

ORDINANCE NO. 9495-15

AN ORDINANCE AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE A REAL ESTATE CONTRACT BETWEEN THE CITY OF URBANA AND MILLIE DURST TRUST

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois to enter into a Real Estate Contract between the City of Urbana and Millie Durst Trust; and

WHEREAS, a written copy of such Real Estate Contract is now before this meeting.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Council hereby approves the City entering into a Real Estate Contract between the City of Urbana and Millie Durst, Trust.

Section 2. That the Chief Administrative Officer is hereby authorized to execute and deliver such Real Estate Contract on behalf of the City. The Real Estate Contract shall be in substantially the form which is before this Council, a copy of which is attached hereto and incorporated herein. The City Clerk is authorized to attest to such execution thereof.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 1st day of August, 1994.

AYES: Hayes, Patt, Pollock, Ryan, Taylor, Whelan

NAYS: Singer

ABSTAINED:


Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 15th day of August, 1994.

Tod Satterthwaite
Tod Satterthwaite, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN ORDINANCE
NO. 9495-15 AND IS INCORPORATED THEREIN BY REFERENCE.

Phyllis D. Clark
Phyllis D. Clark, City Clerk

August 3, 1994
Date

REAL ESTATE CONTRACT

This Real Estate Contract (the "Contract") is made as of the date of the last to execute of the parties hereto (the "Effective Date") by and between the City of Urbana, Champaign County, Illinois ("Purchaser" or sometimes "City") and the undersigned party executing this Contract as the seller ("Seller").

W I T N E S S E T H:

WHEREAS, Seller is the owner of certain real estate as later more specifically described in this Contract; and

WHEREAS, Purchaser desires to purchase said real estate on such terms and conditions as are provided for herein; and

WHEREAS, Seller is subject to the threat of forced, involuntary, eminent domain and City Council action by Purchaser, City of Urbana, Illinois, as more specifically addressed in the City of Urbana Development Agreement with Corridor Properties, Inc. dated September 1, 1993.

NOW, THEREFORE, in consideration of the representations, promises, covenants, agreements and undertakings set forth in this Contract, Seller and Purchaser hereby agree as follows:

Section 1. Sale. Seller, agrees to sell the following real estate, together with all improvements and appurtenances, situated in the City of Urbana, Champaign County, Illinois, the legal description of which is:

East 1/2 of Lot 8, all of Lot 9 and South 80 feet of Lot 10, Block 39, Seminary Addition, City of Urbana, Champaign County, Illinois. The site has the following tax identification numbers: 91-21-07-409-013, 91-21-07-409-012 and 91-21-07-409-017.

(the "Real Estate"), together with all and any of Seller's interest in any real estate adjacent to the above-described parcels.

Section 2. Payments to Seller.

(a) Purchase Price. Purchaser agrees to pay to Seller the sums in section 2(b) below for the Real Estate, which amount, adjusted by prorations and credits allowed the parties by this Contract, shall be paid to Seller as specified in 2(b) below.

(b) Payments. The purchase price shall be paid in the following manner:

(1) \$650,000 at closing;

(2) \$130,000 seven days after vacation of the Real Estate by Seller.

Section 3. Special Covenants. During any period prior to closing, Seller shall not permit or allow or create any leases, liens, mortgages, or other encumbrances, (except as to which Purchaser shall consent in writing) to affect or exist with respect to the Real Estate. Seller hereby covenants that the persons or the entities executing this Contract as Seller are the owners of record of the Real Estate, and that there are no other such record owners than those executing this Contract.

Section 4. Quality of Title. Seller acknowledges that as of the Effective Date, Purchaser is not aware of the nature of any encumbrances on Seller's title to the Real Estate. Within a period of not greater than seven (7) days from and after the Effective Date, Seller shall provide title opinions, title insurance policies and commitments, and the like, or copies thereof, available to Seller in connection with evaluating title to the Real Estate.

