

**AMENDMENT NO. 1 TO THE  
CITY OF LINCOLN REDEVELOPMENT AGREEMENT  
(North Haymarket Hotel Phase II)**

THIS AMENDMENT NO. 1 TO THE CITY OF LINCOLN REDEVELOPMENT AGREEMENT (North Haymarket Hotel Phase II) 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 **BLOCK 21 L.L.C.**, a Utah limited liability company, and its successors and assigns (“Redeveloper”).

**RECITALS**

A. The City and Redeveloper previously entered into the City of Lincoln Redevelopment Agreement (North Haymarket Hotel Phase II) (“Agreement”) on March 24, 2011.

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 a 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 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 the effective date for the Project to be the date of substantial completion of the 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 paragraph 3.B of the Agreement be amended to read as follows:**

B. 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 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 12 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 described in Paragraph 12 below. Redeveloper, at its election, may use its own funds to fund any Public Improvements costs that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder.~~ Unless otherwise provided herein, contracts for construction of the Public Improvements shall be bid in accordance with City procedures. Redeveloper shall reimburse LES for LES's cost to design and construct the reconfiguration of any LES vault transforms, equipment and transmission lines within the Project Site.

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

4. Cost Certification. ~~The Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to construction of the Eligible Project Costs.~~ The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for ~~payment~~ reimbursement of the cost to construct the Public Improvements costs. The City shall approve or reject the same with reasons stated, based on the

review within ten (10) days of receipt of the same; provided, however, the City shall generally approve request for ~~payment~~ reimbursement made by Redeveloper that are consistent with this Agreement. Reimbursement by the City to the Redeveloper shall be made promptly after approval by the City.

**3. That paragraph 9 of the Agreement be amended to read as follows:**

9. Construction Administration. Redeveloper shall be responsible for all components of the Redeveloper Project Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. ~~Subject to Paragraph 3B above and Paragraph 14 below, t~~The Redeveloper will be solely responsible for payment of all construction cost attributable to the Private Improvements ~~regardless of any expectation for reimbursement hereunder. Subject to Paragraph 3B above and Paragraph 14 below, T~~the Redeveloper will be solely responsible for payment of all construction cost attributable to the Public Improvements ~~in the amount of the TIF Proceeds, less the City's cost to issue the TIF Bond and subject to reimbursement as provided in Paragraph 19 for the Public Improvements.~~

**4. That paragraph 11 of the Agreement be amended to read as follows:**

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

a. A & H Plaza. ~~Subject to Paragraph 14 below, the City and The Redeveloper agrees to use available TIF Proceeds to fund the construction of a~~ shall at its own cost and expense, subject to reimbursement provided below, construct the plaza ("A & H Plaza") as generally shown on Exhibit "B", which is attached hereto and incorporated herein by this reference and as shown on Exhibit "C". To the extent allowed by law and then only to the extent TIF Proceeds are lawfully

available, the City shall use the TIF Proceeds to reimburse the Redeveloper for its cost to construct the A & H Plaza. Upon completion of the A & H Plaza, the Redeveloper shall have the duty and responsibility to maintain and repair the A & H Plaza at its own cost and expense and no responsibility thereof shall accrue to the City by reason of its benefits from the A & H Plaza pursuant to the general terms and provisions of the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F" and incorporated herein by this reference.

b. Facade Upgrade. ~~Subject to Paragraph 14 below, the City and The Redeveloper agree to use available TIF Proceeds to help fund the construction of~~ shall at its own cost and expense, subject to reimbursement as provided below, construct an improved exterior brick facade and related improvements on the Private Improvements (collectively "Facade Upgrade") as generally shown on Exhibit "C" and Exhibit "D"; provided that the ~~available TIF Proceeds~~ reimbursement amount shall not exceed the total estimated cost of \$940,552, which is the estimated extra construction costs to upgrade the four exterior sides of the Private Improvements from stucco to brick. To the extent allowed by law and then only to the extent TIF Proceeds are lawfully available, the City shall use the TIF Proceeds to reimburse the Redeveloper for its cost to construct the Facade Upgrade, provided that said reimbursement amount shall not exceed \$940,552. Upon completion of the Facade Upgrade, the Redeveloper shall have the duty and responsibility to maintain and repair the Facade Upgrade at its own cost and expense and no responsibility thereof shall accrue to the City by reason of its benefits from the Facade Upgrade pursuant to the general terms and provisions of the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F".

