

**DOWNTOWN ENTERTAINMENT  
CENTER  
REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF LINCOLN, NEBRASKA,  
A Municipal Corporation in the State of Nebraska (City)**

**AND**

**CENTER ASSOCIATES, LLC,  
A Nebraska Limited Liability Company**

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## EXHIBITS

<b>Exhibit</b>	<i><u>Description</u></i>
<b>A</b>	<i>Legal Description of Redevelopment Site</i>
<b>B</b>	<i>Wells Fargo Purchase Agreement</i>
<b>C</b>	<i>Lincoln Theatre Purchase Agreement</i>
<b>D</b>	<i>Time Line</i>
<b>E</b>	<i>Site Preparation and Demolition Provisions</i>
<b>F</b>	<i>Fund Uses and Sources</i>
<b>G</b>	<i>Schematic Drawings</i>

# **DOWNTOWN ENTERTAINMENT CENTER REDEVELOPMENT AGREEMENT**

THIS AGREEMENT (the "Agreement") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (City), and Center Associates, LLC, a Nebraska limited liability company, with a place of business at 1300 P Street, Lincoln, Nebraska 68508 (Center).

## **RECITALS**

1. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska under the Nebraska Community Development Law. As part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan providing for redevelopment in downtown Lincoln including the Entertainment Center/Old Federal Building Amendment to the Redevelopment Plan, a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk (the "Redevelopment Plan").
2. The purpose of this Agreement is to create a private redevelopment and adaptive reuse of the real estate described on **Exhibit "A"** hereto (the "Redevelopment Site") for an Entertainment Center including multiple screen movie theaters, related video/arcade type game room and related uses consistent with the Redevelopment Plan (the "Project").
3. The City and Center mutually agree that the Project: (i) is in the vital and best interest of the City; (ii) in furtherance of the health, safety, and welfare of its residents; (iii) in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, in consideration of the mutual obligations of the parties as set forth in this Agreement, the City and Center agree as follows:

## **ARTICLE I. REDEVELOPER RESPONSIBILITIES**

### **Section 101. Site Related Responsibilities.**

1. Center has the right to purchase the Wells Fargo Property from Wells Fargo Bank Nebraska, N.A. ("Wells Fargo") pursuant to the terms and provisions of the January 30, 2003 Purchase Agreement attached hereto as **Exhibit "B"** (the "Wells Fargo Purchase Agreement"). If, at Site Assembly Closing, all conditions of closing, as set forth in the Wells Fargo Purchase Agreement, have been met, then immediately following the City's purchase of the Lincoln Property pursuant to 2 below, Center shall: (i) purchase the Wells Fargo Property pursuant to the Wells Fargo Purchase Agreement; and (ii) grant to

the City the necessary and appropriate permanent or temporary easements in the Wells Fargo Property for the City's Project purposes and for purposes of allowing the City to complete the Site Preparation and Demolition of the Redevelopment Site in accordance with the terms and provisions of this Agreement.

2. Center currently owns the Lincoln Property. Contemporaneously with the execution of this Redevelopment Agreement Center, as Seller, and the City, as Purchaser, shall enter into the Lincoln Theatre Purchase Agreement, a true and correct copy of which is attached hereto as **Exhibit "C"** (the "Lincoln Theatre Purchase Agreement") pursuant to which the City shall purchase from Center the Lincoln Property.
3. Upon completion of the Site Assembly, Site Preparation and Demolition as provided in this Agreement (the "Project Closing") Center shall acquire from the City the Redevelopment Site (except the Wells Fargo Property, which will already be owned by Center at such time) and Center will begin to develop the Redevelopment Site into an Entertainment Center subject to the terms and provisions Articles III and IV of this Agreement.
4. At or following Project Closing, Center will grant to the City appropriate permanent or temporary easements for Project purposes related to the City Improvements or other Project related needs as set forth in Section 602 of this Agreement; and the City will grant to Center an easement over the Easement Area of the east-west alley as referred to in Section 201, subparagraph 8 below.

### **Section 102. Project Related Responsibilities**

1. Center shall utilize its reasonable best efforts to complete the Redevelopment Improvements according to the Time Line attached hereto as **Exhibit "D"** (the "Time Line") with final completion scheduled for Summer 2004.
2. The Project is intended to provide for a movie theater complex of approximately 69,000 square feet, consisting of between twelve and fourteen screens and between 2,600 and 3,200 theater seats, a related concession area, together with a possible related video/arcade type game room.

### **Section 103. Speculation Prohibited.**

Center represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of the Project and not for speculation in land holding.

### **Section 104. Restrictions on Assignments of Rights or Obligations.**

1. **Approval Required.** Center represents and agrees that, except as set forth herein, prior to completion of the construction of the Redevelopment Improvements provided for in this Agreement, that there shall be no sale or transfer of the Redevelopment Site by Center, nor any assignment of Center's rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld). Provided, however, that regardless of the foregoing Center may at Project

Closing, without the prior written consent of the City, place a mortgage and/or deed of trust on the Redevelopment Site for the sole purpose of securing financing in order to: (i) allow Center to purchase the Redevelopment Site from the City pursuant to this Agreement; and/or (ii) allow Center to construct on the Redevelopment Site the Redeveloper Improvements identified in Section 601 below. Provided, further, that following the completion of the construction of the Redevelopment Improvements, Center, as Landlord, may lease all or any portion of the Redevelopment Site and/or the Redevelopment Improvements to Douglas Theatre Co., a Nebraska corporation, as Tenant, without the prior written consent of the City, and such lease shall not constitute a transfer of the Redevelopment Improvements or the Redevelopment Site pursuant to this provision.

2. The Mayor of the City shall be entitled to require, except as otherwise provided in this Agreement, as a condition to the approval of any such sale, transfer or assignment, that:
  - a. Financial Qualifications. Any proposed transferee or assignee shall have the qualifications and financial responsibility, as determined by the Mayor, necessary and adequate to fulfill the obligations undertaken in this Agreement by Center;
  - b. Obligations Assumed. Any proposed transferee or assignee, by instrument satisfactory to the Mayor and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Center as set forth in this Agreement and agree to be subject to all the conditions and restrictions to which Center is subject; and
  - c. Review. There shall be submitted to the Mayor for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the sale, transfer or assignment; and if disapproved by the Mayor, such disapproval and reasons therefore shall be delivered to Center in writing. If the Mayor fails to deliver to Center a written approval or disapproval of the requested sale, transfer and/or assignment within ten (10) days from the date of Center's request for approval, then the Mayor shall be deemed to have approved the request for such sale, transfer and/or assignment on behalf of the City.
3. Regardless of the foregoing, at Project Closing or at any time after Project Closing, Center may, without the City's prior written consent, grant a mortgage and/or deed of trust on the Redevelopment Site for purposes of securing financing for the purchase of the Redevelopment Site from the City and for purposes of constructing on the Redevelopment Site the Redeveloper Improvements all in accordance with Article VI of this Agreement.

