11R-30

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 11R-30 by replacing the Redevelopment Agreement which is attached to the resolution with the Redevelopment Agreement (Telesis/Dairy House Project) attached hereto.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Urban Development Department and Redeveloper

Reason for Request: To clarify and add additional provisions to the Redevelopment Agreement as originally submitted.

CITY OF LINCOLN
REDEVELOPMENT AGREEMENT
(Telesis/Dairy House Project)

THIS REDEVELOPMENT AGREEMENT (Telesis/Dairy House Project) is dated this 27 day of January, 2011, and entered into between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("City"), and **THE DAIRY HOUSE, L.LC.,** a Nebraska limited liability company ("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 ("Redevelopment Plan") a copy of which, together with any and all amendments thereto, 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 Redevelopment Plan calls for the City to support redevelopment efforts, including a complex of industrial buildings and a residential/commercial building ("Redevelopment Project") on property in the south Haymarket area of Downtown Lincoln consisting of the entirety of Block 84 and the surrounding right-of-way, which includes 7th Street west to the property line, "M" Street north to the property line, 8th Street east to the property line and "L" Street south to the property line and legally described on the attached and incorporated Exhibit "A" (the "Redevelopment Project Site").

C. The Redevelopment Project is divided into four phases, which are graphically depicted on Exhibit "A-1" attached and incorporated by this reference, as follows:

(1) Phase One will generally consist of redeveloping Building Units One a (1a) and One b (1b) for industrial/warehouse uses;

(2) Phase Two shall generally consist of redeveloping Building Unit Two (2) for use as a brew house or brewery operation;

(3) Phase Three shall generally consist of redeveloping Building Unit Three (3) as a mixed-use residential/commercial complex; and

(4) Phase Four will generally consist of redeveloping Building Unit Four (4) as mixed-use commercial/warehouse space.

This Agreement covers the Phase One and Phase Two Redevelopment Projects. Phase 3 and Phase 4 projects shall be the subject of a future redevelopment agreement or agreements between Redeveloper, its successors or assigns, and the City.

D. 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 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 (as defined in Section 18-2103 of the Act) 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 principal and 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." This Ad Valorem Tax Provision shall apply for Phase One and Phase Two independently with each phase having its own Effective Date and corresponding 15 year term of the Redevelopment Agreement.

E. *Neb. Rev. Stat.* §§ 18-2107 and 18-2150 (Reissue 2007) authorize the City to construct public improvements and provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Redevelopment Project Site in accordance with the Redevelopment Plan. In order to provide such assistance, the City intends to issue tax increment financing indebtedness ("TIF Indebtedness") to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision ("TIF Tax Revenues").

F. The City and Redeveloper desire to enter into this Agreement to implement Phase One and Phase Two of the Redevelopment Project for the above purposes and in accordance with the Redevelopment Plan.

G. Phases Three and Four of the Redevelopment Project as generally described herein shall be implemented in subsequent Redevelopment Agreements between the City and Redeveloper, or its successor. At a subsequent date mutually agreed upon by the parties, the City and Redeveloper shall enter into one or more Redevelopment Agreements substantially similar to this Agreement to implement Phase Three and Phase Four of the Redevelopment Project on the Redevelopment Project Site.

H. The City and Redeveloper mutually agree that the redevelopment of the Redevelopment 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. Evidence of Financial Ability of Redeveloper. Redeveloper shall provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of Redeveloper in connection with the Phase One and Phase Two Redevelopment Projects. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use in the Project and shall state the amount and source of debt financing which is available, or irrevocably committed, to Redeveloper for use in the Project. This financial information shall verify the sources of funding reflected on the "Sources and Uses" of funding

attached as Exhibit "C" and incorporated by this reference and shall be provided to Finance Director of the City before the bond ordinance is approved by the City.

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.

2. Construction of Phase One Redeveloper Improvements.

Phase One Private Improvements and the Phase One Redeveloper Public Improvements defined below are collectively referred to as the Phase One Redeveloper Improvements.

A. Phase One Private Improvements. Redeveloper through a minimum investment of Three Million Five Hundred Thousand and No/100 Dollars ($3,500,000.00) shall, at its own cost and expense, construct the Phase One Private Improvements described on Exhibit "B" attached and incorporated by this reference (the "Phase One Private Improvements"). Redeveloper will use commercially reasonable efforts to substantially complete construction of the Phase One Private Improvements prior to December 31, 2011.

B. Phase One Redeveloper 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 11 below, Redeveloper shall use the TIF Proceeds to construct the Phase One Redeveloper Public Improvements described in paragraph 13 as the priorities for the use of the TIF Proceeds ("Phase One Redeveloper

Public Improvements"). The City shall not have any obligation to fund the Phase One Redeveloper Public Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Redeveloper shall use its own funds to fund any Phase One Redeveloper Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder provided that Redeveloper may, in its sole discretion, elect to eliminate the "Fourth Priority" for the geothermal system if sufficient TIF proceeds are not available. Upon completion of the Phase One Redeveloper Public Improvements, Redeveloper shall have the duty and responsibility to maintain and repair the Phase One Redeveloper Public Improvements at its own cost and expense and no responsibility thereof shall accrue to the City. The Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any changes to the façade or the Phase One Private Improvements except in accordance with the requirements under the Façade Easement attached hereto as Exhibit "D".

C. "M" Street Sanitary Sewer. In addition to the Phase One Redeveloper Public Improvements, Redeveloper shall coordinate the work to be done on the "M" Street Sanitary Sewer with the City which shall include the following work:

(i) Redeveloper. The Redeveloper shall: A) obtain tapping and abandonment permits from the City which will not delay their issuance; B) saw cut, remove and dispose of pavement for tank/vault removal; C) pump, remove and dispose of tank/vault; D) cap and abandon in place the below-grade private sanitary sewer line, if found and abandon the service lines; and E) install sanitary sewer service lines for

Redeveloper's use after City has installed its main sanitary sewer pipe ("Redeveloper "M" Street Work");

(ii) City. The City shall: A) install the sanitary sewer pipe for the reconnection of the sewer main; B) backfill the trenches after Redeveloper has installed its sanitary sewer service lines; and C) install new pavement after tank/vault has been removed.

The City and the Redeveloper shall each give the other written or telephonic notice seven (7) days in advance of the commencement of the work to be done in the "M" Street right-of-way to facilitate the coordination of such work.

3. Construction of Phase Two Redeveloper Improvements.

The Phase Two Private Improvements and the Phase Two Redeveloper Public Improvements defined below are collectively referred to as the "Phase Two Redeveloper Improvements."

