AMENDMENT NO. 1 TO THE
CITY OF LINCOLN REDEVELOPMENT AGREEMENT

(Haymarket Hotel & Tool House Redevelopment)

THIS AMENDMENT NO. 1 TO THE CITY OF LINCOLN REDEVELOPMENT AGREEMENT (Haymarket Hotel & Tool House Redevelopment) is entered into as of this ____ day of _____, 2011 by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("City"), and **B & J PARTNERSHIP, LTD.,** a Nebraska limited partnership, and its successors and assigns ("Redeveloper").

RECITALS

A. The City and Redeveloper previously entered into the City of Lincoln Redevelopment Agreement (Haymarket Hotel & Tool House Redevelopment) ("Agreement") on June 30, 2010.

B. The Agreement includes a provision pursuant to Neb. Rev. Stat. § 18-2147(1) which provides for the division of ad valorem taxes for a period of fifteen years after the effective date of such provision by the City of Lincoln. The purpose for the division of ad valorem taxes is to allow the redevelopment project the use of "Tax Increment Financing" (i.e., the increased property taxes generated by the development) to finance the project rehabilitation and redevelopment activities.

C. Section 18-2147(1) further requires the County Assessor to determine the redevelopment project valuation (also known as the "base year valuation") based upon the fair market value of the real property in a redevelopment project as of January 1 of the year prior to the year that ad valorem taxes are to be divided (i.e., "base year").

D The parties desire to establish January 1, 2012 as the effective date for the Project in order to take better advantage of the maximum fifteen years allowed for the division and recapture of the ad valorem taxes.

NOW, THEREFORE, in consideration of the above recitals and mutual covenants contained herein, the parties agree as follows:

1. That paragraphs 3.C and 3.D of the Agreement be amended to read as follows:

C. Construction of Public Enhancements Redeveloper shall at its own cost and expense, subject to reimbursement as provided below, construct the Public Enhancements in the priorities listed for the use of TIF Proceeds in paragraph 14 below. 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 15 below, the Redeveloper~~ the City shall use the TIF Proceeds to reimburse the Redeveloper for its cost to construct the Public Enhancements. The City shall not have any obligations to ~~fund~~ reimburse the Redeveloper for the cost of the Public Enhancements ~~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 Public Enhancement costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder.~~

Upon completion of the Public Enhancements, the Redeveloper shall have the duty and responsibility to maintain and repair the Public Enhancements 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 facade of the residential/retail space and hotel space, including any of the following without receiving a certificate of appropriateness from the Historic Preservation Commission: any material change in the facade 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 residential/retail space and hotel space, any significant reconstruction, repair, repainting or refinishing of the facade upgrades that alters its state from the Construction Documents, wear and tear excepted.

D. Construction of Public Improvements. Redeveloper shall at its own cost and expense, subject to reimbursement as provided below, construct the Public Improvements through the City's executive order construction process. To the extent allowed by law, contracts for

construction of the Public Improvements shall be bid in accordance with City procedures. 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 15 below, the Redeveloper~~ the City shall use the TIF Proceeds to reimburse the Redeveloper for its cost to construct the Public Improvements~~ through the City's executive order construction process~~. The City shall not have any obligations to ~~fund~~ reimburse the Redeveloper for its cost to construct the 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 Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder. To the extent required by law, contracts for construction of the Public Improvements shall be bid in accordance with City procedures.~~

2. That paragraph 10 of the Agreement be amended to read as follows:

10. Timing of Construction. Redeveloper will use commercially reasonable efforts to substantially complete the ~~Redevelopment Project~~ Private Improvements except for the Optional Private Improvements ~~within twenty-four (24) months following City Council's approval and the Mayor's execution of this Agreement~~ by July 15, 2012. Redeveloper will use commercially reasonable efforts to substantially complete the Optional Private Improvements within twelve months from the start of construction

3. That paragraph 11 of the Agreement be deleted and that paragraph 11 be shown as intentionally omitted for the purpose of numbering paragraphs in the Agreement.

