08R-270

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 08R-270 to accept the substitute Redevelopment Agreement – North Haymarket Arts and Humanities Phase II (10-23-08) attached hereto to revise the signature block and notary for Block 21, LLC.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Kent Seacrest, Attorney for the Applicant

Reason for Request: To correctly identify the Redeveloper.

"Seacrest, Kent"
<kent@sk-law.com>
10/23/2008 12:17 PM

To <Tbabb@lincoln.ne.gov>, <RPeo@ci.lincoln.ne.us>, <JRupp@ci.lincoln.ne.us>
cc Will Scott <will@wrkllc.com>, Robert Scott <robert@wrkllc.com>, Josh Berger <josh@wrkllc.com>, "John H. Bergmeyer" <jbergmeyer@hslegalfirm.com>,
bcc
Subject Marked copy of the Arts and Humanities Block Redevelopment Agreement

Good day Trish and Joe:

It is my understanding that Rick Peo is out of town and based upon my phone call with you, you asked me to send you an email outlining my request of the City Attorney's Office.

I am attaching a marked copy of the Redevelopment Agreement. I needed to revise the signature block and notary for Block 21, L.L.C. as the Redeveloper. I apologize for the last minute revision.

I would request that the City Attorney's Office prepare a motion to amend to substitute this new draft of the Redevelopment Agreement for last week's draft.

In a separate email, I will send you the clean copy of the Redevelopment Agreement as reflected by the marked copy.

Thank you for your help and assistance.

Kent

Kent Seacrest
Seacrest & Kalkowski, PC, LLO
1111 Lincoln Mall, Suite 350
Lincoln, NE 68508
(402) 435-6000 Tel
(402) 435-6100 Fax
kent@sk-law.com

WARNING/CAUTION: This e-mail and any files transmitted with it are strictly confidential and are intended solely for the use of the individual or entity to whom it is addressed. This communication may contain material protected by lawyer-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail and any file attachments is strictly prohibited. If you have received this e-mail in error, please immediately notify us by a collect telephone call to (402) 435-6000 or by reply e-mail to the sender. You must destroy the original transmission and its contents.

Phase 2 Redevelopment Agr marked 10-23-08.doc

10-23-08

CITY OF LINCOLN
REDEVELOPMENT AGREEMENT

(North Haymarket
Arts and Humanities Phase II)

THIS REDEVELOPMENT AGREEMENT (North Haymarket Arts and Humanities Phase II) is entered into between the **CITY OF LINCOLN, NEBRASKA,** a municipal corporation in the State of Nebraska ("City) **BLOCK 21, L.L.C.**, a Utah limited liability company and its successors and assigns ("Redeveloper").

RECITALS

A. 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 Lincoln Center Redevelopment Plan a copy of which, together with any and all amendments thereto (collectively "Redevelopment Plan"), is on file in the Office of the City Clerk of the City ("City Clerk"). The Redevelopment Plan has been adopted in compliance with the Nebraska Community Development Law codified at *Neb. Rev. Stat* §§18-2101 through 18-2144 (the "Act").

B. The City has previously executed the Redevelopment Agreement (Sawmill Project, Phase One of the North Haymarket Arts and Humanities Center Block) between the City and Sawmill Building Partnership ("Sawmill") for the first phase of the future phases of the North Haymarket Arts and Humanities Center Block (Block 21) redevelopment efforts ("Phase 1") for the West One-Half of Lot 3 and all of Lots 4 through 6, Block 21, Original Plat, Lincoln, Lancaster County, Nebraska ("Phase 1 Project Site").

C. The Redevelopment Plan calls for the City to support commercial/ hotel/residential redevelopment efforts on real estate owned by the Redeveloper ("Redeveloper Property") and legally described as:

Lot 1, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska.

D. The Redevelopment Project—Phase 2 area ("Project Site" or "Project Area") incorporates the Redeveloper Property, including the east west Block 21 alley ("East-West Alley") and that portion of "R" Street, 9th Street, "S" Street and 8th Street right-of-way that abut Block 21 in Lincoln, Lancaster County, Nebraska.

E. The City has approved the vacation of the East-West Alley.

F. Neb. Rev. Stat. § 18-2103(12) (2007 Supp) authorizes the City to carry out plans for a program of compulsory repair and rehabilitation of buildings and other improvements in connection with redevelopment of the Project Site and to pay for the same from TIF Proceeds (as defined herein).

H. *Neb. Rev. Stat.* § 18-2107 (2007 Supp) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

I. Redeveloper is willing to enter into this Agreement and through a minimum investment of Twenty-Two Million, Two Hundred and Fifteen Thousand, and Forty-Eight and 86/100 Dollars ($22,215,048.86) to redevelop the Project Site by constructing a new hotel and related building land uses on the Redeveloper Property ("Private Improvements") as shown on the attached Site Plan in Exhibit "A", which is attached hereto and incorporated herein by this reference.

J. In order to help remove blight and substandard conditions and improve conditions in an economically underutilized area, the City is willing to enter into this agreement and to make grants to the Redeveloper as its agent to be used to carry out the public improvements as described in Paragraph 14 below (collectively "Public Improvements).

K. The Private Improvements and Public Improvements are collectively known as the "Redevelopment Project Improvements" and are generally shown on the Site Plan in Exhibit "A". The costs of the Redevelopment Project Improvements are collectively known as the "Redevelopment Project Costs" and are shown on the Sources and Uses of Funds in Exhibit "C", which is attached hereto and incorporated herein by this reference. The City and Redeveloper agree that such assistance is deemed essential to the preparation of the Project Site for commercial/office/residential space.

L. The City is willing to support the above described redevelopment of the Project Site in accordance with the Redevelopment Project; provided that, Redeveloper is willing to restrict the use of the Redeveloper Property to certain approved uses and is further willing to agree to covenants and conditions regarding compulsory maintenance and upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions; and further provided that, Redeveloper is willing to restrict the use the grants provided hereunder for the sole purpose of design, construction and implementation of the Public Improvements on behalf of the City and in the manner contractually described herein.

M. Pursuant to *Neb. Rev. Stat.* § 18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the Redevelopment Project for the benefit of any public body shall be divided, for a

period not to exceed fifteen (15) years after the effective date of such provision by the governing body as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

- That portion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle of the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the "Ad Valorem Tax Provision."

N. *Neb. Rev. Stat.* § 18-2107 (2007 Supp) and § 18-2150 (Reissue 1997) authorize the City to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Project Site in accordance with the Redevelopment Plan. In order to make the grant or grants to the Redeveloper, the City intends to issue tax increment financing indebtedness instrument or instruments in tax exempt and taxable series (collectively "TIF Bond") to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision ("TIF Tax Revenues").

O. The City and Redeveloper desire to enter into this Agreement to implement the Redevelopment Project for the above purposes and in accordance with the Redevelopment Plan.

P. The City and Redeveloper mutually agree that the redevelopment of the Project Site 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.

NOW, THEREFORE, in consideration of the above recitals which are hereby made part of this Agreement and of the mutual covenants contained herein the parties do agree as follows:

1. Design Documents. Redeveloper will prepare exterior Schematic Design Plans (hereinafter "Design Documents") for the Private Improvements and the same will be submitted to and reviewed by the Historic Preservation Commission and approved by the City's Director of Urban Development. The preliminary concept drawings for the Private Improvements are attached hereto as Exhibit "D" and are incorporated herein by this reference. Redeveloper shall submit any material changes in the Design Documents as approved to the Director of Urban Development for his review and approval.

2. Construction Documents. The Redeveloper shall prepare or cause to be prepared, at Redeveloper's expense and with grants funds for Public Improvements described herein, detailed final construction plans and specifications for the Redevelopment Project Improvements (hereinafter "Construction Documents").

A. Private Improvements. The first floor of the Private Improvements located on the Redeveloper Property is to be designed for commercial uses and the upper floors for hotel or residential uses. Redeveloper shall submit such Construction Documents for the Private Improvements and the Facade Upgrade (defined below) to the Director of the Urban Development Department for his review and approval; provided that his review and approval shall be limited to the design and type of materials to be used for the Facade Upgrade and to assure the Facade Upgrade meet the City of Lincoln's design standards and are consistent with the Haymarket Landmark District guidelines. The Director shall

so approve or reject the Construction Documents for the Private Improvements within fourteen (14) days after receipt thereof.