A. Phase Two Private Improvements. Redeveloper through a minimum investment of Two Million Four Hundred Sixty Thousand and No/100 Dollars ($2,460,000.00) shall, at its own cost and expense, construct the Phase Two Private Improvements described on Exhibit "B" attached and incorporated by this reference (the "Phase Two Private Improvements"). Redeveloper will use commercially reasonable efforts to substantially complete construction of the Phase Two Private Improvements within the time period described for substantial completion of the Phase Two Private Improvements once Phase Two is triggered as described in Paragraph 15 below.

B. Phase Two Redeveloper 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 11 below, Redeveloper shall use the TIF Proceeds to construct the Phase Two Redeveloper Public Improvements as described in Section 13 (B) below. The City shall not have any obligation to fund the Phase Two Redeveloper Phase Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Redeveloper shall use its own funds to fund any Phase Two Redeveloper Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder. Upon completion of the Phase Two Redeveloper Public Improvements, Redeveloper shall have the duty and responsibility to maintain and repair the Phase Two Redeveloper Public Improvements at its own cost and expense and no responsibility thereof shall accrue to the City. The Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any changes to the façade or the Phase Two Private Improvements except in accordance with the requirements under the Façade Easement attached hereto as Exhibit "D".

4. Payment of Costs. Redeveloper agrees to use commercially reasonable efforts to complete construction of the Phase One and Phase Two Redeveloper Improvements as provided in this Agreement, and to pay in a timely manner Redeveloper's contractor(s), or his or her subcontractors who performed labor or supplied materials used in the prosecution of the Phase One and Phase Two Redeveloper Improvements. Such payment shall be made promptly after completion of each phase of said improvements in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct the Phase One and Phase Two Redeveloper Improvements. If requested by City, the Redeveloper shall, in addition to this promise to

pay, obtain and supply the City with lien waivers in favor of the Redeveloper from all contractors, subcontractors and suppliers performing any work on the Phase One and Phase Two Redeveloper Improvements or supplying any material for construction of the Phase One and Phase Two Redeveloper Improvements or in the alternative, Redeveloper shall supply the City with information from the title insurance company evidencing that no construction liens have been filed. In addition, the City shall be entitled to inspect at reasonable times all records of the Redeveloper or its agents regarding such lien waiver procedures. Promptly after the Redeveloper provides the City the proper documentation that Redeveloper's contractor(s), or his or her subcontractors who performed labor or supplied materials used in the prosecution of the Phase One and Phase Two Redeveloper Improvements have been properly paid, the City shall upon request by the Redeveloper furnish a Certificate of Completion. 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 applicable Phase One and Phase Two Redeveloper 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 applicable Phase One and Phase Two Redeveloper 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 applicable Phase One and Phase Two Redeveloper Improvements so that they may be reasonably used for their intended purposes.

5. Penal Bond. Pursuant to *Neb. Rev. Stat.* § 18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Phase One and Phase Two Redeveloper Public Improvements, a penal bond in an amount of Ten Thousand and No/100 Dollars ($10,000.00) with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall stay in place for the life of the Phase One and Phase Two Projects and shall be conditioned upon Redeveloper or Redeveloper's contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper's contractor, or his or her subcontractors with labor or materials performed or used in the prosecution of the Redeveloper Improvements. Proof of such penal bond shall be supplied to the City prior to the construction of the Redeveloper Improvements. The City shall accept, in lieu of the penal bond, the payment and performance bond supplied by Redeveloper's general contractor in an amount equal to the costs of the Redeveloper Improvements and a lien waiver from the general contractor. Proof of said payment and performance bond and lien waiver shall be provided to the City prior to the start of construction of the Redeveloper Improvements.

6. Indemnification. Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Redeveloper Improvements the City may be required to make for failure of Redeveloper or Redeveloper's contractor to make payments of all amounts lawfully due to all persons

supplying or furnishing Redeveloper's contractor or his or her subcontractors with labor or materials performed or used in construction of the Redeveloper Improvements.

7. Duty to Maintain. Redeveloper shall, following the completion construction of the Phase One Project and Phase Two Project respectively, keep the Redeveloper Private Improvements in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the buildings including the routine and reasonable preventive maintenance of the buildings and their 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, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes. This paragraph shall expire upon the expiration of the Tax Increment Period.

8. Use Restrictions/Easements.

A. Use Restrictions. Redeveloper agrees no portion of the Phase One and Phase Two Redevelopment Project Site shall be used for any of the following uses:

1. A liquor store selling alcoholic beverages for consumption off the premises, but specifically excluding Redeveloper's micro-brewing establishment that sells alcoholic beverage for consumption off the premises;

2. 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;

3. 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;

4. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any outdoor 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;

5. 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;

6. 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;

7. Any off-premises sign as defined in Section 27.69.020 of the Lincoln Municipal Code;

8. Any cell tower.

B. Façade Easement. Redeveloper shall grant to the City a Façade Easement in the form attached hereto as Exhibit "D" related to certain Phase One and Phase Two Redeveloper Public Improvements.

C. Parking Agreement. Redeveloper owns certain real property located south of "L" Street and west of 8th Street (the "Parking Lot") which is separated by a strip of land condemned and held by the City of Lincoln pursuant to the Report of Appraisers dated March 13, 1991 in the matter entitled City of Lincoln v. BF Properties Company, *et al* Docket 119 Page 80 which was recorded April 12, 1991 as Instrument number 91-10509 ("City Land"). The City Land entitled the City to construct and maintain the public elevated street identified as "Rosa Parks Way". As part of this Redevelopment Agreement, and pursuant to the authority granted under *Neb. Rev. Stat.* §18-2138 and §18-2139, the City grants to Redeveloper a license to use and occupy that portion of the City Land located at grade level and below the elevated street for parking by the Redeveloper, its affiliates and its employees. Such use shall be limited to integrating and including such City Land as part of the Redeveloper's nonconforming parking lot ("Combined Parking Lot"). The license fee payable by Redeveloper shall be One Dollar ($1.00) per year for the "Construction Term". The "Construction Term" shall commence with the date of this Agreement and shall conclude with the completion of the Phase Two Improvements and the recordation of the Certificate of Completion of the Phase Two Improvements. The license shall be for a term of fifteen (15) years (the "Term") from the Effective Date. Following the Construction Term, Redeveloper shall pay to the City the sum of Two Thousand Six Hundred Forty and 00/100 dollars ($2,640.00) as the annual license fee during the operational term until the earlier of: a)

the expiration of the 15 year Term; or b) the recordation of the Certificate of Completion for Phase Three which will involve a separate Redevelopment Agreement and a revised license fee as provided therein ("Operational Term"). The Operational Term shall be subject to early termination by the City in the event the City Land is needed for City right-of-way purposes beyond the current use for Rosa Parks Way. The Combined Parking Lot shall not be used for the storage of any hazardous materials or substances, as defined by state or federal law. Redeveloper shall maintain commercial general liability insurance coverage in commercially reasonable amounts and shall name the City as an additional insured. During the Term, the Redeveloper shall have the right to install new gravel and parking stall designation signs to make efficient use of the Combined Parking Lot. Redeveloper may, at its option, make additional improvements to the Combined Parking Lot which must then comply with the City's Parking Lot Design Standards. The City shall retain the right to exercise that degree of control over the Combined Parking Lot the City deems necessary for the maintenance, repair, and reconstruction of Rosa Parks Way including, but not limited to, prohibiting parking in the Combined Park Lot during such maintenance, repair or reconstruction.