4. That paragraph 12 of the Agreement be amended to read as follows:

12. Issuance of Redeveloper Purchased TIF Bond.

A. TIF Bond based on Value of Private Improvements. ~~On or after the date of this Agreement~~ As soon as is practicable following the above date this Amendment No. 1 is entered into, the City shall issue one or more TIF Bond, in one or more tax exempt and/or taxable series, in the total contracted amount of ~~Two Million, One Hundred and Seventy Three Thousand, One Hundred Seventy Eight~~ Two Million Six Hundred Thirty-Three Thousand Dollars ($~~2,173,178~~ 2,633,000) 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, and receive TIF 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 TIF 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~~ 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.

B. Based on Value of Optional Private Improvements. If Redeveloper elects to build the Optional Private Improvements, it shall provide written notification to the City's Urban Development Director. Upon receipt, the City is hereby authorized to issue one or more TIF Bonds in the maximum amount of ~~Three Hundred and Twenty Thousand Two Hundred Eighty Three~~ Three Hundred Eighty-Two Thousand Dollars ($~~320,283~~ 382,000) in accordance with the procedures provided for in paragraph 12A above. The actual amount of the TIF Bond shall be determined based upon the number of years remaining in the Tax Increment Period. All terms, conditions, and restrictions for TIF bonds and use of TIF Proceeds contained within this Agreement shall apply.

5. That paragraph 14 of the Agreement be amended to read as follows:

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 City's obligation to reimburse the Redeveloper for the Redeveloper's cost to construct the Public Improvements, Public Enhancements, Certain Private Improvements and Optional Private Improvements. Unless otherwise noted, Public Improvement costs may include design fees, review fees, construction and installation costs, and inspection fees. TIF Proceeds shall be expended, in the project area, in the following priority:

A. 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.

B. SECOND PRIORITY: ~~Payment of grant or grants to r~~Reimburse the Redeveloper for its costs ~~of~~ to construct the following Public Improvements, specifically described below:

i. Utility work, including sanitary and storm sewer relocation and construction, water line relocation and construction, electric line improvements and other dry utility improvements as generally shown on Exhibit "F", which are attached hereto and incorporated herein by this reference, but excluding utility service lines;

ii. Street scape, and right-of-way improvements, including paving of streets; construction of sidewalks, curb and gutters; traffic signals and pedestrian lighting; public docks; on-street parking; drop off lanes; signage; landscape and irrigation materials and other street and sidewalk improvements within the Redevelopment Area;

C. THIRD PRIORITY: ~~Payment of grant to r~~Reimburse Redeveloper for its costs to construct those portions of the Private Improvements consisting of structural repairs and improvements needed to ~~the~~ rehabilitate the Tool House, a historical building.

D. FOURTH PRIORITY: ~~Payment of grant to r~~Reimburse Redeveloper for its costs ~~of~~ to construct~~ion of~~ those portions of the Private Improvements ~~for~~ consisting of the private dock areas where public access easements have been granted by the Redeveloper as dock and which are a consistent element in this historic district.

E. FIFTH PRIORITY: ~~Payment of grant to r~~Reimburse Redeveloper for its costs ~~of~~ to construct the following Public Enhancements:

i. Historic facade rehabilitation to the Tool House;

ii. Brick facade upgrades to the hotel.

F. SIXTH PRIORITY: ~~Payment of grant to r~~Reimburse Redeveloper for its costs ~~of~~ to construct Public Enhancements for energy efficiency improvements beyond what is required by building codes and which were approved by the City in the construction documents review phase.

To the extent TIF proceeds are insufficient to pay all the costs of the priorities, except the energy efficiency improvements, the Redeveloper shall be responsible for completion of each priority and for the payment of any shortfall therefor. The ~~grants~~ TIF Proceeds are restricted and earmarked for the ~~funding of~~ reimbursement of the aforesaid Public Improvements, Public Enhancements, and Private Improvements as described herein and the Redeveloper does not have discretionary judgment over the ~~applications~~ use of said ~~grant~~ funds. When Redeveloper has satisfactorily met City's expectations for completion of the Second Priority Improvements, and if the Redeveloper's actual expenditures are less than estimated in Exhibit "B", the Project Account shall be available ~~for~~ to be applied toward reimbursement of the remaining priorities.