## ARTICLE II. CITY'S RESPONSIBILITIES

### Section 201. Site Related Responsibilities.

1. Prior to execution of this Agreement the City represents that it has acquired at its own cost and expense the Latsch's Property.
2. At or before Site Assembly Closing the City shall first acquire, at its own cost and expense, the Melville Property, the Stephenson's Property, the Pearle Property, and the Wells & Frost Property. At Site Assembly Closing, if the conditions of closing, as set forth in the Lincoln Theatre Purchase Agreement have been met, Center shall then sell to the City and the City shall then purchase from Center the Lincoln Property in accordance with the terms and provisions of the Lincoln Theatre Purchase Agreement. At Site Assembly Closing, if the conditions of closing, as set forth in the Wells Fargo Purchase Agreement have been met, Center shall then: (i) purchase from Wells Fargo the Wells Fargo Property in accordance with the terms and provisions of the Wells Fargo Purchase Agreement, and simultaneously therewith; (ii) grant, or cause to be granted, to the City the necessary easements and rights on and over the Wells Fargo Property in order to complete the Site Preparation and Demolition of the Redevelopment Site pursuant to Section 602 1.b. of this Agreement. The parties acknowledge and agree that the City shall acquire the Melville Property, the Stephenson's Property, the Pearle Property, the Wells & Frost Property and the Lincoln Property (collectively the "City Acquisition Property") at or prior to Site Assembly Closing; and that immediately following the City's acquisition of the City's Acquisition Property Center shall, at Site Assembly Closing acquire the Wells Fargo Property. In the event that the City is unable to acquire the City Acquisition Property on or before August 1, 2003 (the "Site Assembly Closing Date") for whatever reason, then Center shall be fully and completely released from all of the terms and provisions of this Agreement unless Center consents in writing to an extension of the Site Assembly Closing Date.
3. At Site Assembly Closing the City and Center shall enter into the Lease attached to the Lincoln Theatre Purchase Agreement as **Exhibit "C"** pursuant to which the City shall lease the Lincoln Property to Center beginning on the Site Assembly Closing and continuing to the date on which the City begins Site Preparation and Demolition of the Redevelopment Site pursuant to Section 602 1.b. of this Agreement (the "Lincoln Property Lease").
4. On or before Project Closing the City shall, at the City's sole cost and expense, complete the Site Preparation and Demolition of the Redevelopment Site in accordance with Section 602 1.b. of this Agreement.
5. At the Project Closing the City shall, subject to the provisions of Articles III and IV below, transfer and convey the City Acquisition Property to Center for \$745,000.00, representing fair value as hereby determined by the Lincoln City Council under the Community Development Law. Unless otherwise agreed by and between the City and Center the Project Closing shall occur on or before October 1, 2003 (the "Project Closing Date). In the event the City is unable to convey the City Acquisition Property to Center on the Project Closing Date

for whatever reason, then Center shall be entitled to terminate this Agreement under Section 611.

6. Utilities. The City at its own cost and expense shall identify the existing public storm and sanitary sewer and other utility easements on the Redevelopment Site, and in the adjacent public alley, to be completed as soon as reasonably possible and no later than Project Closing.
7. Approvals. The City shall, prior to Site Assembly Closing, obtain all necessary and appropriate approvals for and from the City to complete the transfer of City Acquisition Property to Center including the appropriate administrative subdivision of the Redevelopment Site if the City determines the same is necessary, preserving necessary easements, and other appropriate use restrictions consistent with this Agreement.
8. The City granting to Center an appropriate easement over a portion of the east-west alley currently located in Block 41 for purposes of allowing Center to construct the enclosed walkway over such alley, as provided in the Approved Plans (the "Easement Area"). The remainder of the alley shall remain a public alley and the City shall provide normal services related thereto and consistent with other alleys in the district and applicable law.

## **Section 202. Project Related Responsibilities.**

1. Prior to Site Assembly Closing, the City at its sole cost and expense shall procure independent appraisals from certified Real Estate Appraisers in the State of Nebraska for the City Acquisition Property comprising a part of the Redevelopment Site that is to be conveyed to Center.
2. The City shall assist, facilitate and direct the overall design, planning and coordination of the City Improvements so that the City Improvements and Redeveloper Improvements are functionally integrated and appropriately designed and implemented to achieve efficiencies, cost savings, and compliance with the objectives of the Redevelopment Plan and this Agreement including aesthetics and applicable review with urban design, planning or other boards, departments, agencies, commissions or committees. Costs for the same shall be paid as provided in this Agreement and wherever possible shall be allocated according to City Improvements and Redeveloper Improvements.
3. The City shall utilize its reasonable best efforts to complete the City Improvements according to the attached Time Line with final completion scheduled for Spring 2004.

## **Section 203. Parking Responsibilities.**

1. Beginning upon the substantial completion of the Redeveloper Improvements by Center and continually thereafter until the Final Bond Maturity Date the City shall provide, permit, cause or otherwise allow employees and patrons of the Entertainment Center (the "Participants") to utilize the vehicular parking stalls at the City's Center Park Parking facility, which is located at 1100 "N" Street, Lincoln, Nebraska (the "Parking Facility"), subject to the availability

of parking stalls at the Parking Facility and the provisions of this Section 203, through a program administered by the City in cooperation with Center which will allow and permit such Participants to park vehicles in the Parking Facility as follows (the "Parking Program"):

- a. at no cost to any theater patrons leaving the Parking Facility after 7:00 p.m., and on weekends (all day Saturday and Sunday),
  - b. at an amount equal to ten percent (10.0%) of the regular hourly parking rate being charged at the Parking Facility for any Participant parking hours prior to 7:00 p.m. on weekdays (Monday through Friday), such cost to be prepaid by Center on behalf of and restricted to Participants through a bulk purchase of parking validation, reimbursement or other appropriate method.
  - c. With prior written approval of Center, the City may implement the Parking Program as prepaid parking through separate automated or otherwise monitored exits for Participants and require other users of the Parking Facility to exit through gated or otherwise controlled exits; Provided:
    - i. The City shall preserve the cost breakdown provide in 1(a) and (b) above; and
    - ii. the City shall employ any and all reasonable measures (including the use of personnel) to ensure Participants exiting the Parking Facility are able to do so in a timely manner.
2. The Parking Program is subject to availability of parking stalls at the Parking Facility. The City agrees that other prepaid or event parking shall not be employed or utilized to an unprecedented extent based on the history of such parking at the Parking Facility prior to this Agreement; provided that regardless of prior history, the City shall be entitled to implement exclusive event/ prepaid parking at the Parking Facility for the entire day (24 hours) of any University of Nebraska-Lincoln football games played in Lincoln, Nebraska.
  3. The City and Center acknowledge and agree that the Parking Program is of critical importance to the successful implementation of the Redevelopment Agreement, the improved utilization of the Parking Facility, and the justification for the realignment of 12<sup>th</sup> Street. Due to such critical importance and the connection to this Agreement, City agrees that until the Final Bond Maturity Date, City will not offer the Parking Program or any other similar bulk parking agreement materially reducing available spaces at the Parking Facility to any other person or entity, whether in connection with a redevelopment agreement or otherwise, without the prior written consent of Center.
  4. The Parking Program shall be administered through a program or other agreement or arrangement between Center and the City in order to provide for the efficient operation of the Parking Program and the Parking Facility considering the City's lawful obligations regarding enterprise fund and debt service requirements and using a distinctively colored or otherwise distinctive method that will easily distinguish users of the Parking Program from other

City owned parking facilities in the vicinity. The Parking Program may be modified from time to time upon the joint written agreement of Center and the City.

## **ARTICLE III. GENERAL REAL ESTATE SALES PROVISIONS**

The City and Center acknowledge and agree that: (a) the City will initially acquire title to the City Acquisition Property comprising a part of the Redevelopment Site on or prior to the Site Assembly Closing Date commencing such acquisition upon Center obtaining financing approval for the Project and unless waived by Center in writing the expiration of the Financing Contingency Period, and (b) the City will convey title to all of the City Acquisition Property to Center on the Project Closing Date, and that in connection therewith (i) Center will be the “Buyer”, as referred to below of the City Acquisition Property; and (ii) the City will be the “Seller”, as referred to below, of the City Acquisition Property.

### **Section 301. Title and Possession.**

1. Seller agrees to deliver a general warranty deed conveying marketable title free and clear of all mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for easements and restrictions of record, plus easements, use and lease restrictions to be granted under this Agreement, where applicable.
2. Possession of the property conveyed shall be transferred from the Seller to the Buyer at the applicable closing, subject to the Lincoln Property Lease.

