligations under this Lease, where such failure continues for sixty (60) days after Tenant's written notice thereof to Landlord; provided, however, that if the nature of the default is such that it cannot reasonably be cured within sixty (60) days, and Tenant's quiet enjoyment of the Property is not affected thereby, a Landlord Default will not be deemed to have occurred if Landlord will, within such sixty (60) day period, commence to cure the default and thereafter diligently prosecute the same to completion.

C. Upon the occurrence of a Landlord Default, Tenant will have the right to elect any one or more of the following rights and remedies:

(i) To enforce Landlord's obligations under this Lease as and when they become due.

(ii) To demand specific performance or injunctive relief.

(iii) In the case of a non-monetary Landlord Default, to cure the default and demand of Landlord immediate repayment of all amounts expended by Tenant for that purpose, plus interest at the rate of six percent (6%) per annum (collectively, the "Default Amount"), or to offset the Default Amount against rentals due hereunder, as and when they become due.

(iv) To exercise any other right or remedy now or hereafter available to Tenant under the laws and judicial decisions of the State where the Property is located.

ARTICLE 17 - RIVER CHANGES

1. **River Changes.** Landlord and Tenant acknowledge and agree that the Ground Lease is being entered into by Tenant based on the access to the Missouri River, river view and the recreational boating and water activities on the Missouri River. In the event the water flow and access to the Missouri River is terminated, materially lessened or materially altered for any reason, including but not limited to legislation, regulation, agreement of public entities, reduced or seriously increased water flow, or relocation of river banks, then in that event, the Ground Lease shall be automatically modified as to the marina area and the obligations of the Tenant shall abate as to the marina area, including but not limited to real estate taxes and rent and the Assessment Agreement shall be abated with respect to the marina area.

ARTICLE 18 - NO OFFER

1. **No Offer.** The preparation and submission of a draft of this Lease by either party to the other will not constitute an offer, nor will either party be bound to any provisions of this Lease, until both parties have fully executed a final document and an original signature document has been received by both parties. Until then, either party is free to terminate negotiations with no obligation to the other.

ARTICLE 19 - QUIET ENJOYMENT AND TITLE

1. **Covenant of Quiet Enjoyment.** Subject to the terms of this Lease, upon paying the Annual Rent and additional rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Premises during the Term.

2. **Right to Possession.** Landlord covenants, warrants and represents that: (a) the Premises are now unoccupied and tenant-free, except for a month-to-month lease with restaurant "Johnny's on the River" for which the Landlord is proceeding to terminate and obtain possession, and (b) absolute, tenant-free possession of the Premises, except as provided in the preceding 2(a), will be delivered to Tenant on the date of possession by Tenant.

3. **Superior Encumbrances.** Landlord covenants, warrants and represents that there are no liens, mortgages or encumbrances on the Premises superior to the rights of Tenant under this Lease.

4. **Ownership; Authority.** Landlord covenants, warrants and represents that: (a) Landlord alone has the full right to lease the Premises for the Term as set forth in this Lease, (b) there are no existing restrictions or encumbrances affecting the Premises which would prohibit the construction of the Improvements or the use and occupancy of the Premises as set forth in Article 8.1, and (c) the Premises are not subject to any zoning laws or regulations which would prohibit or restrict the construction, maintenance and operation of the uses set forth in Article 8.1. It is expressly understood and agreed that these covenants by Landlord constitute a warranty by Landlord and that if Landlord does not have the sole right to lease the Premises or if there are any such restrictions, then (i) at the option of the Tenant, this Lease shall become null and void and no rent shall accrue for the Term or any part thereof, and (ii) Tenant may pursue any remedy available at law or in equity to recover damages or other relief.

ARTICLE 20 - TRADE FIXTURES AND WAIVER OF LANDLORD'S LIEN

1. **Ownership; Removal.** Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all furniture, fixtures and equipment which are installed or placed in, on or about the Improvements or other parts of the Premises by Tenant or its

assigns and sub-tenants, whether affixed to the Premises or otherwise (“Trade Fixtures”), excluding the heating, ventilating and air conditioning systems and all electrical and mechanical and plumbing and cable components and systems that form an integral part of the Improvements, shall be and at all times remain the property of Tenant or its affiliate and may be removed at any time during the Term, or upon the expiration or earlier termination of the Term, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. Tenant shall cause any damage to a building caused by such removal to be repaired at no cost to Landlord. Landlord waives any rights it may have under any statute or rule of law of the state in which the Premises are located to distrain against the Trade Fixtures for rent or otherwise.

2. **Landlord’s Waiver.** The Trade Fixtures to be used for the operation of the business on the Premises will be ordered and custom built for installation in the Premises. Such Trade Fixtures may be acquired from an equipment lessor under an equipment lease or from an equipment vendor under a security agreement, and it is anticipated that such equipment lessor or vendor will require the execution and delivery by Landlord of an instrument to protect its interest, sometimes referred to as a “landlord’s waiver,” which will include provisions (a) waiving any rights Landlord may have to the Trade Fixtures by reason of (i) the manner or method in which the Trade Fixtures are attached or affixed to the Premises, or (ii) any statute or rule of law of the state in which the Premises are located which would, but for this provision, permit Landlord to distrain against the Trade Fixtures for the non-payment of any rent or other charges coming due hereunder, and (b) giving the equipment lessor or vendor the right to remove the Trade Fixtures in the event of a default under the equipment lease or security agreement, provided any damage to the Premises resulting therefrom is repaired. If requested, Landlord agrees to execute such document in recordable form, and, if required by the equipment lessor or vendor, to obtain the execution of a similar document, in recordable form, by Landlord’s mortgagee or trust deed beneficiary. Landlord waives any statutory lien or security interest in the personal property installed or used on the Premises and agrees to execute and deliver such documents as Tenant may reasonably request to evidence this waiver of Landlord’s lien.

ARTICLE 21 - RESTRICTIVE COVENANTS

1. **Landlord’s Covenants.** Landlord agrees, for itself and its successors and assigns, that during the Term, and any extension thereof, it will not use or lease, or permit, suffer or allow any person to use or lease any real estate within 2,500 linear feet of Premises south of Interstate 29, for any business that would compete with a hotel/motel; full service restaurant, bar or coffee shop; marina and associated uses including gasoline sales and retail establishments (except Sergeant Floyd and Lewis and Clark Interpretive Center gift shops). In the event the casino/riverboat relocates within 2500 feet of the Premises, Tenant will consent to a restaurant therein provided the casino/riverboat with the restaurant otherwise meets the criteria set forth in the Development Agreement, Section 11, Subsection 8. Landlord covenants that for and during the term of this Lease and extension thereof, it will not sell, lease or grant the right to operate upon City-owned or controlled land along the Missouri River and south of Interstate 29 for a distance of 2,500 linear feet from the Premises to commercial users that do not have parking on their own premises sufficient to

comply with City ordinances. The Landlord will not lease to any user the area south of the Premises so as to impede the view of the Premises to and from the Missouri River.

2. **Further Covenants.** Landlord agrees for itself and its successors and assigns, that it will not authorize, allow, endorse, permit or sponsor any activity in the Common Area which would materially affect Tenant's peaceful enjoyment of the Premises including, by way of example and not by limitation, sponsoring Rivercade or other similar events on the Premises, camping on the Premises, allowing the Premises to be a collection point for transfer to events on the riverfront or in any other facility such as the Grandview bandshell, Convention Center, gambling boat or Tyson Auditorium.

3. **Remedies for Breach.** The covenants of Landlord set forth in Article 21 are a material inducement for Tenant to enter into this Lease. If Landlord breaches such covenants and the breach is not cured within thirty (30) days after written notice thereof from Tenant to Landlord, Tenant shall have the right to pursue all of its rights and remedies available at law or in equity, including termination of this Lease, a suit for damages, and injunctive relief. The foregoing enumeration of rights and remedies shall not preclude the exercise of any other rights or remedies which might be available to Tenant at law or in equity.

4. **Incorporation in Short Form Lease.** The provisions of Sections 21.1, 21.2 and 21.3 shall be included in the short form of this Lease as provided in Section 1.4 above.

ARTICLE 22 - ATTORNMENT/NON-DISTURBANCE

1. **Attornment/Non-Disturbance.** Within thirty (30) days after written request by Tenant, Landlord shall deliver to Tenant an Attornment, Non-Disturbance, Waiver and Partial Release Agreement in recordable form and in substantially the same form as Exhibit "D" attached hereto, duly executed by the present mortgagees of Landlord or beneficiaries under any deed of trust or mortgage encumbering the Premises.

ARTICLE 23 - HAZARDOUS SUBSTANCE OR WASTE

1. **Mutual Indemnity.** Landlord hereby represents and warrants that, to the best of its knowledge, there does not exist on, in or under the Premises any "hazardous substance" or "hazardous waste" as those terms are used under the various applicable federal and state environmental laws, including, without limitation, petroleum, petroleum products and asbestos-containing materials ("Hazardous Material"). If any such Hazardous Material is discovered at any time during the Term under circumstances in which it is reasonably clear that such Hazardous Material was present on or before the Commencement Date, Landlord shall indemnify, defend with counsel reasonably satisfactory to Tenant, and hold and save Tenant and any sublessee harmless from

and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material. If any such Hazardous Material is discovered at any time during the Term of this Lease or any time thereafter under circumstances in which it is reasonably clear that such Hazardous Material became present at any time during the Term of this Lease as a result of an act or omission of Tenant, its subtenants, agents, employees, customers or other invitees, Tenant shall indemnify, defend with counsel reasonably satisfactory to Landlord, and hold and save Landlord harmless from and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material during said period.

ARTICLE 24 - NOTICES AND DEMANDS

1. **Notices; Demands.** Any notice, demand or other communication required or permitted by law or any provision of the Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth on the Lease Summary, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, (b) delivered by an overnight private mail service which provides delivery confirmation such as; without limitation, Federal Express, Airborne or UPS, or (c) personally delivered at such address. All communications delivered as set forth herein shall be deemed received by the addressee on the delivery date or the delivery refusal date shown on the return receipt or the delivery confirmation.

ARTICLE 25 - ATTORNEYS' FEES

1. **Paid to Prevailing Party.** If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorneys' fees and costs, incurred by it on account of or related to such action or proceeding.

ARTICLE 26 - RIGHT OF FIRST REFUSAL TO PURCHASE

1. **Right of First Refusal to Purchase.** Tenant will have the right of first refusal during the Term to purchase or lease all or any part of the Premises or any larger tract of land of which the Premises may be a part or any interest therein (the "First Refusal Property") on the same terms and conditions as those of any bona fide offer received by and acceptable to Landlord. Before making any sale or any agreement to sell or lease, Landlord must immediately notify Tenant in writing of the terms and conditions of such offer. Tenant, within thirty (30) days after receipt of such notice, may elect to exercise this preemptive right by written notice to Landlord, on the same terms and conditions set forth in the offer by the third party. In the event that any non-cash consideration is

included in any bona fide offer from a third party, Tenant will have the right to substitute in cash the fair market value of any such non-cash consideration. Landlord and Tenant agree to take such actions and execute such documents as may be reasonably required to effect a conveyance of the First Refusal Property and Premises to Tenant on the terms and conditions set forth in the offer. Failure of Tenant to exercise this preemptive right on one or more occasions will not affect Tenant's right to exercise it on any subsequent occasion. Any sale or transfer of the Premises will be expressly made subject to all of the terms, covenants and conditions of this Lease.

ARTICLE 27 - NO SECURITY INTEREST IN PREMISES
OR ASSIGNMENT BY LANDLORD

1. **No Security Interest in Premises or Assignment by Landlord.** Landlord agrees that it will not assign nor pledge or encumber this Ground Lease or its interest in the Premises by mortgage, pledge, assignment of rent, assignment of lease, security agreement or in any other manner during the Term of the Lease and extension of the Term.

ARTICLE 28 - GENERAL PROVISIONS

1. **Binding Effect.** This Lease shall inure to the benefit of and bind the parties hereto and, their respective successors, representatives and assigns.

2. **Severability.** If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

3. **Entire Agreement.** This Lease and the exhibits attached hereto contain the entire agreement between the parties and shall not be modified in any manner except by a document executed by the parties hereto or their respective successors in interest.

4. **Captions.** The captions used in this Lease are inserted as a matter of convenience only, in no way define, limit or described the scope of this Lease or the intentions of the parties hereto, and shall not in any way affect the interpretation or construction of this Lease.

5. **Gender and Number.** Words of any gender in this Lease shall be held to include any other gender, and words in the singular shall be held to include the plural, and vice versa, as the context permits or requires.

6. **Approvals**. Wherever Landlord's or Tenant's approval or consent is required herein, such approval or consent shall not be unreasonably withheld or delayed.

7. **No Waiver**. A waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision.

8. **Holdover**. If Tenant holds over after the Term with the consent, express or implied, of Landlord, such holding over shall be construed to be a tenancy from month to month only, and Tenant shall pay the rent, additional rent and other sums as herein required for such further time as Tenant continues its occupancy. The foregoing provision shall not affect Landlord's right of reentry or any rights of Landlord hereunder or as otherwise provided by law.

9. **Time of Essence**. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

10. **Governing Law**. This Lease shall be governed by and construed in accordance with the laws of the State of Iowa. The Woodbury County District Court shall have exclusive jurisdiction over any litigation between the Landlord and Tenant regarding the terms and provisions of this Lease or the Development Agreement.

11. **Counterparts**. This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

12. **No Third Party Rights**. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any person or entity other than the parties hereto.

13. **Unexecuted Lease**. The submission of this Lease for review or execution does not constitute a reservation of, or option for, the rights conferred herein. This Lease shall become effective only upon its execution and delivery by both Landlord and Tenant.

14. **Estoppel Certificates**. Landlord and Tenant agree that within fifteen (15) days after receipt of a written request from either to the other, the party receiving the request will execute and deliver to the other a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term and the number and duration of any unexercised, unexpired options to extend the Term, and (d) that to the certifying party's knowledge, as of the date

of the certificate, there are no uncured defaults hereunder on the part of the requesting party or specifying such defaults as are claimed by the certifying party.

15. **Due Authorization.** Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the partnership, joint venture or corporation, as the case may be, for whom he or she is acting, has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

16. **Relationship of Parties.** Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, and Landlord and Tenant's relationship in this Lease shall be deemed to be one of the landlord and tenant only.

17. **Incorporation of Exhibits.** All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

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

LANDLORD:

TENANT:

City of Sioux City, Iowa
a municipality

Midwest Franchise-Iowa, LLC
a Nebraska limited liability company

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

By: Roger Miller
Roger Miller, Member/Manager

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

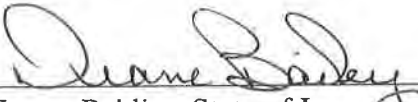
By: [Signature]
Larry Miller, Member/Manager

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 3rd day of November, 2003, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared CRAIG S. BERENSTEIN, Mayor of the City of Sioux City, Iowa, and ROBERT K. PADMORE, City Clerk of said City, each being to me

personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.