D. Right of Way Vacations. Redeveloper, in accordance with the requirements of Chapter 14.20 of the Lincoln Municipal Code, has submitted Petitions to Vacate Public Way to vacate portions of the 7th Street and "L" Street public rights-of-way ("7th Street and L Street Public Right-of-Way") to remove the loading docks from such rights-of-way. The fair market value of such loading dock area shall be valued by the City appropriately taking into account the restrictions and easements reserved on such loading docks for ultimate acquisition by Redeveloper. Redeveloper shall submit to the

City its "Sidewalk/Dock Plan" demonstrating how such loading docks will be utilized for all Phases and how the Redevelopment Project Site can be improved with sidewalk improvements in the remaining rights-of-way in accordance with the phasing plan. City shall vacate the 7th Street and L Street Public Right-of-Way and convey said vacated Public Right-of-Way to Redeveloper subject to the City reserving or the Redeveloper granting a public access easement over the vacated right-of-way, if needed, to accommodate the approved Sidewalk/Dock Plan and any necessary utility easements to accommodate existing utilities. Further, Redeveloper acknowledges and agrees that the City desires to locate sidewalks on the south side of "M" Street within the public right-of-way. The Redeveloper agrees to dedicate or grant a public access easement on vacated M Street abutting Block 84, Lincoln, Lancaster County, Nebraska, located outside the north façade of the existing structures to be used by the City for sidewalk purposes. Such areas, as either dedicated or burdened with a public access easement, shall be valued and credited against the sums Redeveloper must pay to acquire the vacated right-of-way in "L" or 7th Streets.

9. Reimbursement of TIF Proceeds. Redeveloper agrees to repay the City the TIF Proceeds expended on the Redeveloper Public Improvements provided for in Paragraph 10 below in the event Redeveloper fails to substantially complete the Redeveloper Improvements as provided in Paragraph 2 above for the Phase One Project and Phase Two Project respectively.

10. Administration. Redeveloper shall be responsible for all components of the Redeveloper Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements, for each Phase.

Redeveloper will be solely responsible for payment of all construction costs for the Redeveloper Improvements regardless of any expectation for reimbursement hereunder.

11. Redeveloper Improvements/Approval of Plans.

A. Schematic Design Drawings. Redeveloper shall prepare Schematic Drawings for the Phase One Redeveloper Public Improvements and the Phase Two Redeveloper Public Improvements to be constructed by Redeveloper on the Redevelopment Project Site. The Schematic Drawings shall show all Redeveloper Public Improvements for each phase be made on the Redevelopment Project Site as each Phase proceeds. The Schematic Drawings shall be based on the Façade Elevation Drawings attached as Exhibit "F" and incorporated by this reference.

The Schematic Drawings of the Redeveloper Public Improvements shall be submitted to the City for approval and shall be reviewed and approved by the Director of Urban Development and Public Works department for conformance with the Project, the Redevelopment Plan, and this Agreement. Such Schematic Drawings shall also be submitted to the Historic Preservation Commission for its review and approval.

B. Construction Documents (Redeveloper Improvements in the Public Right-of-Way). If Redeveloper shall also be constructing public improvements in the City right-of-way for either Phase, Redeveloper shall prepare or have prepared detailed, final construction plans for any Redeveloper Improvements to be constructed on the Redevelopment Project Site in adjacent rights-of-way (the "Public Improvement Construction Documents"). The Public Improvement Construction Documents for the Redeveloper Improvements shall be submitted to the City's Director of Public Works for approval prior to commencement of construction and rehabilitation on the

Redevelopment Project Site. The Construction Documents shall be approved only if they are prepared from and in conformance with the approved Schematic Drawings and in conformity with the Project and this Agreement. Approval of the Public Improvement Construction Documents or approval of any changes thereto shall not be an indication of the approval of waiver of any requirements with respect to applicable building and construction laws or codes, and shall not subject the City to any liability to any party or person for any purpose whatsoever. The approval hereunder shall not be required for interior improvements within the Redeveloper Private Improvements; however, such interior improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes.

C. Changes in Construction Documents. Redeveloper and the City shall work with the design professional to submit any material changes in the Construction Documents affecting adjacent Redeveloper Public Improvements for approval or disapproval of such amendments to the Director of the Public Works Department. If the Construction documents, as amended by the proposed change, are deemed by the Director to be in conformity with the Project and this Agreement, the Director shall approve the proposed amendment and notify Redeveloper in writing of its approval. Otherwise, the Director shall disapprove the proposed amendment and shall notify Redeveloper of the specific areas wherein such amendment is not in conformance with the Project. Redeveloper or City, as the case may be, may resubmit the amendment after correction to eliminate the items of nonconformance.

D. Approval. The City shall so approve or reject the Schematic Drawings, Construction Documents, and/or amendments thereto within fourteen (14)

days after receipt thereof and, if rejected, Redeveloper shall work with the design professional to submit corrected Schematic Drawings, Construction Documents, and/or amendments thereto, within fourteen (14) days after the date of receiving the written rejection notice of the latest submitted Schematic Drawings, Construction Documents, and/or amendments thereto, and the reasons for such rejection, and such corrected Schematic Drawings, Construction Documents, and/or amendments thereto shall be approved or rejected as hereinbefore provided.

12. Grant of Funds. In order to support redevelopment of the Project Site and as an inducement for the Redeveloper to construct the applicable Phase One and Phase Two Redeveloper Public 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"), 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 ("Grant Funds"), to reimburse Redeveloper for the cost of the applicable Phase One and Phase Two Redeveloper Public Improvements identified in Paragraphs 2B and 3B, respectively. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the expenditures were eligible Redevelopment Project Costs. Any ineligible use of the Grant Funds shall immediately be repaid to the City.

13. Issuance of TIF Indebtedness.

A. Phase One TIF Indebtedness. On or after thirty days following the approval and execution of this Agreement, which date is after the remonstrative period of this Agreement or as soon thereafter as is practicable, the City shall issue Phase One TIF

Indebtedness in the estimated amount of $408,000.00 (as calculated on Exhibit "E") to be purchased by Redeveloper or a lender ("TIF Bond Purchaser") and receive Phase One TIF Proceeds from the TIF Bond Purchaser to be deposited into a fund account for payment of the City's TIF Bond cost of issuance and the Phase One Eligible Project Costs (the "Phase One Project Account"). Notwithstanding the above or any other provision to the contrary in this Agreement, the City shall not have any obligation to fund, make grants or otherwise pay for the Phase One Eligible Project Costs until the Redeveloper has submitted to and received the City's approval of the Sidewalk/Dock Plan for 7th Street. Phase One TIF Proceeds shall be expended in the following priority:

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

SECOND PRIORITY: The improvements to be made in the 7th Street right-of-way including the sidewalk and related improvements based on the approved Sidewalk/Dock Plan.