B. Public Improvements. Unless otherwise provided herein, the Public Improvements shall be designed in accordance with the City's Standard Specifications and shall be submitted to the Director of the Public Works and Utilities Department for review and approval pursuant to the City's executive order construction process.

3. Construction of Redevelopment Project Improvements.

A. Construction of Private Improvements. The Redeveloper, through a minimum investment of Twenty-Two Million, Two Hundred and Fifteen Thousand, and Forty-Eight and 86/100 Dollars ($22,215,048.86), shall at its own cost and expense construct the Minimum Private Improvements substantially in conformance with the Design Documents. Redeveloper agrees to use commercially reasonable efforts to substantially complete construction of the Private Improvements as provided for in Paragraph 10 below and to pay in a timely manner Redeveloper's contractor, or his or her subcontractors who performed labor or applied materials performed or used in the prosecution of the Private Improvements as provided for in Paragraph 5 below. Promptly after completion of the Private Improvements in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct the Private Improvements and promptly after the Redeveloper provides the City the proper documentation that Redeveloper's contractor, or his or her subcontractors who performed labor or applied materials performed or used in the prosecution of the Private Improvements have been properly paid, the City shall upon request by the Redeveloper furnish a Certificate of Completion, the form of which is shown on Exhibit "E", which is

attached hereto and incorporated herein by this reference. Such certification by the City shall be a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of Redeveloper to construct the Private Improvements. The Certificate of Completion shall be recorded by the City in the office of the Register of Deeds for Lancaster County, Nebraska. If the City shall refuse or fail to provide the certification in accordance with the provisions of this paragraph after being requested to do so by Redeveloper, the City shall, within fifteen (15) days after written request by Redeveloper, provide Redeveloper with a written statement indicating in what respect Redeveloper has failed to complete the Private Improvements subject to each such certification in accordance with the provisions of this Agreement and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such certification. As used herein, the term "completion" shall mean substantial completion of the Private Improvements so that they may be reasonably used for their intended purposes.

B. Construction of Public Improvements. To the extent allowed by law and then only to the extent TIF Proceeds are lawfully available and granted to the Redeveloper as described in Paragraph 12 below, the Redeveloper shall use the TIF Proceeds to construct the Public Improvements through the City's executive order construction process. The City shall not have any obligations to fund the Public Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as described in Paragraph 12 below. Redeveloper, at its election, may use its own funds to fund any Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder. Unless otherwise provided herein, contracts for construction of the Public

Improvements shall be bid in accordance with City procedures. Redeveloper shall reimburse LES for LES's cost to design and construct the reconfiguration of any LES vault transforms, equipment and transmission lines within the Project Site.

4. Cost Certification. The Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to construction of the Eligible Project Costs. The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for payment of Public Improvement costs. The City shall approve or reject the same with reasons stated, based on the review within ten (10) days of receipt of the same; provided, however, the City shall generally approve request for payment made by Redeveloper that are consistent with this Agreement. Reimbursement by the City to the Redeveloper shall be made promptly after approval by the City.

5. Penal Bond. Pursuant to *Neb. Rev. Stat.* § 18-215 1, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Redevelopment Project Improvements, a penal bond in an amount of Five Thousand and No/100 Dollars ($5,000) with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons supplying or furnishing the Redeveloper, the Redeveloper's contractor, or his or her subcontractors who performed labor or applied materials performed or used in the prosecution of the Private Improvements. Proof of such penal bond shall be supplied to the City prior to the start of construction of the Redevelopment Project Improvements. Redeveloper shall also obtain and keep in force at all times prior to and until recording of the Certificate of Completion, a title insurance policy insuring the City against loss by the Redeveloper of title or interest in Redeveloper Property or the Redeveloper for Private Improvements by reason of construction liens, mechanic's

liens or similar liens. Proof of such penal bond and title insurance policy shall be promptly supplied to the City. The City shall be supplied, upon written demand, with copies of all lien waivers of Redeveloper's contractor, or his or her subcontractors who performed labor or applied materials performed or used in the prosecution of the Private Improvements, and shall be entitled to inspect at reasonable times all records of Redeveloper or their agents regarding such lien waiver procedures.

6. Indemnification. Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Redevelopment Project Improvements the City may be required to make for failure of Redeveloper or its contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper's contractor or his or her subcontractors who performed labor or applied materials performed or used in construction of the Redevelopment Project Improvements.

7. Duty to Maintain. Redeveloper shall, following construction, operate the Private Improvements in a safe and sanitary manner and shall take all action necessary to maintain, in good order and condition and state of repair, all interior and exterior portions of all buildings including the routine preventive maintenance of the building and its service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors.

8. Use Restrictions. Redeveloper agrees that during the Tax Increment Period no portion of the Redeveloper Property shall be used for any of the following uses:

a. A liquor store selling alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sells alcoholic beverage for consumption off the premises;

b. The retail sale of alcoholic beverages for consumption on the premises if such use, in the opinion of the City, has an unreasonable pattern of unlawful disturbances or alcoholic beverage law violations;

c. 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 use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

d. A sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, 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. The foregoing exclusion shall not include pay for view video/audio services, internet and other forms of telecommunication/communication systems offered or available to guests in the ordinary course of hotel business and trade or to Lincoln residents.

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 salvage or recycling operation, car wash, dry

cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or fuel store.

e. Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding keno, bingo, and the retail sale of lottery tickets as permitted by applicable law.

f. Any business involving the sale or display of weapons, self-service laundromat for nonresidents or non-occupants of the Redeveloper Property, illegal activities, or sale of any illegal goods or products.

g. Off-premises signs as defined in Section 27.69.020 of the Lincoln Municipal Code.

9. Construction Administration. Redeveloper shall be responsible for all components of the Redeveloper Project Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. Subject to Paragraph 3B above and Paragraph 14 below, the Redeveloper will be solely responsible for payment of all construction cost attributable to the Private Improvements regardless of any expectation for reimbursement hereunder. The Redeveloper will be solely responsible for payment of all construction cost attributable to the Public Improvements in the amount of the TIF Proceeds, less the City's cost to issue the TIF Bond and subject to reimbursement as provided in Paragraph 19 for the Public Improvements.

10. Timing of Construction. Redeveloper will use commercially reasonable efforts to complete salvage and demolition of those portions of the existing buildings to be demolished

within one hundred and twenty (120) days following City Council's approval and the Mayor's execution of this Agreement and to substantially complete construction of the Private Improvements located upon the Redeveloper Property and Redeveloper Property within eighteen (18) months following the completion of demolition.

11. Haymarket Improvements. The following A & H Plaza, Facade Upgrade and Public Art (collectively "Haymarket Improvements") are intended to enhance and strengthen the urban fabric and the relationship between the historic Haymarket Landmark District and the Project Site.

a. A & H Plaza. Subject to Paragraph 14 below, the City and Redeveloper agrees to use available TIF Proceeds to fund the construction of a plaza ("A & H Plaza") as generally shown on Exhibit "B", which is attached hereto and incorporated herein by this reference and as shown on Exhibit "C". Upon completion of the A & H Plaza, the Redeveloper shall have the duty and responsibility to maintain and repair the A & H Plaza at its own cost and expense and no responsibility thereof shall accrue to the City by reason of its benefits from the A & H Plaza pursuant to the general terms and provisions of the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F" and incorporated herein by this reference.

b. Facade Upgrade. Subject to Paragraph 14 below, the City and Redeveloper agree to use available TIF Proceeds to help fund the construction of an improved exterior brick façade and related improvements on the Private Improvements (collectively "Facade Upgrade") as generally shown on Exhibit "C" and Exhibit "D"; provided that the available TIF Proceeds amount shall not exceed the total estimated cost of $$550,000, which is the estimated extra construction costs to upgrade the four exterior

sides of the Private Improvements from stucco to brick. Upon completion of the Facade Upgrade, the Redeveloper shall have the duty and responsibility to maintain and repair the Facade Upgrade at its own cost and expense and no responsibility thereof shall accrue to the City by reason of its benefits from the Facade Upgrade pursuant to the general terms and provisions of the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F".

c. Public Art. Subject to Paragraph 14 below, the City and Redeveloper agrees to use available TIF Proceeds to fund the construction of a public art work ("Public Art") within the right-of-way of the Project Site as generally shown on Exhibit "A" and Exhibit "C". Upon completion of the Public Art, the City shall have the duty and responsibility to maintain and repair in a commercially reasonable manner the Public Art at its own cost and expense. The Director of the Urban Development Department and Redeveloper shall carry out a request for proposal for the Public Art and shall seek the input and recommendation of the Historic Preservation Commission.

d. Haymarket Improvements Easement and Maintenance Agreement. Upon completion of the design and construction of the A & H Plaza and the Facade Upgrade, the City and Redeveloper agree to execute a Haymarket Improvements Easement and Maintenance Agreement for the A & H Plaza and Facade Upgrade on a form substantially similar to the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F" and incorporated herein by this reference. Subject to Paragraph 27 below, in the event the Redeveloper fails to maintain the A & H Plaza or Facade Upgrade as provided in the Haymarket Improvements Easement and Maintenance Agreement, then the Redeveloper shall reimburse the City the

proportionate share (1/15) of the grant funds provided for said A & H Plaza or Facade Upgrade for the year the Redeveloper fails to maintain said improvement.