Notary Public - State of Iowa

STATE OF IOWA)
 : SS
WOODBURY COUNTY)



On this 4th day of November, 2003, before me, a Notary Public in and for the State of Iowa, personally appeared Roger Miller, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said Roger Miller acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.





Notary Public - State of Iowa

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this ____ day of November, 2003, before me, a Notary Public in and for the State of Iowa, personally appeared Larry Miller, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said Larry Miller acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Notary Public - State of Iowa

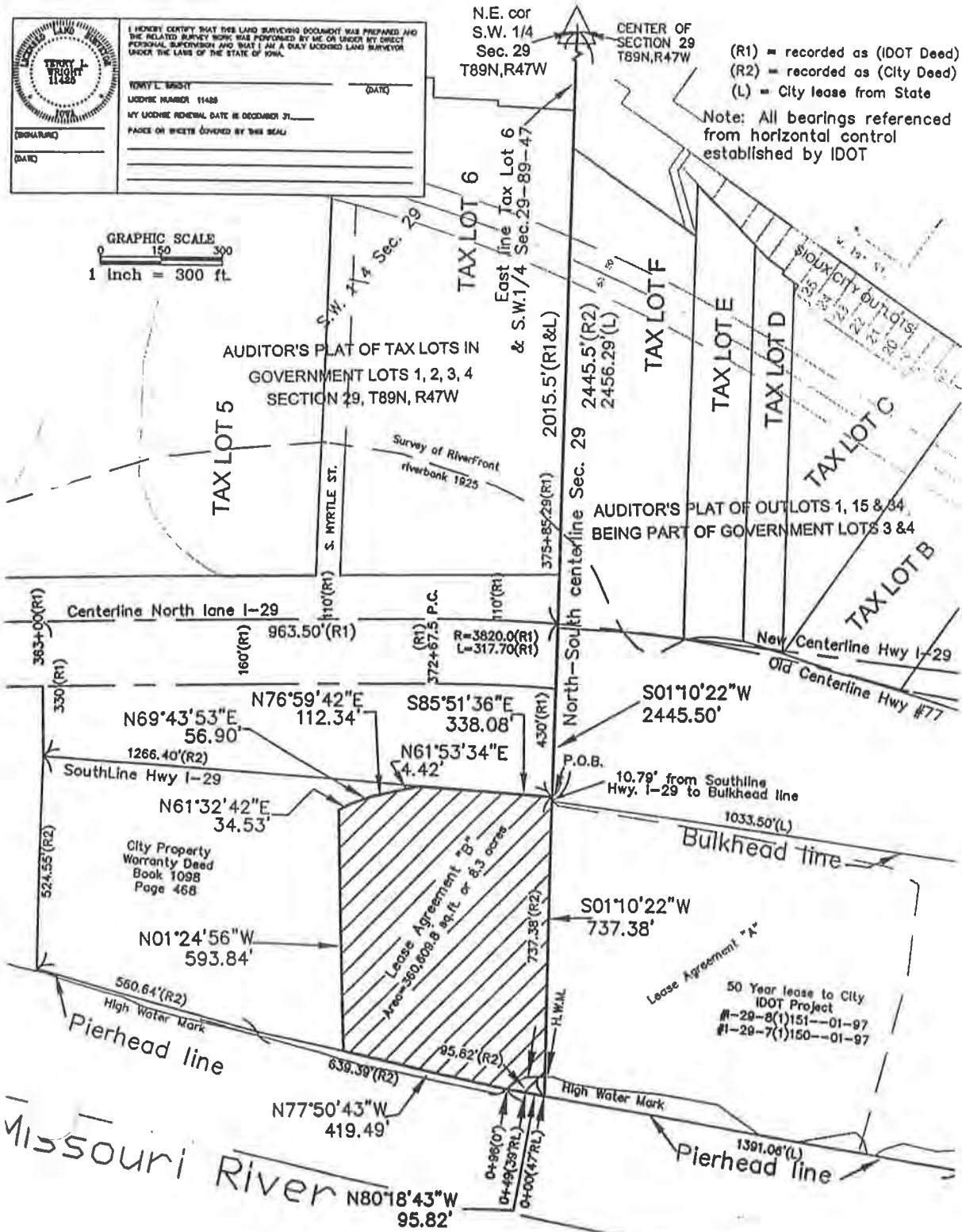
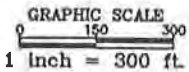
Exhibit "A(1)"

LEASE AGREEMENT "B" PLAT
EXHIBIT "A"
 (sheet 1 of 3)
PROJECT: RIVERFRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 10-29-03 TOTAL AREA: 360,609.8 sq.ft. or 8.3 acres
GRANTOR: CITY OF SIOUX CITY

LAND SURVEYOR
 I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

WERRY L. BRADY (DATE)
 LICENSE NUMBER 11488
 MY LICENSE RENEWAL DATE IS DECEMBER 31, _____
 PAGES ON WHICH COVERED BY THIS SEAL

(SIGNATURE)
 (DATE)



LEASE AGREEMENT "B" PLAT

(sheet 2 of 3)
 PROJECT: RIVERFRONT DEVELOPMENT
 PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
 DATE: 10-29-03 TOTAL AREA: 360,609.8 sq. ft. or 8.3 acres
 GRANTOR: CITY OF SIOUX CITY

LEGAL DESCRIPTION

Lease Agreement "B" being a tract of land of certain accretions to part of Tax Lot 6 in Auditor's Plat of Tax Lots In Government Lots 1, 2, 3, 4 In Section 29, Township 89 North, Range 47 West of the Fifth Principal Meridian, lying South of Interstate Highway #29, all in Sioux City, Woodbury County, Iowa; , as shown on Exhibit "A" of Lease Agreement "B" Plat being sheet 1 of 3, and by reference made a part hereof, more particularly described as follows;

Commencing at the Northeast corner of the Southwest Quarter of said Section 29 thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on the South Right-of way line of Interstate highway #29, said point being the point of beginning and said point being 10.79 feet northerly of the Army Corp of Engineer's Missouri River "Bulkhead line" as shown in the lease document to the City of Sioux City from State of Iowa Department of Transportation as Identified on State project Numbers I-29-8(1)151-01-97 and I-29-7(1)150-01-97; thence continuing S 01°10'22"W along said southerly extension thereof for a distance of 737.38 feet to the Corp of Engineers Missouri River "Pier head line"; thence N 80°18'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 95.82 feet; thence N 77°50'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 01°24'56"W for a distance of 593.84 feet; thence N 61°32'42"E for a distance of 34.53 feet; thence N 69°43'53"E for a distance of 56.90 feet; thence N 76°59'42"E for a distance of 112.34 feet; thence N 61°53'34"E for a distance of 4.42 feet to said South Right-of way line of Interstate highway #29; thence S 85°51'36"E along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet to the point of beginning.
 Lease Agreement "B" containing an area of 360,609.8 square feet or 8.3 acres.

Subject to a Permanent Utility Easement as shown on Exhibit "B" of Lease Agreement "B" Plat being sheet 3 of 3, and by reference made a part hereof, more particularly described as follows;

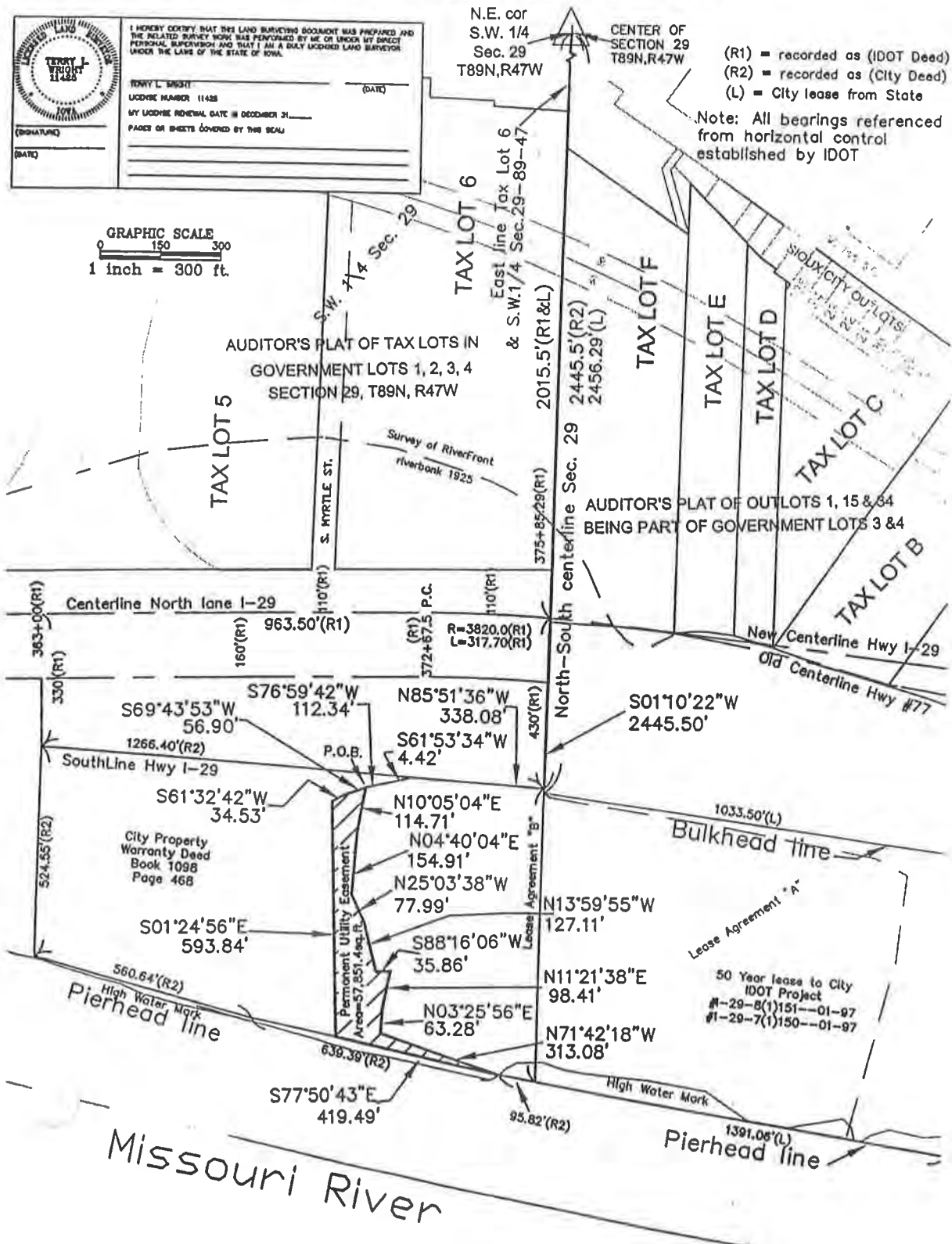
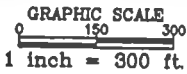
Commencing at the Northeast corner of the Southwest Quarter of said Section 29 thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on the South Right-of way line of Interstate highway #29; thence N 85°51'36"W along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet; thence S 61°53'34"W for a distance of 4.42 feet; thence S 76°59'42"W for a distance of 112.34 feet to the point of beginning of said Permanent Utility Easement; thence S 69°43'53"W for a distance of 56.90 feet; thence S 61°32'42"W for a distance of 34.53 feet; thence S 01°24'56"E for a distance of 593.84 feet to said Corp of Engineers Missouri River "Pier head line"; thence S 77°50'43"E along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 71°42'18"W for a distance of 313.08 feet; thence N 03°25'56"E for a distance of 63.28 feet; thence N 11°21'38"E for a distance of 98.41 feet; thence S 88°16'06"W for a distance of 35.86 feet; thence N 13°59'55"W for a distance of 127.11 feet; thence N 25°03'38"W for a distance of 77.99 feet; thence N 04°40'04"E for a distance of 154.91 feet; thence N 10°05'04"E for a distance of 114.71 feet to the point of beginning of said Permanent Utility Easement.

Permanent Utility Easement containing an area of 57,851.4 square feet.

Note: All bearings referenced from horizontal control established by the Iowa Department of Transportation.

LEASE AGREEMENT "B" PLAT
 EXHIBIT "B"
 (sheet 3 of 3)
 PERMANENT UTILITY EASEMENT

PROJECT: RIVERFRONT DEVELOPMENT
 PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
 DATE: 10-29-03 TOTAL EASEMENT AREA: 57,851.4 square feet



- (R1) = recorded as (IDOT Deed)
- (R2) = recorded as (City Deed)
- (L) = City lease from State

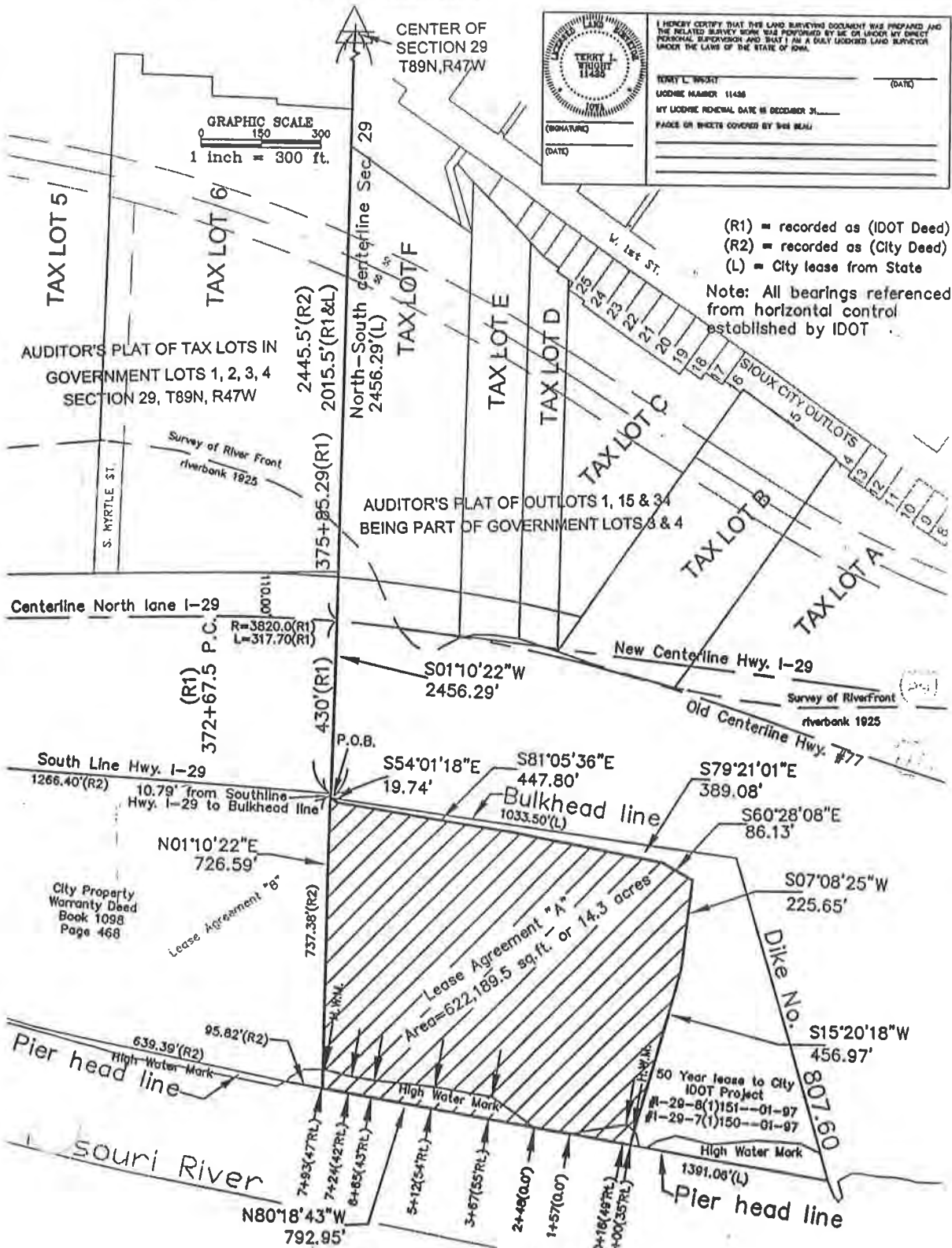
Note: All bearings referenced from horizontal control established by IDOT

