

Cross Reference: 95-0092415  
95-0092416



SECOND AMENDED AND RESTATED PROJECT AGREEMENT

(SALE OF PROPERTY FOR PRIVATE REDEVELOPMENT)

METROPOLITAN DEVELOPMENT COMMISSION

OF MARION COUNTY, INDIANA

Project Area: Citizens/Fall Creek Redevelopment Areas.

Description of Properties: Exhibit "A"

AGREEMENT, made on or as of the 8<sup>th</sup> day of July, 1998, by and between the CONSOLIDATED CITY OF INDIANAPOLIS, INDIANA, DEPARTMENT OF METROPOLITAN DEVELOPMENT (hereinafter "Agency") established pursuant to I.C. 36-7-15.1 (hereinafter "Redevelopment Law") and having its office at 200 East Washington Street, Suite 2040 in the City of Indianapolis (hereinafter "City"), Indiana, and FALL CREEK PROPER, L.P., an Indiana limited partnership, having an office for transaction of business at 3967 North New Jersey Street, Indianapolis, Indiana 46227 (hereinafter "Fall Creek").

WHEREAS, in furtherance of the objectives of the Redevelopment Law, the Agency has undertaken a program for redevelopment in certain areas in the City, and in this connection is engaged in carrying out two Redevelopment Projects known as the Citizens Redevelopment Area and the Fall Creek Redevelopment Area (hereinafter "Project Areas") located in the City; and

WHEREAS, prior to the Agency's acquisition of the Project Areas, there have been prepared and approved by the Agency Redevelopment Plans for the Project Areas, which plans, as they may hereafter be amended from time to time pursuant to law and as so constituted from time to time are, unless otherwise indicated in this Agreement hereinafter referred to as "Redevelopment Plans"; and

WHEREAS, a copy of the Redevelopment Plans as constituted on the date of this Agreement have been recorded among the land records for the place in which the Project Areas are situated, namely, in the Office of the Recorder of Marion County, Indiana on November 29, 1993 as Instrument No. 93-0179609 for the Citizens Redevelopment Area on February 11, 1991 as Instrument No. 91-13318; on February 24, 1994 as Instrument No. 94-029882 and on August 23, 1994 as Instrument No. 94-0129749 for the Fall Creek Redevelopment Area; and

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WHEREAS, the Agency heretofore did comply with all applicable state laws and duly published a notice which stated that at a designated time written offers for the purchase and redevelopment of certain real properties located in the Project Areas, more particularly described on the attached Exhibit A, attached hereto and made a part hereof (the "Properties"), would be opened and considered; and

WHEREAS, no offers were received within thirty (30) days after the designated time; and

WHEREAS, the Metropolitan Development Commission did, pursuant to Resolution No. 94-R-176, approved on November 2, 1994, authorize the sale of the Properties to the Redeveloper in accordance with the terms of said resolution and on said date the Redeveloper was notified thereof; and

WHEREAS, the Agency believes that the redevelopment of the Properties pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and its residents, and in accord with the public purposes and provision of the applicable Federal, State, and Local laws and requirements under which the construction of new residential structures and the rehabilitation of certain existing houses (hereinafter "Project") will be undertaken; and

WHEREAS, in order to accomplish the redevelopment of the Project Areas, the Agency and Citizens Neighborhood Coalition ("Citizens"), on or about December 30, 1994 entered into that certain Project Agreement, which Project Agreement was recorded on July 31, 1995 as Instrument Number 95-0092415 in the Office of the Recorder of Marion County, Indiana, which Project Agreement was amended by instrument captioned "Amendment to Project Agreement Between the City of Indianapolis, Department of Metropolitan Development and Citizens Neighborhood Coalition", a copy of which is attached hereto as Exhibit "B", and further amended by that certain Second Amendment to Project Agreement dated as of July 21, 1995 and recorded July 31, 1995, as Instrument Number 95-0092416 in the Office of the Recorder of Marion County, Indiana and further amended by that certain Third Amendment to Project Agreement dated June 19, 1996, a copy of which is attached hereto as Exhibit "C", and further amended by that certain Fourth Amendment to Project Agreement dated February 20, 1997, a copy of which is attached hereto as Exhibit "D" (such Project Agreement as amended being hereinafter referred to as the "Project Agreement"); and

WHEREAS, on or about August 15, 1997, Citizens, by Amended and Restated Corporate Warranty Deed recorded on August 26, 1997 as Instrument No. 97-0117645 in the Office of the Recorder of Marion County, Indiana, conveyed to Fall Creek all of its right, title and

interest in and to the Properties which Amended and Restated Corporate Warranty Deed supersedes that certain Corporate Warranty Deed from Citizens to Fall Creek dated March 20, 1996 and recorded as Instrument No. 96-37232 in the Office of the Recorder of Marion County, Indiana which erroneously conveyed certain lots to Fall Creek which Citizens did not own at the time of such conveyance; and

WHEREAS, on or about October 30, 1997, the Agency and Fall Creek entered into that certain Amended and Restated Project Agreement, which Amended and Restated Project Agreement amended and restated the previous Project Agreement; and

WHEREAS, the parties now desire to amend and restate their respective obligations under the Amended and Restated Project Agreement; and

WHEREAS, for purpose of this Second Amended and Restated Project Agreement, the term "Redeveloper" shall mean Citizens with respect to matters occurring prior to March 20, 1996 and Fall Creek with respect to matters occurring after March 20, 1996.

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

SEC. 1. DESCRIPTION OF PROPERTIES

The Properties will be broken into three (3) Groups.

Group A, being those properties more particularly described on Exhibit "E" attached hereto, represent those lots of the Properties on which the Redeveloper has heretofore completed construction of residential improvements.