12. Grant of Funds. In order to support redevelopment of the Project Site and as an inducement for the Redeveloper to construct the Redevelopment Project Improvements, the City agrees, to the extent allowed by law and then only to the extent funds are lawfully available from the issuance of the TIF Bond ("TIF Proceeds") as shown in Exhibit "C", to make a grant or grants to Redeveloper in the total amount of the TIF Proceeds less the City's cost to issue the TIF Bond, subject to reimbursement as provided in Paragraph 19 below for Public Improvements. Redeveloper shall submit authentic and satisfactory documentation to the City to verify the grant was expended on eligible Redevelopment Project Costs. Any ineligible use of the grant shall immediately be repaid to the City.

13. Issuance of Redeveloper Purchased TIF Bond. On or after the date of this Agreement, the City shall issue one or more TIF Bond, in one or more tax exempt and taxable series, in the total contracted amount of Two Million Seven Hundred and Seventy-Five Thousand, Five hundred and Fifty-One and 16/100 Dollars ($2,775,551.51) for net funds available (collectively "TIF Indebtedness") to be purchased by Redeveloper or Redeveloper's lender ("TIF Bond Purchaser"), in a written form acceptable to Redeveloper's attorney, and receive Bond Proceeds from TIF Bond Purchaser in said amount. The City and Redeveloper agree that the form of the TIF Bond and funding mechanism of the Bond Proceeds will be set up similar to a line of credit so that the TIF Bond Purchaser is required to pay the Bond Proceeds to the City on or before the date the City needs funds in the Project Account in order for the City to timely make a grant or grants from the Bond Proceeds to the Redeveloper as described herein. Subject to the terms of this Agreement, the City Finance Director on behalf of the City shall have

the authority to determine the timing of issuing the TIF Indebtedness and all the other necessary details of the TIF Indebtedness.

14. Use of TIF Proceeds. The TIF Proceeds shall be deposited into a fund account ("Project Account") to be used for payment of the City's TIF Bond cost of issuance and the grant or grants of funds for the costs of the Public Improvements. TIF Proceeds shall be expended in the following priority:

FIRST PRIORITY: Reimburse the City for the cost of issuing the TIF Bond, including but not limited to bond counsel fees, fiscal advisory fees, placement fees, capitalized interest, and reserves.

SECOND PRIORITY: Payment of grant or grants to reimburse Redeveloper for costs of the following Public Improvements:

a. Demolition, salvage and site preparation of the Project Site, including the Redevelopment Project Improvements and the protection of public right-of-ways;

b. Phase 2 utility work, including extension of cable television within the Project Site, water line improvements, electric line improvements and coordination and screening work with the Phase 1 utility improvements and work as generally shown on Exhibit "B-1" and Exhibit "B-2", which are attached hereto and incorporated herein by this reference, but excluding utility service lines;

c. Streetscape, including relocating streets, sidewalks, curb and gutters, pedestrian lighting, signage, landscape and irrigation materials and other street and sidewalk improvements within the Project Site;

d. Construction of public docks within the public right of way along the east side of 8th Street and along the north side of "R" Street, in character with the Haymarket Landmark District;

e. Construction of the A & H Plaza as described in Paragraph 11a. above and

as generally shown on Exhibit "B";

f. Reconstruction of 8th Street, from "R" Street to "S" Street, reconstruction of "S" Street, from 8th Street to 9th Street and the reconstruction of the intersection of 8th and "S" Street;

g. Public Facade Upgrade as described in Paragraph 11b. above; and

h. Public Art as described in Paragraph 11c. above.

In the event there is not enough available TIF Proceeds to complete the Second Priority items as shown above, the City Urban Development Director and the Redeveloper shall use their best efforts to agree to modify or reduce the scope, scale, size or phasing of the Second Priority item(s), but not eliminate any Second Priority item, to enable the available TIF Proceeds to fund the modified or reduced Second Priority items. Subject to the preceding sentence, the City Urban Development Director on behalf of the City is hereby authorized to modify or reduce the scope, scale, size or phasing of the Second Priority items, but not eliminate any Second Priority item, to enable the available TIF Proceeds to fund the modified or reduced Second Priority items. Redeveloper agrees that upon receipt of said grant(s) from the City, Redeveloper shall deposit said funds in a separate account(s) that does not include any of the Redeveloper's funds for Private Improvements and pay for said Public Improvements from said separate account(s). The grants are restricted and earmarked for the funding of Public Improvements as described herein and the Redeveloper does not have discretionary judgment over the applications of said grant funds.

15. Monthly Parking; Redeveloper's Rights to First Refusal. Subject to availability of monthly parking permits described herein, the Redeveloper shall have the rights of first refusal to obtain parking permits for up to one hundred (100) parking stalls in the Haymarket Parking Garage on a monthly basis at the same monthly rates charged to other monthly parkers in said

Haymarket Parking Garage. As of the date of this Agreement, the City represents that there are available one hundred (100) parking stalls available for parking under permit in the Haymarket Parking Garage on a monthly basis and the City will use its best efforts to have one hundred (100) parking stalls available for parking under permit in the Haymarket Parking Garage upon the substantial completion of the Private Improvements. Notwithstanding the foregoing sentence, the Redeveloper understands and acknowledges that the total number of monthly parking stalls permitted by the City in the Haymarket Parking Garage exceeds the physical number of stalls designated for monthly parking as the City uses a shared parking methodology in calculating the overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result parking is generally available on a regular throughout the day, but on rare occasions, may not available in the Haymarket Parking Garage.

Redeveloper's First Right of Refusal under this paragraph shall terminate on October 1, 2038. The rights of first refusal may be exercised by Redeveloper at any time during said term period by providing the City with at least thirty days advance written notice of Redeveloper's decision to exercise such rights of first refusal. Subject to availability of monthly parking permits, the Redeveloper may request(s) to exercise all or some of the rights of first refusal initially or at any time during said term period with at least thirty days advance written notice to the City; provided that the City reserves the right not to grant said monthly permit(s) if such request to exercise and grant would cause the Redeveloper to have at any one time monthly parking permits that exceed 100 monthly parking stalls.

If monthly parking permits are not available initially or at any time during said term period to meet any or all of Redeveloper's request(s) to exercise its right of first refusal, the

City shall place Redeveloper's unfilled request for monthly parking permits at the head of any waiting list compiled by the City or its agent operating the Haymarket Parking Garage. Notwithstanding the above, this right to be placed at the head of any waiting list does not require the City to place Redeveloper's request ahead of any other person who has been granted similar rights of first refusal prior to the date of this Agreement. Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing monthly parking permit to accommodate Redeveloper's request to exercise its rights of first refusal, but the City will use its best efforts to encourage any existing monthly permit holder who is not subject to a similar rights of first refusal to transfer its monthly parking permit to another City parking garage that may have available monthly parking stalls.

Said rights of first refusal shall run with the land and benefit the real estate legally described as the Redeveloper Property.