### **Section 302. Title Insurance.**

1. Within 30 days prior to the applicable closing, Seller shall furnish Buyer and its counsel with a commitment for an owner's policy of title insurance in an appropriate amount not less than the value of the property (as determined in accordance with this Agreement) to be transferred, which insures marketable title to the same, subject only to the easements, restrictions and other matters of record acceptable to the Buyer including easements, use and lease restrictions to be granted under this Agreement, where applicable (Restrictions).
2. Written notice of any Restrictions or other matter affecting title that is unacceptable to Buyer or its counsel shall be delivered to Seller within two (2) weeks from receipt of the commitment.
3. Written notice of any easement, restriction or other matter affecting title contained in the updated commitment that is unacceptable to Buyer or its counsel shall be delivered to Seller within ten (10) days from receipt of such commitment.
4. Seller shall have a reasonable period, not exceeding thirty (30) days, to cure any unacceptable easement, restriction or other matter affecting title.
5. The premium for the title insurance policy shall be paid by the Seller.

### **Section 303. Taxes, Assessments and Other Costs.**

1. All 2002 taxes related to the property to be conveyed pursuant to this Agreement shall be paid by Seller at or prior to closing.
2. Any 2003 tax related to the property to be conveyed pursuant to this Agreement shall be prorated to the applicable date of closing based on the most recent property valuation and the most recent levy and the Seller shall pay the prorated share up to the date of Closing.
3. Any special assessment arising related to the property to be conveyed pursuant to this Agreement, whether then levied or unlevied, assessed or unassessed, shall be borne by the Seller up to the date of closing. Assessments for improvements constructed after Closing shall be assumed by the Buyer.
4. Seller shall pay any and all transfer taxes or similar fees which are payable upon the recording of the applicable deed.

### **Section 304. Representations and Warranties.**

1. With respect to the conveyance of the City Acquisition Property by the City to Center, the City represents and warrants to Center as follows at the time of Project Closing:
  - a. Power. The City is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and to enter into this Agreement and perform the obligations hereunder.
  - b. Sale Approval. Pursuant to law all sales of property owned by the City must be approved by the City Council after receiving a report of appraiser. The conveyance of the City Acquisition Property to Center is conditioned on the approval of the sale by the City Council as provided by law, and shall be obtained by the City prior to the Site Assembly Closing Date. Unless otherwise agreed in writing between the City and Center, in the event that the City fails to obtain all such appropriate and necessary approvals for purposes of conveying the City Acquisition Property to Center pursuant to this Agreement on or prior to the Site Assembly Closing Date, this Agreement shall be subject to termination under Section 611.
  - c. Authority Relative to Agreement. This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. Following the Site Assembly Closing Date the City will be the owner of the Redevelopment Site and no other persons will have any interest in such real estate, except as set forth in this Agreement.
2. With respect to any conveyance of property from Center to the City, Center represents and warrants to the City as follows at the time of Site Assembly Closing:
  - a. Organization; Power; Good Standing. Center is a limited liability company

duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

- b. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Center and constitutes a legal, valid and binding obligation of Center, enforceable against Center in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.
- c. Effect of Agreement. The execution, delivery, and performance of this Agreement by Center and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Center and, except as contemplated hereby, will not require the consent, waiver, approval, license, or authorization of any person or public authority (other than the City) on the part of Center to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Center, and will not conflict with or violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind or character to which Center is a party. Center is the owner of the Lincoln Property; and will acquire the Wells Fargo Property in accordance with the terms and provisions of this Agreement, and as of the Site Assembly Closing Date no other persons will have any interest in the Lincoln Property or the Wells Fargo Property except Center, or the City in accordance with this Agreement

### **Section 305. Brokers.**

1. The parties represent and agree that there is no contract, arrangement or understanding with any person or firm which may result in the obligation to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.
2. The parties represent and agree that there is no claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.
3. The parties represent and agree that they each will not at any time arrange, engage, procure, or otherwise cause any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

### **Section 306. Special Assessments and Liens.**

Unless provided otherwise in the Seller's statement at Closing, all costs or

expenses of any kind or character whatsoever associated with the construction or maintenance of any street, sidewalk, parking area or utility improvement surrounding or serving the area adjacent to the property to be transferred, including, without limitation, the costs and expenses attributable to paving, extension of water, sanitary sewer, storm sewer lines, street and parking lot lighting, street signs, engineering design and city engineering assessed against the property to be transferred shall be paid by the Seller up to the date of transfer.

### **Section 307. Floodplain.**

The parties acknowledge the Redevelopment Site is not located in a designated floodplain.

### **Section 308. As Is.**

Except as specifically provided in this Agreement, the property to be conveyed is sold "as is," and the Seller makes no representations or warranties concerning such property of any kind or nature, except as is expressly set forth in this Agreement.

### **Section 309. Indemnification.**

1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in this Agreement, the Seller agrees to indemnify and hold Buyer harmless against, and will reimburse Buyer upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against Buyer in respect of any and all damages resulting from:
  - a. Any omission, misrepresentation, breach of warranty, or non-fulfillment of any term, provision, covenant, or agreement on the part of Seller contained in Article III and IV of this Agreement,
  - b. Any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished pursuant to this Article or contemplated hereby.
2. Indemnification by Buyer. Upon the terms and subject to the conditions set forth in this Article, Buyer agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable attorney's fees) made or incurred by or asserted against Seller in respect of any and all damages resulting from any omission, misrepresentation, breach of warranty, or non-fulfillment of any term, provision, covenant, or agreement on the part of Buyer contained in Article III and IV of this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to Article III and IV of this Agreement or contemplated hereby.

### **Section 310. Inspection and Testing.**

At any time after the date of Closing for a particular parcel of property, the Buyer and Seller each grant to the other and its employees and agents the right to enter upon the transferred property and perform such tests and inspections as it deems necessary to determine suitability of Redevelopment Site for its intended Project

use. Center shall restore Redevelopment Site to original condition if the tests conducted by Center alter the grade, compaction, or vegetation. City shall restore Redevelopment Site to original condition if the tests conducted by City alter the grade, compaction, or vegetation.

The City shall, at the City's sole cost and expense (i) obtain and deliver to Center an ASTM standard Phase I (E-1527) site assessment of the Redevelopment Site as well as applicable Phase II sampling of the Redevelopment Site soils and water for hazardous materials and/or substances as determined appropriate by the consulting ESA engineer selected and hired by the City. Such sampling, if any, shall be completed in coordination with related geotechnical surveys where practicable. In the event any areas of concern at the Redevelopment Site reasonably require remediation including sampling or professional fees in excess of the estimated costs related to the same by either City for Site Preparation and Demolition or Center for Redeveloper Improvements, then the City and Center agree that such event will be deemed to be a material change in the scope of the Project requiring a written amendment or termination under Section 611 of this Agreement.

## **ARTICLE IV. REDEVELOPMENT SITE**

### **Section 401. Sale and Purchase.**

1. At Site Assembly Closing and subject to the terms and provisions of this Agreement: (i) the City shall first provide to Center a title insurance policy evidencing that the City has acquired title to all of the City Acquisition Property (except the Lincoln Property); (ii) the City and Center shall then close on the sale of the Lincoln Property to the City pursuant to the Lincoln Theatre Purchase Agreement; (iii) the City and Center shall then enter into the Lincoln Property Lease; (iv) Center and Wells Fargo Bank shall then close on the purchase of the Wells Fargo Property by Center pursuant to the Wells Fargo Purchase Agreement; and (v) Center shall then grant to the City a right of entry or other appropriate rights and interests in the Wells Fargo Property in order to complete the City's Site Preparation and Demolition of the Redevelopment Site pursuant to Section 602 1.b.
2. At Project Closing and subject to the terms and provisions of this Agreement, City shall sell to Center, and Center shall purchase from City the City Acquisition Property subject to the use restrictions, easements, terms and conditions of this Agreement and the Redevelopment Plan.