Group B, being those properties more particularly described on Exhibit "F" attached hereto, represent those lots of the Properties on which the Redeveloper is in the process of constructing residential improvements or on which the Redeveloper intends to commence construction of residential improvements in the near future.

Group C, being those properties more particularly described on Exhibit "G" attached hereto, represent those lots of the Properties on which the Redeveloper has not commenced construction of any residential improvements.

After the date hereof, the Agency and the Redeveloper may agree by letter agreement between the parties to move some or all of the lots in Group C to Group B.

SEC. 2. TIME FOR COMMENCEMENT AND COMPLETION OF CONSTRUCTION OF FIVE NEW HOUSES

The Redeveloper agrees to start construction on five new houses from the Group B lots, excluding lot 34, by no later than August 31, 1998. Construction shall be deemed to have "started" once a building permit is issued and site work commenced on any given lot. Construction of the houses on each of such five lots must be completed by no later than December 1, 1998.

The Agency agrees to pay the interest carrying charges to the construction lender of the Redeveloper for the construction of not less than five (5) new houses in the Fall Creek Proper subdivision up to a maximum of Fifty Thousand Dollars (\$50,000.00), so long as such construction financing is at commercially reasonable interest rates typically offered to other builders in the greater Indianapolis metropolitan area.

If any of the houses to be constructed on such five lots have not sold on or before June 1, 1999, then the Agency, at any time thereafter, by written notice to the Redeveloper, has the right and option, but not the obligation, to purchase any of such houses for an amount equal to the greater of (i) the appraised value of such house based upon an appraisal prepared by an appraiser mutually agreeable to the parties, or (ii) the actual third-party cost of construction of such house (excluding any builder's profit); provided, however, in no event shall the Agency be required to pay more than \$160,000 for any house (the "Purchase Price").

If this option is exercised, the transaction shall be closed within thirty (30) days after the commitment for title insurance described below is delivered to the Agency and each condition of purchase is either satisfied or waived by the Agency.

On closing this transaction, the Agency shall pay in cash to the Redeveloper the Purchase Price specified above.

If this option is exercised, the Agency's obligations hereunder are subject to the satisfaction of the following conditions:

A. That all improvements on each lot are located entirely within the bounds of such lot and that there are no encroachments thereon and no existing violations of zoning ordinances or other restrictions applicable to such lot.

B. The Agency shall receive a satisfactory survey of such real estate certified as of a current date, showing the location of all improvements and easements located on such lot, unless specifically waived.

Within five (5) days after the Redeveloper receives notice of the exercise of this option, the Agency shall order, as soon as the same can be prepared, a commitment for an owner's policy of title insurance issued by a title insurance company satisfactory to the Agency, in which the title insurance company shall agree to insure merchantable title in the name of the Agency after delivery of a general warranty deed to the Agency from the Redeveloper subject only to the standard exceptions in the most recent ALTA form of owner's policy. Such title insurance policy shall insure title for the full amount of the Purchase Price specified above and shall be at the expense of the Agency.

The Agency assumes and agrees to pay all assessments for municipal improvements becoming a lien after the date of the closing under this option and so much of the real estate taxes assessed for and becoming a lien during the calendar year in which closing occurs as shall be allocable to it on or after closing, and the Redeveloper shall pay the balance of such taxes, using, for closing purposes, the present tax rate if the applicable tax rate has not been set, and provided that both installments of real estate taxes due and payable during the calendar year in which the closing occurs shall be paid by the Redeveloper. Any taxes not assumed by the Agency and which are not due and payable at the time of closing shall be allowed to the Agency as a credit on the cash payment required on closing, and the Redeveloper shall not be further liable for such taxes.

Insurance shall be canceled as of the date of closing. The Redeveloper shall bear risk of loss until closing.

At date of closing the Redeveloper shall execute and deliver a general warranty deed conveying such lot(s) in the same condition as it was on the date that the Agency exercised such option, ordinary wear and tear excepted, and a Vendor's Affidavit in the form most recently published by the Indianapolis Bar Association.

Possession of such lot(s) shall be delivered to the Agency on date of closing.

SEC. 3. TIME FOR COMMENCEMENT AND COMPLETION OF CONSTRUCTION OF NEW HOUSES BETWEEN AUGUST 31, 1998 AND DECEMBER 31, 1999 AND THEREAFTER

A. Between August 31, 1998 and December 31, 1999, the Redeveloper agrees to cause new houses to be constructed and sold on not less than fifteen (15) lots included within Group B and Group C of the Properties, excluding lot 34.

B. In the event that the Redeveloper successfully constructs and sells new houses on not less than fifteen (15) of such lots on

or before December 31, 1999, then the term of this Agreement shall be extended from year to year so long as the Redeveloper causes construction of new houses to be completed on not less than five (5) lots included within Group C of the Properties during each subsequent calendar year and sells not less than three (3) of such five (5) new houses during each subsequent calendar year until new houses are constructed on all of the lots comprising Group C of the Properties.

C. For purposes of this Section 3, a sale by the Redeveloper of those houses which have heretofore been constructed and completed on Lots 3, 34 and 48 of the Properties, shall be included within the fifteen (15) houses which must be sold by the Redeveloper on or before December 31, 1999, in accordance with the provisions of Section 3-A. hereof. Further, for the purpose of Sections 2 and 3 hereof, the term "sale" shall mean houses actually sold during any applicable calendar year to a person who intends to occupy such house as his/her primary residence, as well as houses upon which written offers are pending, if such offers result in a closing and transfer of title to such houses to a person who intends to occupy such house as his/her primary residence, no later than ninety (90) days from the end of the applicable calendar year in issue.

#### SEC. 4. COVENANT ON USE

The Properties shall be developed in accordance with the construction plans approved by the Agency and devoted to and used only in accordance with those particular uses approved by the Agency and specified in the Redevelopment Plans for the Project Areas.

