

LIBERTY VILLAGE

REDEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (City), and BRIGHTON CONSTRUCTION COMPANY, INC., a Nebraska corporation, with a place of business at 938 N 70th St, PBS 108, Lincoln, NE 68505. (Brighton).

The parties agree:

1. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the Antelope Valley Redevelopment Plan (Redevelopment Plan), a copy of which, together with amendments thereto, is on file in the Office of the City Clerk (City Clerk).

2. City intends to acquire, the land and buildings depicted on Attachment A generally known as 2301 Vine Street and 2304 U Street and legally described as: Kelly subdivision Lots A, B, and C; Hawley Addition Lots 3, 4, 5, and 6, all in Lincoln Lancaster County Nebraska (TBA Property). With the approval of the Mayor and Brighton, the timing of this acquisition may be phased in accordance with the attached timeline (Attachment A) and in conformance with the property transfer provisions of this Agreement, including by separate agreement approved by the parties and the City Attorney for conformance with this Agreement; Provided, that nothing in the timing or phasing shall change the settlement requirements of the net exchange of land for assembling the Liberty Village between the parties as set forth in paragraph 20 (a)

3. Brighton is the owner of real estate as shown on Attachment B generally known as 701 N. 24th St, 2311 Vine St., 2310 U Street and 2324 U Street and more particularly described as KELLEY'S SUB LOT A EXCEPT 535 SF IN NORTH PART FOR STREET (EXCEPTION DESCRIBED IN INSTR# 05-2365) & LOTS B & C & VAC W20' N 24 ST ADJ LOTS A, B, & C & VAC N15' U ST ADJ FROM N 24 ST TO WEST LOT LINE EXTENDED OF LOT C; HAWLEYS ADD BLOCK 3 LOTS 4 & 5 N74 1/2' EX N PART FOR RD; HAWLEYS ADD BLOCK 3 S70' LOT 5 & VAC N15' U ST ADJ; and HAWLEYS ADD BLOCK 3 S70' LOT 4 & VAC N15' U ST ADJ.} all in Lincoln, Lancaster County, Nebraska (Brighton Property) which the City will acquire from Brighton to assemble the redevelopment site along with the TBA Property, prepare for

redevelopment and transfer back to Brighton for redevelopment at fair value consistent with and for purposes of redevelopment according to the Plan.

4. Brighton will redevelop the site to create a private development including new construction and improvements for residential use, including parking and related uses as provided in this Agreement.

5. The City will acquire the Brighton Property and together with the TBA Property shall prepare the parcels as a single redevelopment site (Liberty Village) including necessary demolition of existing structures, construction of certain improvements, site preparation of Liberty Village, and conveyance to Brighton for redevelopment as provided herein.

6. The City and Brighton enter into this Agreement to implement the redevelopment of the Brighton Improvements and the Public Improvements (collectively Project or Project Improvements) for the purposes and in accordance with the Redevelopment Plan.

7. The City and Brighton mutually agree that the redevelopment of the Project is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

8. Schematic Drawings of the Project. The Project Schematic Drawings have been prepared by Brighton as shown in Attachment C. An architectural program statement is attached as Attachment D. Schematic Drawings for the houses shall be approved by the City and Brighton prior to construction.

9. Construction. Brighton will use its best efforts to substantially complete construction of the dwellings within 36 months following the Closing of the purchase and sale of Liberty Village. The City shall complete the Public Improvements, except sidewalk and streetscape treatment, by the time of the Closing. City shall complete the sidewalk and streetscape improvements within 60 days of completion of the last dwelling.

10. Salvage Rights. Prior to demolition of the Brighton Property for purposes of constructing the Project, Brighton shall have the option to salvage and remove, at Brighton expense, any on site materials and improvements on the Brighton Property scheduled for demolition. City will provide Brighton written notice stating that Brighton has twenty (20) days to enter and complete any desired salvage or else City, at its expense, will be entitled to demolish, salvage, remove and/or dispose of said items.