### **Section 402. Site Assembly Purchase Price and Payment.**

At Site Assembly Closing City shall pay the Purchase Price as set forth in the Lincoln Theatre Purchase Agreement, for the Lincoln Property of which One Thousand Dollars (\$1,000.00) (Earnest Money Deposit) has been deposited with the Escrow Agent on the date hereof with a balance payable at Site Assembly Closing, subject to adjustments and prorations as provided in the Lincoln Theatre

Agreement.

### **Section 403 Redevelopment Site Purchase Price and Payment.**

1. Center shall pay to City \$745,000.00 (Purchase Price), for the City Acquisition Property of which One Thousand Dollars (\$1,000.00) (Earnest Money Deposit) has been received by City on the date hereof with a balance payable at Project Closing, subject to adjustments and prorations as herein provided.
2. The Purchase Price paid by Center to the City is in consideration of the use restrictions placed upon the property under Section 405 below and is a fair value under applicable provisions of the Nebraska Community Development Law considering the objects and duties of the Center under this Redevelopment Agreement.
3. The Purchase Price paid by Center to the City shall be used by the City for redevelopment purposes in accordance with the Plan as provided in this Agreement. Proceeds from the sale, if any, will be applied first to the Duties and obligations of the City hereunder, including the costs of making the Redevelopment Site saleable to Center and the City's obligations to fund and pay for the City Improvements.
4. Not less than the purchase price paid in paragraph 1 of this section shall be deposited in the City Improvements Account and used to fund the City Improvements required to be constructed and/or performed by the City pursuant to Section 602 below.

### **Section 404. Date of Project Closing.**

The closing of the purchase and sale of the City Acquisition Property by the City to Center shall take place at the offices of the City of Lincoln's Urban Development Department 808 "P" Street, Suite 400, Lincoln, Nebraska within thirty (30) days following the date on which the City has acquired title to all of the City Acquisition Property comprising a part of the Redevelopment Site and completed the Site Preparation and Demolition of the Redevelopment Site in accordance with the provisions of Section 6.02 below; however, the Project Closing may be extended to such other time, date and place as the parties may mutually agree.

### **Section 405. Use Restrictions**

1. Center agrees to take title to and accept the sale and transfer of the property comprising the Redevelopment Site subject to the following use restrictions, which restrictions have been negotiated and considered to constitute the basis for the fair value determined for the City Acquisition Property comprising a part of the Redevelopment Site by prohibiting the following uses on the Redevelopment Site:
  - a. Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of liquor law violations;

- b. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of tobacco law violations;
  - c. Any non motion picture business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, exhibition, performance, demonstration, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service.
  - d. Any motion picture business displaying or exhibiting any motion picture that has not been rated by the Classification and Rating Administration (or its successor organization) or any motion picture that has been rated “NC-17” or its equivalent by the Classification and Rating Administration (or its successor organization).
  - e. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business.
  - f. Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law.
  - g. Any business whose predominant operation is warehousing or storage of goods, materials or merchandise (predominant shall mean in excess of 35% of gross square feet used by such business for such purposes).
  - h. Any business involving the sale or display of weapons, industrial manufacturing, off-site outdoor advertising, cell tower, radio telecommunication or other communication tower, tattoos, illegal activities, or sale of any illegal goods or products.
2. The Use Restrictions provided in this section shall run with the Land and shall be recorded with the Register of Deeds of Lancaster County and shall continue in force and effect until the Final Bond Maturity Date, as hereinafter defined.

#### **Section 406. Right of First Refusal.**

The City shall retain a right of first refusal for any transfer or sale of all or substantially all of Center’s interest in the Redevelopment Site or the improvements thereto. Such right of first refusal shall be valid for a period of 60 days after Center or its successors or assigns provide written notice of a pending sale to the Mayor. The right of first refusal must be exercised by the Mayor in writing within such 60 day period upon the same terms and conditions of the pending sale as provided to and verified by the Mayor. If the Mayor fails to

deliver to Center a written notice of the exercise of the City's right of first refusal within such 60 day period, then the City's right of first refusal shall lapse and be rendered null and void. The right of first refusal shall not apply to financing permitted under Article VII. This right of first refusal shall expire by its own terms on the Final Bond Maturity Date, as hereinafter defined.

### **Section 407. Permits and Approval.**

Center agrees to use its best efforts to secure all permits and licenses necessary for its intended use of Redevelopment Site, including, but not limited to, a building permit and applicable permits or licenses. Center shall be able to erect a sign or signs of the size, dimension, or type selected by Center which have been approved by the City. The City shall cooperate and assist Center in obtaining all such permits, licenses and signs. The City hereby warrants and represents to Center that Center shall not be required to pay any impact fee in connection with the construction of the Redeveloper Improvements on the Redevelopment Site.

## **ARTICLE V. TAX AGREEMENT**

### **Section 501. Valuation of Redevelopment Site.**

1. It is understood that the City intends to use the ad valorem tax provisions as set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan.
2. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (as amended), which will be attributable in part to the rehabilitation and redevelopment of the Redevelopment Site as contemplated under this Agreement.
3. The City shall issue tax increment bonds or other legal debt in the amount of not less than \$2,500,000.00 which will mature in increments of principal through December 31, 2014 (the "Final Bond Maturity Date"). Proceeds of the debt issuance are to be solely for Project purposes and may, to the extent needed, be applied and paid out through the City Improvements Account.
4. The tax increment revenues which are to be used to pay debt service on said Bonds will be derived from the increased valuation from redeveloping the Redevelopment Site as provided in this Agreement. So long as any of the bonds issued with respect to the Project remain outstanding and unpaid, Center (including its successors and assigns where applicable) agrees, except as provided below, not to contest any taxable valuation assessed for the Redevelopment Site which does not exceed \$8,500,000.00; provided that the construction of Redevelopment Site is completed as provided in this Agreement.
5. Center has been induced to enter into this agreement in part based on the increased incremental valuation of the Project Area attributable to the City's Current Theater Policy. So long as any of the Bonds issued with respect to the Project Area remain outstanding and unpaid, the City agrees: a) to use its best efforts to maintain and duly enforce the current B-5 zoning restrictions that

prohibit theater complexes of seven or more screens and b) that if the City takes any affirmative action resulting in a competing theater complex of seven or more screens actually opening for business within the City of Lincoln, the City agrees that the valuation of the Redeveloper Improvements are subject to reduction for the actual loss of rental income. The City acknowledges that the Valuation of the Redeveloper Improvements upon completion assumes the Theater Policy is in place and will remain so until the Final Bond Maturity Date.

### **Section 502. Restriction on Transfer.**

Until all tax increment bonds issued by the City pursuant to Section 501 above have been paid in full, Center will not, without the prior written consent of the City, convey the Redevelopment Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions.

### **Section 503. Assessment Valuation.**

The word "valuation" as used in this Article V shall mean the fair market value as that term appears on Lancaster County real estate tax statements. For purposes of this Article V references to the Redevelopment Site shall include all improvements thereto that are customarily included in valuation for real property tax purposes in Lancaster County, Nebraska. Nothing herein shall be deemed an agreement by Center not to protest valuation for tax purposes as of any assessment date on which the construction of the City and Redeveloper Improvements relating to the Redevelopment Site are not fully completed or not to protest the allocation of Improvements between real property and personal property which is not appropriately made; or not to protest valuation for tax purposes as of any assessment date following the construction of the City and Redeveloper Improvements if such valuation exceeds \$8,500,000.00; or not to protest any valuation for tax purposes if the City does not fulfill the requirements of Section 501 (5) subparagraphs a) or b).