Exhibit "A(2)"

LEASE AGREEMENT "A" PLAT

EXHIBIT "A"
(sheet 1 of 2)

PROJECT: RIVER FRONT DEVELOPMENT
 PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
 DATE: 10-29-03 TOTAL AREA "A": 622,189.5 sq. ft. or 14.3 acres
 GRANTOR: CITY OF SIOUX CITY



	I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.	
	TERRY J. WRIGHT 11438	(DATE)
	UDORIC NUMBER 11438	MY UDORIC RENEWAL DATE IS DECEMBER 31, _____
	(SIGNATURE)	PAGES OR SHEETS COVERED BY THIS SEAL:

(R1) = recorded as (IDOT Deed)
 (R2) = recorded as (City Deed)
 (L) = City lease from State
 Note: All bearings referenced from horizontal control established by IDOT

LEASE AGREEMENT "A" PLAT

(sheet 2 of 2)
PROJECT: RIVER FRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 10-29-03 TOTAL AREA "A" 622,189.5 sq. ft. or 14.3 acres

LEGAL DESCRIPTION

Lease Agreement "A" lying within a described lease to the City of Sioux City from State of Iowa Department of Transportation as identified on State project Numbers I-29-8(1)151-01-97 and I-29-7(1)150-01-97 being a tract of land of certain accretions to that part of Tax Lots A, B, C, D, E, and F in the Auditor's Plat of part of Out lots 1, 15 and 34 Sioux City, being a part of Government Lots 3 and 4, Section 29, Township 89 North, Range 47 West, of the Fifth Principal Meridian, Woodbury County, Iowa, lying North of the left bank of the Missouri river and lying South of Interstate Highway #29 all in Sioux City, Woodbury County, Iowa, as shown on Exhibit "A" of Lease Agreement "A" Plat being sheet 1 of 2, and by reference made a part hereof, more particularly described as follows;

Commencing at the center of said Section 29; thence S 01°10'22"W along the North-South centerline of said Section 29 and the southerly extension thereof for a distance of 2456.29 feet to the Army Corp of Engineer's Missouri River "Bulkhead line" and the point of beginning, said point being 10.79 feet southerly of the South line of Interstate Rouge 29 Right-of-way as described in Recorded Deed in Book 877, Page 626, filed in the Woodbury County Court House, Sioux City, Iowa; thence S 54°01'18"E for a distance of 19.74 feet; thence S 81°05'36"E for a distance of 447.80 feet; thence S 79°21'01"E for a distance of 389.08 feet; thence S 60°28'08"E for a distance of 86.13 feet; thence S 07°08'25"W for a distance of 225.65 feet; thence S 15°20'18"W for a distance of 456.97 feet to the Corp of Engineers Missouri River "Pier head line"; thence N 80°18'43"W along said Army Corp of Engineers Missouri River "Pier head line" for a distance of 792.95 feet to a point on said southerly extension of said North-South centerline; thence N 01°10'22" E along said southerly extension for a distance of 726.59 feet to the point of beginning.

Lease Agreement "A" containing an area of 622,189.5 square feet or 14.3 acres.

Note: All bearings referenced from horizontal control established by Iowa Department of Transportation.

Exhibit "B"

TABLE A: SEPARATION DISTANCES FROM WELLS

SOURCE OF CONTAMINATION	REQUIRED DISTANCE FROM WELL, IN FEET									
	5	10	25	50	75	100	200	400	1000	
WASTEWATER STRUCTURES										
POINT OF DISCHARGE TO GROUND SURFACE SEWERS AND DRAINS	Well house floor drains	A								
	Water treatment plant wastes				A					
	Sanitary & industrial discharges									A
	Well house floor drains to surface	A-EWM	A-WM	A-WM	A-SP					
	Well house floor drains to sewers			A-WM	A-WM	A-SP	A-SP	A-SP		
	Water plant wastes			A-WM	A-WM	A-SP	A-SP	A-SP		
	Sanitary & storm sewers, drains			A-WM	A-WM	A-SP	A-SP	A-SP		
	Sewer force mains						A-WM	A-WM	A-WM	A-SP
	Land application of solid wastes							D	S	
	Irrigation of wastewater							D	S	
LAND DISPOSAL OF WASTES										
concrete vaults & septic tanks							D	S		
mechanical wastewater treatment plants							D	S		
cesspools & earth pit privies							D	S		
Soil absorption fields							D	S		
Lagoons								D	S	
CHEMICALS										
chemical application to ground surface							D	S		
CHEMICAL AND MINERAL STORAGE							D	S		
Above ground							D	S		
On or under ground							D	S		
ANIMALS										
animal pasturage				A						
animal enclosure						D	S			

SOURCE OF CONTAMINATION	REQUIRED DISTANCE FROM WELL, IN FEET									
	5	10	25	50	75	100	200	400	1000	
ANIMAL WASTES	Land application of solids					D	S			
	Land application of liquid or slurry					D	S			
	Storage tank					D	S			
	Solids stockpile						D	S		
Storage basin or lagoon								D	S	
Earthen silage storage trench or pit						D	S			
MISCELLANEOUS										
Basements, pits, sumps		A								
Flowing streams or other surface water bodies				A						
Cisterns				D		S				
Cemeteries							A			
Private wells							D	S		
Solid waste disposal sites										A

A: All wells
D: Deep wells
S: Shallow wells
EWM: Water main pipe specifications encased in 4" of concrete
SP: Pipe of sewer pipe specifications
WM: Pipe of water main specifications

Exhibit "C"

Prepared by: Green Ballard, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1732

Form No. 636-019
Revised 5/11/01



Iowa Department of Transportation

OFFICE OF RIGHT OF WAY
AMES, IOWA 50010
COMMERCIAL LEASE

Parcel No. _____
Project No. _____

County _____
Lease No. _____

The Iowa Department of Transportation, acting for the State of Iowa, Lessor, hereby agrees to lease to the City of Sioux City, Iowa, Lessee, commencing the _____ day of _____, 2003 for a term of fifty (50) years the following described premises, to-wit:

The above-described premise is leased to said Lessee in consideration of the following terms, provisions, and conditions:

- To pay Lessor rental for said term as follows: \$ _____ on _____ day of _____, 2003, and \$ _____ on the 1st day of _____, 2003, and _____ on the 1st day of _____, 2003, to be mailed to the Cashier, Accounting Office, Iowa Department of Transportation, Ames, Iowa 50010.

Rent shall be paid in advance and no refund shall be made for any cause.

Payment shall be made in the form of a City warrant, made payable to the Iowa Department of Transportation.

- To use said premises only for municipal purposes and for marina and marina related commercial purposes.

- It is understood and agreed that the Lessee will not allow the release or disposal of any fuel, oil, grease and any and all other petroleum products or other hazardous materials or substances within the leased area or on any adjacent lands. It is also agreed that the Lessee will not change oil, wash any vehicles or perform any automotive maintenance on these premises.

If any petroleum products and/or chemicals should accidentally be released upon the leased premises or adjacent land, the Lessee agrees to immediately clean up and remove said petroleum products or chemicals to the satisfaction of the Iowa Department of Transportation and the Department of Natural Resources.

- Parking vehicles used for the storage of fuel, hazardous materials or substances is prohibited.
- Lessee acknowledges that Lessee has inspected and knows the condition of the property and the same hereby leased without any representation or warranty by the Lessor whatsoever, and without obligation on the part of the Lessor to make any changes, alterations, repairs, or additions thereto, except as otherwise herein provided.

C:\Documents and Settings\rosemary\Local Settings\Temporary Internet Files\OLK3\Midwest Franchise - Commercial Lease - State.doc

Formatted: Height: 11"

Deleted: Deanne Popp

Deleted: 1477

Deleted: _____

Deleted: from _____

Deleted: 2002

Inserted: 2002

Deleted: 2000

Deleted: _____, to the _____ day of _____, 2003

Deleted: 2001

Deleted: _____, and on a month to month basis beginning on the _____ day of _____, _____

Inserted: 2003

Deleted: 2002

Inserted: 2002

Deleted: 2000

Deleted: Money Order, Certified Check or Cashier's Check

Deleted: PERSONAL CHECKS AND COMPANY CHECKS WILL NOT BE ACCEPTED.

Deleted: _____

Deleted: _____

Deleted: \\10.2.128.121\everyone\City Legal\Secure\LEGAL\Commercial Lease - State.doc

Inserted: \\10.2.128.121\everyone\City Legal\Secure\LEGAL\Commercial Lease - State.doc

Deleted: W:\Highway\ROW\Property Management\ResourceCenter\Shell Documents\PMForms\Leases\Commercial Lease.doc

Inserted: W:\Highway\ROW\Property Management\ResourceCenter\Shell Documents\PMForms\Leases\Commercial Lease.doc

Deleted: S:\Row\Property Management\Resource Center\Shell Documents\PM Forms\Lease Forms\Commercial Lease.doc

Prepared by: Owen Ballard, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1732
Form No. 636-019
Revised 5/1/01

Deleted: Deanne Popp
Deleted: 1477

- 6. Not to sell, transfer or assign this lease or underlet said premises or any portion thereof without prior written consent of Lessor which shall not be unreasonably withheld. Lessor hereby consents to Lessee subletting a portion of the property to Midwest Franchise - Iowa, LLC for marina and marina-related commercial purposes.
- 7. Any provisions on the reverse side or attached to this lease are, by this reference, made a part of this lease.
- 8. To surrender possession of said premises at the expiration of this lease without further Notice to Quit and in as good repair and condition as the same are now in or may hereinafter be placed, unavoidable wear through careful use or damage by fire or the elements caused without any fault on Lessee's part. Lessee and/or its sub-lessee shall retain title to the improvements constructed by each of them, including but not limited to dock and retail structures.
- 9. To pay all public utility services used including city sewage and/or disposal service.
- 10. The Lessor shall not be liable for damages or injury to Lessee or Lessee's employees, agents or associates or any of their property from any cause whatsoever which may arise out of or in connection with the use and occupancy of the premises by any such persons or their property.
- 11. Lessee represents that Lessee, and will not engage in or permit any unlawful business whatsoever on said premises.
- 12. To comply with all lawful regulations, restrictions, ordinances and laws applicable to the proper use and occupancy of said premises; and not to allow ashes, trash, garbage or junk of any kind to accumulate on the premises or the alley in rear thereof and to remove the same from said premises, to remove snow and other obstructions from the sidewalks and to keep same, including ground, in as good condition as when received or thereafter put by Lessor, reasonable wear and tear excepted.
- 13. That Lessor, Lessor's agents, or workmen may temporarily enter premises to inspect the same, or to show the property to persons interested in leasing or purchasing the premises, or any part thereof within thirty (30) days prior to the expiration of this Lease.
- 14. Lessor or Lessor's agent may place "For Rent" or "For Sale" signs on the premises at any time or at any place within thirty (30) days prior to the expiration of this Lease.
- 15. That should said Lessee hold over by permission of Lessor for three (3) days after expiration of this lease, it is agreed by all parties signing the same that it shall be a tenancy at will on a thirty (30) day term.
- 16. Upon any failure on Lessee's part to comply with any of the terms or conditions of this lease, Lessor may elect to declare a default of this lease by issuing a 60 day written Notice to Cure, designating the date on which said lease shall be forfeited, canceled and terminated; and the acceptance of partial payments of rent due shall not constitute a waiver of the right of action for balance due, aided by attachment, garnishment, ejectment, or action for forcible entry and detainer for possession on account of the unpaid balance of rent for the month for which part payment was made,

Deleted: <#>Not to permit or allow the premises to be damaged, or depreciated in value by any act of negligence by Lessee or Lessee's employees, agents, associates or others under Lessee's control or direction; to at once repair or replace any part of the premises or fixtures or appliances therein broken, damaged, frozen, clogged or destroyed and to prevent the freezing of pipes. No alterations, additions or improvements shall be made by the Lessee in or upon said premises without the prior written consent of Lessor, and when made by the same shall not be made upon credit, and Lessor and said property shall in no manner be held liable for same. Lessee agrees to use due care and diligence in guarding said property and in using the same, as a reasonable and careful (... [1]

- Formatted: Bullets and Numbering
- Formatted: Tabs: 0.25", Left
- Formatted: Bullets and Numbering
- Formatted: Bullets and Numbering
- Formatted: Bullets and Numbering
- Deleted: is of good character an' (... [2]
- Deleted: as shall also be intoxic' (... [3]
- Deleted: ting
- Formatted: Bullets and Numbering
- Deleted: 14. If for any reason I (... [4]
- Deleted: 15
- Deleted: 16
- Deleted: 17
- Deleted: 18
- Deleted: A
- Deleted: shall make the whole (... [5]
- Deleted: or
- Deleted: forfeiture
- Deleted: and all of Lessee's right (... [6]
- Deleted: of Forfeiture
- Deleted: W:\Highway\ROW\Pr (... [7]
- Inserted: W:\Highway\ROW\Pr (... [8]
- Deleted: S:\Row\Property\Manag (... [9]

Prepared by: Qwen Ballard, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-7322

Form No. 636-019
Revised 5/11/01

Deleted: Deanne Popp
Deleted: 1477

or on account of other legal causes. Lessor shall additionally issue a 60 day written notice to cure to Lessee's subtenants or assignees.

