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DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

Preparer Information: Dorsey & Whitney
801 Grand Ave., Ste. 3900
Des Moines, IA 50309-2790
Phone: (515) 283-1000

Taxpayer Information: N/A

Return Document To: City of Manchester, Iowa
208 E. Main St.
Manchester, IA 52057

Grantors:
David A. & Linda M. Cabalka
408 Quaker Mill Dr.
Manchester, IA 52057

Grantees:
City of Manchester, Iowa
208 E. Main St.
Manchester, IA 52057

Legal description is located on page: 7 8

Document of instrument number of previously recorded documents: N/A

CONSTRUCTION AGREEMENT AND MORTGAGE

THIS CONSTRUCTION AGREEMENT (the "Agreement") between David A. Cabalka and Linda M. Cabalka, the undersigned property owner(s) (the "Property Owner") and the City of Manchester, Iowa (the "City") is entered into as of the 6TH day of APRIL, ~~2003~~ 2004.

WHEREAS, the Property Owner is the owner of certain real property as described on Exhibit A hereto (the "Property"); and

WHEREAS, the Property Owner desires that the City cause the construction of certain sidewalk improvements on the Property as described in the plans and specifications set forth on Exhibit B hereto (the "Improvements"); and

WHEREAS, the Property Owner is willing to pay his or her share of costs of the Improvements (the "Property Owner's Share") as set forth on Exhibit C hereto, so long as the payment of such costs can be deferred for 10 years; and

WHEREAS, the City has the authority to cause the construction of the Improvements and to defer receipt of payments on the Property Owner's Share for 10 years; and

WHEREAS, the Property Owner is willing to grant a lien against the Property in order to secure the deferred payments on the Property Owner's Share of the costs of the Improvements;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

A. CITY COVENANTS

1. The City hereby agrees to cause the construction of the Improvements in substantial compliance with the specifications set forth on Exhibit B hereto.

2. The City hereby agrees to not exercise its power under Chapter 384 of the Code of Iowa to specially assess the costs of the Improvements to the Property. The City also agrees to forego any other means of recouping the costs of the Improvements from the Property Owner except as specifically provided in this Agreement.

B. PROPERTY OWNER COVENANTS AND DECLARATIONS

1. The Property Owner hereby agrees to pay the Property Owner's Share ($1,529.51) in the following manner and subject to the following terms:

a. The Property Owner may, at his or her option, elect to pay the Property Owner's Share, or any portion thereof, at any time and in any amount prior to September 1, 2013;

b. On September 1, 2013 the outstanding amount of the Property Owner's Share shall begin accruing interest at a rate per annum equal to 1% below the New York Prime Interest Rate as of August 30, 2013.

c. On each September 1, commencing September 1, 2013 and continuing through and including September 1, 2022 (the "Final Payment Date"), the Property Owner shall make a principal payment equal to one tenth of the Property Owner's Share that remains outstanding on September 1, 2013 (the "Annual Principal Installment") plus a payment of any interest that has accrued to that date.

2017 ONE FIFTH ONE

d. The Property Owner reserves the right to prepay the Property Owner's Share at any time so long as such prepayment is made in an amount equal to one or more whole Annual Principal Installment(s). Each prepayment of a whole Annual Principal Installment shall advance the Final Payment Date by 12 months.

e. All payments made on the Property Owner's Share shall be made to the City of Manchester, Iowa at the City Hall, 208 East Main Street, Manchester, Iowa 52057-1797.

f. Failure to pay any Annual Principal Installment and/or any interest when due shall constitute a default under this Agreement.

2. The Property Owner hereby declares that the Property is, at the time of execution of this Agreement, subject to the following liens and mortgages which shall have priority over the lien granted to the City herein.

FNB BANK - MANCHESTER, IA.

3. The Property Owner hereby mortgages and grants to the City a security interest in the Property and all buildings, structures and improvements now standing or at any time hereafter constructed or placed upon the Property (the "Buildings"), including all hereditaments, easements, appurtenances, mineral rights, water rights, rights in and to the lands lying in the streets, alleys and roads adjoining the Property, estates and other rights and interests now or hereafter belonging to or in any way pertaining to the Property (the "Mortgage").

TO HAVE AND TO HOLD the Property and the Buildings together with all privileges, hereditaments thereunto now or hereafter belonging, or in any way appertaining and the products and proceeds thereof, unto the City, its successors and assigns.

The Mortgage secures the obligation of the Property Owner to pay the Property Owner's Share as described in Section B.1. of this Agreement and any renewals, extensions, modifications or refinancing thereof and any promissory notes issued in substitution therefor. It is intended by the parties that the lien against the Property created by this Agreement shall run with the Property and be binding upon all assignees thereof and successors thereto.