### **Section 504. Agreement to Pay Taxes.**

1. Payment Provisions. Following the Project Closing Date Center agrees to pay all real property taxes levied upon Redevelopment Site prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Center shall cease upon expiration of the tax increment period, but the City in no way waives the statutory obligation of Center to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Center to waive its right to protest or contest the valuation of Redevelopment Site and improvements for tax purposes. Furthermore, nothing herein shall be deemed an agreement by Center not to protest the tax levy rate.
2. General Valuation Change. Notwithstanding the foregoing:
  - a. In the event, while the Bonds remain outstanding, there shall be a general change in the method of valuation for tax purposes of substantially all real estate in the City of Lincoln which is similar in classification or use to Redevelopment Site, nothing herein shall be deemed an agreement by Center not to seek the full benefit of such general change including, but not limited to, protesting the valuation of Redevelopment Site and the real

- property on which they are situated for tax purposes; and
- b. If any of the Bonds may remain outstanding on such date, all obligations of Center hereunder and of any tax exempt entity described in Section 502 above under any written agreement relating to payments in lieu of taxes, shall expire absolutely on December 31, 2014; provided that, Center agrees to pay all real estate taxes levied on or before December 31, 2014 and payable after December 31, 2014; and further provided that, the City in no way waives the statutory obligation of Center to continue to pay real estate taxes after that date.

### **Section 505. Damage or Destruction of Redevelopment Site.**

1. During the tax increment period, Center agrees to keep the Redevelopment Site construction area and completed premises insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the insurable value thereof based upon an estimate of insurable value but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles.
2. In the event of any insured damage or destruction, Center agrees to begin the restoration of its facility to its prior condition within twelve (12) months from the date of the damage or destruction, and shall diligently pursue the same to completion. In the event Center fails to restore its facility for any reason, Center shall pay to the City the amount of tax increment received by the City in the preceding year times the number of years remaining in the tax increment period, and upon such payment, Center shall have no further liability or obligation to the City under this Agreement

### **Section 506. Condemnation.**

1. In the event that during the tax increment period all or a substantial portion of Redevelopment Site is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemnor an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the tax increment period.

## **ARTICLE VI. PROJECT**

### **Section 601. Redeveloper Improvements.**

1. The Redeveloper Improvements shall include a building consisting of approximately 69,000 square feet, with between 12 and 14 movie theater screens, and between 2,600 and 3,200 theater seats and related concession facilities, all as generally depicted in the Schematic Drawings, and a possible related video/arcade type game room.
2. As part of the Project, Center shall contract, pay for and use the Architect to provide any and all related design services to provide the Redeveloper Improvements.

3. Center shall contract and pay for following Redeveloper Improvements all as generally depicted on the Schematic Drawings and the Approved Plans:
  - a. all improvements and renovations related to the construction of the building and related theater complex improvements on the Redevelopment Site, including the external façade and interior finish of such building (except for City Improvements as specifically provided in this Agreement);
  - b. electric, gas, water, sanitary sewer, and separate conduit and cables for cable, phone, internet, and connections thereto all separately metered for separate service where applicable; and
  - c. finish all floors, ceilings, interior walls, space, doors, windows and/or open space within such building in order for the building to be constructed on the Redevelopment Site in accordance with the City’s applicable building requirements for fire prevention and emergency exit(s);
  - d. space, access, concrete platform and utility corridor(s) for installing, maintaining, replacing and operating heating, ventilation, and air conditioning equipment and related improvements to be constructed on the Redevelopment Site in order to properly provide heating, ventilation, and air conditioning;
  - e. access and utility corridor(s) for installing, maintaining, replacing and operating exhaust and smoke ventilation equipment and related improvements to be constructed on the Redevelopment Site in order to provide the exhaust and smoke ventilation from stoves, ovens, smokers and grills to the top level of the existing building, if necessary;
  - f. garbage refuge containers and equipment, storage space, concrete floor and access for installing, maintaining, replacing and operating a garbage refuge area in order to provide convenient garbage refuse service for such building;
  - g. Signs on the exterior street frontage based upon a design acceptable to the City and Center, which are in compliance with applicable laws and codes.
4. Unless otherwise authorized by Center’s prior written approval, all expenditures for the foregoing Redeveloper Improvements shall be made on a not to exceed basis according to the Fund Uses and Sources attached hereto as Exhibit “E” (the “Fund Uses and Sources”).

## **Section 602. City Improvements.**

1. As part of the Project, the City will contract and pay for at the City’s sole cost and expense the following improvements all as generally depicted on the Schematic Drawings and in the Approved Plans:
  - a. Site Preparation and Demolition on the Redevelopment Site prior to the Project Closing Date.
  - b. City ROW improvements including sidewalks, landscaping, lighting, street furniture, curb and gutter treatment around the Redevelopment Site;
  - c. Exterior public circulation areas around the Redevelopment Site; which will include landscaping, walkways and exterior lighting of sidewalks and

- the east-west alley located on the Redevelopment Site.
- d. Façade features and treatments including structures for the marquee, canopy and entrance to the building and a two-lane drive through drop off lane on “P” Street located on the Redevelopment Site; provided, however, that the City shall give primary emphasis to the drop off lane and related canopy.
  - e. Realignment and reconfiguration of 12<sup>th</sup> Street from the northern right of way of “P” Street to the southern right of way of “N” Street as a two way street in order to accommodate both northbound and southbound traffic within the aforementioned areas of 12<sup>th</sup> Street, and in order to permit southbound traffic on 12<sup>th</sup> Street to enter the Parking Facility from 12<sup>th</sup> Street.
2. Unless otherwise authorized by City’s prior written approval, all expenditures for the foregoing City Improvements shall be made on a not to exceed basis according to the Fund Uses and Sources attached hereto as **Exhibit “E”** (the “Fund Uses and Sources”), utilizing City procurement practices where applicable.

### **Section 603. Schematic Drawings of the Project.**

The Project Schematic Drawings prepared by Center, at Center’s expense, for the contemplated public and private improvements to be constructed pursuant to this Agreement have been reviewed and approved by the City's Urban Development Director.

### **Section 604. Construction.**

Center will use its best efforts to complete their construction of the Redeveloper Improvements by no later than November 30, 2004. Notwithstanding the above, the Mayor reserves the right to reject bids for the construction of the City Improvements if the bid(s) submitted by the lowest responsible, responsive bidder(s) exceeds the construction costs as budgeted, whereupon the City and Center shall mutually agree on cost effective reductions or alternate specifications to the extent practicable. The City will complete the City Improvements in coordination with the completion of the Redeveloper Improvements by Center.

### **Section 605. Salvage Rights.**

At Site Assembly Closing Center may reserve salvage rights for the Lincoln Property and the Wells Fargo Property for a period of time not to exceed thirty (30) days to enter and complete any desired salvage therein or else the City will be entitled to demolish, salvage, remove and/or dispose of said items without any liability whatsoever to Center.

### **Section 606. Construction Documents.**

The Mayor shall be entitled to review and approve the Final Construction Documents for the Project. Center shall have no unilateral authority to initiate any substantial changes to the Construction Documents which affect either the exterior of the building to be constructed by Center on the Redevelopment Site or the City Improvements described in Section 602 above; and shall provide a copy

of all such requested changes to the Urban Development Director for approval which approval shall not be unreasonably withheld. The City shall be deemed to have approved such changes unless Center receives written notice from the City withholding the City's approval of such change within fourteen (14) days after the City's receipt of the proposed change from Center. The City shall submit any material changes in the Construction Documents affecting the City Improvements to Center for approval which approval shall not be unreasonably withheld. If Center in good faith denies such changes based on cost, the City either withdraw the request for such change or provide additional funding to make such changes. Center shall be deemed to have approved the submitted changes unless the City receives written notice of Center withholding approval within fourteen (14) days after receipt of the proposed change. Center shall be obligated to pay the additional costs and fees of the Architect incurred as a result of withholding approval. Center may submit requested changes to the Construction Documents that apply to the Redeveloper Improvements to the Mayor for approval, which approval shall not be unreasonably withheld. If the amendments thereto are in conformance with the Project and this Agreement, and the Mayor in his or her sole discretion approves the same, then Center shall be obligated to pay the additional costs and fees of the Architect incurred as a result of such changes which shall be deemed a part of improvements required to be completed by Center under this Agreement.