17. If, during the term of this lease, the building or premises are destroyed by fire, the elements, or any natural cause, or become partially destroyed, so as to render the premises wholly or materially unfit for occupancy, then this lease shall cease and become null and void from the date of such damage or destruction, and then said Lessee shall immediately surrender said premises and/or interest therein to said Lessor. If said premises shall be so slightly damaged by fire, the elements or natural causes so as not to render the same unfit for occupancy in the opinion of the Lessor, then the rent accrued or accruing shall not cease, provided, however, that said Lessor will repair the damage and restore the premises with all reasonable dispatch.

Deleted: 19

18. Lessor may enter upon the premises for the purpose of drilling test holes or making surveys during the term of this lease, or to accommodate utility relocation.

Deleted: 20

19. It is specifically understood and Lessee hereby agrees that the premises, or any part thereof shall at no time or under any circumstances be used for, or devoted to political purposes or the conduct of political activities, including, but not limited to: meetings, rallies, caucuses, administration, distribution of literature which related to or bears upon the action of any political organization, unit or party.

Deleted: 21. This lease may be terminated by Lessee on 10 days written Notice.

Deleted: 22

Deleted: 23

Deleted: 24

20. Lessee warrants that Lessee is not employed either by the Iowa Department of Transportation or by the Federal Highway Administration and that this lease has not been obtained by the agreement to pay any fee, commission, percentage, gift or any other consideration to any person, and that no employee of the Iowa Department of Transportation or of the Federal Highway Administration shall be admitted to any share or part of this lease or to any benefit to arise therefrom.

Deleted: , EXCEPT those tenants that were in possession of the premises at the time the State acquired title to property.

Deleted: <#>Damage Deposit of \$_____ will be held in escrow and will be returned upon inspection and approval of the property when the lease is terminated. If, however, the Lessee has defaulted in the payment of any rent due or owes other funds to the Lessor pursuant to the rental agreement at the time of lease termination, that portion of the rental deposit that is needed to remedy said default or debt will be withheld by the Lessor.

Deleted: 6

Deleted: without regard to whether any

Deleted: Lessee

Deleted: W:\Highway\ROW\PropertyManagement\ResourceCenter\Shell Documents\PMForms\Leases\Commercial Lease.doc

Inserted: W:\Highway\ROW\PropertyManagement\ResourceCenter\Shell Documents\PMForms\Leases\Commercial Lease.doc

Deleted: S:\Row\PropertyManagement\ResourceCenter\Shell Documents\PMForms\Lease Forms\Commercial Lease.doc

It expenses incurred by Lessee for moving itself, Lessee's inventory and other personal property from the premises, upon expiration of this lease, shall be Lessee's responsibility,

22. The Lessee will protect, indemnify and save harmless the Lessor from any and all claims, demands, judgement, loss, cost or expense for injury to or death of persons, damage to the property and improvements (hereon and damage to the property of any person whomsoever (including employees and representatives of both parties hereto) in any manner arising from the use of the premises by the Lessee unless such acts or omissions of the Lessor or its agents or servants directly contributed to said damage.

The Lessee is self insured. The Lessee's sub-tenant shall furnish the State with an appropriate certificate or copy of a current liability insurance policy in the minimum amount \$1,000,000.00 which must be in effect during the entire term of the lease as stated above. Said policy must specifically include the leased premises and must also include the Lessor as an additional insured party and must meet with the satisfaction of the Lessor. If the sub-tenant fails to furnish proof of insurance promptly after taking possession of the premises or fails to maintain such insurance during the entire term of this lease, such failure shall be cause for forfeiture, cancellation and termination of this lease after notice to cure as set forth in Section 18 hereof.

Prepared by: Gwen Ballard, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1732

Deleted: Deanne Popp
Deleted: 1477

Form No. 636-019

Revised 5/11/01

BY: _____
Lessee Date

Telephone No. _____

(SSN) Social Security Number or
Federal Tax I.D. _____

APPROVAL RECOMMENDED:

**APPROVED
IOWA DEPARTMENT OF TRANSPORTATION**

BY: _____
Property Manager Date
Telephone No. 515-239-_____

BY: _____
Douglas C. Bates, Chief Property Manager Date
Right of Way Office

Deleted: \\10.2.128.121\everyone\City
Legal\Secure\LEGAL\Commercial
Lease - State.doc
Inserted: \\10.2.128.121\everyone\Cit
y Legal\Secure\LEGAL\Commercial
Lease - State.doc
Deleted: W:\Highway\ROW\Property
Management\ResourceCenter\ShellDocu
ments\PMForms\Leases\Commercial
Lease.doc
Inserted: W:\Highway\ROW\Property
Management\ResourceCenter\ShellDocu
ments\PMForms\Leases\Commercial
Lease.doc
Deleted: S:\Row\PropertyManagement
\Resource Center\Shell Documents\PM
Forms\Lease Forms\Commercial
Lease.doc

C:\Documents and Settings\rosemary\Local Settings\Temporary Internet Files\OLK3\Midwest Franchise - Commercial Lease -
State.doc

Prepared by: Coven Ballard, Iowa Department of Transportation, Right of Way Office, 800 Lincoln Way, Ames, Iowa 50010 515-239-1732

Form No. 636-019
Revised 5/11/01

Deleted: Deanne Popp

Deleted: 1477

APPENDIX A

ATTACHMENT TO LEASE

The Lessee, for itself, Lessee's personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with a land that:

- (1) In the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services of benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- (2) No person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- (3) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- (4) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, the State of Iowa shall have the right to terminate the lease and to re-enter and repossess said land the facilities thereon, and hold the same as if said lease had never been made or issued.

Deleted: \\10.2.128.121\everyone\Cit
Legal\Secure\LEGAL\Commercial
Lease - State.doc

Inserted: \\10.2.128.121\everyone\Cit
y Legal\Secure\LEGAL\Commercial
Lease - State.doc

Deleted: W:\Highway\ROW\Property
Management\ResourceCenter\ShellDocu
ments\PMForms\Leases\Commercial
Lease.doc

Inserted: W:\Highway\ROW\Property
Management\ResourceCenter\ShellDocu
ments\PMForms\Leases\Commercial
Lease.doc

Deleted: S:\Row\PropertyManagement
\Resource Center\Shell Documents\PM
Forms\Lease Forms\Commercial
Lease.doc

C:\Documents and Settings\rosemary\Local Settings\Temporary Internet Files\OLK3\Midwest Franchise - Commercial Lease - State.doc

Exhibit "D"

Preparer Information	<u>ROSEMARY SHEEHAN,</u>	<u>614 PIERCE STREET,</u>	<u>SIOUX CITY,</u>	<u>(712) 277-4561</u>
	Individual's Name	Street Address	City	Phone

SPACE ABOVE THIS LINE
FOR RECORDER

**SUBORDINATION, ATTORNMENT,
NON-DISTURBANCE AND WAIVER AGREEMENT**

THIS SUBORDINATION, ATTORNMENT, NON-DISTURBANCE AND WAIVER AGREEMENT (the "Agreement") is made and entered into as of _____, 200____, by and between Midwest Franchise-Iowa, LLC, a Nebraska limited liability company ("Tenant"), whose principal place of business is located at 1602 W. 29th Street, South Sioux City, Nebraska 68776, the City of Sioux City, Iowa, a municipality ("Landlord"), whose principal place of business is located at 405 - 6th Street, Sioux City, Iowa 51101, and _____, a national banking corporation ("Lender"), whose principal place of business is located at _____, with reference to the following:

RECITALS:

- A. Tenant entered into that certain Ground Lease dated as of November _____, 2003 (the "Lease") with the City of Sioux City, Iowa, a municipality ("Landlord"), pursuant to which Tenant shall occupy the land and build Improvements (as defined in the Lease) located thereon described on Exhibits "A(1) and "A(2)" attached hereto (the "Premises").
- B. Lender has committed to make a loan to Tenant in the original principal amount of \$_____ (the "Loan"). To secure the Loan Tenant must grant to Lender and assignment of Lease and mortgage on _____ (collectively the "Mortgage") which Mortgage was recorded on the _____ day of _____, 2_____, in Roll _____, Image _____ of the records of the Woodbury County Auditor/Recorder.
- C. Lender and Tenant have agreed to execute this Agreement to set forth the rights and obligations of each party in connection with the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Tenant hereby agree as follows:

1. Subordination. The Lease is and shall be subordinate to the Mortgage insofar as it affects the Improvements (as such term is defined in the Lease) and all renewals, modifications, replacements and extensions thereof. Tenant's sole right, title and interest in and to the Improvements (as such term is defined in the Lease) is acknowledged by Landlord and is subject to the Mortgage. Landlord consents to the assignment of the Ground Lease to Lender.

2. Attornment. If, in the exercise of any rights under the Mortgage, Lender or any other person becomes owner of the Ground Lease for the Premises upon which the Improvements are located, or Tenant's Improvements on the Premises, Landlord shall attorn to and recognize Lender or such purchaser as Tenant under the Lease. In such event, Lender or such purchaser shall have all the rights of Tenant under the Lease and shall assume and perform all obligations of Tenant under the Lease. Lender agrees that it shall not join Landlord in any foreclosure proceedings but will give Landlord notice of the commencement of any foreclosure proceedings; provided, however, failure to give such notice to Landlord shall not invalidate any such foreclosure proceedings. Notwithstanding anything to the contrary contained herein, in no event shall Lender or such purchaser be: (a) liable for any act or omission of any previous Tenant; (b) subject to any offset or counterclaim which Landlord might be entitled to assert against any previous Tenant; or (c) bound by any material amendment or modification of the Lease hereafter made without the consent of Lender.

3. Collection of Rents. Landlord acknowledges that the Mortgage provides that the Lender may collect all rents from the property encumbered by the Mortgage from sub-tenants which property includes the Premises.

4. Non-Disturbance. So long as Landlord is not in default beyond any notice and cure period provided in the Lease or in the performance of any other terms, covenants or conditions of the Lease on Landlord's part to be performed, Landlord's rights and privileges under the Lease, including any extensions or renewals thereof, shall not be diminished or interfered with by Lender.

5. Tenant's Default. Notwithstanding anything contrary in the Lease, Landlord agrees that it shall concurrently give Lender a copy of any written notice of default given to Tenant and Lender shall have the right for an additional thirty (30) days, but not the obligation, to cure any default asserted against Tenant within the time provided in the Lease, or if no such time is provided, within a reasonable period of time, before Landlord may take any action against Tenant and/or terminate the Lease by reason of such default.

6. Waiver of Landlord's Lien. Landlord hereby waives its landlord's lien, if any, in the Improvements and agrees that, if requested by Tenant, Landlord shall execute and deliver to Tenant releases in the form appropriate for recording in the real estate records and filing under the Uniform Commercial Code, and such releases shall be recorded and/or filed by Tenant as required to give effect thereto.

7. Binding Effect. This Agreement shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

8. Incorporation of Exhibits. The Lease and all exhibits attached to this Agreement are hereby incorporated herein as though set forth in full in this Agreement itself.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LANDLORD:

TENANT:

CITY OF SIOUX CITY, IOWA
a municipality

MIDWEST FRANCHISE-IOWA, LLC
a Nebraska limited liability company

By: _____
Craig S. Berenstein, Mayor

By: _____
Roger Miller, Member/Manager

By: _____
Robert K. Padmore, City Clerk

By: _____
Larry Miller, Member/Manager

LENDER:

a national banking corporation

By: _____

STATE OF IOWA)

: SS

WOODBURY COUNTY)

On this ____ day of _____, 200____, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared CRAIG S. BERENSTEIN, Mayor of the City of Sioux City, Iowa, and ROBERT K. PADMORE, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Notary Public - State of Iowa

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this ____ day of _____, 200____, before me, a Notary Public in and for the State of Iowa, personally appeared Roger Miller, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said Roger Miller acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Notary Public - State of Iowa

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this ____ day of _____, 200____, before me, a Notary Public in and for the State of Iowa, personally appeared Larry Miller, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said Larry Miller acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Notary Public - State of Iowa

STATE OF _____)
 : SS
_____ COUNTY)

On this ____ day of _____, 200____, before me, a Notary Public in and for said State personally appeared _____, to me personally known, who being by me duly sworn did say that he/she is the _____ of said corporation, that the no seal has been procured by the said corporation and that said instrument was signed on

behalf of the said corporation by authority of its board of directors and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it and by him/her voluntarily executed.

Notary Public - State of Iowa

Exhibit "A(1)"

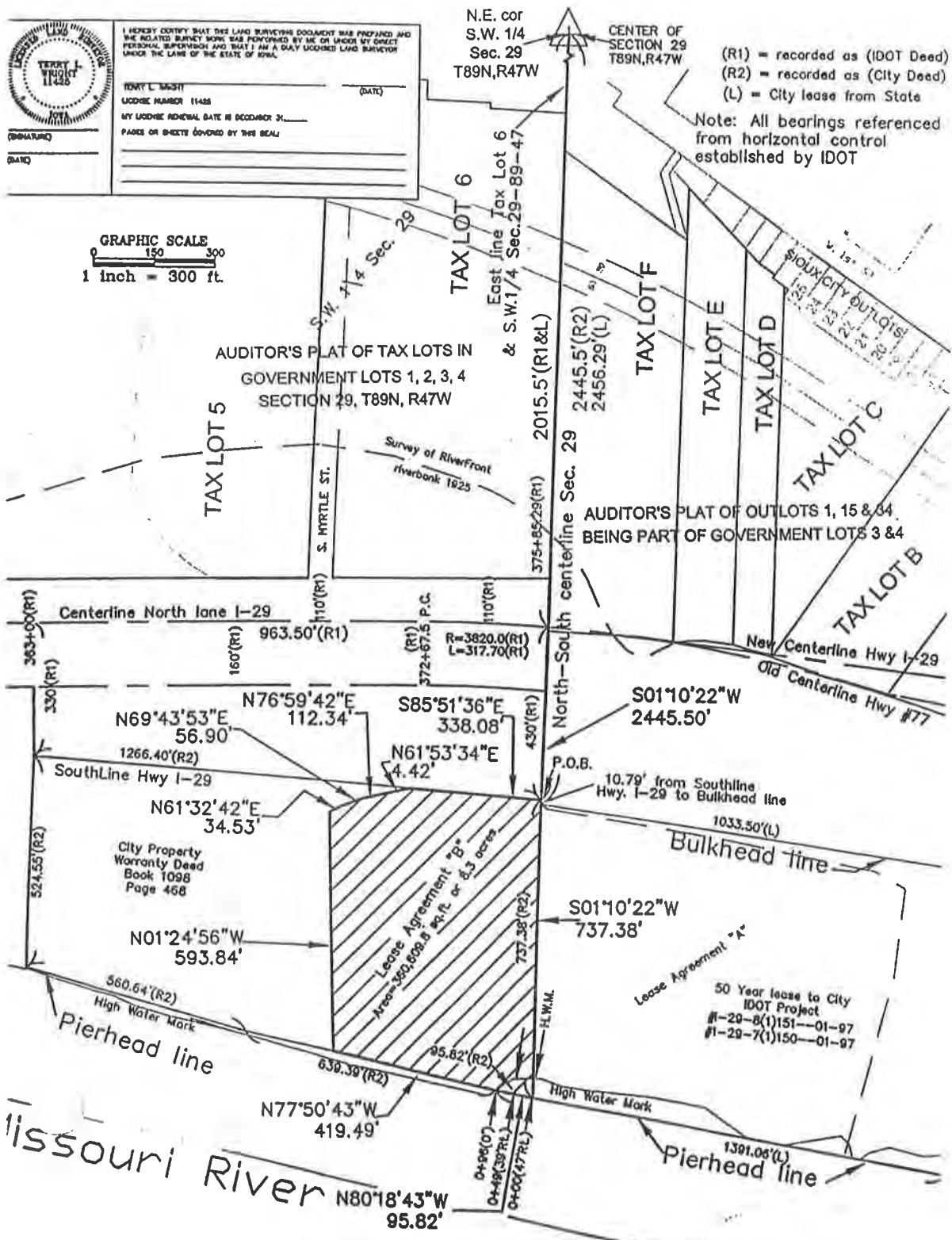
LEASE AGREEMENT "B" PLAT

EXHIBIT "A"
(sheet 1 of 9)