Section 5. Evidence of Title. Seller shall, within a reasonable time, deliver to Purchaser as evidence of Seller's title, a commitment for title insurance issued by a title insurance company regularly doing business in the county where the Real Estate is located, committing the company to issue a policy in the usual form insuring title to the Real Estate in Purchaser's name for the amount of the purchase price.

Seller shall be responsible for payment of the owner's premium and Seller's search charges. Permissible exceptions to title shall include only the lien of general taxes and special assessments; zoning laws and building ordinances; easements, apparent or of record; and covenants and restrictions of record which do not restrict reasonable use of the Real Estate as a parking lot. If title evidence discloses exceptions other than those permitted, Purchaser shall give written notice of such exceptions to Seller within a reasonable time. Seller shall have a reasonable time to have such title exceptions removed, or any such exception which may be removed by the payment of money may be cured by deduction from the purchase price at the time of closing. If Seller is unable to cure such exception, then Purchaser shall have the option to proceed with closing with no further claims, or by written notice to terminate this Contract, in which case this Contract shall be terminated and of no effect.

Section 6. Deed of Conveyance. Conveyance of the Real Estate by Seller to Purchaser, or its assigns, shall be by a recordable warranty deed which conveys the Real Estate in fee simple absolute, subject only to exceptions permitted herein.

Section 7. Taxes and Assessments. General taxes and special assessments (if any) shall be paid by Seller for annual amounts owed through the date of closing. The proration thereof shall be calculated upon the basis of the most current tax information, including confirmed multipliers. Transfer tax and all special assessments which are a lien upon the Real Estate as of the date of this Contract shall be Seller's expense. All such taxes and special assessments shall constitute a credit to Purchaser against the purchase price, and shall release Seller from any further liability to Purchaser in connection therewith.

Section 8. Closing and Possession.

(a) Closing. The closing of this transaction shall occur on August 16, 1994 at the time and place in Champaign County, Illinois, designated by Purchaser. At closing, Purchaser will provide Seller with a mortgage securing any amounts then still outstanding until the transfer of possession.

(b) Possession. The parties agree that Purchaser may take possession of the real estate on 12:00 noon on April 1, 1995. Seller is moving to 1110 and 1112 West University Avenue, Urbana, Illinois. The date of April 1, 1995 may be adjusted to a later date in accordance with the force majeure paragraph below.

Section 9. Special Contingencies. Purchaser may obtain an environmental analysis of the Real Estate described in section 1 above, and this Contract is contingent upon Purchaser receiving that analysis showing no substantial environmental defects. If Purchaser does not approve the environmental analysis, then Purchaser shall give notice to Seller so that the notice is received on or before 12:00 noon on July 29, 1994. Such notice shall indicate the substantial deficiency causing Purchaser to enforce this contingency and shall indicate that Purchaser chooses to terminate this Contract. If Purchaser does not so provide Seller with such notice by said time, then the contingency in this paragraph is of no effect, and the Contract will be in full force. If the city chooses to acquire the Real Estate, it agrees to take it "as is," and the City agrees to hold seller harmless from any and all claims against the property or the owners of the property, if such claims are related to any environmental issue; and such agreement shall survive the closing date.

Section 10. Conveyance. Seller agrees that it shall convey to Buyer, or its nominee all right, title and interest that

Seller now has or may hereafter acquire in adjacent Mathews Street right-of-way.

Section 11. Salvage. After closing and until noon on April 1, 1995 ("Possession Date"), Seller shall (at no cost to Seller) retain the right to enter upon the premises described in Section 1 to operate its business and to salvage any items of personal property, fixtures, portions of the building or materials that were owned by Seller prior to closing. This date is subject to the force majeure terms below.

Section 12. Notices. All notices shall be addressed as follows:

Mildred L. Durst
1304 West University Avenue
Urbana, IL 61801

All notices to Purchaser shall be addressed as follows:

Bruce K. Walden, Chief Administrative Officer
City of Urbana
400 South Vine Street
Urbana, IL 61801

All notices provided for herein shall be deemed to have been duly given, if and when deposited in the U.S. Mail, postage prepaid and addressed to Seller at the above listed address, or when delivered personally to such party.