Except as herein stated, the rights granted hereunder shall be similar to the monthly parking permits granted to monthly parkers in other City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the same may from time to time be established or revised by the City. Monthly parking stalls will not be assigned within the Haymarket Parking Garage by the City, but the City may, at its option, segregate the location of these stalls devoted primarily to monthly parking from those devoted primarily to hourly parking and the City may designate the most convenient space or area for hourly parking.

16. Valuation of Property Within the Redeveloper Property. The City intends to use the Ad Valorem Tax Provision to generate tax increment financing funds which shall be used to finance the issuance of the TIF Bond and to make the grant or grants to Redeveloper in accordance with this Redevelopment Agreement. 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 the Community Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service for on the TIF Indebtedness from the sale of the TIF Bond will be derived from the increased valuation from redeveloping the Redeveloper Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property and improvements thereon which does not exceed the following values commencing tax year 2009 and continuing for a period of not to exceed fifteen (15) years after the effective date hereof or so long as any portion of the TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter:

Total	$17,772,039.08

17. Debt Service for TIF Indebtedness. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of and/or interest on the TIF Indebtedness with interest at a rate not to exceed seven percent (7.0%) per annum. Any debt service on the TIF Indebtedness (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City. Only costs incurred after the effective date of this Agreement shall be eligible for payment. The City shall not be liable nor be required to reimburse Redeveloper for any costs incurred by Redeveloper in the event this Agreement is not approved for any reason, including for reasons alleged to be the fault of the City. Any excess TIF Revenues resulting from the Tax Increment Provision on the Redeveloper Property not needed or required to pay the TIF Bond Purchaser for the TIF Indebtedness shall be expended by the City or returned to the applicable taxing authorities as provided in the Community Development Law. Any shortfall in anticipated TIF

funds from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper without recourse of any kind against the City.

18. Tax Increment Deficiency on Redeveloper Purchased TIF Bond.

A. Redeveloper Purchased TIF Bond. If the Redeveloper purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the Redeveloper as purchaser of the TIF Bond agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred if and when TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness shall be forgiven.

B. Lender Purchased TIF Bond. If Redeveloper's Lender purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the

Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes if and when TIF Tax Revenues do become available from the Ad Valorem Provisions to meet current debt service and reimburse Redeveloper for such deficiency payments.

19. Reimbursement of Grants. Subject to Paragraph 27 below, Redeveloper agrees to repay the City the grant or grants of funds provided for in Paragraph 12 above in the event Redeveloper fails to substantially complete the Redeveloper's Private Improvements as provided in Paragraph 10 and, upon such repayment of the of the grant funds, this Agreement shall be null and void in regards to the Redeveloper and the Redeveloper Property.

Subject to Paragraph 27 below, in the event the Redeveloper fails to maintain the Redeveloper's Private Improvements as provided in Paragraph 7 above, then the Redeveloper shall reimburse the City the proportionate share (1/15) of the grant funds provided for in Paragraph 12 above for the year the Redeveloper fails to maintain the Private Improvements.

20. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date hereof or so long as the TIF Bond remains outstanding whichever period of time is shorter (tax increment period), convey the Redeveloper Property or any portion thereof to any entity which will result in such property being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions.

21. Financing Creating Encumbrances Restricted.

a. Prior to completion of Private Improvements, neither Redeveloper, nor any successors in interest with respect to the Redeveloper Property shall engage in any

financing or any other transaction creating any Mortgage upon the Redeveloper 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 Redeveloper Property, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the Private Improvements. Redeveloper 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 Redeveloper Property, and shall promptly notify the City of any Mortgage that has been created on or attached to Redeveloper Property whether by voluntary act of Redeveloper or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of the Redeveloper Property and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City, Redeveloper's lender to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of Private Improvements; any loan proceeds secured by any interest in the Redeveloper Property shall be used solely for the payment of costs and expenses related to the development of the Private Improvements. Redeveloper shall provide a copy of all draw requests and bank approvals related to the Private Improvements 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 Private Improvements has occurred and has not been fully restored, any party who obtains title to any portion of the Redeveloper

Property from or through Redeveloper or the holder of any Mortgage or any other purchaser 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 or, in lieu thereof, the holder of any Mortgage or any other purchaser at foreclose sale shall pay to the City the amount necessary to fully retire the TIF Indebtedness within three (3) months from the date of acquisition of title.

c. Notice of Default. Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper 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 the Private Improvements by Redeveloper 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 the Project Site, 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 the Redeveloper Property shall apply to any other type of encumbrance on any of the

Redeveloper 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.

22. Damage or Destruction of Private Improvements. During the construction period, Redeveloper 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, Redeveloper agrees to restore the Private Improvements 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 Redeveloper fails to restore the same for any reason, Redeveloper 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, Redeveloper shall include by restrictive covenant an enforceable obligation on the Redeveloper or other 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 Redeveloper or other owner or tenant's obligation to restore the Private Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

23. Condemnation. If during the Tax Increment Period, all or any portion of the Redeveloper Property 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 Condemner 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.

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

25. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of the Private Improvements provided for above there shall be no sale or transfer of the Redeveloper Property or assignment of Redeveloper's rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld, conditioned, or delayed), other than mortgages and involuntary transfers by reason of death, insolvency, or incompetence. 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 Redeveloper; 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 Redeveloper 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 Redeveloper in writing.

26. Representations and Warranties of Parties.

a. Redeveloper represents and warrants to City as follows:

i. Organization; Power; Good Standing. Redeveloper is a limited liability company duly organized and validly existing in good standing under the laws of Utah. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate their properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

ii. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable 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.

iii. Effect of Agreement. The execution, delivery and performance of this Agreement by Redeveloper have been duly authorized by all necessary action by Redeveloper and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regu1ation, or any other restriction of any kind to which Redeveloper is a party.

b. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable 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.

ii. Effect of Agreement. The execution, delivery and performance of this Agreement by City have been duly authorized by all necessary action by the City and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party.

27. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Redeveloper, 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.

28. 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.

29. 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 but not limited to 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, shortages of labor or materials, 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.

30. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Redeveloper Property and Private Improvements 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.

31. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of anyone 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 if in writing and only to the extent specified in writing.

32. Conflicts of Interest: City Representatives Not Individually Liable. No official or employee of the City shall be personally liable to Redeveloper or any successors in interest due to any default or breach by the City under the terms of this Agreement.

33. Notices and Demands. A notice under this Agreement by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to Redeveloper at (i) General Counsel, 2733 East Parleys Way, Suite 300, Salt Lake City, UT 84109 and (i) 440 North 8th Street, Lincoln, NE 68528, with a copy to Seacrest & Kalkowski PC LLO, 1111 Lincoln Mall, Suite 350, Lincoln, NE 68508; and to the City at Mayor's Office, 555 South 10th Street, Lincoln, NE 68508, with a copy to City Attorney's Office, 575 South 10th Street, Lincoln, NE 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.

34. Access to Redeveloper Property. During construction of the Private Improvements, Redeveloper shall permit the representatives of the City to enter all areas of the Redeveloper Property 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.

35. Provisions Run With the Land. This Agreement shall run with the Redeveloper Property and shall inure to and bind the parties and their successors in interest. This Redevelopment Agreement or a Memorandum hereof shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Redeveloper's Property, at the City's expense.

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

37. 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.

38. Expiration of Agreement. Unless otherwise stated in this Agreement, this Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the TIF Bond, whichever first occurs; provided the City and the Redeveloper each agree to execute any release necessary to be filed of record to evidence such expiration or termination, unless otherwise stated herein.

39. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to the Redeveloper for Public Improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61).

40. Counterparts. This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

41. Equal Employment Opportunity. Pursuant to requirements of Section 11.08.160 of the Lincoln Municipal Code and *Neb. Rev. Stat.* § 48-1122 (Reissue 2004), Redeveloper, and its successors and transferees, agree that, during the performance of this Agreement, it will not

discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of race, religion, sex, color, national origin, ancestry, disability, age or marital status. Redeveloper further agrees to require that its contractor and subcontractors shall agree to conform to said requirements.

42. Audit and Review. Redeveloper shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. The City shall cooperate and make available to the Redeveloper or its agent copies of all financial and performance related records and materials germane to the Project Account and the TIF Proceeds.