PROJECT: RIVERFRONT DEVELOPMENT
 PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
 DATE: 10-29-03 TOTAL AREA: 360,609.8 sq. ft. or 8.3 acres
 GRANTOR: CITY OF SIOUX CITY

TERRY L. WRIGHT
 LICENSE NUMBER 11455
 MY LICENSE RENEWAL DATE IS DECEMBER 31, _____
 PAGES OR SHEETS COVERED BY THIS SEAL: _____

(R1) = recorded as (IDOT Deed)
 (R2) = recorded as (City Deed)
 (L) = City lease from State
 Note: All bearings referenced from horizontal control established by IDOT



LEASE AGREEMENT "B" PLAT

(sheet 2 of 3)
 PROJECT: RIVERFRONT DEVELOPMENT
 PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
 DATE: 10-29-03 TOTAL AREA: 360,609.8 sq. ft. or 8.3 acres
 GRANTOR: CITY OF SIOUX CITY

LEGAL DESCRIPTION

Lease Agreement "B" being a tract of land of certain accretions to part of Tax Lot 6 in Auditor's Plat of Tax Lots in Government Lots 1, 2, 3, 4 in Section 29, Township 89 North, Range 47 West of the Fifth Principal Meridian, lying South of Interstate Highway #29, all in Sioux City, Woodbury County, Iowa; as shown on Exhibit "A" of Lease Agreement "B" Plat being sheet 1 of 3, and by reference made a part hereof, more particularly described as follows;

Commencing at the Northeast corner of the Southwest Quarter of said Section 29 thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on the South Right-of way line of Interstate highway #29, said point being the point of beginning and said point being 10.79 feet northerly of the Army Corp of Engineer's Missouri River "Bulkhead line" as shown in the lease document to the City of Sioux City from State of Iowa Department of Transportation as identified on State project Numbers I-29-8(1)151-01-97 and I-29-7(1)150-01-97; thence continuing S 01°10'22"W along said southerly extension thereof for a distance of 737.38 feet to the Corp of Engineers Missouri River "Pier head line"; thence N 80°18'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 95.82 feet; thence N 77°50'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 01°45'56"W for a distance of 593.84 feet; thence N 61°32'42"E for a distance of 34.53 feet; thence N 69°43'53"E for a distance of 56.90 feet; thence N 76°59'42"E for a distance of 112.34 feet; thence N 61°53'34"E for a distance of 4.42 feet to said South Right-of way line of Interstate highway #29; thence S 85°51'36"E along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet to the point of beginning. Lease Agreement "B" containing an area of 360,609.8 square feet or 8.3 acres.

Subject to a Permanent Utility Easement as shown on Exhibit "B" of Lease Agreement "B" Plat being sheet 3 of 3, and by reference made a part hereof, more particularly described as follows;

Commencing at the Northeast corner of the Southwest Quarter of said Section 29 thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on the South Right-of way line of Interstate highway #29; thence N 85°51'36"W along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet; thence S 61°53'34"W for a distance of 4.42 feet; thence S 76°59'42"W for a distance of 112.34 feet to the point of beginning of said Permanent Utility Easement; thence S 69°43'53"W for a distance of 56.90 feet; thence S 61°32'42"W for a distance of 34.53 feet; thence S 01°24'56"E for a distance of 593.84 feet to said Corp of Engineers Missouri River "Pier head line"; thence S 77°50'43"E along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 71°42'18"W for a distance of 313.08 feet; thence N 03°25'56"E for a distance of 63.28 feet; thence N 11°21'38"E for a distance of 98.41 feet; thence S 88°16'06"W for a distance of 35.86 feet; thence N 13°59'55"W for a distance of 127.11 feet; thence N 25°03'38"W for a distance of 77.99 feet; thence N 04°40'04"E for a distance of 154.91 feet; thence N 10°05'04"E for a distance of 114.71 feet to the point of beginning of said Permanent Utility Easement.

Permanent Utility Easement containing an area of 57,851.4 square feet.

Note: All bearings referenced from horizontal control established by the Iowa Department of Transportation.

LEASE AGREEMENT "B" PLAT
EXHIBIT "B"
(sheet 3 of 3)

PERMANENT UTILITY EASEMENT

PROJECT: RIVERFRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 10-29-03 TOTAL EASEMENT AREA: 57,851.4 square feet

TERRY L. WRIGHT
11428

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DAILY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

TERRY L. WRIGHT (DATE)
LICENSE NUMBER 11428
MY LICENSE RENEWAL DATE IS DECEMBER 31, _____
PAGES OR SHEETS COVERED BY THIS SEAL

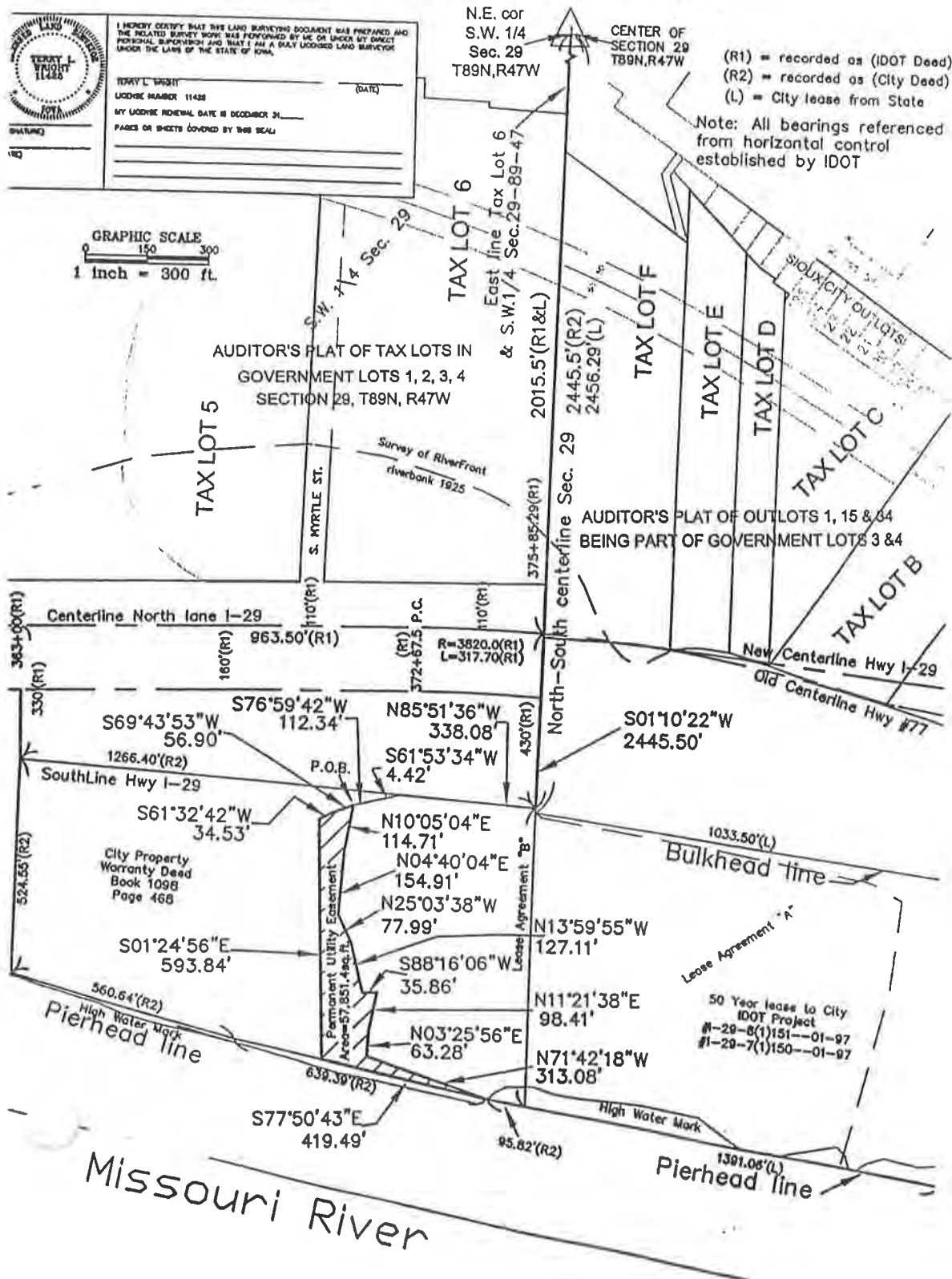
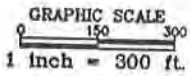
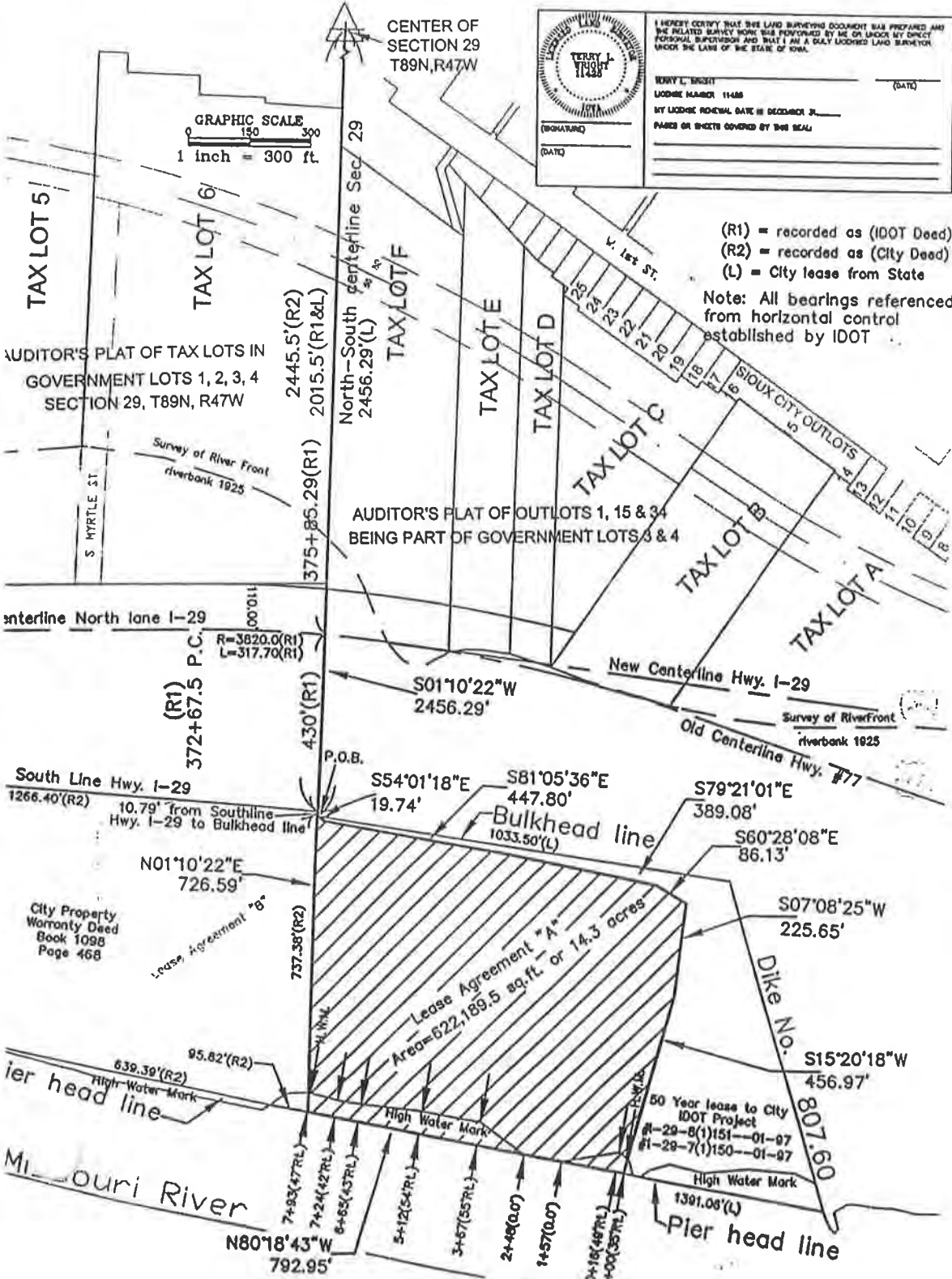


Exhibit "A(2)"

LEASE AGREEMENT "A" PLAT
EXHIBIT "A"
(sheet 1 of 2)

PROJECT: RIVER FRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 10-29-03 TOTAL AREA "A": 622,189.5 sq. ft. or 14.3 acres
GRANTOR: CITY OF SIOUX CITY



	I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.	
	TERRY J. SMITH	(DATE)
	LICENSE NUMBER 11488	
	MY LICENSE RENEWAL DATE IS DECEMBER 31, _____	
(SIGNATURE)	PAGES OR SHEETS COVERED BY THIS SEAL	
(DATE)		

(R1) = recorded as (IDOT Deed)
(R2) = recorded as (City Deed)
(L) = City lease from State
Note: All bearings referenced from horizontal control established by IDOT

LEASE AGREEMENT "A" PLAT

(sheet 2 of 2)
PROJECT: RIVER FRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 10-29-03 TOTAL AREA "A" 622,189.5 sq. ft. or 14.3 acres

LEGAL DESCRIPTION

Lease Agreement "A" lying within a described lease to the City of Sioux City from State of Iowa Department of Transportation as identified on State project Numbers I-29-8(1)151-01-97 and I-29-7(1)150-01-97 being a tract of land of certain accretions to that part of Tax Lots A, B, C, D, E, and F in the Auditor's Plat of part of Out lots 1, 15 and 34 Sioux City, being a part of Government Lots 3 and 4, Section 29, Township 89 North, Range 47 West, of the Fifth Principal Meridian, Woodbury County, Iowa, lying North of the left bank of the Missouri river and lying South of Interstate Highway #29 all in Sioux City, Woodbury County, Iowa, as shown on Exhibit "A" of Lease Agreement "A" Plat being sheet 1 of 2, and by reference made a part hereof, more particularly described as follows;

Commencing at the center of said Section 29; thence S 01°10'22"W along the North-South centerline of said Section 29 and the southerly extension thereof for a distance of 2456.29 feet to the Army Corp of Engineer's Missouri River "Bulkhead line" and the point of beginning, said point being 10.79 feet southerly of the South line of Interstate Rouge 29 Right-of-way as described in Recorded Deed in Book 877, Page 626, filed in the Woodbury County Court House, Sioux City, Iowa; thence S 54°01'18"E for a distance of 19.74 feet; thence S 81°05'36"E for a distance of 447.80 feet; thence S 79°21'01"E for a distance of 389.08 feet; thence S 60°28'08"E for a distance of 86.13 feet; thence S 07°08'25"W for a distance of 225.65 feet; thence S 15°20'18"W for a distance of 456.97 feet to the Corp of Engineers Missouri River "Pier head line"; thence N 80°18'43"W along said Army Corp of Engineers Missouri River "Pier head line" for a distance of 792.95 feet to a point on said southerly extension of said North-South centerline; thence N 01°10'22" E along said southerly extension for a distance of 726.59 feet to the point of beginning.