THIRD PRIORITY: Rehabilitation of masonry and facade for historic preservation, and other exterior improvements which façade shall be subject to those protections of the Façade Easement;

FOURTH PRIORITY: Installation of a ground coupled geothermal heating and cooling system on the Phase One Project Site;

B. Phase Two TIF Indebtedness. As soon as practicable following the completion of the Phase One Redeveloper Improvements, the City shall issue Phase Two TIF Indebtedness in the estimated amount of $180,000.00 (as calculated on Exhibit "E")

to be purchased by the TIF Bond Purchaser and receive Phase Two TIF Proceeds from the TIF Bond Purchaser to be deposited into a fund account for payment of the City's TIF Bond cost of issuance and the Phase Two Eligible Project Costs (the "Phase Two Project Account"). Notwithstanding the above or any other provision to the contrary in this Agreement, the City shall not have any obligation to fund, make grants or otherwise pay for the Phase One Eligible Project Costs until the Redeveloper has submitted to and received the City's approval of the Sidewalk/Dock Plan for "L" Street. Phase Two TIF Proceeds shall be expended in the following priority:

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

SECOND PRIORITY: The improvements to be made in the "L" Street right-of-way including the sidewalk and related improvements based on the approved Sidewalk/Dock Plan.

THIRD PRIORITY: Rehabilitation of masonry and facade for historic preservation, and other exterior improvements;

14. Valuation of Property Within the Project Area. The City intends to use the Ad Valorem Tax Provision for both phases to generate a total amount of proceeds generated by each of the Phase One Project and the Phase Two Project as calculated on Exhibit "E" ("TIF Proceeds") which shall be used to finance the issuance of the TIF Indebtedness and the assistance to Redeveloper in accordance with this Redevelopment Agreement. Phase One is intended to generate approximately $408,000.00 ("Phase One TIF Proceeds") and Phase Two is intended to generate approximately $180,000.00

("Phase Two TIF Proceeds"). 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 the TIF Indebtedness will be derived from the increased valuation from redeveloping the Redevelopment Project Site as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Phase One Project Site and improvements thereon which does not exceed Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00), , commencing tax year that the Phase One Redevelopment Improvements are completed and continuing for a period of not to exceed fifteen (15) years after the Phase One Effective Date or so long as any portion of the Phase One TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter. Redeveloper agrees not to contest any taxable valuation assessed for the Phase Two Project Site and improvements thereon which does not exceed One Million One Hundred Seventy Thousand and No/100 Dollars ($1,1700,000.00), commencing in the tax year that the Phase Two Redevelopment Improvements are completed and continuing for a period of not to exceed fifteen (15) years after the Phase Two Effective Date or so long as any portion of the Phase Two TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter.

15. Effective Date of Phases. The effective date for each phase of the Redevelopment Project (the "Phase One Effective Date" and the "Phase Two Effective Date", respectively) shall be the first day of January in the year that the "Notice to Divide

Tax for Community Redevelopment Project" form is filed with the County Assessor pursuant to Section 18-2147 of the Act, which provides that said form must be filed on or before August 1 of the year of the effective date. The Phase One Effective Date shall be January 1, 2011. The Phase Two Effective Date shall be triggered by the satisfaction of the following actions:

a.) The execution of the Certificate of Completion by the City for the Phase One Redevelopment Project;

b.) the recordation of this Redevelopment Agreement or a Memorandum hereof against the Phase Two Redevelopment Site;

c.) the filing of the "Notice to Divide Tax for Community Redevelopment Project" form as described above for the Phase Two Redevelopment Project; and

d.) verification by the Redeveloper that its project costs and the resulting valuation and incremental tax revenue for the Phase Two Project are within Fifteen percent (15%) of the amounts stated herein. If Redeveloper determines that its Redeveloper Private Improvement costs vary by more than 15% from its original projections, Redeveloper and the City shall jointly pursue a formal amendment to this Agreement.

16. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date hereof or so long as the TIF Indebtedness remains outstanding whichever period of time is shorter (tax increment period), convey the Redevelopment Project Site 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.

17. Financing Creating Encumbrances Restricted.

A. Prior to completion of Redeveloper's Improvements for each Phase One and Phase Two, neither Redeveloper nor any successors in interest with respect to the Redevelopment Project Site shall engage in any financing or any other transaction creating any Mortgage upon the Redevelopment Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any of such Redevelopment Project Site, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the Redevelopment Project. 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 Redevelopment Project Site, and shall promptly notify the City of any Mortgage that has been created on or attached to Redevelopment Project Site 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 Redevelopment Project Site 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 Clerk of the District Court pursuant to Neb. Rev. Stat. § 52-142 to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of Redeveloper Improvements, any loan proceeds secured by any interest in the Redevelopment Project Site shall be used

solely for the payment of costs and expenses related to the development of the Redevelopment Project.

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 Redeveloper's Improvements has occurred and has not been fully restored, any party who obtains title to any portion of the Redevelopment Project Site 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. In lieu thereof, the titleholder may pay to the City the amount needed to retire the TIF Indebtedness.

C. Notice of Default. Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper and/or 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 Redeveloper's 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 Redevelopment Project Site, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize Holder to modify the Redevelopment Project approved by the City. In the event the Holder fails to cure, then the City shall have the remedies provided within this Agreement.

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 Redevelopment Project Site shall apply to any other type of encumbrance on any of the Redevelopment Project Site, 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.

18. Damage or Destruction of Redeveloper's 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 Redeveloper 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 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 Redeveloper or other owner or tenant's obligation to restore the Redeveloper's Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

19. Condemnation. If during the Tax Increment Period, all or any portion of the Redevelopment Project Site 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.

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

21. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of Redeveloper's responsibilities provided for above there shall be no sale or transfer of the Redevelopment Project Site 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.

22. 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 Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

(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, regulation, 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 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 City, and will not violate any instrument, agreement, order,

judgment, decree, statute, regulation, or any other restriction of any kind to which City is a party.

23. 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. If the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

24. 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.

25. 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 a reasonable period after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

26. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Redevelopment Project Site 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.