43. Certain Public Improvements Design and Construction. Notwithstanding any contrary provisions herein, certain Public Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Redevelopment Project Improvements with the existing or recreated historic elements of the Haymarket Landmark District. The City and Redeveloper shall seek the input and recommendation of the Historic Preservation Commission on the visual design aspects of said Public Improvements. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's estimates for said Public Improvements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and appropriate, the Redeveloper shall utilize unit price or itemized contracts specifically showing

the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the City in advance of incurring the same. The Redeveloper agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same.

44. Evidence of Financial Ability of Redeveloper. The Redeveloper shall provide to the City on a confidential and privilege basis evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of the Redeveloper in connection with the Project Site. Such information shall state the amount and source of liquid assets on hand or immediately available to the Redeveloper for use in the Project; and shall state the amount and source of debt financing which is available, or irrevocably committed, to the Redeveloper for use in the Project Site. Such information shall be provided in a form satisfactory to the Finance Director of the City, and evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

Executed by **City** this _____ day of _____, 2008.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this day of _____, 2008, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

_____
Notary Public

Executed by **Redeveloper** this _____ day of_____, 2008.

BLOCK 21 L.L.C., a Utah limited liability company

By: Woodbury Corporation , a Utah corporation, as Manager

By _____

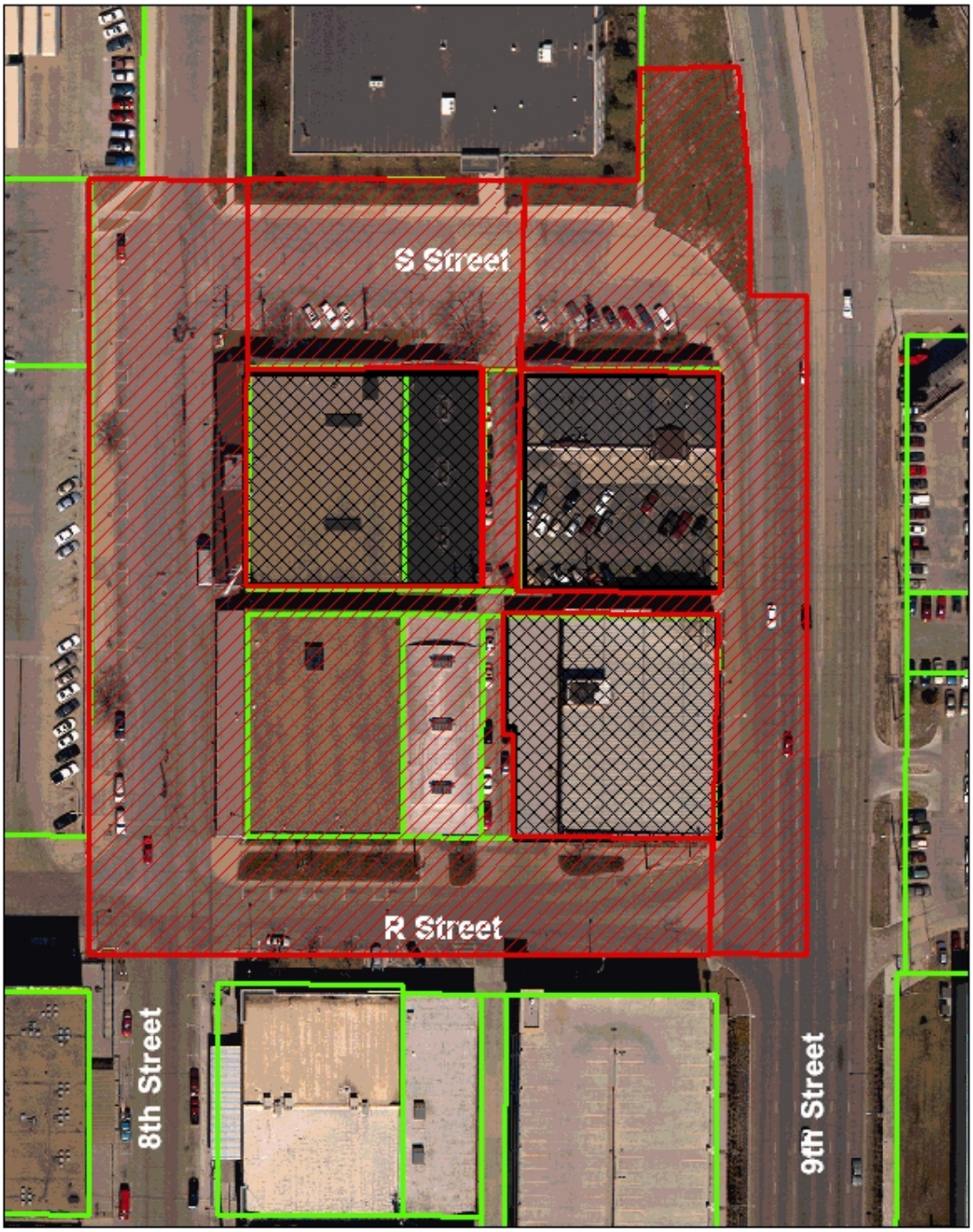
Title: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2008, _____, as _____ of Woodbury Corporation, a Utah corporation, as Manager of the **BLOCK 21, L.L.C.**, a Nebraska limited liability company, on behalf of the limited liability company.