Lease Agreement "A" containing an area of 622,189.5 square feet or 14.3 acres.

Note: All bearings referenced from horizontal control established by Iowa Department of Transportation.

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE is made as of April 17, 2006 by and between the **CITY OF SIOUX CITY, IOWA**, a municipality ("Landlord") and **MIDWEST FRANCHISE-IOWA, LLC**, a Nebraska limited liability company ("Tenant"). The effective date of this First Amendment to Ground Lease shall be the date of approval of the First Amendment to Ground Lease by the City Council of Sioux City, Iowa (the "Council") and shall be acknowledged in a Memorandum of First Amendment to Ground Lease to be recorded within the records of the Woodbury County Recorder/Auditor's office.

RECITALS

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease made and entered into as of November 10, 2003 (the "Ground Lease"), a Memorandum of which Ground Lease was recorded as part of the document recorded on March 9, 2004, in Roll 635, Image 737 of the records of the Woodbury County Recorder/Auditor; and

WHEREAS, the Landlord and Tenant have each fulfilled certain provisions of the Ground Lease; and

WHEREAS, to fulfill the Council's vision for development of the Missouri River Riverfront, additional land should be included within the Ground Lease; and

WHEREAS, as additional consideration for this First Amendment to Ground Lease and the Development Agreement, the Tenant has agreed to enter into an Amended and Restated Assessment Agreement with the City of Sioux City increasing the minimum actual value of the Premises for the period stated therein. The agreement for an increase in the minimum valuation is conditioned upon the City's funding the additional improvements described in the amendment to its Redevelopment Agreement with Tenant, as said improvements have a major impact on the success of the Tenant under the Ground Lease.

WHEREAS, the parties have agreed to this First Amendment to Ground Lease in order to acknowledge certain accomplishments by the parties under the Ground Lease and to expand the Premises and extend the Term.

FOR VALUABLE CONSIDERATION, THE CITY OF SIOUX CITY, IOWA, AS LANDLORD AND MIDWEST FRANCHISE-IOWA, LLC, AS TENANT, DO HEREBY AGREE AS FOLLOWS:

- A. Except as restated, deleted or amended herein, the Landlord and Tenant agree that all of the terms of the Ground Lease shall remain in full force and effect.
- B. Exhibit A-1 and Exhibit A-2 to the Ground Lease are hereby stricken and replaced with Exhibit A attached to this First Amendment to Ground Lease. From and after the effective date of this First Amendment to Ground Lease, the term "Premises" as used in the Ground Lease shall apply to all of the real estate described in Exhibit A attached to this First Amendment to Ground Lease.
- C. Sections 1 and 2 of Article 1 of the Ground Lease shall be restated and substituted as follows:

ARTICLE 1 – PREMISES AND TERM

1. **Premises.** Landlord owns the land described on Exhibit A attached hereto.

For and in consideration of the rents, taxes, insurance and other charges and expenses to be paid by the Tenant, and in consideration of the performance by Tenant of the covenants set forth in this Ground Lease, as amended, the Landlord does hereby demise and lease to the Tenant and that Tenant does lease from the Landlord the Premises as shown on Exhibit A attached hereto consisting of approximately 25.37 acres of land and the rights appurtenant thereto (the "Premises").

The parties acknowledge that the utilities which are the subject of the permanent utility easement shown on Exhibit A are being relocated from Premises onto adjacent property owned by Landlord as part of the work being performed by Tenant pursuant to Tenant's Redevelopment Agreement with Landlord. The parties agree that when the relocation of said utilities is completed, the parties shall enter into an agreement terminating said permanent utility easement and record said agreement in the records of the Woodbury County Recorder.

The City agrees that it will not offer to license, lease or grant an interest in the real estate described on Exhibit A to any third party except through the Iowa Code procedures for disposal of real estate.

2. **Term.** The term of the Lease commenced November 10, 2003, (the "Commencement Date") and shall expire sixty (60) years thereafter (the "Term");

provided however if the Commencement Date falls on a day other than the first day of a calendar month, then the Term shall expire sixty (60) years from the last day of the month in which the Commencement Date occurs.

D. Article 2, Section 1 of the Ground Lease shall be restated and substituted as follows:

ARTICLE 2 – POSSESSION AND CONTINGENCIES

1. **Possession and Contingencies.** Tenant shall be provided possession of the Premises upon execution of the First Amendment to Ground Lease.

The Tenant has razed certain existing structures and paving improvements as contemplated in the Ground Lease prior to its amendment. Tenant has also excavated, dredged and carried out activities it deemed necessary to improve the marina area including using excavated material for fill on the Premises.

Landlord shall satisfy the exceptions set forth in the Supplemental Preliminary Title Opinion #36925SP dated October 23, 2003, and any additional title exceptions for the additional parcel of real estate which was added to this Ground Lease by the First Amendment to Ground Lease and which is now part of Exhibit A attached hereto.

E. Article 2, Section 2(D) of the Ground Lease shall be restated and substituted as follows:

2(D) The Tenant's obligations are contingent on Landlord's furnishing an abstract of title to all of the real estate described in Exhibit A, including but not limited to the real estate added to Exhibit A by the First Amendment to Ground Lease, showing marketable title in Landlord in conformity with Iowa law and title standards of the Iowa State Bar Association. The Landlord shall make every reasonable effort to promptly perfect title.

F. Article 5 of the Ground Lease is restated and substituted as follows:

ARTICLE 5 – COMMON AREA

1. **"Common Area" Defined.** The term "Common Area" as used herein means that area and facilities that are provided and designated from time to time for the general use and convenience of the Tenant and other members of the general public. The Common Area includes recreation paths or pedestrian trails, a public restroom located on the pedestrian trail along the riverfront and built in Spring 2005 (the "Public Restroom"), associated landscaping and parking areas.

2. **Maintenance of Common Area.** During the Term, except for the recreation paths and pedestrian trails, Tenant shall maintain and repair, or cause to be maintained and repaired by Tenant's subtenants or designees, the Common Area and shall keep, or cause to be kept, the Common Area in good condition and repair throughout the Term, all at Tenant's cost and expense. The recreation paths and pedestrian trails shall be maintained and repaired by the City at its sole expense. The Tenant's obligation to maintain and repair, or cause to be maintained and repaired, the Common Area shall include, without limitation, providing day-to-day cleaning, sweeping and trash removal services, and snow and ice removal, and with respect to the Public Restroom, the provision of supplies reasonably necessary in connection therewith. Notwithstanding the above, in the event the City seeks and obtains any easements for improvements such as lookout towers, these structures shall not be deemed Common Areas and Tenant shall not have the maintenance obligations therefore.

3. **Pier Portion of Common Area.** The parties acknowledge that use of the pier located within the Premises (the "Pier") is intended to be seasonal in nature and that generally said use will occur, weather permitting, between approximately May 1 and October 31 (the "Season"). Tenant may close the Pier to access from the general public from approximately October 31 of each year through May 1 of the following year (the "Off-Season"), and during the Season, Tenant may close the Pier to access from the general public during any hours when Tenant is not open for business. If Tenant elects to close the Pier during the Off-Season, Tenant shall, during such periods of closure, be relieved of its obligations to perform day-to-day maintenance and snow and ice removal in connection with the Public Restroom and any other portions of the Common Area located within the Pier.

G. Article 6, Section 1 of the Ground Lease is restated and substituted as follows:

**ARTICLE 6 – CONSTRUCTION OF IMPROVEMENTS;
REPAIRS AND MAINTENANCE; ALTERATIONS**

1. **Construction of Improvements.** The parties contemplate that Tenant will construct or cause to be constructed on the Premises a marina, a bar and restaurant and hotel or motel as well as retail establishments. Tenant has constructed a bar/snack restaurant, currently called "Jolly Rogers," and a boat accessible gasoline and sundries shop which are approved uses.

H. The Ground Lease Summary attached to the Ground Lease shall be restated and substituted as shown on Exhibit B attached hereto.

(signature page follows)

IN WITNESS WHEREOF, the parties have executed this First Amendment to Ground Lease as of the date first written above.

LANDLORD:

City of Sioux City, Iowa
a municipality

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

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

TENANT:

Midwest Franchise-Iowa, LLC
a Nebraska limited liability company

By: Roger Miller
Roger Miller, Member/Manager

By: Larry Miller
Larry Miller, Member/Manager

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 17th day of April, 2006, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared CRAIG S. BERENSTEIN, Mayor of the City of Sioux City, Iowa, and ROBERT K. PADMORE, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Diane Bailey
Notary Public - State of Iowa



STATE OF IOWA)
 : SS
 WOODBURY COUNTY)

On this 5th day of May, 2006, before me, a Notary Public in and for the State of Iowa, personally appeared ROGER MILLER, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said ROGER MILLER acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Laura Schmitt

Notary Public - State of Iowa



STATE OF IOWA)
 : SS
 WOODBURY COUNTY)

On this 5th day of May, 2006, before me, a Notary Public in and for the State of Iowa, personally appeared LARRY MILLER, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said LARRY MILLER acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Laura Schmitt

Notary Public - State of Iowa

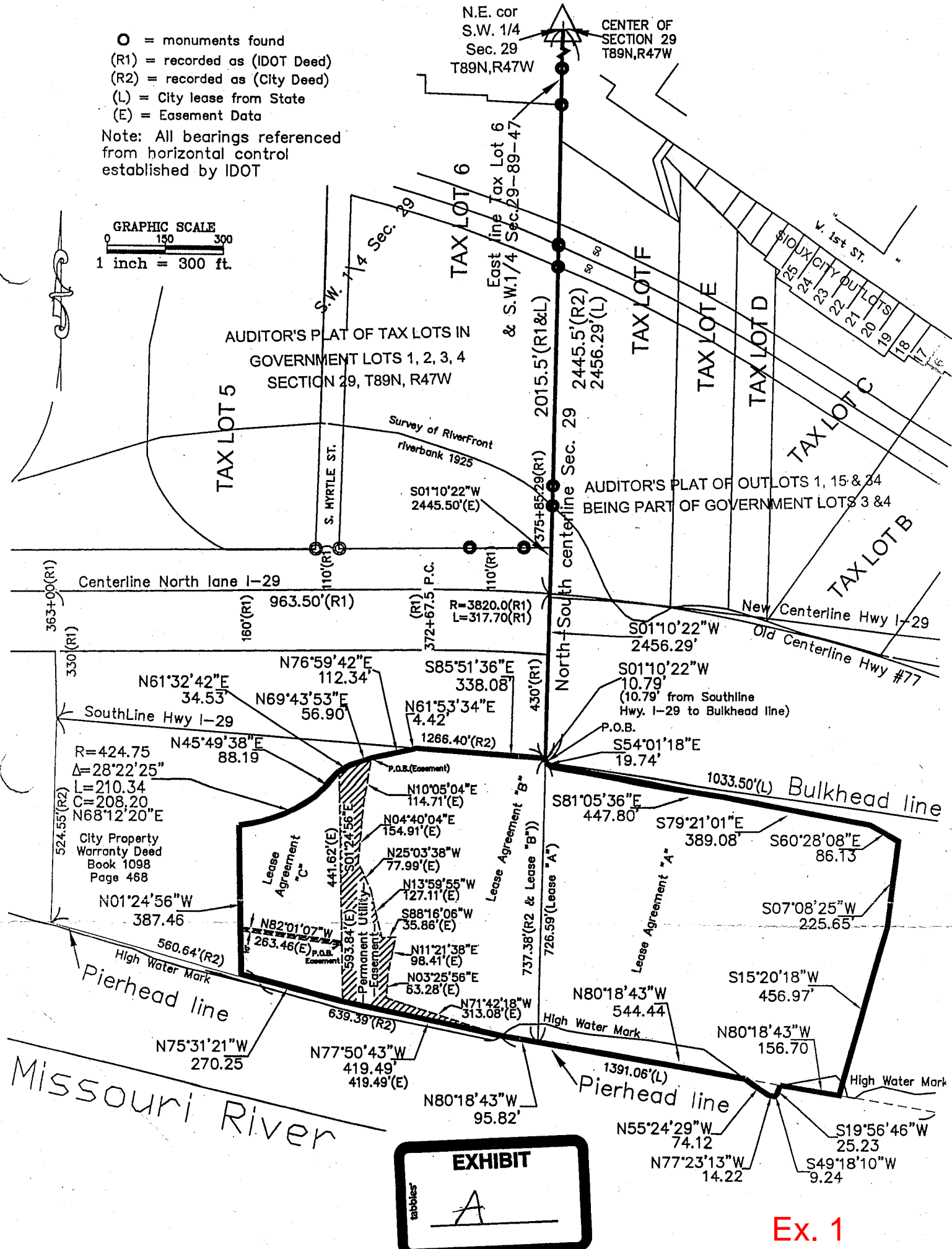
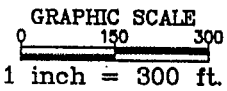


LEASE AGREEMENT PLAT
EXHIBIT "A"
 (sheet 1 of 3)

PROJECT: RIVERFRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 04/17/06 TOTAL LEASE AREA: 1,106,750.03 sq.ft. or 25.41 acres.
GRANTOR: CITY OF SIOUX CITY

- = monuments found
- (R1) = recorded as (IDOT Deed)
- (R2) = recorded as (City Deed)
- (L) = City lease from State
- (E) = Easement Data

Note: All bearings referenced from horizontal control established by IDOT



LEASE AGREEMENT PLAT
(sheet 2 of 3)

PROJECT: RIVERFRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 04/17/06 **TOTAL LEASE AREA:** 1,106,750.03 sq. ft. or 25.41 acres.
GRANTOR: CITY OF SIOUX CITY