27. Tax Increment Deficiency on TIF Indebtedness. The obligation of the City on the TIF Indebtedness shall be limited solely to the TIF Tax Revenues from the Ad Valorem Tax Provision pledged as security for such TIF Indebtedness. To the extent of any deficiency in such TIF Tax Revenues for required debt service on the TIF Indebtedness for either Phase One or Phase Two, one of the following provisions shall apply to that Phase of the Redevelopment Project: (a) if Redeveloper is the purchaser or holder of the TIF Indebtedness, Redeveloper agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period and further forgive any remaining debt on the TIF Indebtedness in the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period; or (b) if a lender is the purchaser or holder of the TIF Indebtedness, Redeveloper agrees to pay the amount of the deficiency to the City within thirty (30) days of a written request of the City and shall pay

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

28. 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.

29. 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.

30. Notices and Demands. A notice under this Agreement by a party to the other parties shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to Redeveloper at 729 "Q" Street, 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.

31. Access to Redevelopment Project Area. During construction of the Redeveloper Improvements, Redeveloper shall permit the representatives of the City to

enter all areas of the Redevelopment Project Site 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.

32. Provisions Run With the Land. This Agreement shall run with the Redevelopment Project Site 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 Redevelopment Project Site at Redeveloper's expense

33. 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 contractually obligate its general contractor to conform to said requirements.

34. 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.

35. Eligibility to Work. In accordance with Neb. Rev. Stat. §4-108 through §4-114; the Redeveloper agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska.

36. Indemnification and Insurance. Redeveloper shall indemnify, defend and save harmless the City of Lincoln, Nebraska, or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney's fees arising out of the activities of Redeveloper or of Redeveloper's contractors, agents, servants, or employees in constructing, maintaining, operating, repairing or reconstructing the Phase One and Phase Two Redeveloper Public Improvements. In this connection Redeveloper shall maintain during the life of this contract, Public Liability Insurance, naming and protecting it and the City of Lincoln against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from work under this contract whether such work be by itself or by any contractor, or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of $1,000,000 and $2,000,000 aggregate.

(i) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and

(ii) The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of coverage: Contractual Liability, Products Liability and/or Completed Operation.

At all times the Redeveloper shall keep on file with the City Clerk a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for conformance with this section evidencing the existence of valid and effective policies of insurance naming the City of Lincoln as an additional insured for the coverage required herein, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and providing for ten and thirty days notice by mail to the City Clerk before the insurer may cancel the policy for non-payment of premium or for any or for any other reason, respectively. A copy of the notice of cancellation endorsement (preferably ISO form CG7631) and the additional insured endorsement must be attached to the Certificate of Insurance. In the alternative for notice of cancellation, Redeveloper agrees to immediately provide the City with a copy of any notice of cancellation or non-renewal of such insurance received by the Redeveloper.

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

38. 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.

39. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the TIF Indebtedness, whichever first occurs;

provided the City and Redeveloper each agree to execute any release necessary to be filed of record to evidence such expiration or termination,

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

Executed by **City** this _____ day of _____, 2011.

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 (ART) 27 day of January, 2011, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

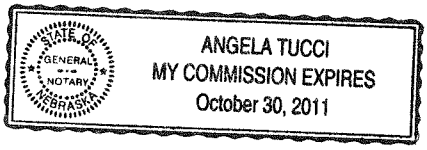
Executed by **Redeveloper** this 27 day of January, 2011.

THE DAIRY HOUSE, L.L.C.,
a Nebraska limited liability company

By: _____
Eric Schafer, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 27 day of January, 2011, by Eric Schafer, Manager of The Dairy House, L.L.C., a Nebraska limited liability company, on behalf of the company.



Notary Public

Exhibit List

Exhibit "A"	Legal Description
Exhibit "B"	Redeveloper Private Improvements
Exhibit "C"	Sources/Uses - Phase I
Exhibit "D"	Façade Easement
Exhibit "E"	TIF Indebtedness
Exhibit "F"	Façade Elevation Drawings

EXHIBIT "A"

LEGAL DESCRIPTION

UNITS 1a and 1b, DAIRY HOUSE CONDOMINIUM REGIME PURSUANT TO THAT DECLARATION OF CONDOMINIUM RECORDED DECEMBER 30, 2010 AS INSTRUMENT # 2010-0615710 WITH THE LANCASTER COUNTY REGISTER OF DEEDS.

EXHIBIT "B"

REDEVELOPER PRIVATE IMPROVEMENTS

The Redeveloper Private Improvements to be constructed on the Redevelopment Project Site shall consist of the following:

PHASE ONE PRIVATE IMPROVEMENTS:

The Redeveloper Private Improvements to be completed on the Phase One Project Site shall consist of the redevelopment and renovation of two buildings (Building Unit 1a and Building Unit 1b) for industrial/warehouse uses, including the renovation of approximately 18,840 square feet of building space for the immediate relocation of Data Security, Inc., to the Phase One Project Site, and the renovation of approximately 6,000 to 12,000 square feet of building space for the future expansion of Data Security, Inc., operations on the Phase One Project Site.

PHASE TWO PRIVATE IMPROVEMENTS:

The Redeveloper Private Improvements to be completed on the Phase Two Project Site shall consist of the redevelopment and renovation of approximately 24,290 square feet of building space in Building Unit 2 for use as a manufacturing facility and brew house, specifically to create increased brewing capacity, additional fermentation tanks, and a more advanced packaging line for Empyrean Brewing Company.

Exhibit C
Sources and Uses - Phase I

Sources	Description	Amount
TIF		*$ 408,000*
Other Sources		*$ 3,450,000*
Total Sources		**$ 3,858,000**

Uses of Funds	Description		Amount
Total Private Improvements			***$ 3,450,000***
Total Public Improvements/Enhancements			***$ 408,000***
Right-of-Way Improvements	$	45,000	
Reimbursement for Façade Upgrades	$	363,000	
Geothermal Enhancements	$	-	
Total Uses			**$ 3,858,000**

Sources and Uses - Phase II

Sources	Description	Amount
TIF		*$ 180,000*
Other Sources		*$ 2,460,000*
Total Sources		**$ 2,640,000**

Uses of Funds	Description		Amount
Total Private Improvements			***$ 2,460,000***
Total Public Improvements/Enhancements			***$ 180,000***
Right-of-Way Improvements	$	46,000	
Reimbursement for Façade Upgrades	$	134,000	
Total Uses			**$ 2,640,000**

EXHIBIT "D"

FAÇADE EASEMENT AGREEMENT
(Dairy House Building Complex)

THIS FAÇADE EASEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2011 by and between The Dairy House, L.L.C., a Nebraska limited liability company ("Grantor"), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska ("Grantee").

RECITALS

A. Grantor owns certain real estate located in Lincoln, Lancaster County, Nebraska, legally described on the attached Exhibit A (the "Property").

B. Grantor entered into a Redevelopment Agreement (the "Redevelopment Agreement") with Grantee for the redevelopment and renovation of Building Unit 1a, Building Unit 1b and Building Unit 2 located on the Property (the "Buildings").