### **Section 607. Maintenance and Repairs.**

Except as provided in this Agreement and applicable law the City will be responsible for all costs in regards to the maintenance, repairs and replacement of the City Improvements in Section 602 b. and e. Center will be responsible for all costs in regards to the maintenance, repairs and replacement of any other improvements including snow removal and any City Improvements initially paid for or installed at City expense located on Center's property and all landscaping, even if within the public right of way or easement areas. The parties acknowledge that landscaping within the public right of way or easement areas is currently included for designated maintenance tasks within the downtown maintenance business improvement district (the "Maintenance BID") and City and Center agree to take reasonable steps to include the Entertainment Center landscaping within the public right of way or easement areas as a part of the maintenance tasks assumed by the Maintenance BID.

### **Section 608. Intention; Standard of Operation.**

Subsequent to completion of the Project, it is the express intention of Center to operate the Project or cause the same to be operated, in accordance with commonly accepted community standards for **publicly held** facilities of a similar size and nature. Likewise, it is the express intention of Center to retain its interest in Redevelopment Site and to operate the same, or cause the same to be operated, in accordance with commonly accepted industry standards for facilities of a similar size and nature.

## **Section 609. Easements to be Granted.**

1. **Intention.** It is the intention of the City and Center that the Project shall have all necessary and reasonably desirable easements for support, installation, construction, maintenance, repair, replacement, improvement, ingress and egress for the Project as shown on the Schematic Drawings and Construction Drawings. City and Center deem it desirable to impose a general plan of easements, covenants, conditions, reservations, and restrictions to provide for the foregoing.
2. **Declaration.** In order to effectuate the foregoing, the City and Center do hereby certify and declare that each does hereby establish the covenants, conditions, restrictions, and reservations hereinafter contained for the design, installation, construction, protection, maintenance, repair, replacement, improvement, ingress and egress, and development of the Project shown on the Construction Drawings. These covenants, conditions, restrictions, easements and reservations shall run with the land, and shall be binding upon all persons having or acquiring any right, title or interest therein or any portion thereof, and shall inure to the benefit of and bind each owner thereof and their respective successors and assigns in interest and are imposed upon the Project and each and every lot thereof as a covenant running with the land and in favor of the parcel(s) intended to be benefited thereby for the time period specified, and if no time period is specified, then for a period of thirty (30) years.
3. **Construction Easement.** The City and Center shall grant to each other a temporary construction easement to use and temporarily occupy during the initial construction of the Project, and appurtenances and improvements thereto, for the accommodation of construction equipment, construction activity, materials, and excavated earth over and across the Project. The grant of said easement shall be at no cost to any party and shall terminate upon completion of the Project, final inspection and acceptance thereof by the City and Center.
4. **Future Easements.** The parties agree that if any additional easement with respect to the development and use of the improvements developed thereon is determined to be reasonably required to effectuate the Project or is reasonably required to take advantage of any new technology which would reasonably benefit the Project, then the parties shall promptly enter into an appropriate written agreement establishing such easement.
5. **Effect.** The parties agree that no easement reserved or granted therein is intended in any way to change or alter the responsibilities and obligations of the parties to construct the Project improvements in accordance with this Agreement and in accordance with the Construction Documents and all responsibilities and obligations shall be as set forth in this Agreement and Construction Documents.
6. The Mayor shall be authorized to execute and approve the necessary easements as provided herein on behalf of the City.

## **Section 610. Mutual Cooperation.**

The successful operation of the Project is dependent upon the continued cooperation and good faith of the City, Center and any owners and users of all of the interrelated uses therein including their respective successors and assigns. Such cooperation shall be required of all parties interested in any phase or

element of the Project. Every covenant, restriction, or easement herein stated shall be construed in recognition of this interdependence and need for continued mutual cooperation. Any easement or license herein or hereinafter granted by the owner of any of the lots or interests in the Project for the use or enjoyment of the public or for another owner or user of any other interest in the Project shall be liberally construed with the intention of providing such rights and privileges as may be reasonably necessary or convenient to adequately and properly operate the benefited facilities and properties without encroaching or interfering needlessly with the subservient facility or property. No person or entity involved with or interested in any part of the Project shall take any action or permit any action to be taken to interfere with the free beneficial use and enjoyment of any easement provided for herein or hereafter, or as may be expressly agreed by the interested parties, or as may be necessary for proper maintenance or repairs. This covenant shall have no time limit and shall last as long as any of the Redeveloper Improvements.

### **Section 611. Change in Scope, Termination of Project.**

City and Center agree that any material change in the scope of the Project including termination of the entire Project for any reason shall require mutual written agreement considering the established Fund Uses and Sources and Time Line for the Project in this Agreement and, if applicable, the costs incurred by the respective parties to date. Such written amendments may include transfers of real property between the parties as appropriate to offset costs incurred subject to approval where required by law. It is understood and agreed that any delay related to critical path items in the Time Line is presumed to be a material change in the scope of the Project regardless of fault. To the extent there is either a surplus or loss, any liquidation proceeds upon termination (including property transfers, if any) the same shall, to the extent feasible, be credited or returned to the City and Center proportionately based on the costs incurred up to the date of termination.

## **ARTICLE VII MORTGAGE FINANCING, RIGHTS OF MORTGAGEES**

### **Section 701. Financing Creating Encumbrances Restricted.**

1. Upon execution of this Agreement by the City and Center, Center shall apply for the necessary conventional financing required by Center in order to meet the financial obligations imposed upon Center under the terms and provisions of this Agreement (the "Center Financing"). Center warrants and represents to the City that Center will promptly and expeditiously apply for and attempt to obtain the Center Financing. In the event that Center is unable to secure the Center Financing, on terms and conditions reasonably acceptable to Center within **thirty (30) days** after the execution of this Agreement by the City and Center (the "Financing Contingency Period"), then Center may terminate this Agreement by

written notice to the City **within forty five (45) days** after the execution of this Agreement by the City and Center. If Center fails to terminate this Agreement by written notice to the City pursuant to this provision, then Center shall be deemed to have forever waived its right to terminate this Agreement based upon Center's inability to obtain the Center Financing.