Lease Legal Description

A tract of land being certain accretions to that part of Tax Lots A, B, C, D, E, and F in the Auditor's Plat of part of Out lots 1, 15 and 34 Sioux City, and being a part of Government Lots 3 and 4, Section 29, and lying in part of a tract of land being certain accretions to part of Tax Lots 5 and 6 in Auditor's Plat of Tax Lots in Government Lots 1, 2, 3, 4 in Section 29, all in Township 89 North, Range 47 West, of the Fifth Principal Meridian, all in Sioux City, Woodbury County, Iowa, lying North of the left bank of the Missouri River and lying South of Interstate Highway #29, as shown on Exhibit "A" of Lease Agreement Plat being sheet 1 of 3, and by reference made a part hereof, more particularly described as follows;

Commencing at the center of said Section 29; thence S 01°10'22"W along the North-South centerline of said Section 29 and the Southerly extension thereof for a distance of 2456.29 feet to the Army Corp of Engineer's Missouri River "Bulkhead line" being the point of beginning; thence S 54°01'18"E for a distance of 19.74 feet; thence S 81°05'36"E for a distance of 447.80 feet; thence S 79°21'01"E for a distance of 389.08 feet; thence S 60°28'08"E for a distance of 86.13 feet; thence S 07°08'25"W for a distance of 225.65 feet; thence S 15°20'18"W for a distance of 456.97 feet to the Corp of Engineers Missouri River "Pier head line"; thence N 80°18'43"W along said Army Corp of Engineers Missouri River "Pier head line" for a distance of 156.70 feet a point on the high water mark of said left bank of the Missouri River; thence S 19°56'46"W along said high water mark for a distance of 25.23 feet; thence S 49°18'10"W along said high water mark for a distance of 9.24 feet; thence N 77°23'13"W along said high water mark for a distance of 14.22 feet; thence N 55°24'29"W along said high water mark for a distance of 74.12 feet; thence N 80°18'43"W along said Army Corp of Engineers Missouri River "Pier head line" for a distance of 544.44 feet to a point on said Southerly extension of said North-South centerline of Section 29; thence continuing N 80°18'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 95.82 feet; thence N 77°50'43"W along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 75°31'21"W for a distance of 270.25 feet; thence N 01°24'56"W for a distance of 387.46 feet; thence Northeasterly along a 424.75 foot radius curve concave Northwesterly for a arc distance of 210.34 feet and a delta of 28°22'25", said curve having a chord bearing of N 68°12'20"E and a chord distance of 208.20 feet; thence N 45°49'38"E for a distance of 88.19 feet; thence N 61°32'42"E for a distance of 34.53 feet; thence N 69°43'53"E for a distance of 56.90 feet; thence N 76°59'42"E for a distance of 112.34 feet; thence N 61°53'34"E for a distance of 4.42 feet to the South Right-of way line of Interstate highway #29 as described on Recorded Deed in Book 877, Page 626, filed in the Woodbury County Court House, Sioux City, Iowa; thence S 85°51'36"E along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet; thence S 01°10'22"W along said North-South centerline of Section 29 and the southerly extension thereof for 10.79 feet to the point of beginning;

Containing an area of 1,106,750.03 square feet or 25.41 acres.

LEASE AGREEMENT PLAT
(sheet 3 of 3)

PROJECT: RIVERFRONT DEVELOPMENT
PREPARED BY: CITY OF SIOUX CITY (ENGINEERING DEPT.)
DATE: 04/17/06 **TOTAL LEASE AREA:** 1,106,750.03 sq.ft. or 25.41 acres.
GRANTOR: CITY OF SIOUX CITY

Subject to a Permanent Utility Easement as, more particularly described as follows;

Commencing at the Northeast corner of the Southwest Quarter of said Section 29; thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on said South Right-of way line of Interstate highway #29; thence N 85°51'36"W along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet; thence S 61°53'34"W for a distance of 4.42 feet; thence S 76°59'42"W for a distance of 112.34 feet to the point of beginning of said Permanent Utility Easement; thence S 69°43'53"W for a distance of 56.90 feet; thence S 61°32'42"W for a distance of 34.53 feet; thence S 01°24'56"E for a distance of 593.84 feet to said Corp of Engineers Missouri River "Pier head line"; thence S 77°50'43"E along said Corp of Engineers Missouri River "Pier head line" for a distance of 419.49 feet; thence N 71°42'18"W for a distance of 313.08 feet; thence N 03°25'56"E for a distance of 63.28 feet; thence N 11°21'38"E for a distance of 98.41 feet; thence S 88°16'06"W for a distance of 35.86 feet; thence N 13°59'55"W for a distance of 127.11 feet; thence N 25°03'38"W for a distance of 77.99 feet; thence N 04°40'04"E for a distance of 154.91 feet; thence N 10°05'04"E for a distance of 114.71 feet to the point of beginning of said Permanent Utility Easement. Permanent Utility Easement containing an area of 57,851.4 square feet.

Also subject to a 10 foot wide Permanent Utility Easement lying 5 feet on each side of the following described centerline, more particularly described as follows;

Commencing at the Northeast corner of the Southwest Quarter of said Section 29; thence S 01°10'22"W along the East line of the Southwest Quarter of said Section 29 and the southerly extension thereof, said line being the East line of said Tax Lot 6 for a distance of 2445.50 feet to a point on said South Right-of way line of Interstate highway #29; thence N 85°51'36"W along said South Right-of way line of Interstate highway #29 for a distance of 338.08 feet; thence S 61°53'34"W for a distance of 4.42 feet; thence S 76°59'42"W for a distance of 112.34 feet; thence S 69°43'53"W for a distance of 56.90 feet; thence S 61°32'42"W for a distance of 34.53 feet; thence S 01°24'56"E for a distance of 441.62 feet to the point of beginning, being the centerline of said 10 foot wide Permanent Utility Easement; thence N 82°01'07"W for a distance of 263.46 feet to the West line of said Lease Agreement, being the end of said centerline of a 10 foot wide Permanent Utility Easement;

Permanent Utility Easement containing an area of 2,634.6 square feet.

Also subject to any and all other easements, of record or apparent, and any new easements over and across said Lease Agreement needed for the moving of any existing utilities from future construction, also an ingress egress easement to access well sites.

Note: All bearings referenced from horizontal control established by the Iowa Department of Transportation.

Exhibit B
Restated and Substituted Ground Lease Summary

GROUND LEASE SUMMARY


- A. Landlord: The Landlord is the City of Sioux City, Iowa, pursuant to the First Amendment to Ground Lease.
- B. Address for Notice and Rent Payment to Landlord: Attention: City Clerk, City Hall, 405 6th Street, Sioux City, Iowa 51101.
- C. Tenant: Midwest Franchise - Iowa, LLC, a Nebraska limited liability company authorized to do business in the State of Iowa.
- D. Address for Notice to Tenant: Attention: Roger Miller, 1602 W. 29th Street, P.O. Box 188, South Sioux City, Nebraska 68776 and Jesse Miller, 127 Gilman Terrace, Sioux City, Iowa 51104.
- E. Premises: See Exhibit "A" attached hereto for the legal description of real estate located on the waterfront, Sioux City, Woodbury County, Iowa.
- F. Improvements: Buildings, parking areas, fixtures, recreation trails and sidewalks, docks, seawalls, marina excavation provided by the Tenant.
- G. Term: Sixty (60) years from the Commencement Date.
- H. Commencement Date: November 10, 2003
- I. Option to Extend: The Tenant shall have one (1) option to extend the Lease term for an additional forty (40) years, except as otherwise provided in Article 1(3).
- J. Use: River marina and associated uses including gas sales; hotel or motel uses; restaurant; bar and associated entertainment uses; retail establishment and all legal uses. This use shall be exclusive to Tenant, its successors and assigns for the Premises and 2,500 feet surrounding the Premises.


RESOLUTION NO. 2009 - 000010

RESOLUTION APPROVING THE SECOND AMENDMENT TO THE GROUND LEASE WITH MIDWEST FRANCHISE-IOWA L.L.C.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SIOUX CITY, that the Second Amendment to the Ground Lease, a copy of which is attached hereto and by this reference made a part hereof, to the lease Agreement with Midwest Franchise- Iowa L.L.C. be and the same is hereby approved.

PASSED AND APPROVED: January 5, 2009


Michael M. Hobart, Mayor

ATTEST: 
Lisa L. McCardle, City Clerk

**MEMORANDUM OF GROUND LEASE
AS AMENDED BY THE
FIRST AND SECOND AMENDMENTS TO GROUND LEASE
Recorder's Cover Sheet**

Preparer Information:

Laura D. Schmitt, 614 Pierce Street, Sioux City, IA, 51101, Phone: (712) 277-4561

Taxpayer Information:

Midwest Franchise-Iowa, LLC
212 S. 74th Street, Suite 202
Omaha, NE 68114

Return Address:

Laura D. Schmitt
614 Pierce Street
Sioux City, IA 51101

Landlord:

The City of Sioux City, Iowa

Tenant:

Midwest Franchise-Iowa, LLC

Legal Description: See Exhibit "A"

**MEMORANDUM OF GROUND LEASE
AS AMENDED BY THE FIRST AND
SECOND AMENDMENTS TO GROUND LEASE**

LANDLORD: The City of Sioux City, Iowa
a municipal corporation

TENANT: Midwest Franchise-Iowa, LLC
a Nebraska limited liability company

PREMISES: The real estate described on Exhibit A

LEASE TERM: Sixty (60) years from the Commencement Date which is
November 10, 2003.

OPTIONS: Tenant has the right and option to renew the Lease for an
additional forty (40) years to continue from the last day of the
existing lease.

MECHANIC'S LIEN: Neither the Tenant nor anyone claiming by, through, or under the
Tenant, shall have the right to file or place any mechanic's lien or
other lien of any kind or character whatsoever, upon said premises
or upon any building or improvement thereon, or upon the
leasehold interest of the Tenant therein, and notice is hereby given
that no contractor, sub-contractor, or anyone else who may furnish
any material, service or labor for any building, improvements,
alteration, repairs or any part thereof, shall at any time be or
become entitled to any lien thereon, and for the further security of
the Landlord, the Tenant covenants and agrees to give actual notice
thereof in advance, to any and all contractors and sub-contractors
who may furnish or agree to furnish any such material, service or
labor. Tenant and the Landlord agree that the rental terms of the
Lease have taken into consideration Tenant's obligations
thereunder.

RESTRICTIVE COVENANTS: Landlord agrees, for itself and its successors and assigns, that
during the Term, and any extension thereof, it will not use or lease,
or permit, suffer or allow any person to use or lease any real estate
within 2,500 linear feet of Premises south of Interstate 29, for any
business that would compete with a hotel/motel; full service
restaurant, bar or coffee shop; marina and associated uses
including gasoline sales and retail establishments (except Sergeant
Floyd and Lewis and Clark Interpretive Center gift shops). In the
event the casino/riverboat relocates within 2500 feet of the
Premises, Tenant will consent to a restaurant therein, provided the
casino/riverboat with the restaurant otherwise meets the criteria set
forth in the Development Agreement, Section 11, Subsection 8.
Landlord covenants that for and during the term of this Lease and
extension thereof, it will not sell, lease or grant the right to operate
upon City-owned or controlled land along the Missouri River and
south of Interstate 29 for a distance of 2,500 linear feet from the
Premises to commercial users that do not have parking on their
own premises sufficient to comply with City ordinances. The
Landlord will not lease to any user the area south of the Premises
so as to impede the view of the Premises to and from the Missouri
River.

RIGHT OF FIRST REFUSAL TO PURCHASE AND LEASE: Tenant will have the right of first refusal during the Term to
purchase or lease all or any part of the Premises or any larger tract

of land of which the Premises may be a part or any interest therein (the "First Refusal Property") on the same terms and conditions as those of any bona fide offer received by and acceptable to Landlord. Before making any sale or any agreement to sell or lease, Landlord must immediately notify Tenant in writing of the terms and conditions of such offer.

THIS MEMORANDUM DOES NOT CONTAIN ALL OF THE TERMS OF THE UNRECORDED LEASE. THE TERMS OF THE UNRECORDED LEASE SHALL CONTROL IF THERE IS ANY CONFLICT BETWEEN IT AND THIS MEMORANDUM.

Dated this 5th day of January, 2009.

LANDLORD:

TENANT:

City of Sioux City, Iowa
a municipality

Midwest Franchise-Iowa, LLC
a Nebraska limited liability company

By: Michael Hobart
Michael Hobart, Mayor

By: Larry Miller
Larry Miller/Member/Manager

By: Lisa McCardle
Lisa McCardle, City Clerk

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 5th day of January, 2009, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared MICHAEL HOBAR, Mayor of the City of Sioux City, Iowa, and LISA MCCARDLE, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

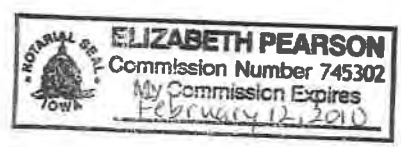
IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.



Diane Bailey
Notary Public - State of Iowa

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 13th day of MARCH, 2009, before me, a Notary Public in and for the State of Iowa, personally appeared LARRY MILLER, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said LARRY MILLER acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.