6. That paragraph 18 of the Agreement be amended to read as follows:

18. Cost Certification. The Redeveloper shall submit authentic documentation to the City on approved forms or format for ~~payment~~ reimbursement of any expenses related to construction of the eligible Redevelopment Project Costs. The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for ~~payment~~ reimbursement 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 not unreasonably withhold such approval. Reimbursement by the City to the Redeveloper shall be made within ten (10) days after approval by the City.

7. That paragraph 19 of the Agreement be amended to read as follows:

19. Repayment of Reimbursement~~ of Grants Funds~~. ~~Subject any other remedial provisions contained within this Agreement, the Redeveloper agrees to repay the City the Grant Funds in the event Redeveloper fails to substantially complete the Redeveloper's Private Improvements 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 any other remedial provisions contained within this Agreement, 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 ~~(1/13)~~ (1/14) of the ~~Grant Funds~~ reimbursement paid to the Redeveloper for its cost of constructing the Public Improvements for each the year the Redeveloper fails to maintain the Private Improvements.

8. That paragraph 20 of the Agreement be amended to read as follows:

20. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the ~~effective date hereof~~ Effective Date in paragraph 47 below 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.

9. That a new paragraph numbered paragraph 47 be added to the Agreement to read as follows:

47. Effective Date of the Ad Valorem Provision. The effective date of the Ad Valorem Provision for the Redevelopment Project (the "Effective Date") shall be January 1, 2012. On or after January 1, 2012, but no later than July 31, 2012, the "Notice to Divide Tax for Community Redevelopment Project" form shall be filed by the City with the County Assessor pursuant to §18-2147 of the Act.

10. That Exhibit B (Sources and Uses) attached hereto replace and be substituted for Exhibit B attached to the Agreement.

Executed by City this _____ day of _____, 2011.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

ATTEST:

_____ By: _____
City Clerk Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

Executed by Redeveloper this ____ day of _____, 2011.

B & J PARTNERSHIP, LTD.,
a Nebraska limited partnership

By: _____
Clay Smith, General Partner

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____day of _____, 2011, by Clay Smith, as General Partner of B & J Partnership, Ltd., a Nebraska limited partnership, on behalf of the limited partnership.

_____
Notary Public

Exhibit B

Sources and Uses

Sources	Description	Amount
TIF Series A		***$ 2,633,000***
TIF Series B	***up to***	***$ 382,000***
Private Sources	***up to***	***$ 15,800,000***
Total Sources		**$ 18,815,000**

Uses of Funds	Description	Amount
Total Private Improvements *(i.e., Hotel, Toolhouse Residential/Retail Complex)*	***up to***	***$ 15,800,000***
Total TIF Expenses: Administration, Public Improvements, and Enhancements		***$ 3,015,000***
Cost of Administering TIF	$ 60,000	
Public Improvements		
Utility Relocation and Improvements (i.e., Water, Sanitary Sewer, Storm Sewer, LES, Time Warner, Fiber)	$ 350,000	
Streetscape/Right-of-Way Improvements (i.e., Streets, Sidewalk, Pedestrian Lighting, Signage, Landscaping)	$ 460,000	
Pedestrianway Improvements (i.e., Demolition/Grading, Concrete, Lighting)	$ 110,000	
Public Enhancements		
Structural Repairs to Historic Building	$ 413,000	
Reimbursement for Façade Upgrades to Toolhouse and Hotel	$ 250,000	
Reimbursement for Dock Installation and Improvements	$ 1,070,000	
Reimbursement for Energy Efficiency Improvements to Residential Complex and Hotel	$ 302,000	
Total TIF Expenses		
Costs in excess of TIF (to be covered through construction savings, private sources, and/or otherwise not be funded)		$ -
Total Uses		**$ 18,815,000**