2. At the time of, or any time following the Project Closing Date, Center may mortgage and/or place a deed of trust on all or any portion of the Redevelopment Site in order to obtain financing for the sole purposes of: (i) purchasing any portion of the Redevelopment Site from the City pursuant to this Agreement; and/or (ii) paying for the construction of any of the Redeveloper Improvements identified in Article VI above (the "Restricted Financing). Prior to Project Completion, neither Center nor any of Center's successors in interest shall engage in any financing, other than the Restricted Financing, or any other transaction creating any Mortgage upon the Redevelopment Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any of such Redevelopment Property, except for the purposes of obtaining funds only to the extent necessary to purchase, design, construct, maintain, repair, replace and insure the Redevelopment Property. After Project Completion Center may, without the City's prior written consent, engage in any financing or other transaction creating a mortgage and/or deed of trust on the Redevelopment Property, for purposes of obtaining funds for any Center purpose.
3. Prior to Project Completion Center or any successor in interest shall notify the City in advance of any Restricted Financing secured by a Mortgage or Deed of Trust on the Redevelopment Property that it proposes to enter into with respect to the Redevelopment Property, and prior to Project Completion shall promptly notify the City of any Mortgage or Deed of Trust that has been created on or attached to the same whether by voluntary act of Center or otherwise.
4. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of the Redevelopment Property which is contested by Center, then Center may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Center's lender to permit Center to avoid or prevent foreclosure of such encumbrance or lien.
5. Prior to Project Completion, no controlling interest (51.0% or more) in Center may be transferred, sold or otherwise transferred or assigned without approval of the City; Provided that after Project Completion, any ownership interest may be sold without approval of the City.
6. In addition, Center agrees that prior to Project Completion, any loan proceeds secured by any interest in the Redevelopment Property shall be used solely for the payment of costs and expenses related to the development of the Project based on the Architect's certification as to percentage of completion. Center shall provide a copy of all draw requests and bank approvals related to the Project to the Director of Urban Development in a timely fashion.
7. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the finishing of the Project Completion, any party who obtains title to any portion of Redevelopment Property from or through Center or the holder of any Mortgage or Deed of Trust or any other purchase at

foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said party and to complete construction or restoration within twenty-four (24) months from the date of such acquisition.

**Section 702. Notice of Default.**

Whenever the City shall deliver any notice or demand to Center with respect to any breach or default by Center of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each Holder of any Mortgage or Deed of Trust at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

**Section 703. Option to Cure.**

If sixty (60) days after any notice or demand with respect to any breach or default as referred to in Section 702, such breach or default remains uncured as defined in Section 901, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of Redevelopment Property by Center or its successors in interest shall so provide) have the right, at its option, to begin the cure or remedy of such breach or default by written notice to the City within such sixty (60) day period, and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

**Section 704. Rights Applicable to Other Forms of Encumbrance (Deed of Trust).**

Prior to Project Completion, the rights and obligations of this Agreement relating to Mortgages or Deeds of Trust on any portion of Redevelopment Property shall apply to any other type of encumbrance on any of Redevelopment Property, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

**ARTICLE 8 FINANCE AND INSURANCE**

**Section 801. Financing For City Improvements.**

The City proposes to provide financing for all or a portion of the costs of the Improvements through the issuance of its Bonds payable from tax increment revenues available to the City under Neb. Rev. Stat § 18-2147(2), as amended, which are to become available to the City from ad valorem taxes upon real estate located within the Redevelopment Property. Center acknowledges that the actual amount of tax increment Bonds which the City will be able to issue will depend upon then prevailing interest rates and the then expected tax levy amounts and valuations, as of the time of issuance. As and to the extent that the interest rates obtainable and the expected tax levy amounts and valuations as of the time for issuance of Bonds permit an issue of the Bonds (a) for which such revenues will provide projected coverage of average annual payments for principal

and interest for such Bonds of not less than 1.25 times, (b) the creation of a debt service reserve in the amount of the maximum annual payment of principal and interest for such Bonds and (c) the capitalizing of interest falling due for each semi-annual interest payment date (expected to be June 15 and December 15 of each year) for which either no tax increment revenues or insufficient tax increment revenues are anticipated because of the timing of tax receipts from the expected increase in valuation for Redevelopment Property, the City agrees to use its best efforts to issue the resulting maximum amount of Bonds and agrees to use the resulting net proceeds available for expenditure to pay the costs of the City Improvements. Center and the Members of Center shall have the option of agreeing to purchase such Bonds, and upon such purchase may waive the requirements for coverage set forth in (a) above and the requirement for a reserve set forth in (b) above. The estimated net proceeds available for expenditure to pay for the cost of the City Improvements is \$2.5 million. The calculation of amounts available for expenditure is shown on the Fund Uses and Sources of the same are shown on **Exhibit "E"**.

## **Section 802. Insurance.**

1. **Structure Damage Insurance.** Center shall keep the entire Project insured, naming the City as additional insured against loss or damage by the special perils endorsement (all-risk) which may bear a deductible of not more than Fifty Thousand Dollars (\$50,000), under insurance policies issued by one insurance company chosen by mutual assent of the parties as may from time to time be carried by prudent owners of buildings in the City of Lincoln, in an amount at least equal to one hundred percent (100%) of insurable value thereof excluding the cost of excavation and of foundations, piers or other supports which are below the surface of the Redevelopment Property. Such policies shall be issued by an insurance company authorized to do business in Nebraska having a current Best's rating of at least A. Such policies shall name as parties insured, as their interests may appear, (i) City and Center, (ii) any lessee, lessor, or mortgagee of all or any portion of the Redevelopment Property owned by such party, and (iii) at the request of any such lessee, any holder of a fee mortgage or a leasehold mortgage which is a lien upon the fee interest of any party or the lease held by such lessee. Such policy shall contain a standard mortgagee clause in favor of any mortgagee of all or any portion of their properties owned by such party and/or any holder of a mortgage on a leasehold interest in all or any portion of the Redevelopment Property, as their interests may appear. The policy shall provide that the acts of any insured party shall not invalidate the policy as against any other insured party or otherwise adversely affect the rights of any other insured party under the policy. Each insured party shall be entitled to be provided with a duplicate original of the policy or policies or appropriate insurance certificates that same will not be canceled without thirty (30) days prior notice.
2. **Liability Insurance.** Following Project Completion, Center shall cause to be maintained (a) Comprehensive General Liability insurance against claims for personal injury, death or property damage occurring upon, in or about the properties or any elevators therein and on, in or about the adjoining streets, sidewalks and passageways, and (b) statutory Worker's Compensation and Employer's Liability insurance. Said insurance shall be in such amounts as from

time to time are carried by prudent owners of comparable buildings in the City of Lincoln; provided, however, that in no event shall the Comprehensive General Liability insurance required by clause (a) above afford protection to the limit of less than One Million Dollars (\$1,000,000) per person or per occurrence and One Million Dollars (\$1,000,000) in respect to property damage nor shall the Worker's Compensation and Employer's Liability insurance required under clause (b) above be in the amount of less than that required by law.

Evidence of Insurance. Until the Bonds are paid in full Center shall provide appropriate evidence that the insurance required to be provided pursuant to ARTICLE VIII is in full force and effect and will not be modified or reduced without thirty (30) days prior written notice to the City and/or such certificate holders. Such policies shall be issued by insurance companies authorized to do business in Nebraska having a current Best's rating of at least A.

## **ARTICLE IX. REMEDIES**

### **Section 901. General Remedy Provisions.**

Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City or Center, or any successors to such parties, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within sixty (60) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such –sixty (60) day period, then the defaulting party within such sixty (60) day period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach, including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Center shall be deemed to be a curing by Center. Any default or breach which cannot, by its nature, be cured in the time allowed shall be deemed cured if curing is commenced in the time allowed and diligently pursued to completion thereafter.

### **Section 902. Other Rights and Remedies: No Waiver by Delay.**

The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

### **Section 903. Delay in Performance For Causes Beyond Control of Party.**

For the purpose of any provisions of this Agreement, the parties or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable

control and without their fault, including acts of God, acts of the public enemy, acts of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of Center, contractors, or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay; provided, that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall within twenty (20) days after the beginning of any such delay notify the other party thereof in writing, and of the cause or causes thereof.

**Section 904. Rights and Remedies Cumulative.**

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

**ARTICLE X. GENERAL PROVISIONS AND DEFINITIONS**

**Section 1001. Conflicts of Interest: City Representatives Not Individually Liable.**

No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Center, any successors in interest or transferees of Center, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Center, its successors or transferees, or on any obligations under the terms of this Agreement.