C. Pursuant to the Redevelopment Agreement, for the historic preservation of the Buildings and to ameliorate the blighted and substandard conditions of the Property, Grantor agrees to make certain improvements to the façade of the Buildings (the "Façade") for the benefit of the public. Under the Redevelopment Agreement Grantor is receiving tax increment financing from Grantee to make certain public improvements including, but not limited to the improvements to the Façade.

D. This Agreement sets forth the parties' rights and obligations with respect to the Façade.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Grantor and Grantee do now hereby agree as follows:

1. Façade. In consideration of the benefits received by Grantor under the Redevelopment Agreement, Grantor hereby agrees to subject the façade of the Property to the restrictions described herein.

2. Façade Restrictions. Grantor agrees to observe and comply with the following restrictions:

a. Grantor shall not demolish, remove or raze the Façade

during the term of this Agreement.

b. Grantor shall not undertake, or allow to be undertaken, any material changes to the Façade without the express written consent of Grantee. Changes to the Façade include, but are not limited to:

(i) Any material change in the Façade, 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 Façade;

(ii) The addition of any signs, canopies, plaques or other attachments to the Façade; or

(iii) Any significant reconstruction, repair, repainting or refinishing of any Façade feature that alters its state from the existing condition.

c. This section shall not preclude Grantor from implementing any ordinary or necessary maintenance as set forth in Section 3 below.

3. Façade Maintenance. Grantor shall perform all ordinary and/or necessary maintenance and repairs on the Façade to maintain its appearance and structural soundness and to prevent any deterioration of the Façade.

4. Specification of Work. In the event Grantor desires to make any material changes to the Façade, Grantor shall give Grantee 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.

5. Casualty Damage. In the event that the Buildings or any part thereof shall be damaged by fire or other casualty, then Grantor shall use reasonable effort to reconstruct the Façade to the condition required under this Agreement. If one or more of the Buildings is damaged to such an extent that Grantor determines that reconstruction of said Building(s) is not feasible and provides Grantee with a statement from an independent engineer to the same effect, then this Agreement shall be void and of no further force or effect with respect to said Building(s).

6. Inspection. Grantee shall be permitted to have reasonable access to the Property to inspect the Façade for the purpose of determining conformance with this Agreement.

7. Term. The term of this Agreement shall be fifteen (15) years from the date of completion of the improvements to the Façade. Provided, however, this Agreement shall terminate at any earlier date that the Redevelopment Agreement is terminated and is no longer in effect.

8. Public Access. Grantor acknowledges and agrees that the general public shall have the regular and substantial opportunity to view the Façade from the streets, sidewalks and other property near the Buildings. Grantor shall have no obligation under this Agreement to allow the general public to view the interior of the Buildings.

9. Indemnification. Grantor shall defend, indemnify and hold Grantee harmless from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorneys fees), resulting from actions or claims by third parties or defaults under this Agreement by Grantor arising out of the conveyance of or possession of the Façade Easement.

10. Binding Effect. This Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heir, executors, administrators, successors and assigns of Grantor.

"GRANTOR"

The Dairy House, L.L.C., a Nebraska limited liability company

By: _____
Eric Shafer, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Eric Shafer, Manager of The Dairy House, L.L.C., a Nebraska limited liability company, on behalf of the company.

_____
Notary Public

ATTEST:

"GRANTEE"
The City of Lincoln, Nebraska, a municipal corporation

By: _____
City Clerk

By: _____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

FAÇADE EASEMENT AGREEMENT
EXHIBIT A

Legal Description

UNITS 1a and 1b , DAIRY HOUSE CONDOMINIUM REGIME PURSUANT TO THAT DECLARATION OF CONDOMINIUM RECORDED DECEMBER 30, 2010 AS INSTRUMENT # 2010-0615710 WITH THE LANCASTER COUNTY REGISTER OF DEEDS.

EXHIBIT "E"

TIF INDEBTEDNESS

Phase One TIF Indebtedness

1. **Principal Amount**. The principal amount of the TIF Indebtedness shall be the amount, together with interest accruing thereon, which can be amortized by the thirty-first (31st) day of December, in the fifteenth (15th) year after the Phase One Effective Date (the "Phase One Maturity Date"), solely from the Tax Increment Revenues based upon the current aggregate ad valorem tax rate applicable to the Redevelopment Project Site multiplied by an assumed valuation of Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00). Due to the fact that Redeveloper or its lender shall purchase the TIF Indebtedness, the City shall not require the maintenance of any minimum debt service coverage or the posting of any reserves. The City shall receive its cost of issuance from the Project account realized upon the sale of the TIF Indebtedness.

2. **Payments**. Semi-annually with interest only until real estate taxes are fully collected for the tax year of the Phase One Effective Date in an amount sufficient to fully amortize the TIF Indebtedness on or before the Phase One Maturity Date.

3. **Maturity Date**. On or before the Phase One Maturity Date.