The Redeveloper shall not discriminate against any employees or applicant for employment in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of the race, sex, religion, color, national origin, ancestry, age, handicap, disabled veteran status and Vietnam era veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

#### SEC. 5. PERIOD OF DURATION OF COVENANT ON USE

The covenant pertaining to the use of the Properties in the Redevelopment Plans shall remain in effect from the date of the Deed until twenty years thereafter or until such date thereafter to which it may be extended by proper amendment of the Redevelopment Plans, on which date, as the case may be, such covenant shall terminate.

SEC. 6. ENFORCEMENT OF AGREEMENT AND REDEVELOPMENT PLANS

The Agency or its successor may enlist the assistance of any appropriate body to use their authority to either require remedial action or to stop construction not in compliance with this Agreement or the Redevelopment Plans.

Furthermore, the Agency or its successor may enter into a civil law suit to stop or rescind actions not in conformance with this Agreement and Redevelopment Plans, or to enforce contractual agreements to ensure conformance with this Agreement and the Redevelopment Plans.

SEC. 7. REMEDIES

A. In consideration of the Agency's willingness to agree to the terms and provisions of Section 11(k) hereof, the Redeveloper does hereby agree to deliver to the Agency on the date hereof warranty deeds to each of the lots within Group C of the Properties, which warranty deeds will be held by the Agency in accordance with the terms and provisions hereof:

- (1) If the Redeveloper fails to start construction on all five new houses by October 1, 1998 as required by Section 2 hereof, the Agency may, any time after October 2, 1998, date and record all the deeds in its possession, other than deeds for lots upon which houses have been constructed or are in the process of being constructed; or
- (2) If the Redeveloper fails to cause 15 new houses to be constructed and sold from Group B and Group C of the Properties, excluding lot 34, during the period from August 31, 1998 to December 31, 1999 as required by Section 3-A. hereof, the Agency may, any time after January 1, 2000, date and record all the deeds in its possession, other than deeds for lots upon which houses have been constructed or are in the process of being constructed; or
- (3) If after December 31, 1999 the Redeveloper fails to cause five new houses to be constructed and at least three of such five houses to be sold in each calendar year thereafter, as required by Section 3-B. hereof, the Agency may date and record all the deeds in its possession, other than deeds for lots upon which houses have been constructed or are in the process of being constructed, any time after the end of any calendar year in which the Redeveloper fails to so construct and sell such houses.

The Redeveloper hereby irrevocably constitutes and appoints the Agency and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Redeveloper and in the name of the Redeveloper or its own name, from time to time, in the Agency's discretion, for the purpose of carrying out the terms of this Second Amended and Restated Project Agreement, to cause the deeds which are in the possession of the Agency for those lots upon which no construction has commenced as of the date that the Redeveloper fails to perform any of its obligations as described in subparagraphs A., B. or C. above, to be dated and thereafter recorded in the Office of the Recorder of Marion County, Indiana.

The Redeveloper or any builder selected by the Redeveloper to build new houses in the Fall Creek Proper subdivision may mortgage any lot upon which it has undertaken construction of a new house on such lot. No other mortgages or other encumbrances may be placed on any lots in Group C in the Fall Creek Proper subdivision.

The Redeveloper may transfer any lot in the Fall Creek Proper subdivision to another builder so long as such builder has obtained construction financing in an amount sufficient to pay for the construction of a new house on such lot and agrees to commence construction of a new house on such lot within 30 days from the date such lot is transferred to the builder. In addition, any lot upon which a new house has been constructed may be transferred to a homeowner who intends to occupy the same as his/her primary residence. No other transfer of any lot(s) shall be made without the prior written consent of the Agency.

B. In the event the Redeveloper fails to perform any or all of its other obligations under this Agreement, then the Agency shall have the right to institute such actions or proceedings as it may deem necessary for effectuating the purposes of this Agreement; provided, however, any delay by the Agency in instituting or prosecuting any of such actions or proceedings or otherwise asserting its rights hereunder shall not operate as a waiver of such rights or deprive the Agency of or limit any of the Agency's rights in any way.

#### SEC. 8. ASSIGNMENT OF AGREEMENT AND TRANSFER OF PROPERTIES

Assignment of this Agreement, or any transfer of any or all of the lots contained within the Properties (real or personal) or any part thereof, prior to the issuance of the Certificate of Completion, shall occur only after written consent thereto is granted by the Agency.

#### SEC. 9. NOTICE AND DEMANDS



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

- (i) The Agency at  
Director, Department of Metropolitan Development  
Suite 2001 City County Building  
200 East Washington Street  
Indianapolis, Indiana 46294, or
- (ii) The Redeveloper at  
Fall Creek Proper, L.P.  
c/o Urban Development Inc.  
3967 North New Jersey Street  
Indianapolis, Indiana 46205
- (iii) National City Bank;  
Mr. Darwin May, Director of Community Development  
101 West Washington Street, Site 400 E  
Indianapolis, Indiana 46255
- (iv) or at such other address either party may, from time to time, designate in writing and forward to the other as provided in this section.

SEC. 10. SPECIAL PROVISIONS

(a) Redeveloper agrees that in the construction of such work it will comply with all building codes and applicable ordinances of the City, as well as all applicable statutes of the State of Indiana and the United States of America, and all applicable rules and regulations thereunder.

(b) In the event there is further new or exterior construction, after the issuance of the Certificate of Completion, it is required that the plans for construction must be submitted to the Agency and approved by the Agency prior to obtaining any permits.

SEC. 11. OTHER PROVISIONS

(a) Redeveloper will construct a project with the intent to provide a mix of market rate houses and affordable houses for low to moderate income families.