_____
Notary Public

Exhibit A



AREA NOT INCLUDED IN PROJECT

PARCEL AREAS

TIF PROJECT AREA

PROJECT AREA

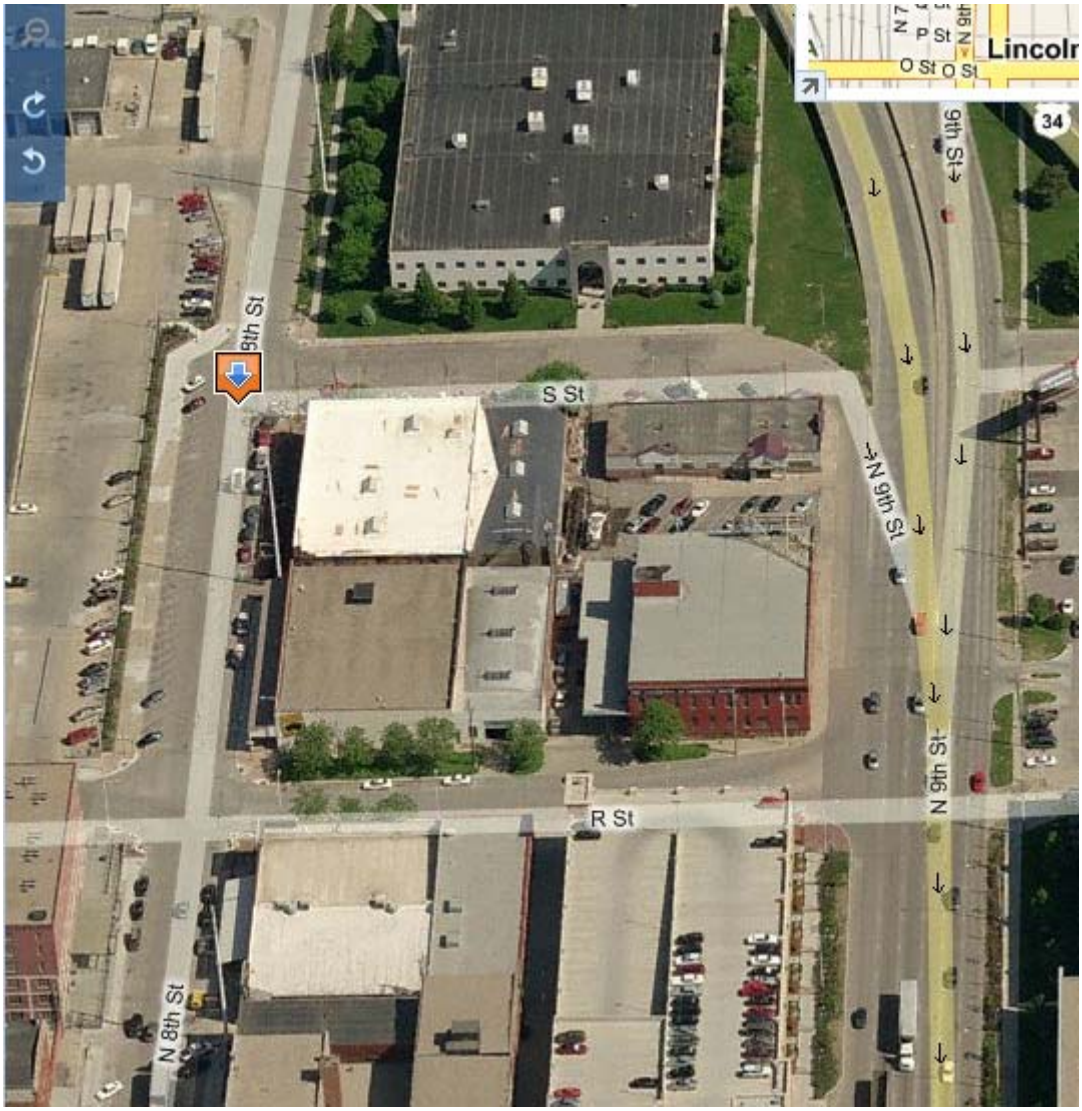

34
9th St
N 9th St
N 9th St
S St
8th St
R St
N 8th St
Lincoln
O St
P St

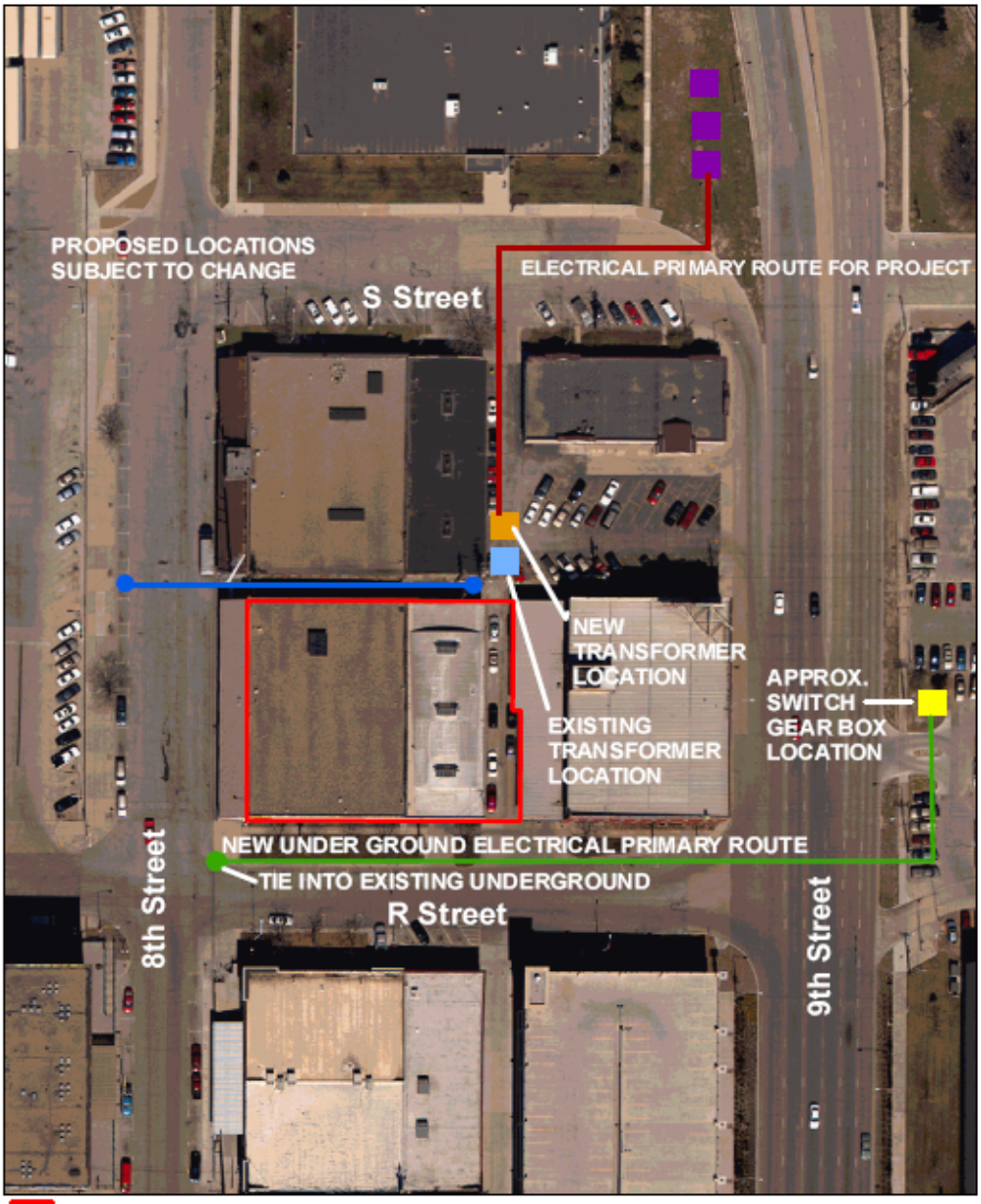
Exhibit B

PUBLIC PLAZA AREA

F

PUBLIC PLAZA

Exhibit B.1

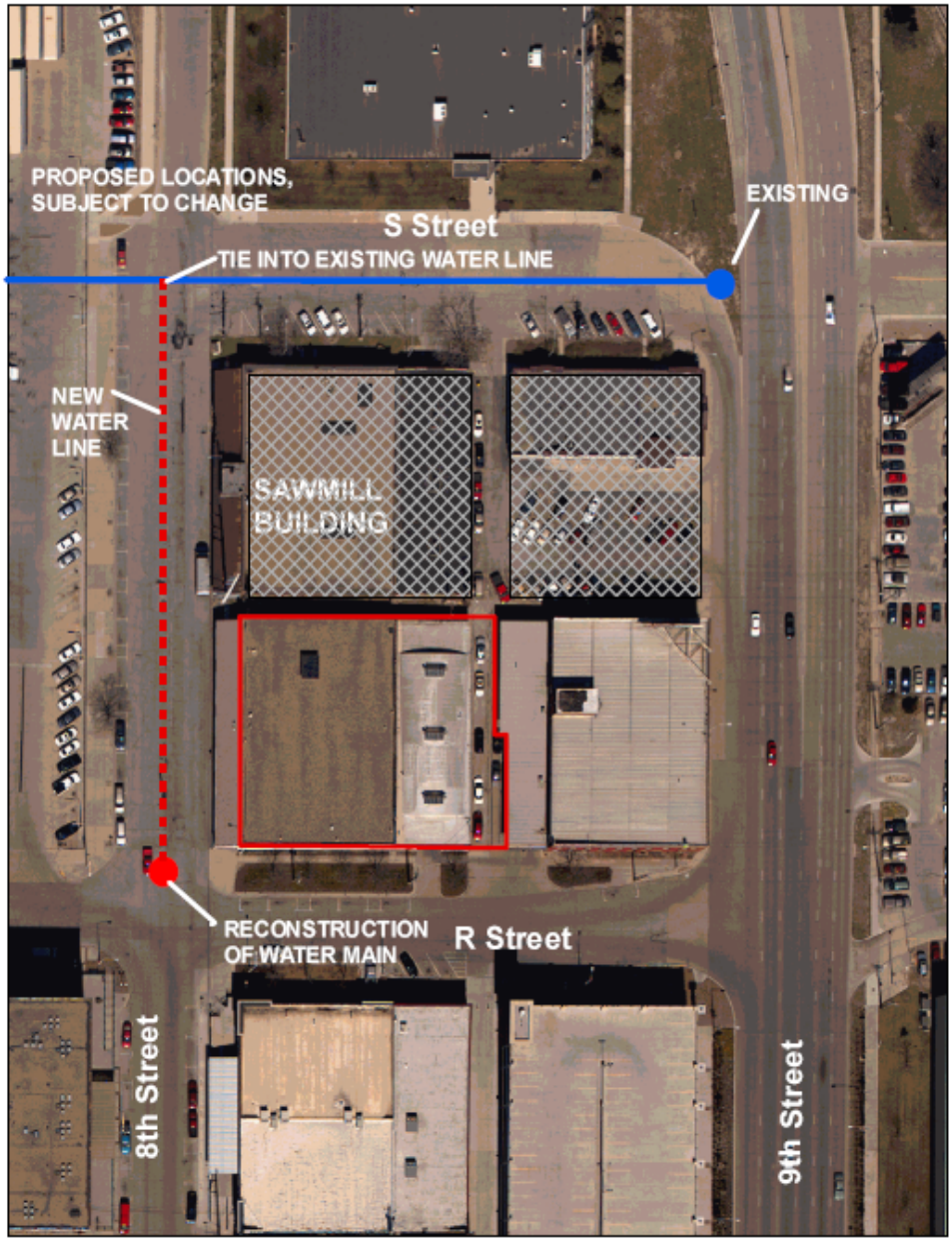


PROJECT AREA
PHASE 1 UNDER GROUND PRIMARY
PHASE 2 UNDER GROUND PRIMARY
PHASE 1 SWITCH GEAR BOX
PHASE 2 SWITCH GEAR BOX
CABLE TV TO BLOCK
PHASE 1 TRANSFORMER
PHASE 2 TRANSFORMER