**Section 1002. Persons Authorized to Issue Approvals.**

For purposes of this Agreement and the approvals and disapprovals required hereunder, Center shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of the City, the Mayor, or the Director of the Department of Urban Development or its successor. Until City receives further written notice from Center, City shall be entitled to rely on the written approval of Russell Brehm, the managing member of Center, or, David Livingston, the assistant managing member of Center as constituting the approval or disapproval of Center.

**Section 1003. Notices 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 sent by registered or certified mail,

postage prepaid, return receipt requested, or delivered personally, in the case of Center to Managing Member, Assistant Managing Member or Member at 1300 “P” Street, Lincoln, Nebraska 68508 ; and, in the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

**Section 1004. Access to Redevelopment Property.**

Center shall permit the representatives of the City to enter all areas of Redevelopment Property and at any and all reasonable times, as the City may deem necessary for the purposes of this Agreement, including but not limited to, work and inspection of all work being performed in connection with the construction of the facility.

**Section 1005. Nondiscrimination.**

Center covenants that it shall not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, familial status, or receipt of public assistance in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of Redevelopment Property nor will it itself or any person claiming under or through it establish or permit such practices of discrimination or segregation with reference to the selection, location, number or use of occupancy of licensees, tenants, lessees, sublessees, vendees, visitors, or invitees to Redevelopment Property, and that such covenants and restrictions shall run with the land and shall remain in effect from the date of this Agreement until the time of expiration below.

**Section 1006. Provisions Run With the Land**

The provisions and covenants of this Agreement shall run with Redevelopment Site and shall inure to and bind the undersigned parties, successors and assigns.

**Section 1007. Titles of Articles and Sections.**

Any titles of the several parts, articles, and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 1008. Integrated Contract: Severance of Provisions: Governing Law.**

It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of Nebraska.

**Section 1009. Expiration of Agreement.**

Except for the provisions of Article 6 this Agreement shall expire upon the Final Bond Maturity Date.

## Section 1010. Definitions.

1. Approved Plans shall mean the current set of Project plans, specifications and drawings as amended and updated from time to time by the Architect, the City and Center as provided in this Agreement and in the separate agreement between the City, Center and the Architect for the Project.
2. Architect shall mean the firm selected for the Project by Center.
3. City Improvements shall mean the improvements provided in Section 602 of this Agreement.
4. City shall mean the City of Lincoln, Nebraska a municipal corporation in the State of Nebraska.
5. Community Development Law shall mean Neb. Rev. Stat. § 18-2101 et. seq., as amended.
6. Demolition shall mean the destruction and removal of all buildings, facilities, improvements, and other materials (including personal property associated with the same where applicable) located on the Redevelopment Site as provided in **Exhibit “E”** hereto and the Testing and Inspections as provided in Section 310 of this Agreement.
7. Center shall mean Center Associates, LLC, a Nebraska Limited Liability Company, with a place of business at 1300 P Street, Lincoln, Nebraska 68508
8. Fund Uses and Sources shall mean the uses and sources of public funds under the Community Development Law as provided in **Exhibit “F”** hereto.
9. Mayor shall mean the Mayor of the City.
10. Project Closing and Project Closing Date shall mean the closing where City is Seller and Center is Buyer to complete the conveyance of the City Acquisition Property to Center for purposes of the Project. The Project Closing Date is scheduled to occur on or before October 1, 2003.
11. Project Completion shall mean the date of completion of the Redeveloper Improvements as certified by the Mayor.
12. Project shall mean the overall combination of City Improvements and Redeveloper Improvements on or for the benefit of the Redevelopment Site.
13. Property shall mean the following parcels for purposes of Site Assembly as depicted on the attached Property Diagram:
  - **Latsch’s** shall mean Lots 12 & 13, Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Lincoln** shall mean Lots 1 & 2, Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Melville** shall mean Lots 10 & 11 Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Pearle** shall mean Lot 14, Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Stephenson’s** shall mean Lot 9, Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Wells & Frost** shall mean Lots 15 and 16 Block 41, Original Plat, Lincoln Lancaster County Nebraska.
  - **Wells Fargo Property** shall mean Lots 3 & 4, Original Plat, and Lots A through F inclusive Co Clerks Subdivision of lots 5 & 6 all in Block 41

Original Plat, Lincoln Lancaster County Nebraska.

14. Redeveloper Improvements shall mean the improvements provided in Section 601 of this Agreement.
15. Redevelopment Property shall mean the Redevelopment Site and the Redeveloper Improvements collectively unless the context includes the Redevelopment Site or the Redeveloper Improvements.
16. Redevelopment Site shall mean all of the Property described at paragraph 13 above.
17. Site Assembly Closing and Site Assembly Closing Date shall mean the closing where Center is Seller and City is Buyer to complete the transfer of the Lincoln property to the City and the granting of easements on the Wells Fargo Property for purposes of Project Demolition and Site Preparation by the City. The Site Assembly Closing Date is scheduled to occur on or before August 1, 2003.
18. Site Assembly shall mean the transfer and acquisition of the Property to comprise the Redevelopment Site for purposes of the Project as provided in this Agreement including the City acquiring in fee the Lincoln property, the Wells & Frost property, the Pearle property, the Latsch's property, the Melville property and the Stephenson's Property and a right of entry or other appropriate rights and interests in the Wells Fargo Property to provide for Project Demolition and Site Preparation.
19. Site Preparation shall mean the earthwork construction, as provided in **Exhibit "E"**.
20. Schematic Drawings shall mean the Schematic Drawings attached hereto as **Exhibit "G"**.
21. Lincoln Theatre Purchase Agreement shall mean the Purchase Agreement attached hereto as **Exhibit "C"**.
22. Entertainment Center shall mean the movie theater complex, related concession stand, and related video/arcade type game room to be constructed on the Redevelopment Site by Center pursuant to this Agreement.
23. Redevelopment Plan shall mean the City's Lincoln Center Redevelopment Plan, and all amendments thereto, as on file in the office of the City Clerk as of the date of this Agreement.
24. Wells Fargo Purchase Agreement shall mean the Purchase Agreement attached hereto as **Exhibit "B"**.
25. Time Line shall mean the Time Line attached hereto as **Exhibit "D"**.
26. Final Bond Maturity Date shall mean December 31, 2014, or until the bonds are paid in full, not including any refinancing of the same.
27. Parking Facility shall mean the City's Parking Facility which is located at 1221 "N" Street, Lincoln, Nebraska.
28. Parking Program shall mean the Parking Program described in Section 203 of this Agreement for purposes of allowing employees and patrons of the Entertainment Center to utilize the Parking Facility.
29. City's Current Movie Theatre Policy shall mean the current B-5 zoning restrictions in effect as of the date of this Agreement that prohibit theater complexes of seven or more screens outside of the City's downtown core business (B-2) district and the supporting text in effect as of the date of this Agreement in

the Comprehensive Plan.

30. Easement Area shall mean the easement to be granted by the City to Center over the ease-west alley currently located in Block 41, for purposes of allowing Center to construct the enclosed walkway over such Easement Area in accordance with the Approved Plans.

31. City Acquisition Property shall mean the Lincoln property, the Latsch's property, the Melville property, the Pearle property, the Stephenson's property and the Wells & Frost property described at paragraph 13 above.

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

CITY OF LINCOLN, NEBRASKA,  
A Municipal Corporation

ATTEST:

By: \_\_\_\_\_  
City Clerk Don Wesely, Mayor

Executed by Center this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

CENTER ASSOCIATES, LLC  
A Nebraska limited liability company

By: \_\_\_\_\_  
Russell Brehm, Managing Member

By: \_\_\_\_\_  
David Livingston,  
Assistant Managing Member

**STATE OF NEBRASKA** )  
 ) ss.  
**COUNTY OF LANCASTER** )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2003, by Don Wesely, Mayor of the City of Lincoln, Nebraska on behalf of the City.

\_\_\_\_\_  
Notary Public