(b) The parties do hereby agree that all previous agreements with respect to the Agency's participation in buried debris removal

on the Properties are hereby null and void and of no further force and effect.

In lieu thereof, the parties agree as follows:

(i) The Agency will provide to the Redeveloper, an aggregate subsidy of \$108,000.00 to be used to reimburse the Redeveloper for actual out-of-pocket costs incurred by it (a) to remove buried debris, (b) for dumping such debris; and (c) for clean fill dirt to bring the building pad up to an acceptable grade, all of which shall be incurred in order to create buildable sites on unimproved lots in Group B and Group C in the Fall Creek Proper subdivision, excluding lot 34; provided, however, in no event shall the Agency be required to provide more than a \$7,000.00 subsidy on any given lot. At the time that the Redeveloper makes application for any subsidy hereunder, it shall deliver to the Agency paid invoices for all work for which the Redeveloper is seeking reimbursement;

(ii) Prior to engaging any contractors to perform such buried debris removal work, the Redeveloper, on behalf of the Agency, shall obtain two (2) quotes for such work in accordance with the provisions of applicable law and obtain the approval of the Agency of the quote selected prior to engaging such contractors to perform such work. The Agency does hereby agree to approve or reject such quote within three (3) business days after receipt of the same; and

(iii) In no event shall the Redeveloper include within the purchase price of any individual lot or any house constructed upon any individual lot any costs for buried debris removal work which have been paid hereunder.

(c) Infill Housing Guidelines of the Department of Metropolitan Development shall be utilized for exterior rehabilitation as well as for new construction located among existing structures.

(d) Any contractor used in the construction of any houses on the Properties must be licensed and bonded in Indianapolis, Marion County.

(e) Redeveloper, to the greatest extent feasible, as determined under the standards specified in 24 CFR 135, shall:

(i) use lower income Project Area residents as trainees and employees;

(ii) contract for work with business concerns located in the Project Areas or owned in substantial part by persons residing in the Project Areas;

(iii) The Redeveloper shall put forth a good faith effort to engage the services of minority or women owned business concerns in accordance with the City of Indianapolis' established overall percentage goals of ten percent (10%) for Minority Business Enterprises and two percent (2%) for Women Business Enterprises.

(f) If any breach or default by a party occurs, the other party shall, in addition to all other rights and remedies, be entitled to recover reasonable costs and attorney fees incurred in enforcing its rights and the other party's obligations hereunder.

(g) The Agency agrees to pave alleys within the portion of the Fall Creek Proper subdivision owned by the Redeveloper. The paving will consist of gravel, asphalt chips and a sealer. Paving will be completed on or before September 1, 1998. The Redeveloper hereby agrees to repair all damage to the paving in such alleys caused by it or any of its contractors, subcontractors, materialmen, agents or employees.

(h) On or before August 1, 1998, the Agency will agree, on a one-time basis, to move and dispose of large pieces of concrete and fallen portions of trees from alleys in the Fall Creek Proper subdivision and areas adjoining alleys in the Fall Creek Proper subdivision and from vacant lots in the Fall Creek Proper subdivision owned by the Agency or the Redeveloper.

(i) The Redeveloper agrees to remove all other above-ground debris from the Properties and such alleys and to repair the "wrought iron" fence along 25th Street on or before August 15, 1998.

(j) The Agency recognizes the importance of the Fall Creek Proper subdivision to the success of the Home Ownership Zone. Where legally possible, the Agency will make a good faith effort to make available to the Redeveloper, and prospective purchasers of lots in the Fall Creek Proper subdivision, the same benefits (e.g., home buyer subsidy, special financing packages) as are available to other developers and purchasers of lots in the Home Ownership Zone; provided, however, any benefits to be made available to the Redeveloper, as part of any program offered by the Home Ownership Zone, shall be provided only if and to the extent that the average aggregate per lot benefit provided by federal, state and local government in the Home Ownership Zone exceeds the average aggregate per lot benefit provided by federal, state and local government in the Fall Creek Proper subdivision. Such benefits shall only be

provided in the Fall Creek Proper subdivision with respect to lots developed after benefits are made available from programs sponsored by the Home Ownership Zone, but not with respect to lots developed prior to the implementation of such programs.

(k) In consideration of the agreement of the Redeveloper to the terms and provisions of Section 7 hereof, the Agency shall allow the reinvestment of the existing \$194,700.00 loan to the Redeveloper into the Fall Creek Proper subdivision, in order to enhance the success of such subdivision.

(l) The Redeveloper does hereby agree that, after consultation with the Redeveloper, the Agency may install permanent barricades or guardrails (if mutually agreeable to the parties) at the end of the east-west alleys in the Fall Creek Proper subdivision to prevent traffic from entering the Fall Creek Proper subdivision through such alleys from Delaware Street and Central Avenue.

(m) The Agency will keep all lots owned by the Agency in a slightly condition in accordance with the provisions of applicable law. The Redeveloper will keep all lots described in the deeds referenced in Section 7 hereof in a slightly condition in accordance with the provisions of applicable law.

(n) The Agency agrees that by execution of this Second Amended and Restated Project Agreement, the Agency waives all prior defaults, if any, under the Project Agreement and the Amended and Restated Project Agreement by the Redeveloper.

