

**AMENDMENT NO. 1
TO THE
CITY OF LINCOLN REDEVELOPMENT AGREEMENT
(Telesis/Dairy House Project)**

This Amendment No. 1 to the City of Lincoln Redevelopment Agreement (Telesis/Dairy House Project) is entered into as of the _____ day of _____, 2011, by and between the **City of Lincoln, Nebraska**, a municipal corporation (“City”), and **The Dairy House, L.L.C.**, a Nebraska limited liability company (“Redeveloper”).

RECITALS

A. The City and Redeveloper previously entered into the City of Lincoln Redevelopment Agreement (Telesis/Dairy House Project) on January 27, 2011.

B. The Redevelopment 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. The specific date identified in the Redevelopment Agreement as the “effective date” for the division of ad valorem taxes is January 1, 2011, said date being the year that the redevelopment activities commenced.

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 amend the effective dates for Phase One and Phase Two of the Telesis/Dairy House Project to be the applicable date of completion of the Phase One and Phase Two Private Improvements 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 2.A and 2.B of the Redevelopment Agreement be amended to read as follows:

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~~, 2012.

B. Phase One Redeveloper Public Improvements. Redeveloper shall, at Redeveloper’s own cost and expense, subject to reimbursement as provided below, construct the Phase One Redeveloper Public Improvements described in paragraph 13 below in the priorities listed for the use of the TIF Proceeds (“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 the City shall reimburse the Redeveloper for its cost 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 reimburse Redeveloper for the costs of 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~~ Notwithstanding the above obligation of the Redeveloper to construct all of the Phase One Redeveloper Public Improvements, the Redeveloper may, in its sole discretion, elect to eliminate the “Fourth Priority” for the geothermal system if it appears that sufficient TIF proceeds are not will not be available to reimburse Redeveloper for said cost. 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 facade or the Phase One Private Improvements except in accordance with the requirements under the Facade Easement attached hereto as Exhibit “D”.~~

2. That paragraphs 3.A. and 3.B. of the Redevelopment Agreement be amended to read as follows:

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~~ The commencement date of Phase Two is may be triggered as described in Paragraph 15 below. by the Redeveloper after satisfaction of the following actions:

(1) The execution of the Certificate of Completion by the City for the Phase One Redevelopment Project;

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

(3) verification by the Redeveloper that its estimated project costs and the estimated 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 Phase Two 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.

(4) Redeveloper sends notice to the City of its commencement of construction of Phase Two.

B. Phase Two Redeveloper Public Improvements. Redeveloper shall, subject to reimbursement as provided below, construct the Phase Two Redeveloper Public Improvements as described in Paragraph 13 below in the priorities listed for the use

~~of TIF Proceeds (“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~~ the City shall reimburse the Redeveloper for Redeveloper’s cost to construct the Phase Two Redeveloper Public Improvements, as described in Section 13 (B) below. The City shall not have any obligation to fund reimburse Redeveloper for the cost of 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 facade or the Phase Two Private Improvements except in accordance with the requirements under the Facade Easement attached hereto as Exhibit “D”.

3. That paragraph 12 of the Redevelopment Agreement be deleted and that paragraph 12 be shown as intentionally omitted for the purpose of numbering paragraphs in the Agreement.

4. That paragraph 13 of the Redevelopment Agreement be amended to read as follows:

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 a~~ As soon thereafter as is practicable following the above date this Amendment No. 1 is entered into, the City shall issue Phase One TIF Indebtedness in the estimated amount of ~~\$408,000.00~~ \$451,000.00 (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~~ payment of the reimbursement to the Redeveloper for its cost of constructing the Phase One Redeveloper Public Improvements (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~~ reimburse the Redeveloper for the Phase One Eligible Project Costs Redeveloper Public Improvements 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~~ Reimburse the Redeveloper for the costs of ~~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: Reimburse the Redeveloper for the cost of the ~~R~~rehabilitation of masonry and facade for historic preservation, and other exterior improvements which facade shall be subject to those protections of the Facade Easement;

FOURTH PRIORITY: Reimburse the Redeveloper for the costs of ~~f~~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~~ commencement of the Phase ~~One Redeveloper Two Private~~ Improvements, the City shall issue Phase Two TIF Indebtedness in the estimated amount of ~~\$180,000.00~~ \$200,000.00 (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 payment of the reimbursement to the Redeveloper for its cost of constructing the Phase Two Eligible Project Costs Redeveloper Public Improvements (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~~ reimburse Redeveloper for the Phase ~~One Two Eligible Project Costs Redeveloper Public Improvements~~ 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~~ Reimburse the Redeveloper for the costs of 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: Reimburse the Redeveloper for the cost of the ~~R~~ rehabilitation of masonry and facade for historic preservation, and other exterior improvements;

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

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~~ \$451,000.00 (“Phase One TIF Proceeds”) and Phase Two is intended to generate approximately ~~\$180,000.00~~ \$200,000.00 (“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~~ Private 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~~ Private 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.

6. That paragraph 15 of the Redevelopment Agreement be amended to read as follows:

15. Effective Date of Phases. The effective date of the Ad Valorem Provision for each phase of the Redevelopment Project (the “Phase One Effective Date” and the “Phase Two Effective Date”, respectively) shall be as follows: ~~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 date of substantial completion of the Phase One Private Improvements. The Phase Two Effective Date shall be the date of substantial completion of the Phase Two Private Improvements, 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.~~

7. That paragraph 16 of the Redevelopment Agreement be amended to read as follows:

16. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the ~~effective date hereof~~ Phase One and Phase Two Effective Dates 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.

8. That Exhibit C, Sources and Uses, be amended to read as shown on the Exhibit C attached to this Amendment No. 1.

Executed by City this ____ day of _____, 2011.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

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

Notary Public

Executed by Redeveloper this ____ day of _____, 2011.

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

By: _____
_____, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

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

Notary Public

Exhibit C
Sources and Uses - Phase I

Sources	Description	Amount
<i>TIF</i>		\$ 451,000
<i>Other Sources</i>		\$ 3,450,000
Total Sources		\$ 3,901,000

Uses of Funds	Description	Amount
<i>Total Private Improvements</i>		\$ 3,450,000
<i>Total Public Improvements/Enhancements</i>		\$ 451,000
Right-of-Way Improvements	\$ 45,000	
Reimbursement for Façade Upgrades	\$ 406,000	
Geothermal Enhancements	\$ -	
Total Uses		\$ 3,901,000

Sources and Uses - Phase II

Sources	Description	Amount
<i>TIF</i>		\$ 200,000
<i>Other Sources</i>		\$ 2,460,000
Total Sources		\$ 2,660,000

Uses of Funds	Description	Amount
<i>Total Private Improvements</i>		\$ 2,460,000
<i>Total Public Improvements/Enhancements</i>		\$ 200,000
Right-of-Way Improvements	\$ 46,000	
Reimbursement for Façade Upgrades	\$ 154,000	
Total Uses		\$ 2,660,000