

**CITY OF LINCOLN  
REDEVELOPMENT AGREEMENT**

**Holdrege/Idylwild**

THIS REDEVELOPMENT AGREEMENT (Holdrege/Idylwild) (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2012 (“**Commencement Date**”) by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska and its successors and assigns (“**City**”); **KAPPA FOUNDATION**, a Nebraska nonprofit corporation and its successors and assigns (“**Kappa Foundation**”); and **KINPORT CORPORATION**, a Nebraska corporation, and its successors and assigns (“**Kinport**”). Kappa Foundation and Kinport are sometimes referred to herein individually as “**Redeveloper**” and collectively as “**Redevelopers**”.

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 adopted the Holdrege/Idylwild Redevelopment Plan, as may amended, which in part provides for the Holdrege/Idylwild Redevelopment Project in a “T” shaped area generally bounded by Holdrege Street between North 34<sup>th</sup> and 37<sup>th</sup> Street on the north, Idylwild Park and Apple Street on the south, connected by Idylwild Drive, including abutting public right-of-ways and the vacation of North 35<sup>th</sup> Street between Starr Street to Holdrege Street and the east 200.10 feet of the west-east alley in Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska (“**Street and Alley Vacation**”), as shown on Exhibit “A”, which is attached hereto and incorporated herein by this reference (collectively “**Redevelopment Area**”). A copy of said Redevelopment Plan, together with any and all amendments thereto (collectively “**Redevelopment Plan**”), is on

file in the Office of the City Clerk of the City of Lincoln, Nebraska (“**City Clerk**”).

B. The “**Kappa Foundation Property**” is owned by the Kappa Foundation and legally described on Exhibit “B”, which is attached hereto and incorporated herein by this reference.

C. The “**Kinport Property**” is owned by Kinport and legally described on Exhibit “B”.

D. The “**SAM Property**” is currently owned by SAM Properties, Inc., a Nebraska corporation (“**SAM**”) and legally described on Exhibit “B”. SAM and Kinport have entered into a Real Estate Purchase Agreement, dated April 25, 2012, as modified by the First Amendment to Real Estate Purchase Agreement, dated June 18, 2012 (collectively “**Real Estate Purchase Agreement**”) for the fair market value sale and purchase of the SAM Property located within the Redevelopment Area upon condition that the City agree to assist Kinport in such acquisition by providing a grant of TIF Proceeds (defined below) to Kinport to be used to buy down the purchase price of the SAM Property (“Land Purchase Assistance”) which assistance is essential to implementation of the Redevelopment Project. The Real Estate Purchase Agreement is on file in the Office of the City Clerk of the City of Lincoln, Nebraska and is incorporated herein by this reference.

E. The Redevelopers have submitted a proposal designated as the “**Holdrege/Idylwild Project**” or “**Redevelopment Project**” to the City to redevelop the Kappa Foundation, Kinport Property and SAM Property (individually and collectively “**Project Site**”).

F. The planned private improvements for the Redevelopment Project include, but are not limited to, the following subprojects (collectively “**Private Improvements**”):

1. “**Kappa Foundation Private Improvements**”: Construction of a new three story AGR fraternity house with associated off-street and depressed parking, screen with landscaping, berms and masonry wall on the Kappa Foundation Property.
2. “**Kinport Private Improvements**”: acquisition of the SAM Property for fair value, relocation of the original Valentino’s restaurant, demolition, remediation, site improvement and construction of two three story buildings (totaling approximately 60,000 square feet) with mixed uses (new Valentino’s restaurant, retail, office, and/or housing), along with properly screened parking on the Kinport Property and SAM Property. The Kinport Private Improvements will be developed in two phases:
  - a. “**East Phase**”: Phasing of the Kinport Private Improvements is necessary to permit the existing Valentino’s restaurant to remain open while the first east building and related parking is constructed. Upon completion of the first three-story east building, Valentino’s will then be relocated and become a first floor tenant.
  - b. “**West Phase**”: After completion of the East Phase and the relocation of Valentino’s restaurant, the current Valentino’s building will be demolished. Once demolition and site preparation is completed, then the second west phase three-story building and related parking will commence.

G. The planned public improvements for the Redevelopment Project will provide enhancements to the Private Improvements and to the abutting East Campus Neighborhood and

the East Campus Community Organization (collectively “**ECCO**”) and includes, but is not limited to, the following improvements (collectively “**Public Improvements**”):

1. “**City Park Improvements**”: update and make improvements to the City Park located at the intersection of Idylwild Drive and Apple Street as shown on Exhibit “D”, which is attached hereto and incorporated herein by this reference, which improvements may, subject to final design and funding, include benches, gazebo, historical information signage, tree and vegetation plantings, ornamental light, and paved walkway.
2. “**Idylwild Drive Median Improvements**”: update and make improvements to the medians within Idylwild Drive and make other related Idylwild Drive street improvements from Holdrege Street to Apple Street as shown on Exhibit “D”, which may, subject to final design and funding, include new planting beds, irrigation, ornamental street lighting and street/district monument.

H. Kinport and other abutting property owners submitted Petitions to Vacate to the City for the Street and Alley Vacation and the City is approving said Street and Alley Vacation simultaneously with the approval of this Agreement, subject to the City retaining certain water line easement within said vacated right-of-way ("Vacated ROW") and subject to title to the Vacated ROW being transferred to Kinport as part of the Project Site and under the terms and conditions of the Ordinance vacating said Vacated ROW.

I. Kappa Foundation and Kinport have submitted to the City a Planned Unit Development for the Redevelopment Project, dated July \_\_\_\_\_, 2012 (“**PUD**”), which was approved by the City. The PUD permits the Kappa Foundation Private Improvements to be

constructed under the terms and conditions of the R-2 PUD and R-6 PUD and permits the Kinport Improvements to be constructed under the terms and conditions of the B-3 PUD.