#### SEC. 12. CERTIFICATE OF COMPLETION

The Redeveloper shall follow all provisions of the Redevelopment Plans, and appropriate Federal, State, and Local code and ordinances. After completion of the proposed improvement activities on any lot which is the subject of this Agreement, in accordance with the construction plans approved by this Agency, the Redeveloper shall request the necessary inspections from the Division of Development Services, and any other appropriate agency. The Redeveloper shall then submit a copy of the signed building permit indicating approvals and request final inspection by the Agency. In the event an F.H.A., H.U.D., or any other compliance report is made, the Redeveloper shall forward a copy of the final inspection report with the sign building permit. After the Redeveloper's improvements on such lot(s) have been inspected by the Agency (or its agent, acting on its behalf) and a satisfactory report is filed, the Agency shall issue a Certificate of Completion for such lot(s). Said Certificate of Completion for such lot(s) shall serve only as a statement to the effect that the Redeveloper has completed the improvements on such lot(s) in accordance with

approved plans and that the Redeveloper is released from Sections 2 and 3 of this Agreement with respect to such lot(s). Covenants that run with the land and those recited in Sections 4, 5 and 6 of this Agreement shall remain in full force. Said Certificate of Completion shall not be interpreted to serve as a warranty of any kind for the work of the Redeveloper or of any existing prior condition.

SEC. 13. SAVE HARMLESS

(a) The Redeveloper agrees to hold harmless the Agency and the City and its officers, agents, officials, and employees, from any and all claims, actions, causes of actions, judgments, and liens arising out of the Redeveloper's performance under this Agreement; provided, however, this paragraph does not apply to or obligate National City Community Development Corporation, d/b/a National City Bank of Indiana Community Development Association or National City Bank of Indiana.

(b) The Agency agrees to hold harmless the Redeveloper and its officers, agents, officials, and employees, from any and all claims, actions, causes of actions, judgments, and liens arising out of the Agency's performance under this Agreement; provided, however, this paragraph is not intended to apply to or benefit in any way National City Community Development Corporation, d/b/a National City Bank of Indiana Community Development Association or National City Bank of Indiana..

SEC. 14. COUNTERPARTS

This Agreement is executed in five (5) counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Second Amended and Restated Project Agreement to be executed as of the day and year first above written.

REDEVELOPER

FALL CREEK PROPER, L.P., an Indiana limited partnership

By: URBAN DEVELOPERS, INC., an Indiana corporation, managing general partner

*Lloyd J. Tucker*  
By: \_\_\_\_\_  
Lloyd J. Tucker, President

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Lloyd J. Tucker, President of Urban Developers, Inc., an Indiana corporation, managing general partner of Fall Creek Proper, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing Second Amended and Restated Project Agreement as his free and voluntary act and deed on behalf of said limited partnership.

Witness my hand and Notarial Seal this 8th day of July, 1998.



*Theresa M. Hargis*  
Notary Public

Printed \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

County of Residence: Notary Public  
~~Theresa M. Hargis, Notary Public~~  
My Commission Expires: February 1, 2000  
Resident of Hendricks Co., Indiana



EXHIBIT A

1138,

Lots 5 through the 30 feet off the S. Side of lot 14, 17 through 22, 24 through 37, 39 through 43, 46, 47, and 49 through 57 in Fall Creek Proper Subdivision, a subdivision in Marion County, Indiana, as per plat thereof recorded April 13, 1995 as Instrument Number 950041493 in the Office of the Recorder of Marion County, Indiana.

Parcel Number: 101-1056707, 101-1040950, 101-1053642, 101-1009302, 101-1023663, 101-1030434, 101-1025986, ~~101-1025986~~, 101-1041301, ~~101-1025986~~, ~~101-1025986~~, ~~101-1025986~~, ~~101-1025986~~, 101-1039010, 101-1039007, 101-1052871, 101-1079525, 101-1032777, ~~101-1032777~~, ~~101-1032777~~, 101-1058073, 101-1041258, 101-1031933, 101-1012551, 101-1047868, 101-1070901, 101-1027083, 101-1055437, 101-1054058, 101-1070965, 101-1073603, 148-1029217, 148-1029216, 148-1010663, 148-1004870, 148-1044491, 148-1011215, 148-1012926, 148-1005869, 148-1002075, 148-1073063, 148-1023916, 148-1071294, 148-1071295, 148-1058074, 148-1002438, 148-1063888, 148-1021318, 148-1043932, 148-1008845, ~~148-1008845~~, ~~148-1008845~~, 148-1012730, 148-1051482, 148-1019469, 148-1044521, 148-1036363, 148-1012730, 148-1055367, 148-1052186, 148-1015436, 148-1053144, 148-1043781, 148-1058075, 148-1065528, 148-1014693, 148-1014131, 148-1019722, 148-1048059, 148-1030927, 148-1013417

and: 1098324, 1017076, 1018123, 1052187, 1071519, 1048285, 1067709, 1031185, 1005712, 1063454, 1056570, 1009908, 1079980, 1058075 and 1033961.

Commonly known as: 2519, 2525, 2531, and 2541 N. Delaware; 2506, 2518, 2526, 2540, 2546, 2602, 2521, 2527, 2607, 2513, 2619, and 2635 N. Alabama; 2504, 2524, 2532, 2538, 2542, 2602, 2608, 2614, 2620, 2624, 2832, 2517, 2523, 2529, 2537, 2543, 2601, 2609, 2615, 2621, 2626 and 2631 N. New Jersey; 325, 333, 407, 413, 427 and 433 E. Fall Creek Parkway S. Drive; 2510, 2516, 2522, 2528, 2534, 2610, 2616 and 2630 N. Central Avenue.

*Together with the real estate described on Exhibits E, F and G.*



AMENDMENT TO PROJECT AGREEMENT BETWEEN CITY  
OF INDIANAPOLIS, DEPARTMENT OF METROPOLITAN DEVELOPMENT  
AND CITIZENS NEIGHBORHOOD COALITION

The Agreement, by and between the City of Indianapolis and Citizens Neighborhood Coalition, dated December 30, 1994, in consideration of the premises herein, is hereby amended as follows:

1. Section 5 is amended to extend the time period for commencement of construction from April 30, 1995 to May 15, 1995.

All other provisions of the Agreement are unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures at the City of Indianapolis, Indiana this \_\_\_\_\_ day of May, 1995.