Section 13. Memorandum of Contract. Purchaser may and is hereby authorized to file in the appropriate county real estate records either a copy of this Contract, or an appropriate memorandum of the existence of this Contract, identifying the Real Estate, Seller, Purchaser and a brief summary of this Contract.

Section 14. Default and Enforcement. Default under this Contract shall mean failure to timely and fully perform any term or provision hereof after proper notice. The party claiming a default on the part of the other party shall provide a written notice of that claim to the other party. The other party will have 30 days after receipt of said notice to cure said alleged default. If a cure is not reasonably possible within a 30-day cure period, then the cure period will be extended to a reasonable time, so long as the party which would otherwise be in default continues to diligently pursue the resolution of the potential default. Seller and Purchaser shall have all rights and remedies available to them in law and in equity. Seller shall be liable for any consequential damages to the City with respect to any willful default to close on the Real Estate transaction as hereby contemplated. A willful default is

defined, for the purposes of this agreement, as a refusal to continue with obligations under this agreement under circumstances where, but for the refusal of the seller, the transaction could otherwise be closed as hereby contemplated. No failure by Seller or Purchaser to elect to declare a default hereunder shall be deemed a waiver of their respective rights to make such election, and a waiver in one case shall not be a waiver of another. Default by Seller or by Purchaser shall entitle the non-defaulting party to claim as damages all reasonable costs, attorneys' fees and expenses incurred in connection with enforcement of this Contract, whether by suit or otherwise.

Section 15. Agreements and Binding Effect. This Contract shall be binding upon Seller and Purchaser, and their respective successors and assigns, according to its tenor and import. When any term or provision of this Contract directs that any party hereto perform or undertake a particular action, such party hereby covenants and agrees to timely and fully perform. Time is the essence of this Contract.

Section 16. Amendments. This Contract may be amended from time to time, but only in writing by Seller and Purchaser.

Section 17. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act (other than a party's payment of a monetary obligation hereunder) required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, civil commotion, extraordinarily adverse weather conditions of prolonged duration, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Contract, then, provided the party intending to claim the benefit of this section gives written notice to the other party as soon as practicable of the existence of such cause for hinderance or delay, the performance of such acts shall be excused for the period of the delay. In addition to other unavoidable causes which hinder, delay or prevent the timely performance of any act required hereunder, if Seller does not obtain possession of 1110 and 1112 West University Avenue, Urbana, Illinois, by 11:00 p.m. on November 1, 1994, or if Seller must remediate environmental problems on the site and such remediation efforts require significant delay in starting construction of the new structure, such conditions shall be treated the same as those causes listed above. A "significant delay" is defined as a delay of two weeks, or a delay which, when all then-current circumstances are taken into account, may cause a risk of the completion not being in accordance with the planned date, whichever is less.

Section 18. Execution and Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. By executing this Contract, the persons executing it as Seller covenant that they are the record owners of the Real Estate, and all of the record owners thereof, and have fully power and authority to so execute and deliver this Contract. Section headings are for convenience only and do not limit the effectiveness of any section.

Section 19. Mathews Street. Seller agrees not to contest vacating the Mathews Street right of way and agrees that she shall not be paid any additional consideration therefor. The Purchaser will use its best efforts to design the closing of Mathews Street so as to allow the continuing use of Seller's parking spaces off of Mathews Street as long as is reasonable. If those spaces are no longer available, Purchaser will use its best efforts to encourage the adjacent property owner to provide a replacement parking area.

City of Urbana,
Champaign County, Illinois,
Purchaser:

Mildred L. Durst
MILDRED L. DURST
Trustee of the Mildred L. Durst
Trust, Seller

By: Bruce K. Walden
Bruce K. Walden
Chief Administrative Ofcr.

Date: July 12, 1994.

Date: 8-16-94, 1994