11. Construction Documents; Changes in Construction Documents. The Mayor & Brighton shall be entitled to review and approve the exterior portions of the Construction Documents for the Project Improvements, and such approval shall be granted if the Construction Documents are consistent with the Schematic Drawings and the terms and conditions of this Agreement. Neither Brighton nor the City shall have unilateral authority to initiate changes to the exterior portions of the Construction Documents without the other party approval. A party requesting a change shall submit any material changes in the Construction Documents to the other party for approval which approval shall not be unreasonably withheld. A party shall be deemed to have approved the submitted Construction Documents or proposed changes thereto unless the requesting party receives written notice within fourteen (14) days after receipt of the proposed Construction Documents or proposed changes. The requesting party shall be obligated to pay the additional costs and fees of the Architect reasonably incurred as a result of such changes.

12. Brighton Responsibilities. Brighton will, at its own cost and expense, purchase Liberty Village from the City as provided in this Agreement at fair value to complete the Brighton Improvements in connection with the Project. Brighton, at its own cost and expense, shall design and construct an appropriate residential use thereof consisting of not less than 16 single-family dwellings and 2 duplexes (20 total dwelling units) according to approved plans as provided in this Agreement and commence construction within 30 days after Closing. The development is intended to provide for market rate single-family homes and duplexes, subject to economic conditions. The improvements for Liberty Village shall be substantially completed within 36 months after closing.

13. Grant of Easements to City. At Closing, Brighton will grant to the City without additional consideration the appropriate public access easements in a form acceptable to the City Attorney as they relate to proposed east/west drive to provide access to the proposed single-family dwellings and duplexes and permanent easement for widening and pedestrian/streetscape improvements in Vine Street as shown on Attachment E.

14. Grant of Right-of-Way. At Closing, if needed, Brighton will grant to the City without additional consideration the appropriate right-of-way in a form acceptable to the City Attorney for the proposed widening and pedestrian/ streetscape improvements in Vine Street right-of -way as shown on Attachment E.

15. Architect and Landscape Designer. Brighton will use the services of RM101 as Project Architect and Kim Todd as Project Landscape Designer or another architect or landscape designer acceptable to the City.

16. Representations. Brighton represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of Liberty Village and not for speculation in land holding.

17. Restrictions on Assignments of Rights or Obligations. Brighton represents and agrees that prior to completion of Brighton Responsibilities provided for above there shall be no sale or transfer of the Liberty Village Project or assignment of its rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld), other than mortgages, and involuntary transfers by reason of death, insolvency, or incompetence. The City shall retain the right of first refusal for any subsequent transfer or sale of all or substantially all of Brighton interest as redeveloper in the property. Such right of first refusal shall be valid for a period of 60 days after Brighton 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. The right of first refusal shall not apply to financing permitted under this Agreement or to the sale of individual lots or units upon written approval from the Mayor of the manner to accomplish the same in conformance with the Redevelopment Plan and this Agreement including the transfer to the new owner of the same use restrictions and necessary covenants enforceable by the City respecting the duties and obligations undertaken by Brighton hereunder, which approval shall not be unreasonably withheld. The City shall be entitled to require, as conditions to any required approval, that:

- a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Brighton; and
- b. Any proposed transferee, by instrument satisfactory to the City 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 Brighton under this Agreement; and

- c. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefore shall be indicated to Brighton in writing.

18. City Duties. City at its own cost and expense shall:

- a. Identify for Brighton the existing public storm and sanitary sewer, and other utility easements on the Liberty Village property as soon as reasonably possible and terminate without additional consideration any utility easements no longer needed no later than the Closing. If the City requires any existing utility easement(s) to remain and Brighton in good faith concludes that the Project cannot proceed with those utility easement(s) remaining in place, then Brighton shall have the right prior to Closing to terminate this Agreement. If this Agreement is terminated by Brighton, neither party shall be liable to the other party for damages due to termination.
- b. Prior to Closing, City shall complete the necessary environmental testing, demolition, site preparation and the Public Improvements (defined below) and approvals for the City to assemble and prepare the Liberty Village for the Project and complete the transfer of the TBA Property and Brighton Property for purposes of constructing Liberty Village, preserving necessary easements and other appropriate use restrictions provided under this Agreement. Site preparation shall include preparation, governmental approvals, utility service line(s) relocation, demolition, removal, hauling and landfill charges, filling cavities and holes, including but not limited to basements, footings and foundations, and rough site grading in anticipation of the buildings shown on Attachment D.