CITIZENS NEIGHBORHOOD COALITION

By: *Dorothy L. Burse*  
Dorothy Burse

5-22-95  
DATE

CITY OF INDIANAPOLIS  
DEPARTMENT OF METROPOLITAN DEVELOPMENT

By: *Elaine E. Bedel*  
Elaine E. Bedel, Director

5-12-95  
DATE

Approved as to Adequacy of Legal Form

By: *Stephen Neff*  
Stephen Neff, Assistant Corporation Counsel

5-11-95  
DATE

Exhibit "B"

Cross References: \_\_\_\_\_

THIRD AMENDMENT TO PROJECT AGREEMENT  
(Fall Creek Proper)

THIS THIRD AMENDMENT TO PROJECT AGREEMENT (the "Amendment") is made and entered into as of the 19<sup>th</sup> day of June, 1996 by and between the CONSOLIDATED CITY OF INDIANAPOLIS, INDIANA, DEPARTMENT OF METROPOLITAN DEVELOPMENT (the "Agency") and CITIZENS NEIGHBORHOOD COALITION, an Indiana not-for-profit corporation (the "Redeveloper").

WITNESSETH:

WHEREAS, the Agency and the Redeveloper entered into that certain Project Agreement dated as of December 30, 1994 and recorded 7/31, 1995, as Instrument Number 1995-0092415 in the Office of the Recorder of Marion County, Indiana which Project Agreement was amended by instrument captioned "Amendment to Project Agreement Between the City of Indianapolis, Department of Metropolitan Development and Citizens Neighborhood Coalition", and further amended by that certain Second Amendment to Project Agreement dated as of July 21, 1995 and recorded 7/31, 1995, as Instrument Number 1995-0092416 in the Office of the Recorder of Marion County, Indiana (such Project Agreement, as so amended, being hereafter referred to as the "Project Agreement"); and

WHEREAS, pursuant to the Project Agreement, the Redeveloper agreed to provide certain assistance in the redevelopment of certain real estate more particularly described in Exhibit "A" attached hereto (the "Properties"); and

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Exhibit "C"

WHEREAS, as of the date hereof, with respect to the Properties, the Redeveloper has (i) caused the construction of model homes on Lots 4 and 16 thereof; (ii) sold Lot 37 for the purpose of the development of residential improvements thereon; and (iii) caused construction of residential foundation footers on Lot 36 and expects to sell the same for purposes of the development of residential improvements thereon by no later than May 1, 1996; and

WHEREAS, the Agency and the Redeveloper desire to begin to work in good faith to develop additional lots within the Properties.

WHEREAS, the Agency and the Redeveloper desire to amend the Project Agreement in certain particulars to further reflect the various agreements of the parties with respect to the Properties.

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

1. The schedule for the transfer of the Properties as set forth in Paragraph 1 of the above-referenced Second Amendment to Project Agreement is hereby amended to incorporate the following paragraphs:

I. Lots 1, 22, 23, 46 and 47 are hereby moved from Group B to Sub-Group A-2.

J. Lots 1 and 2 of Sub-Group A-2 are hereby combined and shall hereafter be referred to singly as Lot 1/2.

K. Lots 56 and 57 of Group B are hereby combined and shall hereafter be referred to singly as Lot 56/57.

L. Hereafter, all Lots which the parties desire to be moved from Group B to Sub-Group A-2 may, in lieu of drafting a formal amendment to the Project Agreement, be accomplished by letter agreement between the parties, which letter agreement shall be approved by the Agency.

M. Promptly after the date hereof, the Agency shall cause Lots 1 and 23 to be conveyed to the Redeveloper."

2. Section 5 of the Project Agreement is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"5. Construction of the improvements, as shown on the Construction Plans, with respect to Lot 1/2 shall be commenced by June 15, 1996 and, except as otherwise provided in this Agreement, construction shall be completed by ~~October 31,~~ <sup>November 30</sup> 1996. *WJM*

Construction of the improvements, as shown on the Construction Plans, with respect to Lot 22 shall be commenced by April 1, 1996 and, except as otherwise provided in this Agreement, construction shall be completed by ~~August 31,~~ <sup>September 30</sup> 1996. *WJM*

Construction of the improvements, as shown on the Construction Plans, with respect to Lot 3, 23 and 46 shall be commenced within thirty (30) days following the sale by the Redeveloper of the model homes on Lots 4 and 16 and, except as otherwise provided in this Agreement, construction of the exterior shall

of such improvements shall be completed no later than ~~five (5)~~ <sup>SIX (6)</sup> months following the sale by the Redeveloper of the model homes on Lots 4 and 16. The Redeveloper shall pay normal fees and follow established policy in obtaining all permits. *WJM*

On or before June 30, 1997, the construction of improvements, as shown on the Construction Plans, shall be

commenced on no less than twenty (20) Lots included within the Properties. In the event that the Redeveloper successfully commences construction on such twenty (20) Lots on or before June 30, 1997, then, the term of this Agreement shall be hereby extended for an additional one (1)-year period to provide that on or before June 30, 1998, construction of improvements, as shown on the Construction Plans, shall be commenced on the greater of (i) twelve (12) Lots in addition to the number of Lots upon which construction was actually commenced by the Redeveloper by June 30, 1997 or (ii) thirty-two (32) Lots included within the Properties. Thereafter, if the Redeveloper successfully commences construction on or before June 30, 1998 as hereinabove provided, the time for commencing construction on the remaining Lots within the Properties shall be determined by the Agency after consultation with the Redeveloper. In the event that the Redeveloper has failed to commence construction on such twenty (20) Lots on or before June 30, 1997, then the Redeveloper and the Agency shall meet to determine whether the selling price and design of the residential improvements to be constructed on such Lots should be modified in order to increase the marketability of the same. In the event the Redeveloper and the Agency are not able to agree upon the same, then the issue shall be submitted to a panel of qualified arbitrators who shall determine the best marketing plan for the construction of residential improvements on such Lots.