Phase Two TIF Indebtedness

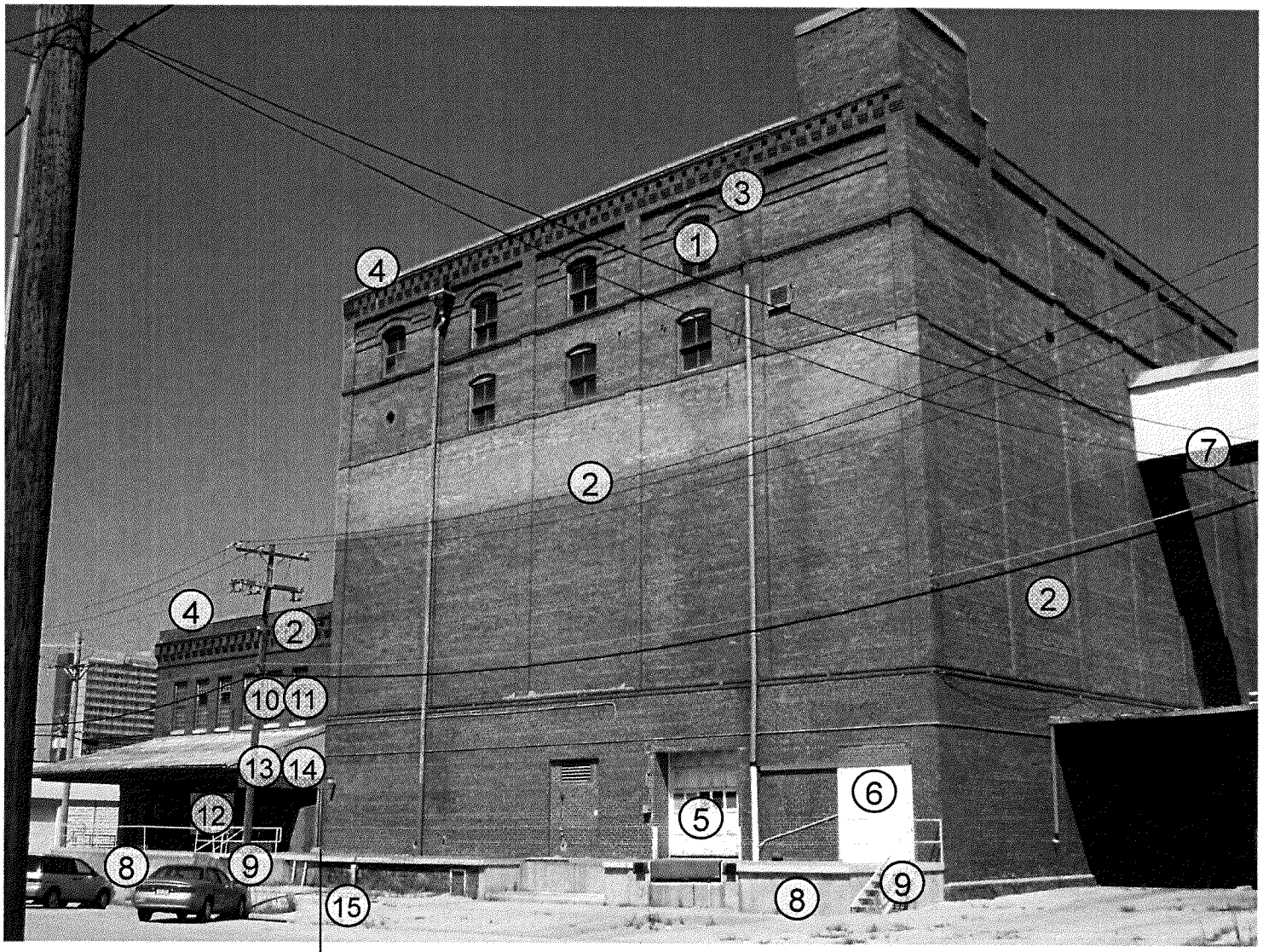
1. **Principal Amount**. The principal amount of the TIF Indebtedness shall be the amount, together with interest accruing thereon, which can be amortized by thirty-first (31st) day of December, in the fifteenth (15th) year after the Phase Two Effective Date (the "Phase Two Maturity Date"), solely from the Tax Increment Revenues based upon the current aggregate ad valorem tax rate applicable to the Redevelopment Project Site multiplied by an assumed valuation of One Million One Hundred Seventy Thousand and No/100 Dollars ($1,170,000.00). Due to the fact that Redeveloper or its lender shall purchase the TIF Indebtedness, the City shall not require the maintenance of any minimum debt service coverage or the posting of any reserves. The City shall receive its cost of issuance from the Project account realized upon the sale of the TIF Indebtedness.

2. **Payments**. Semi-annually with interest only until real estate taxes are fully collected for the tax year of the Phase Two Effective Date in an amount sufficient to fully amortize the TIF Indebtedness on or before the Phase Two Maturity Date.

3. **Maturity Date**. On or before the Phase Two Maturity Date.

CLARK
architectural
collaborative³

EXHIBIT "F"
FAÇADE ELEVATION DRAWINGS



1. New aluminum double hung windows
2. Tuck point masonry
3. Repair scuppers and downspouts
4. Repair parapet wall cap
5. New segmented dock door
6. Secure existing elevator dock door
7. Reinforce bridge floor deck
8. Remove cast in place dock extensions. Repai existing brick dock face.
9. New dock stairs, ramp and rails.
10. Remove existing glass block.
11. New aluminum double hung windows
12. New aluminum store front entry system
13. Remove corrugated ceiling panel at awning.
14. Repaint awning trusses
15. Repair sidewalk pavement.

Date: 1 . 18 . 11
Scale:

Telesis – The Dairy House - Preliminary Façade improvements
(Draft - subject to historic review)

CLARK
architectural
collaborative³

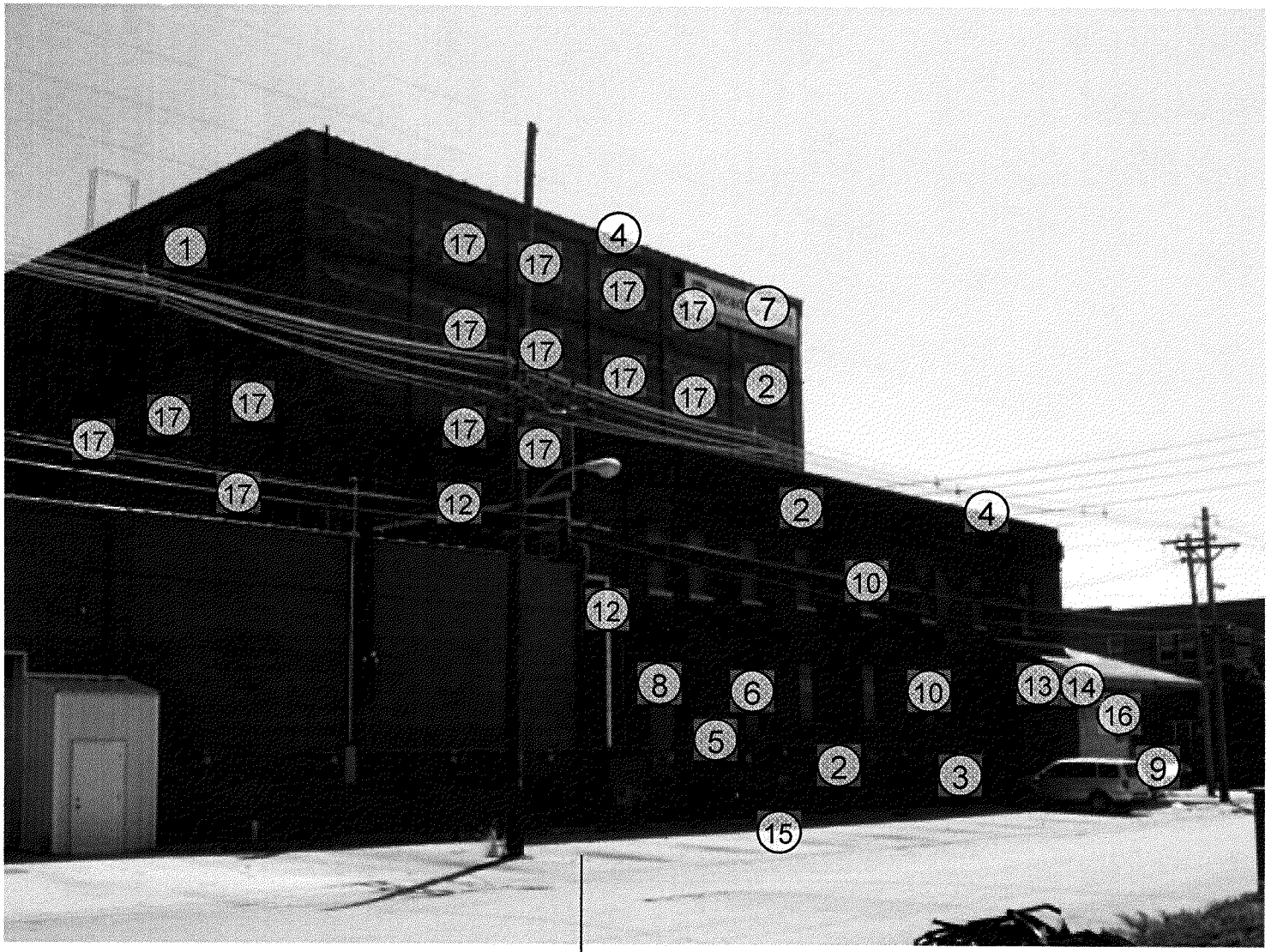
1. New aluminum double hung windows in existing opennings.
2. Tuck point masonry
3. Repair scuppers and downspouts
4. Repair parapet wall cap
5. New segmented dock door
6. Secure existing elevator dock door
7. Remove sign
8. Remove cast in place dock extensions. Repai existing brick dock face.
9. New dock stairs, ramp and rails.
10. Remove existing glass block.
11. New aluminum double hung windows
12. New aluminum store front entry system
13. Remove corrugated ceiling panel at awning.
14. Repaint awning trusses
15. Repair sidewalk pavement.
16. Remove chicken coup
17. New aluminum windows installed in extg masonr wall.