LES ELECTRICAL

F

Exhibit B.2



AREA NOT INCLUDED IN PROJECT

PROJECT AREA

EXISTING WATER LINE

PHASE 2 NEW WATER MAIN

F

WATER MAIN

Exhibit "C"

CITY OF LINCOLN SUPPORT FUNDING
DEVELOPER PURCHASED TIF BONDS
Tax Increment Finance Analysis

Project Name **North Haymarket Arts and Humanities Phase II**
Project Location **8th and R Street**

Tax Increment Financing Analysis					
ITEM	**DESCRIPTION**	**AMOUNT**			
Base Value	Current Assessed Value	$	750,000.00		
Block 21 Construction Total		**$**	**22,215,048.86**		
Discount	Discounted (80%)	$	17,772,039.08		
Increment Value	New Assessed Value - Base Assessed Value	$	17,022,039.08		
Annual TIF Generated	Increment x 0.02009031 [2007 Tax Rate]	$	341,978.04		
Coverage Rate [Required by Lender for Mill Levy Risk]	Annual TIF Increment Generated / 1.1DSC for Mill Levy risk	$	310,889.13		
Bond Note Issues	Coverage Rate x 13 years @ 6.5% (first 2 yrs of loan is interest only)		$2,723,685.31		
Reserve Fund / Costs to Issue Bonds	50 basis point fee on Loan Amt - Issuance Cost	$	13,618.43		
	Funds Available for Construction	$	2,710,066.88		
			TOTAL FUNDS AVAILABLE	**$**	**2,710,066.88**

Sources of Funds					
Private Funds		**$**	**22,215,048.86**		
TIF Funds		**$**	**2,710,066.88**		
			GRAND TOTAL	**$**	**24,925,115.74**

Uses of Funds					
Private sector	Design and Construction		**$22,215,049**		
Public sector	Demo / Salvage / Site Prep	$	230,000.00		
	Utilities and Infrastructure Improvements	$	275,000.00		
	Street Scape [street work, sidewalks, lighting, landscaping, signage]	$	475,000.00		
	South and West Docks	$	400,000.00		
	A & H Plaza	$	350,000.00		
	8th Street (R to S Street) & S Street (8th to 9th Street) including the intersection	$	260,000.00		
	Public Façade Improvements	$	520,000.00		
	Public Art	$	200,000.00		
	TOTAL	**$**	**2,710,000.00**		
			TOTAL USES AVAILABLE	**$**	**24,925,048.86**

Exhibit "D"

Design Documents

Issue Date: September 3, 2008
BLOCK 21 HOTEL
SOUTH ELEVATION
WRK LLC.
Real Estate & Investments
WOODBURY
CORPORATION
2750 East Parkway Way, Suite 300 / Salt Lake City, UT 84109-1663

DRAFT

Issue Date: September 3, 2008
BLOCK 21 HOTEL
WEST ELEVATION
WRK LLC.
Real Estate & Investments
WOODBURY
CORPORATION
2733 East Parleys Way, Suite 300 / Salt Lake City, UT 84109-1662

Issue Date: September 3, 2008
BLOCK 21 HOTEL
EAST ELEVATION
WRK LLC.
Real Estate & Investments
WOODBURY
CORPORATION

Exhibit “E”

BLOCK 21, L.L.C

CERTIFICATE OF COMPLETION OF PRIVATE IMPROVEMENTS

KNOW ALL PEOPLE BY THESE PRESENTS: That the City of Lincoln, Nebraska, a Nebraska municipal corporation, hereinafter called "City", hereby makes the conclusive determination and certification that, with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit ("Redeveloper Property"):

> Lot 1, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska,

all the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT (North Haymarket Arts and Humanities Phase II**)** of the North Haymarket Arts and Humanities Center Block ("Agreement") by and between the **CITY OF LINCOLN, NEBRASKA,** a municipal corporation in the State of Nebraska (“City”) and **BLOCK 21, L.L.C.**, a Utah limited liability company (“Redeveloper”), said Agreement dated as of _____, 2008 and recorded as Instrument No._____, in the office of the Register of Deeds for Lancaster County, Nebraska.

The City further makes the conclusive determination that the Private Improvements (as defined in the Agreement) to the above-described Redeveloper Property are presently in conformance with the Agreement.

IN WITNESS WHEREOF, the City and Redeveloper have executed this instrument this _____ day of _____, 200__.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this day of _____, 200__, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

(Seal)

_____
Notary Public

BLOCK 21, L.L.C., a Utah limited liability company

By: Woodbury Corporation , a Utah corporation, as Manager

By _____

Title: _____

STATE OF_____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day o f_____, 200_, _____, as _____ of Woodbury Corporation as Manager of the **BLOCK 21, L.L.C.**, a Utah limited liability company, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Exhibit "F"

HAYMARKET IMPROVEMENTS
EASEMENT AND MAINTENANCE AGREEMENT

This Haymarket Improvements Easement and Maintenance Agreement ("Agreement") is made and given on _____ 200__ by and between the **City OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("City), and **BLOCK 21, L.L.C.**, a Utah limited liability company and its successors and assigns ("Redeveloper").

Whereas, the Redeveloper and the City have executed and delivered the City of Lincoln Redevelopment Agreement (North Haymarket Arts and Humanities Phase II) ("Redevelopment Agreement") which is filed as Instrument Number _____ in the Lancaster County Register of Deeds Office. The Redevelopment Agreement provides for the redevelopment of certain private and public improvements in the south half (S1/2) of Block 21, Original Plat, Lincoln, Lancaster County, Nebraska and the abutting public right-of-ways;

Whereas, Redeveloper is the owner in fee simple of the real property legally described as Lot 1, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska, hereinafter referred to as the "Redeveloper Property". The Redeveloper has constructed a hotel and related improvements ("Private Improvements") on a portion of the Redeveloper Property legally described on Exhibit "1", which is attached hereto and incorporated herein by this reference. The Private Improvements' exterior façade ("Facade Upgrade") has been improved with brick and other related materials. The City finds the Facade Upgrade in harmony with the historic Haymarket Landmark District;

Whereas, the Redeveloper has constructed a plaza ("A & H Plaza") on a portion of the Redeveloper Property legally described on Exhibit "1". The A & H Plaza is an open space area that has been improved for use by the general public, the user of the Private Improvements, and the University of Nebraska. The City finds the A & H Plaza in harmony with the historic Haymarket Landmark District;

Whereas, the Facade Upgrade and A & H Plaza are sometimes collectively referred to herein as "Haymarket Improvements";

Whereas, Whereas**,** the Redeveloper gives this Haymarket Improvements Easement and Maintenance Agreement to the City to assist in the maintenance and preservation of the Haymarket Improvements and enhance and strengthen the urban fabric and the relationship between the historic Haymarket Landmark District and Block 21; and

Whereas**,** it is the specific intention of the parties hereto to specifically exclude the interior and other parts of the Private Improvements from this Agreement.

The City and Redeveloper agree as follows:

1. Completion of the Haymarket Improvements. The Redeveloper has completed the implementation of the Haymarket Improvements pursuant to the terms of the Redevelopment Agreement.