The procedure to be followed in resolving such matter shall be as follows:

Any party may request a meeting to be attended by all parties for the purpose of resolving any such dispute. If the matter is not resolved at such meeting, or the meeting is not held, any party may, within thirty (30) days from the date set for such meeting, make a written request to resolve such dispute by arbitration. Within ten (10) days from the date of receipt of such notice, each party shall select an arbitrator which has no less than fifteen (15) years' experience in selling residential real estate similar to the type of lots and residential improvements which comprise the Properties. Such arbitrators shall meet within ten (10) days after selection for the purpose of resolving the dispute. If such arbitrators are unable to agree, an additional arbitrator having similar experience shall be selected by the designated arbitrators. If such arbitrators are unable to select such an arbitrator, such arbitrator shall be appointed by the Presiding Judge of the Circuit Court of Marion County, State of Indiana, at the request of any such party.

Within ten (10) days from such appointment, all arbitrators shall meet and determine the matter in dispute and shall resolve the same and all questions pertaining thereto within twenty (20) days from the date of selection of such additional arbitrator. A majority decision shall be final at any stage of the proceeding. Each party shall bear its own expense except that relating to the selection and services of the additional

arbitrator which shall be borne equally by the parties.

In the event the Redeveloper does not agree with the marketing plan determined by the arbitrators, then the Redeveloper, as its sole and exclusive remedy, may, at its election, within fifteen (15) days after receipt of the decision by such arbitrators, convey to the Agency by special warranty deed, such remaining Lots comprising the Properties which the Redeveloper then owns, subject to such title exceptions as the Agency may reasonably approve. Thereupon, the Agency and the Redeveloper shall also enter into an agreement in recordable form terminating this Project Agreement.

All arbitration conducted hereunder shall be in accordance with the rules of the American Arbitration Association, to the extent such rules do not conflict with the procedures herein set forth. Compliance with this Paragraph 5 is a condition precedent to the commencement by any party of a judicial proceeding arising out of a dispute which is subject to arbitration hereunder. No damage or costs, including attorneys' fees, shall be awardable in arbitration, but claims for damages, costs and attorneys' fees are reserved for the jurisdiction of the courts.

Notwithstanding the foregoing, in the event the Redeveloper (i) has not sold at least fifteen (15) Lots with residential improvements completed thereon or (ii) has not commenced construction on such fifteen (15) Lots, on or before December 31, 1996, then either party may request a meeting to

be attended by the other party to begin the process of determining whether the selling price and quality of the residential improvements to be constructed on such Lots should be modified in order to increase the marketability of the same.

3. The Agency and the Redeveloper do hereby agree to work in good faith to expedite the construction, sale and occupancy of single-family residences on the other lots which are included within the Properties. To further such end, the parties agree to meet for the purposes of developing a plan for the same no later than fifteen (15) days from the date hereof. As part of such plan, the Agency will agree to spend up to Two Hundred Twenty Thousand Dollars (\$220,000.00) to promote the construction and sale of such single-family residences.

4. Section 15(e)(1) is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"(1) Agency's participation in demolition and said abatement or remediation activities beyond the date of this Third Amendment to Project Agreement shall not exceed Fifty Thousand Dollars (\$50,000.00) in the aggregate in cost (Agency's total participation in said abatement or remediation activities being hereinafter referred to as "Agency's Abatement Investment").

Further, the sum of at least One Hundred Twenty-Eight Thousand Dollars (\$128,000.00) shall be used by the Agency for additional public activities which benefit the neighborhood containing and adjoining the Properties, some of which activities are more particularly set forth in Section 15 of



the Project Agreement. Such funds shall be used by the Agency for the purchase and demolition of one (1) or more homes within the boundaries of the project area described in the Project Agreement on or before August 31, 1996. With respect to those existing homes purchased by the Agency which are located within the boundary of the project area which are not demolished on or before August 31, 1996, the Agency hereby agrees to use the remainder of such funds to rehabilitate the exteriors of such existing homes which are not demolished on or before November 30, 1996.

In addition to the foregoing, the Agency does hereby agree to cause its contractor to complete its existing contract for the construction and installation of infrastructure improvements with respect to the Properties by July 1, 1996.

5. Section 15(e)(2) is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"(2) Redeveloper shall pay for all demolition and abatement or remediation in excess of Agency's Abatement Investment up to \$3,800.00 per lot for the remaining lots. "Remaining lots" is defined as those lots which have not been abated or remediated after the Agency has completed its responsibilities pursuant to Section 15(e)(1)".

6. Section 15(j) is hereby deleted in its entirety and the following is hereby inserted in lieu thereof:

"Agency shall allocate Community Development Block Grant funds in an amount not to exceed One Hundred Seventy-Thousand

and 00/100 Dollars (\$170,000.00) for assistance in the construction of affordable housing units."

7. A new Section 15(p) is hereby added to read as follows:

"(p) On or before April 4, 1996, the Redeveloper shall construct or cause to be constructed a wrought-iron fence, of a type reasonably approved by the Agency, along the entire southernmost boundary of the Properties".

8. A new Section 15(q) is hereby added to read as follows:

"(q) On or before <sup>July 1st</sup> ~~May~~ 1, 1996, the Redeveloper shall construct or cause to be constructed entrance monuments, of a type reasonably approved by the Agency, at the northeast and northwest corners of the Properties".

9. A new Section 15(r) is hereby added to read as follows:

"(r) After the Agency has completed its initial clean-up of the common areas on the Properties, the Redeveloper shall thereafter maintain such common areas in a clean, safe and first-class condition."

10. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Project Agreement.

11. If any breach or default by a party occurs, the other party shall, in addition to all other rights and remedies, be entitled to recover reasonable costs and attorney fees incurred in enforcing its rights and the other party's obligations hereunder.

12. This Amendment may be signed in counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

13. The Project Agreement, as hereby amended, remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Third  
Amendment to Project Agreement as of the date first above written.

CONSOLIDATED CITY OF INDIANAPOLIS, INDIANA,  
DEPARTMENT OF METROPOLITAN DEVELOPMENT

By: *Maura Carlstedt*  
Maura Carlstedt, Director

Approved for availability of funding:

James H. Steele  
James H. Steele, Controller

Approved as to adequacy and form:

Steve Neff  
Steve Neff, Assistant Corporation Counsel

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Moira Carlstedt, the Director of the Consolidated City of Indianapolis, Indiana, Department of Metropolitan Development, who being first duly sworn, acknowledged the execution of the foregoing Third Amendment to Project Agreement, as said Director, for and on behalf of the Consolidated City of Indianapolis, Indiana, Department of Metropolitan Development, as her voluntary act and deed and for the uses and purposes contained therein.

Witness my hand and Notarial Seal this 28<sup>th</sup> day of MAY, 1996.

My Commission Expires:  
AUG. 19, 1998  
My County of Residence:  
MARION

Steven J. Schumeyer  
(Signature) NOTARY PUBLIC  
Steven J. Schumeyer  
(Printed)

FOURTH AMENDMENT TO PROJECT AGREEMENT  
(Fall Creek Proper)

THIS FOURTH AMENDMENT TO PROJECT AGREEMENT (the "Amendment") is made and entered into as of the 20<sup>th</sup> day of February, 1997 by and between the CONSOLIDATED CITY OF INDIANAPOLIS, INDIANA, DEPARTMENT OF METROPOLITAN DEVELOPMENT (the "Agency") and CITIZENS NEIGHBORHOOD COALITION, a neighborhood development corporation (the "Redeveloper").

W I T N E S S E T H:

WHEREAS, the Agency and the Redeveloper entered into that certain Project Agreement dated as of December 30, 1994 and recorded July 31, 1995, as Instrument Number 95-0092415 in the Office of the Recorder of Marion County, Indiana which Project Agreement was amended by instrument captioned "Amendment to Project Agreement Between the City of Indianapolis, Department of Metropolitan Development and Citizens Neighborhood Coalition", and further amended by that certain Second Amendment to Project Agreement dated as of July 21, 1995 and recorded July 31, 1995, as Instrument Number 95-0092416 in the Office of the Recorder of Marion County, Indiana and further amended by that certain Third Amendment to Project Agreement dated as of May 20<sup>th</sup> 1996 and recorded N/A, 1996, as Instrument Number N/A in the Office of the Recorder of Marion County, Indiana (such Project Agreement, as so amended, being hereafter referred to as the "Project Agreement"); and

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Exhibit "D"

WHEREAS, the Agency and the Redeveloper desire to amend the Project Agreement in certain particulars to further reflect the various agreements of the parties with respect to the Properties.

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

1. The second paragraph of Section 5 is hereby deleted and the following is hereby inserted in lieu thereof:

"On or before December 31, 1997, the construction of new improvements, as shown on the Construction Plans, shall be completed on not less than fifteen (15) Lots included within the Properties, upon Lots on which construction has not previously been commenced. In the event that the Redeveloper successfully completes construction on such fifteen (15) Lots on or before December 31, 1997, then, the term of this Agreement shall be hereby extended for an additional one (1)-year period to provide that on or before December 31, 1998, construction of improvements on all remaining Lots shall be completed in accordance with a schedule to be agreed upon between the Redeveloper and the Agency. In the event that the Redeveloper has failed to complete construction on such fifteen (15) Lots on or before December 31, 1997, then the Redeveloper and the Agency shall meet to determine whether the selling price and design of the residential improvements to be constructed on such Lots should be modified in order to increase the marketability of the same. In the event the Redeveloper and the Agency are not able to agree upon the same, then the issue shall be submitted to a panel of qualified arbitrators who shall determine the best marketing plan for the construction of residential improvements on such Lots."

2. Sections 15(e)(1) and 15(e)(2) are hereby deleted in their entirety and the following is hereby inserted in lieu thereof:

"15(e) The parties do hereby agree that all previous agreements with respect to the Agency's participation in buried debris removal on the Properties are hereby null and void and of no further force and effect.

In lieu thereof, the parties agree as follows:

EXHIBIT "E"

Completed Lots

Lots 3, 4, 16, 22, 23, 24, 27, 32, 33, 35, 36, 37, 38, 47, 48 and 54 in Fall Creek Proper Subdivision, a subdivision in Marion County, Indiana, as per plat thereof recorded April 13, 1995 as Instrument No. 95-0041493 in the Office of the Recorder of Marion County, Indiana.

EXHIBIT "F"

Lots Under Construction

Lots 11, 28, 31, 34, 40 and 46 in Fall Creek Proper Subdivision, a subdivision in Marion County, Indiana, as per plat thereof recorded April 13, 1995 as Instrument No. 95-0041493 in the Office of the Recorder of Marion County, Indiana.



EXHIBIT "G"

Vacant Lots

Lots 1-2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 26, 28, 29, 31, 39, 40, 41, 43, 46, 49, 50, 51, 52, 53, 55, 56 and 57 in Fall Creek Proper Subdivision, a subdivision in Marion County, Indiana, as per plat thereof recorded April 13, 1995 as Instrument No. 95-0041493 in the Office of the Recorder of Marion County, Indiana.