19. Public Improvements. As part of the Project, City, at its expense, will contract, design, and pay for the following Public Improvements:

- a. Acquisition of Kelly subdivision Lots A, B, and C; Hawley Addition Lots 3, 4, 5, and 6, all in Lincoln Lancaster County Nebraska. ;
- b. Demolition and site preparation;

- c. Public sidewalk and streetscape treatment in the 23rd Street, Street, and 24th Street right-of-way;
 - d. Pavement of east west private roadway between North 23rd Street and North 24th Street;
 - e. Construction of 8-inch sanitary sewer line in the private driveway and extension to existing sewer.
20. Transfer of Property.
- a. Sale and Purchase. At Closing, Brighton shall sell and convey to the City the Brighton Property and the City shall sell and convey to Brighton the Liberty Village subject to the terms and conditions of this agreement. The net exchange of land for assembling the Liberty Village will result in a Boot Price payable to Brighton Two Hundred Twenty one thousand nine-hundred eighty dollars (\$221,980) of which One Thousand Dollars (\$1,000.00) (Earnest Money Deposit) has been received by Brighton on the date hereof with a balance payable at Closing, subject to adjustments and prorations as herein provided.
 - b. Right of Entry, Testing and Demolition. Upon execution of this Agreement, Brighton shall grant to the City the Right of Entry as shown on Attachment F, which is attached hereto and incorporated herein, to permit entry upon the Brighton Property for testing and demolition of the existing structures thereon and site preparation in accordance with the assembly of Liberty Village provided in this Agreement.
 - c. Closing. The closing of the purchase and sale of Liberty Village as agreed in phases between the parties shall take place at the offices of the City of Lincoln Urban Development Department, 129 N. 10th Street, Lincoln, Nebraska, with the property closing (except TBA property) to be held on May 5, 2005 at 10:00 a.m. However, Closing shall be automatically extended until the Lincoln City Council has approved the sale as provided by law, or at such other time, date and place as the parties may mutually agree (Closing) not later than July 1, 2006.
 - d. Use Restrictions, Title and Possession. Brighton agrees to deliver at Closing a warranty deed conveying to the City marketable title to the Brighton Property. City agrees to deliver at Closing a warranty deed conveying to Brighton marketable title to Liberty Village, subject

to easements for public access and utilities as provided in this Agreement, and conditions of approval of the Liberty Village Community Unit Plan which shall be included as a deed restriction upon the property for the duration of the tax increment period, which shall be considered the applicable use restrictions under the Nebraska Community Development Law.

- e. Title Insurance. On or prior to closing for each phase each party shall provide the other and its counsel with a commitment for an owner policy of title insurance which insures marketable title to the TBA Property and Brighton Property respectively, subject only to the easements, restrictions (including those provided in this Agreement as applied to Liberty Village) and other matters of record. Written notice of any easement, restriction or other matter affecting title to Liberty Village that is unacceptable shall be delivered prior to Closing. The curing party shall have a reasonable period, not exceeding thirty (30) days, to cure any unacceptable easement, restriction or other matter affecting title. The premium for the title insurance policy shall be paid by the City.
- f. TBA Property. Any special assessment arising out of any improvements completed or under construction prior to Closing of the TBA Property, whether then levied or unlevied, assessed or unassessed, shall be borne by City up to the date of Closing. City shall pay all taxes related to the TBA Property respectively for 2004 and all prior years and any such taxes for 2005 shall be prorated to the date of Closing and based on the most recent property valuation and the most recent levy.
- g. Brighton Property. Any special assessment arising out of any improvements completed or under construction prior to Closing of the Brighton Property, whether then levied or unlevied, assessed or unassessed, shall be borne by Brighton up to the date of Closing. At Closing, Brighton shall pay all taxes related to the Brighton Property respectively for 2004 and all prior years and any such taxes for 2005 shall be prorated to the date of Closing and based on the most recent property valuation and the most recent levy.
- h. Transfer Taxes. City shall pay any and all transfer taxes or similar fees which are payable upon the recording of the instruments of transfer.