2. Façade Easement. Redeveloper hereby conveys to the City a facade easement over the exterior façade of the Private Improvements on the real property legally described as the Facade Upgrade in Exhibit "1". It is agreed by and between Redeveloper and City that the Facade Upgrade as shown on Exhibit "2", the design drawings of the facade, is the facade that shall be maintained on the Private Improvements located upon the Redeveloper Property during the term of this Agreement**.**

3**.** A & H Plaza Easement**.** Redeveloper hereby conveys to the City a preservation easement over the exterior façade of the A & H Plaza on the real property legally described as the A & H Plaza in Exhibit "1". It is agreed by and between Redeveloper and City that the A & H Plaza as shown on Exhibit "3", the design drawings of the facade, are the improvements that shall be maintained on the Redeveloper Property during the term of this Agreement**.**

4. Additional Agreements. The Redeveloper agrees to do (or refrain from doing, as the case may be) each of the following:

(a) The Redeveloper shall not demolish, remove or raze the Haymarket Improvements, without the prior written consent of the City Director of the Urban

Development Department;

(b) The Redeveloper shall not undertake or allow to be undertaken any changes to the Haymarket Improvements including any of the following without the prior written consent of the City Director of the Urban Development Department: any material change in the Haymarket Improvements including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Haymarket Improvements; any significant reconstruction, repair, repainting or refinishing of the designated feature that alters its state from the existing condition, wear and tear excepted.

(c) This subsection shall not include ordinary or necessary maintenance as covered by Paragraph 6 below.

5. Director's Response. Within ten (10) days after Redeveloper requests permission to make a change, written consent or refusal to allow the change, along with reasons, shall be delivered by the City Director of the Urban Development Department to the Redeveloper.

6. Maintenance. Redeveloper agrees that it shall perform ordinary maintenance on the Haymarket Improvements to maintain their appearances and structural soundness and prevent any deterioration of the Haymarket Improvements in a commercially reasonable manner. The Redeveloper shall not have to notify the City that maintenance is going to be performed.

7. Specification of Work. In the event the Redeveloper is required to seek the consent of the City, the Redeveloper shall give the City copies of the plans, designs, elevations, specifications, and documents relating to the change or work, including specification of all materials, colors and construction techniques to be used in any such work and photographs of the subject area as it appears at the time of the request.

8. Insurance. Redeveloper, at its expense, shall (i) keep the Haymarket

Improvements insured under a standard form of insurance policy against loss or damage resulting from fire and other perils normally insured under a uniform standard extended coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State of Nebraska and (ii) carry and maintain comprehensive public liability insurance in the amount of One Million Dollar ($1,000,000). The public liability policy shall name the City as an additional insured as to the Haymarket Improvements only and shall provide for not less, than thirty (30) days prior written notice to the City by the insurer of any proposed cancellation of any such insurance. The Redeveloper shall deliver to the City a certificate of insurance prior to the recording of this Agreement and, on renewal, a new certificate shall be sent to the City**.**

9. Casualty Damage**.** In the event that the Haymarket Improvements or any part thereof shall be damaged by fire or other casualty, then the proceeds of the insurance required to be carried pursuant this Agreement and Redeveloper's funds shall be applied to reconstructing the Haymarket Improvements. If the Haymarket Improvements are damaged to such an extent that the Redeveloper determines that reconstruction is not feasible and provides the City with a statement from an independent engineer to the same effect, then this Agreement shall be void and of no further force and effect.

10. Inspection**.** The City shall be permitted to inspect the Haymarket Improvements at reasonable times and upon proper advance notice to the Redeveloper for the purpose of determining conformance with this Agreement.

11. Remedies. In the event of any default in performance of this Agreement by the City or Redeveloper, 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. 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.

12. Provisions Run With the Land. This Agreement shall run with the Redeveloper Property and shall inure to and bind the parties and their successors in interest. This Agreement or a Memorandum hereof shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Redeveloper's Property, at the City's expense.

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

14. 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.

15. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

16. Counterparts. This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

17. Compliance With Applicable Ordinances**.** Except as provided in this section, nothing contained in this Agreement shall be interpreted to authorize or permit Redeveloper to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between any ordinance and the terms of this Agreement, the ordinance shall prevail and the Redeveloper shall promptly notify the City of the conflict.

18. Notices and Demands. A notice under this Agreement by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to Redeveloper at (i) General Counsel, 2733 East Parleys

Way, Suite 300, Salt Lake City, UT 84109 and (i) 440 North 8th Street, Lincoln, NE 68528, with a copy to Seacrest & Kalkowski PC LLO, 1111 Lincoln Mall, Suite 350, Lincoln, NE 68508; and to the City at Mayor's Office, 555 South 10th Street, Lincoln, NE 68508, with a copy to City Attorney's Office, 575 South 10th Street, Lincoln, NE 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.

19. Transfer of Development Rights**.** Nothing contained in this Agreement shall be interpreted to limit Redeveloper's right or ability to transfer any development or other rights which may exist at any time in the future.

20. Condemnation**.** In the event that any governmental authority institutes a suit by virtue of eminent domain, or other similar proceedings for any public or quasi- public or other use against all or a portion of the Haymarket Improvements, this Agreement shall immediately terminate on that portion of the property only.

21. Public Use and Access**.** Notwithstanding any contrary provision herein, the City and the public shall not have the right of access to the Redeveloper Property; provided that, the City will have the right to use the A & H Plaza, without charge for up to fifteen (15) days per year for events formally sponsored by the City. The events formally sponsored by the City are subject to the schedules for the Redeveloper and its tenants, guests and invitees for the A & H Plaza and will be scheduled by the Redeveloper on a first-come first-served basis and confirmed in writing to the City in advance. After each event formally sponsored by the City, the City and its sponsoring entity at their expense, shall be responsible to immediately clean up and remove all trash and event items and restore the A & H Plaza to its pre-event condition. The Redeveloper may adopt reasonable rules and regulations regarding the use of the A & H Plaza after said rules and regulations are reviewed and approved by the City Attorney for the City. The Redeveloper Property, including the A & H Plaza, is and shall at all times remain the private property of the Redeveloper and shall not be deemed to create or constitute a public forum, limited or otherwise. The Redeveloper shall have no obligation to allow the general public to view the interior of the Private Improvements.

22. Right to Use of the Premises**.** The Redeveloper reserves for itself, its successors, assigns, mortgagees and lessees the right to continue to use and occupy the Redeveloper Property for all lawful purposes not inconsistent with this Agreement and the City agrees to sign any and all documents (including not by way of limitation, any and all future leases or mortgages) Redeveloper shall at anytime and from time to time request to further such end or purpose and not inconsistent with this Agreement.

23. Expiration of Agreement. Unless otherwise stated in this Agreement, this Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the TIF Bond, whichever first occurs as defined in the Redevelopment Agreement.

24. Amendment**.** For purposes of furthering the preservation of the Haymarket Improvements and of furthering the other purposes of this Agreement and to meet the changing conditions, Redeveloper and the City are free to amend this instrument from time to time by mutual consent in writing and such amendment shall become effective upon its signing.

IN WITNESS WHEREOF, on the date first shown above, Redeveloper and the City have signed this Agreement.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

_____
City Clerk

B_____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this day of _____, 200__, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

(Seal) _____
Notary Public

BLOCK 21, L.L.C., a Utah limited liability company

By: Woodbury Corporation , a Utah corporation, as Manager

By _____

Title: _____

STATE OF_____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 200_, _____, as _____ of Woodbury Corporation, a Utah corporation, as Manager of the **BLOCK 21, L.L.C.**, a Utah limited liability company, on behalf of the limited liability company.

(Seal) _____
Notary Public

Exhibit "1"

(Note: When Haymarket Improvements are completed, need to insert the following legal descriptions :)

A. Facade Upgrade:

The following portion of Lot One, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska:

B. A & H Plaza:

The following portion of Lot One, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska:

C. Redeveloper Property: Lot One, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska.

Exhibit "2"

Facade Upgrade Drawings

(Note: When the Facade Upgrade is designed and completed, need to insert the: design drawings of the Facade Upgrade)

Exhibit "3"

A & H Plaza Drawings

(Note: When the A & H Plaza is designed and completed, need to insert the: design drawings of the A & H Plaza)