c. Public Art. ~~Subject to Paragraph 14 below, the City and The Redeveloper agrees to use available TIF Proceeds to fund the construction of~~ shall at its own cost and expense, subject to

reimbursement as provided below, construct a public art work ("Public Art") within the right-of-way of the Project Site or Public Plaza as generally shown on Exhibit "A" and Exhibit "C". To the extent allowed by law and then only to the extent TIF Proceeds are lawfully available, the City shall use the TIF Proceeds to reimburse the Redeveloper for its cost to construct the Public Art. The Director of the Urban Development Department and Redeveloper shall carry out a request for proposal for the Public Art and shall seek the input and recommendation of the Historic Preservation Commission.

i. Right of Way. In the event the right of way of the Project Site is chosen as the location for the Public Art, then the final location and work shall be subject to the review and approval by the Mayor and/or his designee(s). Upon completion of the Public Art within the right-of-way of the Project Site, the City shall have the duty and responsibility to maintain and repair in a commercially reasonable manner the Public Art at its own cost and expense.

ii. Public Plaza. In the event it is desirable for the Public Art to be located within the Public Plaza of the Project Site, then (i) the final location and work shall be subject to the review and approval by the Redeveloper and the Mayor; (ii) the on-going maintenance responsibilities for the Public Art will be determined and the responsibilities allocated between the parties; (iii) if the City does have on-going maintenance responsibilities for the Public Art, then the Redeveloper, without additional consideration, will grant the City a written public art maintenance easement; and (iv) the maintenance responsibilities and the any public maintenance easement shall be reduced to a written recordable agreement, executed by the Mayor and the Redeveloper and filed of record.

d. Haymarket Improvements Easement and Maintenance Agreement. Upon completion of the design and construction of the A & H Plaza and the Facade Upgrade, the City and Redeveloper agree to execute a Haymarket Improvements Easement and Maintenance Agreement

for the A & H Plaza and Facade Upgrade on a form substantially similar to the Haymarket Improvements Easement and Maintenance Agreement, which is attached hereto as Exhibit "F" and incorporated herein by this reference. Subject to Paragraph 28 below, in the event the Redeveloper fails to maintain the A & H Plaza or Facade Upgrade as provided in the Haymarket Improvements Easement and Maintenance Agreement, then the Redeveloper shall reimburse the City the proportionate share (1/15) of the grant funds provided for said A & H Plaza or Facade Upgrade for the year the Redeveloper fails to maintain said improvement.

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

**6. That paragraph 13 of the Agreement be amended to read as follows:**

13. Issuance of TIF Bond. ~~On or after the date of this Agreement, t~~The City shall issue one or more TIF Bond, in one or more tax exempt and taxable series, in the total contracted amount of Two Million Seven Hundred and Seventy-Five Thousand, Five Hundred and Fifty-Two and No/100 Dollars (\$2,775,552.00) for net funds available (collectively "TIF Indebtedness") to be purchased by Redeveloper or Redeveloper's lender ("TIF Bond Purchaser"), in a written form acceptable to Redeveloper's attorney, and receive Bond Proceeds from TIF Bond Purchaser in said amount. ~~The City and Redeveloper agree that the form of the TIF Bond and funding mechanism of the Bond Proceeds may 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. In the alternative, the~~ The City Finance Director on behalf of the City shall have the authority to determine the actual timing of issuing the TIF Indebtedness and all the other necessary and reasonable details and mechanics of the TIF Indebtedness, TIF Bonds, TIF

Tax Revenues, TIF Proceeds, Project Account, and the ~~grants of funds~~ reimbursement for the costs of the Public Improvements.