Elizabeth Pearson
Notary Public - State of Iowa

Exhibit A
Restated and Substituted Legal Description

All that part of accretions to Tax Lots A, B, C, D, E and F of the Auditor's Plat of part of Out Lots One (1), Fifteen (15) and Thirty-four (34) Sioux City, being a part of Government Lots Three (3) and Four (4), Section Twenty-nine (29) and part of accretions to Tax Lots Five (5) and Six (6) of the Auditor's Plat of Tax Lots in Government Lots One (1), Two (2), Three (3), Four (4), Section Twenty-nine (29), all in Township Eighty-nine (89) North, Range Forty-seven (47) West of the Fifth Principal Meridian, Sioux City, Woodbury County, Iowa, described as follows:

Commencing at the center of said Section 29; thence South $1^{\circ}10'22''$ West along the North-South centerline of said Section 29, also being the East line of said Tax Lot 6 and said centerline projected South for 2,456.29 feet to the Army Corp of Engineer's Missouri River "Bulkhead line" and the point of beginning; thence South $82^{\circ}12'08''$ East along said Bulkhead line for 87.00 feet; thence South $12^{\circ}09'38''$ West for 10.68 feet; thence South $81^{\circ}05'36''$ East for 379.00 feet; thence South $79^{\circ}21'01''$ East for 389.08 feet; thence South $60^{\circ}28'08''$ East for 86.13 feet; thence South $7^{\circ}08'25''$ West for 225.65 feet; thence South $15^{\circ}20'18''$ West for 421.95 feet to the High Water Mark line of the Missouri River as per State of Iowa Patent recorded on Roll 671, Image 3480, Woodbury County Recorder's Office; thence North $44^{\circ}56'45''$ West along said High Water Mark line for 24.72 feet; thence South $80^{\circ}20'14''$ West along said High Water Mark line for 148.36 feet; thence South $53^{\circ}36'19''$ West for 12.35 feet; thence South $56^{\circ}32'00''$ West for 20.00 feet; thence North $63^{\circ}00'00''$ West for 33.00 feet; thence North $45^{\circ}30'00''$ West for 23.00 feet; thence North $53^{\circ}50'00''$ West for 72.00 feet; thence North $57^{\circ}20'00''$ West for 32.00 feet; thence North $61^{\circ}48'00''$ West for 39.00 feet; thence North $76^{\circ}20'00''$ West for 96.00 feet; thence North $80^{\circ}20'00''$ West for 39.50 feet; thence North $85^{\circ}52'00''$ West for 136.00 feet; thence North $83^{\circ}42'00''$ West for 108.48 feet to said High Water Mark line as per said State of Iowa Patent; thence North $73^{\circ}01'16''$ West along said High Water Mark line for 48.25 feet; thence South $83^{\circ}32'04''$ West along said High Water Mark line for 12.58 feet to the Southerly projection of said North-South centerline of said Section 29; thence South $1^{\circ}10'22''$ West along said Southerly projection for 3.63 feet; thence South $84^{\circ}20'00''$ West for 24.10 feet; thence South $73^{\circ}20'00''$ West for 23.50 feet; thence South $53^{\circ}10'00''$ West for 22.50 feet; thence North $76^{\circ}45'00''$ West for 109.00 feet; thence North $62^{\circ}30'00''$ West for 15.00 feet; thence North $77^{\circ}20'00''$ West for 170.00 feet; thence North $64^{\circ}20'00''$ West for 27.00 feet; thence North $69^{\circ}35'00''$ West for 91.00 feet; thence North $77^{\circ}50'00''$ West for 63.00 feet; thence North $86^{\circ}10'00''$ West for 60.00 feet; thence North $75^{\circ}05'12''$ West for 193.50 feet; thence North $1^{\circ}24'56''$ West for 358.42 feet; thence Northeasterly for 210.34 feet along a 424.75 foot radius curve, concave Northwesterly, having a long chord length of 208.20 feet, bearing North $68^{\circ}12'20''$ East; thence North $45^{\circ}49'38''$ East for 88.19 feet; thence North $61^{\circ}32'42''$ East for 34.53 feet; thence North $69^{\circ}43'53''$ East for 56.90 feet; thence North $76^{\circ}59'42''$ East for 112.34 feet; thence North $57^{\circ}37'43''$ East for 4.66 feet to the South right of way line of Interstate Highway No. 29; thence South $85^{\circ}47'30''$ East along said South right of way line for 338.08 feet to said Southerly projection of said North-South centerline of said Section 29; thence South $1^{\circ}10'22''$ West along said North-South centerline for 10.79 feet to the point of beginning.

Said described parcel contains 24.215 acres, more or less.

SECOND AMENDMENT TO GROUND LEASE

THIS SECOND AMENDMENT TO GROUND LEASE is made as of January 5, 2009 by and between the **CITY OF SIOUX CITY, IOWA**, a municipality ("Landlord") and **MIDWEST FRANCHISE-IOWA, LLC**, a Nebraska limited liability company ("Tenant"). The effective date of this Second Amendment to Ground Lease shall be the date of approval of the Second Amendment to Ground Lease by the City Council of Sioux City, Iowa (the "Council") and shall be acknowledged in a Memorandum of Second Amendment to Ground Lease to be recorded within the records of the Woodbury County Recorder/Auditor's office.

RECITALS

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease made and entered into as of November 10, 2003, a Memorandum of which Ground Lease was recorded as part of the document recorded on March 9, 2004, in Roll 635, Image 737 of the records of the Woodbury County Recorder/Auditor, and amended by that certain First Amendment to Ground Lease dated April 17, 2006, a Memorandum of which was recorded on May 17, 2006, in Roll 683, Image 10253-10259 of the records of the Woodbury County Recorder/Auditor (collectively, the "Ground Lease"); and

WHEREAS, the Landlord and Tenant have each fulfilled certain provisions of the Ground Lease; and

WHEREAS, the parties desire to amend the Ground Lease to accurately reflect the legal description; and

WHEREAS, in consideration for this Second Amendment to Ground Lease and the Development Agreement, the Tenant has agreed to enter into a Second Amended and Restated Assessment Agreement with the City of Sioux City decreasing the minimum assessed value of the Premises for the period stated therein.

WHEREAS, the parties have agreed to this Second Amendment to Ground Lease in order to acknowledge certain accomplishments by the parties under the Ground Lease.

FOR VALUABLE CONSIDERATION, THE CITY OF SIOUX CITY, IOWA, AS LANDLORD AND MIDWEST FRANCHISE-IOWA, LLC, AS TENANT, DO HEREBY AGREE AS FOLLOWS:

A. Except as restated, deleted or amended herein, the Landlord and Tenant agree that all of the terms of the Ground Lease shall remain in full force and effect.

B. Exhibit A to the Ground Lease is hereby stricken and replaced with Exhibit A attached to this Second Amendment to Ground Lease. From and after the effective date of this Second Amendment to Ground Lease, the term "Premises" as used in the Ground Lease shall apply to all of the real estate described in Exhibit A attached to this Second Amendment to Ground Lease.

C. Section 1 of Article 1 of the Ground Lease shall be restated and substituted as follows:

ARTICLE 1 – PREMISES AND TERM

1. **Premises.** Landlord owns the land described on Exhibit A attached hereto.

For and in consideration of the rents, taxes, insurance and other charges and expenses to be paid by the Tenant, and in consideration of the performance by Tenant of the covenants set forth in this Ground Lease, as amended, the Landlord does hereby demise and lease to the Tenant and that Tenant does lease from the Landlord the Premises as shown on Exhibit A attached hereto consisting of approximately 24.215 acres of land and the rights appurtenant thereto (the "Premises").

The parties acknowledge that the utilities which are the subject of the permanent utility easement shown on Exhibit A are being relocated from Premises onto adjacent property owned by Landlord as part of the work being performed by Tenant pursuant to Tenant's Redevelopment Agreement with Landlord. The parties agree that when the relocation of said utilities is completed, the parties shall enter into an agreement terminating said permanent utility easement and record said agreement in the records of the Woodbury County Recorder.

The City agrees that it will not offer to license, lease or grant an interest in the real estate described on Exhibit A to any third party except through the Iowa Code procedures for disposal of real estate.

(signature page follows)

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Ground Lease as of the date first written above.

LANDLORD:

City of Sioux City, Iowa
a municipality

By: Michael Hobart
Michael Hobart, Mayor

By: Lisa McCardle
Lisa McCardle, City Clerk

TENANT:

Midwest Franchise-Iowa, LLC
a Nebraska limited liability company

By: Larry Miller
Larry Miller, Member/Manager

STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 5th day of January, 2009, before me, a Notary Public duly commissioned and qualified in and for said County and State, personally appeared MICHAEL HOBART, Mayor of the City of Sioux City, Iowa, and LISA MCCARDLE, City Clerk of said City, each being to me personally known to be the identical persons and officers named in the foregoing instrument, who executed the same under and by virtue of the authority vested in them by the City Council of said City, and each for himself acknowledged the execution thereof to be his voluntary act and deed for the purposes herein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal at Sioux City, Iowa, the day and year last above written.

Diane Bailey
Notary Public - State of Iowa



STATE OF IOWA)
 : SS
WOODBURY COUNTY)

On this 13th day of March, 2009, before me, a Notary Public in and for the State of Iowa, personally appeared LARRY MILLER, to me personally known, who, being by me duly sworn, did say that the person is a Member/Manager of Midwest Franchise-Iowa, LLC, that no seal has been procured by the said Limited Liability Company and that said instrument was signed on behalf of Midwest Franchise-Iowa, LLC by authority of its Member/Manager and the said LARRY MILLER acknowledged the execution of said instrument to be the voluntary act and deed of Midwest Franchise-Iowa, LLC by it and by the Member/Manager voluntarily executed.

Elizabeth Pearson

Notary Public - State of Iowa

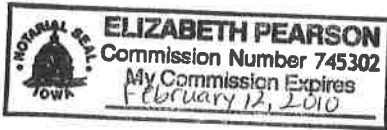


Exhibit A
Restated and Substituted Legal Description

All that part of accretions to Tax Lots A, B, C, D, E and F of the Auditor's Plat of part of Out Lots One (1), Fifteen (15) and Thirty-four (34) Sioux City, being a part of Government Lots Three (3) and Four (4), Section Twenty-nine (29) and part of accretions to Tax Lots Five (5) and Six (6) of the Auditor's Plat of Tax Lots in Government Lots One (1), Two (2), Three (3), Four (4), Section Twenty-nine (29), all in Township Eighty-nine (89) North, Range Forty-seven (47) West of the Fifth Principal Meridian, Sioux City, Woodbury County, Iowa, described as follows:

Commencing at the center of said Section 29; thence South 1°10'22" West along the North-South centerline of said Section 29, also being the East line of said Tax Lot 6 and said centerline projected South for 2,456.29 feet to the Army Corp of Engineer's Missouri River "Bulkhead line" and the point of beginning; thence South 82°12'08" East along said Bulkhead line for 87.00 feet; thence South 12°09'38" West for 10.68 feet; thence South 81°05'36" East for 379.00 feet; thence South 79°21'01" East for 389.08 feet; thence South 60°28'08" East for 86.13 feet; thence South 7°08'25" West for 225.65 feet; thence South 15°20'18" West for 421.95 feet to the High Water Mark line of the Missouri River as per State of Iowa Patent recorded on Roll 671, Image 3480, Woodbury County Recorder's Office; thence North 44°56'45" West along said High Water Mark line for 24.72 feet; thence South 80°20'14" West along said High Water Mark line for 148.36 feet; thence South 53°36'19" West for 12.35 feet; thence South 56°32'00" West for 20.00 feet; thence North 63°00'00" West for 33.00 feet; thence North 45°30'00" West for 23.00 feet; thence North 53°50'00" West for 72.00 feet; thence North 57°20'00" West for 32.00 feet; thence North 61°48'00" West for 39.00 feet; thence North 76°20'00" West for 96.00 feet; thence North 80°20'00" West for 39.50 feet; thence North 85°52'00" West for 136.00 feet; thence North 83°42'00" West for 108.48 feet to said High Water Mark line as per said State of Iowa Patent; thence North 73°01'16" West along said High Water Mark line for 48.25 feet; thence South 83°32'04" West along said High Water Mark line for 12.58 feet to the Southerly projection of said North-South centerline of said Section 29; thence South 1°10'22" West along said Southerly projection for 3.63 feet; thence South 84°20'00" West for 24.10 feet; thence South 73°20'00" West for 23.50 feet; thence South 53°10'00" West for 22.50 feet; thence North 76°45'00" West for 109.00 feet; thence North 62°30'00" West for 15.00 feet; thence North 77°20'00" West for 170.00 feet; thence North 64°20'00" West for 27.00 feet; thence North 69°35'00" West for 91.00 feet; thence North 77°50'00" West for 63.00 feet; thence North 86°10'00" West for 60.00 feet; thence North 75°05'12" West for 193.50 feet; thence North 1°24'56" West for 358.42 feet; thence Northeasterly for 210.34 feet along a 424.75 foot radius curve, concave Northwesterly, having a long chord length of 208.20 feet, bearing North 68°12'20" East; thence North 45°49'38" East for 88.19 feet; thence North 61°32'42" East for 34.53 feet; thence North 69°43'53" East for 56.90 feet; thence North 76°59'42" East for 112.34 feet; thence North 57°37'43" East for 4.66 feet to the South right of way line of Interstate Highway No. 29; thence South 85°47'30" East along said South right of

way line for 338.08 feet to said Southerly projection of said North-South centerline of said Section 29; thence South $1^{\circ}10'22''$ West along said North-South centerline for 10.79 feet to the point of beginning.

Said described parcel contains 24.215 acres, more or less.

x	Regular Session
	Study Session
	Closed Session

**CITY OF SIOUX CITY
REQUEST FOR CITY COUNCIL ACTION**

MEETING DATE: January 5, 2009 **ACTION ITEM #** 8C-E

FROM: Patty Heagel, Community Development Director

SUBJECT: Resolution approving a Second Amendment to the contract between Midwest Franchise – Iowa for redevelopment in the Combined Central Sioux City CBD Urban Renewal Area for the lease of certain land and authorizing lease of said property. (Property adjacent to 1110 Larsen Park Road)

Resolution approving the Second Amended And Reinstated Assessment Agreement with Midwest Franchise-Iowa L.L.C.

Resolution approving the Second Amendment to the Ground Lease with Midwest Franchise-Iowa L.L.C.

Reviewed By:	x	Department Director	Finance Department	City Attorney	City Manager
---------------------	---	---------------------	--------------------	---------------	--------------

RECOMMENDATION:

Approve the second amendment to the development agreement and subsequently the second amendment to the ground lease and a second amended and reinstated assessment agreement with Midwest Franchise, L.L.C. for the development of the riverfront.

DISCUSSION:

The Development Agreement with Midwest Franchise, L.L.C. that was approved on November 3, 2003 and amended on April 17, 2006, provided for the leasing of approximately 25 acres on the riverfront and included the restoration of the marina, the construction of a restaurant, the construction of a hotel and the construction of a convenience store. The construction of a convenience store was the last phase of the development and was to be located at the Hamilton Boulevard entrance to Chris Larsen Park. The land for the convenience store was identified but not leased to Midwest Franchise at the time of the development agreement. The lease was to come forward with the development of a convenience store. The final minimum assessment agreement for all four phases was to be \$11.5 million dollars.

The City participated in the overall development with TIF financing for public parking improvements, relocation of utilities, the relocation of the public boat ramp parking lot, and improvements at the Hamilton entrance to the park.

The Millers (Midwest Franchise) have developed the first three phases beyond the minimum requirements in the development agreement and beyond expectations. Unfortunately, because of the number of City water wells and water lines on the riverfront, a convenience store with underground storage tanks could not be placed at the proposed location or any

other location in the development area that would meet Iowa Department of Natural Resources requirements. Therefore, after extensive research and efforts, the Millers have to forego the construction of a convenience store.

Since a convenience store cannot be included as part of the development that was proposed, a request to reduce the final minimum assessed value from \$11.5 million to \$10.0 million has been submitted. Recognizing, first, that the development could not occur; secondly, that the assessed value is only a threshold or minimum that can be set by the assessor; and thirdly, the development to date has exceeded the requirements, staff recommends the proposed change.

FINANCIAL IMPACT:

The City will see a return of its investment within 8.5 years.

RELATIONSHIP TO STRATEGIC PLAN:

To be a vibrant destination City known for quality of life and economic opportunity.

ALTERNATIVES:

N/A

ATTACHMENTS:

Resolutions