C. DEFAULT AND REMEDIES

1. The following shall constitute events of default under this Agreement:

a. The Property Owner shall default in the due observance or performance of his or her agreement to pay the Property Owner's Share and any interest thereon as described in Section B.1. of this Agreement.

b. The Property Owners shall make an assignment for the benefits of creditors, or a petition shall be filed by or against the Property Owner under the United States Bankruptcy Code or Property Owners shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of the Property or the Buildings, or shall not within 30 days after the appointment of a trustee, receiver or liquidator of a material part of the Property or the Buildings have such appointment vacated.

c. A judgment, writ or warrant of attachment or execution, or similar process shall be entered and become a lien on or be issued or levied against the Property or the Buildings or any part thereof which is not released, vacated or fully bonded within thirty (30) days after its entry, levy or issue.

d. An event of default, however defined, shall occur under any other mortgage, assignment or other security document constituting a lien on the Property or the Buildings or any part thereof.

2. Upon the occurrence of any event of default described under Section C.1. of this Agreement, the City may at its option, after such notice as may be required by law, exercise one or more of the following rights and remedies:

a. The City may declare immediately due and payable all of the then outstanding amount of the Property Owner's Share and any interest due thereon secured by the Mortgage, and the same shall thereupon become immediately due and payable without further notice or demand.

b. The City may, and is hereby authorized and empowered to, foreclose the Mortgage in accordance with the law of the State of Iowa, and at any time after the

commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of the City appoint a receiver to take immediate possession of the Property and the Buildings and to rent and cultivate the same as he may deem best for the interest of all parties concerned, and such receiver shall be liable to account to the Property Owner only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the outstanding Property Owner's Share and any interest due thereon.

c. The inclusion of rights and remedies in this Section C.2. shall not restrict the City in any way from exercising all rights and remedies available to it to enforce the obligations under this Agreement whether in law or in equity.

3. No delay by the City in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by the City of any particular provisions of this Agreement shall be deemed effective unless in writing signed by the City. All such rights and remedies provided for herein or which the City may have otherwise at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as occasion therefor arises.

4. The Property Owner shall pay on demand all costs and expenses incurred by the City in enforcing or protecting its rights and remedies under this Agreement including but not limited to reasonable attorney's fees and legal expenses.

D. MISCELLANEOUS

1. In the event that any portion of this Agreement shall, for any reason, be held invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable.

2. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

3. Each undersigned Property Owner hereby relinquishes all rights of dower, homestead and distributive share in and to the Property and the Buildings and waives all rights of exemption in the same.

4. The rights, covenants and agreements contained herein shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of the parties. Words and phrases contained herein, including acknowledgement hereof shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the contexts.

CITY OF MANCHESTER, IOWA

By _____
Mayor

ATTEST:

_____
City Clerk

PROPERTY OWNERS

_____
David A. Cabalka

_____
Linda M. Cabalka

Dated: 4-6-04

I UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I VOLUNTARILY GIVE UP MY RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated: 4/6/04

_____
David A. Cabalka

Dated: 4/6/04

_____
Linda M. Cabalka

STATE OF IOWA)
) SS.
COUNTY OF DELAWARE)

On this 6th day of April, 2004, before me, the undersigned, a Notary Public, personally appeared David A. Cabalka and Linda M. Cabalka to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

CARI J. WRIGHT
COMMISSION NUMBER 141516
MY COMMISSION EXPIRES
11-6-04

_____
Cari J. Wright
Notary Public

On this 24th day of February, 2004, before me, Laura K. Thomas, a Notary Public in and for the State of Iowa, personally appeared Milt L. Kramer and Erin Rempe, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Manchester, Iowa; that the seal affixed to the foregoing instrument is the Corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution Number R-014-2004 adopted by the City Council on the 23rd day of February, 2004, and that Milt L. Kramer and Erin Rempe acknowledged the execution of the instrument to be their voluntary act and deed of the corporation, by it voluntarily executed.



Laura K. Thomas

Laura K. Thomas, Notary Public

EXHIBIT A – REAL PROPERTY DESCRIPTION

Lot Six (6) of the Subdivision of Lots Seventy-nine, Eighty, and Eighty-one of Henry Acers Addition in the Southwest Quarter (SW¼) of Section Twenty (20), Township Eighty Nine (89) North, Range Five (5), West of the Fifth Principal Meridian, in the City of Manchester, Delaware County, Iowa, according to plat recorded in Book 3 Plats, Page 56.

EXHIBIT B – PLANS AND SPECIFICATIONS OF IMPROVEMENTS

Installation of 109.8 lineal feet of Class C mix concrete sidewalk with a minimum compressive strength of 4,500 PSI, four feet wide and four inches thick

EXHIBIT C – PROPERTY OWNER'S SHARE OF THE COSTS OF IMPROVEMENTS

$1,529.51