**7. 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. TIF Proceeds shall be expended in the following priority:

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

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

- a. Demolition, salvage and site preparation of the Project Site, including the Redevelopment Project Improvements and the protection of public right-of-ways;
- b. Phase 2 utility work, including extension of cable television within the Project Site, water line improvements, electric line improvements and coordination and screening work with the Phase 1 utility improvements and work as generally shown on Exhibit "B-1" and Exhibit "B-2", which are attached hereto and incorporated herein by this reference, but excluding utility service lines;
- c. Streetscape, including relocating streets, sidewalks, curb and gutters, pedestrian lighting, signage, landscape and irrigation materials and other street and sidewalk improvements within the Project Site;

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

e. Construction of the A & H Plaza as described in Paragraph 11a. above and as generally shown on Exhibit "B";

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

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

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

In the event it becomes apparent that there is ~~will~~ not be enough available TIF Proceeds to complete the Second Priority items as shown above, the City Urban Development Director and the Redeveloper shall use their best efforts to agree to modify or reduce the scope, scale, size or phasing of the Second Priority item(s), but not eliminate any Second Priority item, to enable the available TIF Proceeds to ~~fund~~ be sufficient to reimburse the Redeveloper for its cost to construct the modified or reduced Second Priority items. Subject to the preceding sentence, the City Urban Development Director on behalf of the City is hereby authorized to modify or reduce the scope, scale, size or phasing of the Second Priority items, but not eliminate any Second Priority item, in an effort to enable the available TIF Proceeds to ~~fund~~ be sufficient to reimburse the Redeveloper for its cost to construct the modified or reduced Second Priority items. Redeveloper shall be responsible for the cost to construct any of the modified or reduced Second Priority items which exceed the TIF Proceeds available to reimburse Redeveloper for said cost. ~~Redeveloper agrees that upon receipt of said grant(s) from the City, Redeveloper shall deposit said funds in a separate account(s) that does not include any of the Redeveloper's funds for Private Improvements and pay for said Public Improvements from said separate account(s).~~ Redeveloper agrees that in the event the

reimbursements are not directly paid to the contractor or vendor who does the Public Improvement work and instead the reimbursement are paid to the Redeveloper, then the Redeveloper shall deposit said funds in a separate account(s) that does not include any of the Redeveloper's funds for Private Improvements and pay said contractor or vendor for said Public Improvements work from the separate account(s). ~~The grants are~~ use of TIF Proceeds is restricted and earmarked for the ~~funding reimbursement~~ of Redeveloper's cost to design, construct, and implement the Public Improvements as described herein and the Redeveloper does not have discretionary judgment over the applications of said ~~grant funds~~ TIF Proceeds.

**8. That paragraph 17 of the Agreement be amended to read as follows:**

17. Valuation of Property Within the Redeveloper Property. The City intends to use the Ad Valorem Tax Provision to generate tax increment financing funds which shall be used to finance the issuance of the TIF Bond and to make ~~the grant or grants~~ reimbursements to Redeveloper in accordance with this Redevelopment Agreement. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service for on the TIF Indebtedness from the sale of the TIF Bond will be derived from the increased valuation from redeveloping the Redeveloper Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property and improvements thereon which does not exceed the following values commencing tax year 2011 and continuing for a period of not to exceed fifteen (15) years after the effective date of 2011 or so long as any portion of the TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter:

Total	\$17, 507,146
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**9. That paragraph 20 of the Agreement be amended to read as follows:**

20. Repayment of Reimbursement of Grants. ~~Subject to Paragraph 28 below, Redeveloper agrees to repay the City the grant or grants of funds provided for in Paragraph 12 above in the event Redeveloper fails to substantially complete the Redeveloper's Private Improvements as provided in Paragraph 10 and, upon such repayment of the of the grant funds, this Agreement shall be null and void in regards to the Redeveloper and the Redeveloper Property.~~

Subject to Paragraph 28 below, in the event the Redeveloper fails to maintain the Redeveloper's Private Improvements as provided in Paragraph 7 above, then the Redeveloper shall reimburse the City the proportionate share (1/15) of the ~~grant funds~~ reimbursement payment provided for in ~~Paragraph 12 above~~ herein for the year the Redeveloper fails to maintain the Private Improvements.

**10. That paragraph 21 of the Agreement be amended to read as follows:**

21. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the ~~effective date hereof~~ Effective Date in paragraph 46 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.

**11. That a new paragraph numbered paragraph 46 be added to the Agreement to read as follows:**

46. Effective Date of Project. The effective date of the Ad Valorem Provision for the Redevelopment Project (the "Effective Date") shall be the date of substantial completion of the Private Improvements.