21. Representations and Warranties of City. City represents and warrants to Brighton as follows:
- 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 an appraisal of the fair market value. The transfer of property is conditioned on the approval of the sale by the City Council as provided by law.
 - 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 rights generally, or by judicial discretion in connection with the application of equitable remedies. At the time of closing for the TBA Property, the City will be the owner of the TBA Property and no other persons will have any interest in such real estate, except as set forth in this Agreement. The City is not the owner of the TBA Property, but as of the date of execution of this Agreement, City has duly authorized all actions necessary to effect acquisition of the TBA Property.
 - d. Brokers. The City has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Brighton to pay any finder fee, brokerage or agent commission or other like payment in connection with this Agreement or the consummation of the transactions contemplated, and City is not aware of any claim or basis for any claim for same.
 - e. Special Assessments and Liens. There are no 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 TBA Property assessed against the TBA Property up to the date of Closing.
 - f. Floodplain. The TBA Property is not located in a designated floodplain.

24. Inspection and Testing. At any time after the date of this Agreement, the City, Brighton and their respective employees and agents shall have the right to enter upon Liberty Village and perform such tests and inspections as the City deems necessary for site preparation and Brighton deems necessary to determine suitability of Liberty Village for its intended use. Unless otherwise approved by the other party in writing, the testing party shall restore Liberty Village to original condition if tests alter the grade, compaction, or vegetation. As to the TBA Property, the City represents that as of the date of this Agreement it has no knowledge of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement the City has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the TBA Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to Hazardous Materials.

As to the Brighton Property, Brighton represents that it has no knowledge as of the date of this Agreement of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement, Brighton has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the Brighton Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to Hazardous Materials. The parties agree that if inspection, testing or other activities contemplated by this Agreement identify areas of concern regarding site conditions that would likely interfere, delay or require remediation over and above contingencies for related components (including but not limited to Hazardous Materials) that the party discovering the condition shall immediately notify the other party and the parties shall use their best efforts to resolve the concerns. If the parties cannot agree on a resolution permitting the Project to proceed, this Agreement may be terminated by either party upon ten day written notice. Upon termination, City shall reconvey the Brighton Property to Brighton subject to refund of the Purchase Price paid. Neither party shall be liable to the other party for damages due to termination, including consequential damages, anticipated income or lost opportunity related to or arising out of this Agreement. The City has ordered a phase one environmental audit for Liberty Village and the phase one report will be completed by Closing. The City agrees to provide a complete copy of the phase one report to Brighton as soon as the report is completed and delivered to the City.

25. Valuation of Property Within the Project Area. The City intends to use the ad valorem tax provisions set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan. 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). The tax increment revenues which are to be used to pay debt service for the Project will be derived from the increased valuation from redeveloping Liberty Village as provided in this Agreement. So long as any of the debt issued with respect to the Project funds remain outstanding and unpaid, Brighton agrees not to contest any taxable valuation assessed for Liberty Village which does not cumulatively exceed \$2,572,400; provided that the construction of Liberty Village is completed as provided in this Agreement.

26. Restriction on Transfer. Brighton will not, for a period of fifteen (15) years after the effective date of the ad valorem tax provision, or so long as the tax increment indebtedness remains outstanding whichever period of time is shorter (tax increment period), convey any lot within Liberty Village to any entity which would result in the lot or dwelling built upon such lot being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions. Brighton agrees to adopt restrictive covenants upon all lots within Liberty Village which prohibit leasing of any dwelling to non-owner occupants and prohibiting any owner from applying for any exemption from ad valorem taxes so long as the tax increment indebtedness remains outstanding.

27. Agreement to Pay Taxes. Brighton agrees to pay all real property taxes levied upon Liberty Village prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the tax increment period, but the City in no way waives the statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the lots or improvements for tax purposes.

28. Financing Creating Encumbrances Restricted.

- a. Prior to completion of Liberty Village, as certified by the Mayor, neither Brighton nor any successors in interest to Liberty Village as redeveloper shall engage in any financing or any other transaction creating any Mortgage upon the Real 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 Liberty Village, except for the purposes of obtaining funds only to

the extent necessary to design, construct, maintain, repair, replace and insure the redevelopment Project. Brighton or any successor in interest as redeveloper shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to Liberty Village, and shall promptly notify the City of any Mortgage that has been created on or attached to Liberty Village whether by voluntary act of Brighton or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of Liberty Village and which is contested by Brighton, then Brighton may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Brighton lender to permit Brighton to avoid or prevent foreclosure of such encumbrance or lien. In addition, Brighton agrees that prior to completion of Liberty Village, as certified by the Mayor, any loan proceeds secured by any interest in Liberty Village shall be used solely for the payment of costs and expenses related to the development of the Project based on the Architect certification as to percentage of completion. Brighton 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.