Date: 1 . 18 . 11
Scale:

Telesis – The Dairy House - Preliminary Façade improvements

(Draft - subject to historic review)

CLARK
architectural
collaborative³



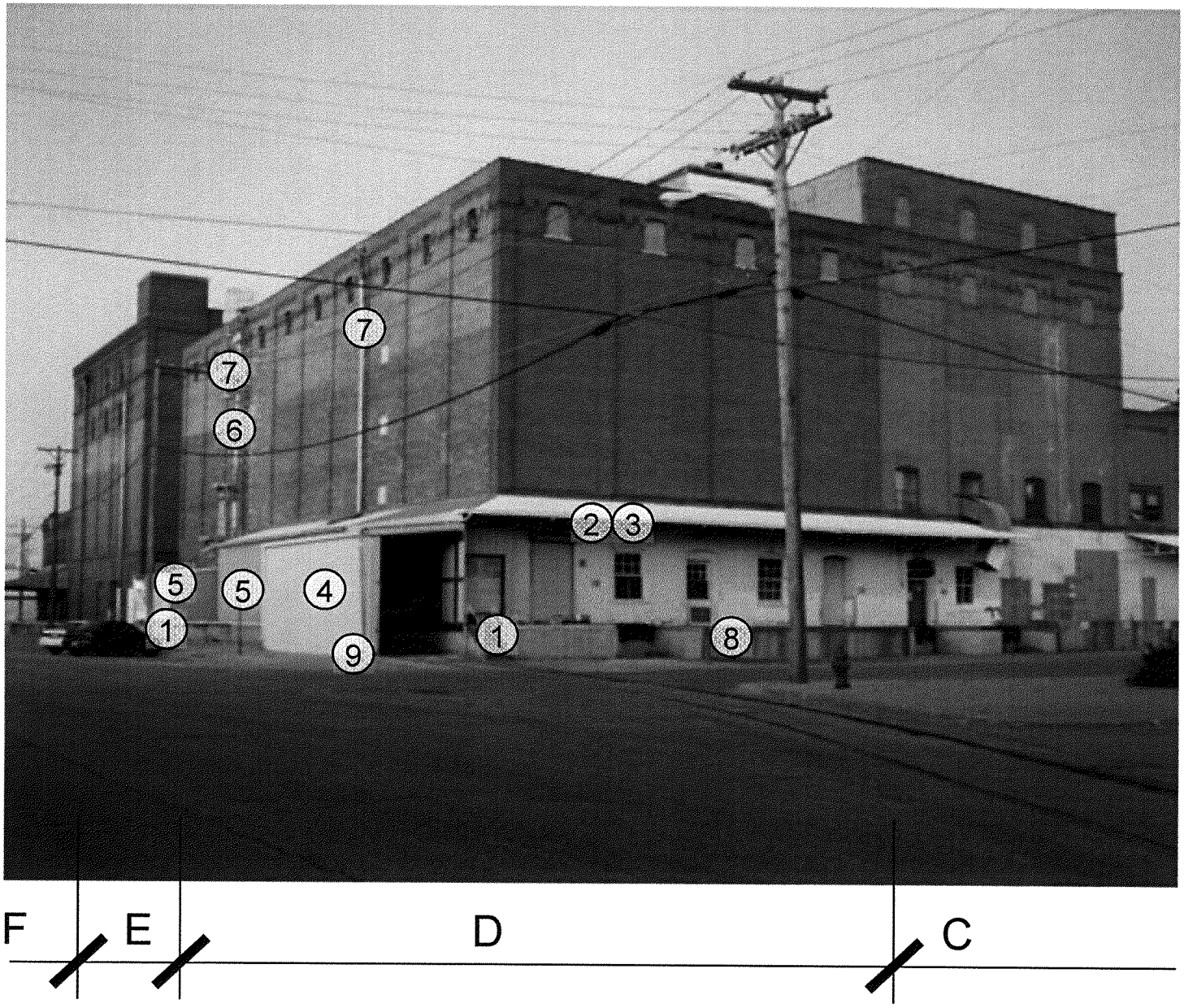
1. New aluminum double hung windows in existing openings.
2. Tuck point masonry
3. Repair masonry wall damage.
4. Repair parapet wall cap
5. Remove conduit
6. Remove CMU window infill.
7. Remove sign
8. Remove brick door infill. Install new window.
9. New dock stairs, ramp and rails.
10. Remove existing glass block.
11. New aluminum double hung windows
12. Remove piping.
13. Remove corrugated ceiling panel at awning.
14. Repaint awning trusses
15. Remove wheel stops
16. Remove chicken coup
17. New aluminum windows installed in extg masonry wall.

Date: 1 . 18 . 11
Scale:

Telesis – The Dairy House - Preliminary Façade improvements

(Draft - subject to historic review)

CLARK
architectural
collaborative³



1. New dock stairs, ramp and rails.
2. Remove corrugated ceiling panel at awning.
3. Repaint awning trusses
4. Remove cast in place dock enclosure
5. Remove metal wall panels
6. Remove Fire Escape
7. Repair scupper and downspout
8. Remove cast in place dock extensions. Repai existing brick dock face.
9. Repair sidewalk pavement.

Date: 1 . 18 . 11
Scale:

Telesis – The Dairy House - Preliminary Façade improvements

(Draft – subject to historic review)