- b. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time when any casualty damage to the Property has occurred and has not been fully restored, any party who obtains title to any portion of Liberty Village from or through Brighton or the holder of any Mortgage 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.
- c. Notice of Default. Whenever the City shall deliver any notice or demand to Brighton with respect to any breach or default by Brighton 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 at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

- d. Option to Cure. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of Liberty Village by Brighton or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage; provided, that if the breach or default is with respect to construction of Liberty Village, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize.
- e. Rights Applicable to Other Forms of Encumbrance (Deed of Trust). The rights and obligations of this Agreement relating to Mortgages of any portion of Liberty Village shall apply to any other type of encumbrance on any of Liberty Village, 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.

29. Damage or Destruction of Redeveloper Property. During the construction period, Brighton agrees to keep the construction area, including completed operations 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 replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Brighton agrees to restore the Project 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 Brighton fails to restore the same for any reason, Brighton 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. During the tax increment period, Brighton shall include by restrictive covenant an enforceable obligation on the owner or tenant in possession to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to the owner or tenant obligation to restore the Project to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

30. Condemnation. If during the tax increment period all or any portion of Liberty Village is condemned by a condemning authority other than the City, and the 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 the property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

31. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Brighton, the party in default shall, upon written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. In the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

32. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

33. Delay in Performance For Causes Beyond Control of Party. The parties or their successors or assigns shall not be in default of their obligations for delay in performance 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 or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this section is 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 improvements shall be extended for the period of delay. However, 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 the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

34. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of any one or more remedies shall not preclude the exercise by it of any other 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 in writing and only to the extent specified in writing.

35. 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 Brighton or any successors in interest due to any default or breach by the City under the terms of this Agreement.

36. Approvals. For purposes of this Agreement and the approvals and disapprovals required, Brighton 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 them. City shall be entitled to rely on the written approval of the President of Brighton as constituting the approval or disapproval of Brighton.

37. Notices and Demands. A notice under this Agreement by either party to the other shall be deemed delivered on the date it is postmarked, sent by registered or certified mail, postage prepaid, or delivered personally to Brighton, at 938 N. 70th #108, Lincoln, Nebraska 68505, or the City, to the Office of 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 notify the other as provided in this Section.

38. Access to Project Area. During construction of the Project, Brighton shall permit the representatives of the City to enter all areas of Liberty Village and at any and all reasonable times, as the City may deem necessary for the purposes of inspection of work being performed in connection with the construction of the facility.

39. Provisions Run With the Land. This Agreement shall run with Liberty Village and shall inure to and bind the parties and their successors in interest.

40. Headings. Headings of the sections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

41. Severance and Governing Law. Invalidation of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect. This Agreement shall be construed and governed by the laws of Nebraska.

42. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the tax increment indebtedness, whichever first occurs.

Executed by City this _____ day of _____, 2005.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
A Municipal Corporation

City Clerk

By: _____
Coleen J. Seng, Mayor

Executed by Brighton Construction, Inc., this _____ day of _____, 2005.

BRIGHTON CONSTRUCTION COMPANY, INC.,
a Nebraska corporation

By: _____
Fernando Pages, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Coleen Seng, Mayor of the City of Lincoln, Nebraska. on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Fernando Pages, President of Brighton Construction Company, Inc., a Nebraska corporation on behalf of the corporation.

Notary Public

Attachment A

Timeline

April 4, 2005 City Council Approval

May 5, 2005 Property Closing (except TBA Property)

May 11, 2005 Financing approvals

May 15, 2005 Demolition Phase 1 & Preliminary Utility relocation

June 2005 Groundbreaking Phase 1

July 1, 2005 TBA Property Closing

July 15, 2005 Demolition Phase 2 & site Preparation

Attachment B

Map showing land comprising the TBA Property and Brighton Property.

Attachment C

Project Schematic Drawings

Attachment D

Architectural Program Statement for Liberty Village

Attachment E

Right of Entry

Attachment F

Uses & Sources of Funds