J. **“Redevelopment Project Undertakings”** shall mean the Private Improvements, Land Purchase Assistance and Public Improvements located within the Redevelopment Area. The costs of the Redevelopment Project Undertakings are collectively known as the **“Redevelopment Project Costs”** and are shown on the Uses and Sources of Funds in Exhibit “C”.

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

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

M. Kappa Foundation is willing to enter into this Agreement and through an anticipated Minimum Investment (defined below) of approximately Four Million and No/100 Dollars (\$4,000,000.00) to redevelop the Kappa Foundation Property by constructing the Kappa Foundation Private Improvements. Kinport is willing to enter into this Agreement and through an anticipated Minimum Investment (defined below) of approximately Nine Million and No/100 Dollars (\$9,000,000.00) to redevelop the Kinport Property and SAM Property by constructing the Kinport Private Improvements. The term **“Minimum Investment”** in this Agreement shall include all costs incurred by each Redeveloper when constructing its respective Private

Improvements, including but not limited to design costs, permits, impact fees, and financing costs.

N. Kinport is willing to assist the City in the implementation and construction of the Public Improvements as described in Recital G of this Agreement.

O. In order to help remove blight and substandard conditions and improve conditions in this economically underutilized Redevelopment Area, the City is willing to enter into this Agreement and to make grants to Kinport to be used to fund the Land Purchase Assistance and carry out the Public Improvements as described in Recitals D and G above. The City and Kinport agree that such assistance is deemed essential to the success of the Redevelopment Project.

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

Q. The Redevelopment Plan contains a provision dividing ad valorem property taxes upon property in the Redevelopment Project for the benefit of any public body for a period not to exceed fifteen (15) years after the effective date of such provision, as provided for in Neb. Rev. Stat. § 18-2147, et seq. Said provision is hereinafter referred to as the “**Ad Valorem Tax Provision.**”

R. Neb. Rev. Stat. § 18-2107 and § 18-2150 (Reissue 2007) authorize the City to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan. In order to make the grant or grants to Kinport, the City intends to issue a tax increment financing indebtedness instrument or instruments in tax exempt and taxable series (individually and collectively “**TIF Bond**”) and to incur indebtedness (“**TIF Indebtedness**”) upon the sale of the TIF Bond to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“**TIF Tax Revenues**”).

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

T. The City and Redeveloper mutually agree that the redevelopment of the Redevelopment Area and 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:

## **ARTICLE I**

### **REDEVELOPER’S RESPONSIBILITIES**

**Section 101. Evidence of Financial Ability of Redeveloper.** Each Redeveloper shall, within thirty (30) days following the execution of this Redevelopment Agreement, provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of said Redeveloper in connection with the Redevelopment Project

Undertakings. To the extent allowed by law, the City agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to said Redeveloper for use in the Redevelopment Project; and shall state the amount and source of debt financing which is available, or irrevocably committed, to said Redeveloper for use in completing the Private Improvements. 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 said Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

**Section 102. Property Assemblage.**

**A. Acquisition of SAM Property.** Within thirty (30) days following the Commencement Date of this Agreement, Kinport shall close upon the Real Estate Purchase Agreement for the SAM Property. On or before such closing, the City shall grant Kinport the Land Purchase Assistance amount shown on the Uses and Sources of Funds attached hereto as Exhibit "C" to be used solely toward the acquisition of the SAM Property.

**B. Vacated ROW.** To assist in the implementation of the Redevelopment Project, the City agrees to convey said Vacated ROW to Kinport as part of Kinport's portion of the Project Site and under the terms and conditions of the Ordinance approving said Vacated ROW.

**Section 103. Construction of Redevelopment Project Improvements.**

A. **Conceptual Plans and Drawings.** The Conceptual Plans and Drawings ("**Project Drawings**") for the Holdrege/Idylwild Project attached hereto as Exhibit "E", and incorporated herein by this reference, have been reviewed and approved by the Mayor. The Project Drawings for the Kinport Private Improvements will serve as the basis for development of preliminary plans and specifications ("**Preliminary Plans**") for the Kinport Private Improvements to be constructed by Kinport.

B. **Preliminary Plans.** Kinport will prepare or cause to be prepared Preliminary Plans for the Kinport Private Improvements. The Preliminary Plans for the Kinport Private Improvements shall be based upon the Project Drawings. Such Preliminary Plans shall provide elevation views of the exterior of the Kinport Private Improvements ("**Exterior Drawings**") and the construction materials to be used for such exterior walls. The Preliminary Plans will be submitted to the Historic Preservation Commission for review and approval of the applicable certificate(s) of appropriateness.

C. **Construction Documents.**

1. **Kinport Private Improvements.** Upon approval of the Preliminary Plans, Kinport shall prepare or cause to be prepared, at Kinport's expense, detailed final construction plans and specifications for the Kinport Private Improvements (hereinafter "**Kinport Construction Documents**"). Kinport shall submit such Kinport Construction Documents to the City for review and approval.

2. **Kappa Foundation Private Improvements.** Kappa Foundation Preliminary Plans have been reviewed and approved by the Historic Preservation Commission. Kappa Foundation has prepared or cause to be prepared, at Kappa Foundation's expense, detailed final construction plans and specifications for the Kappa Foundation Private

Improvements (hereinafter “**Kappa Foundation Construction Documents**”). Kappa Foundation has submitted such Kappa Foundation Construction Documents to the City for review and approval.

3. Public Improvements. Kinport, at its expense, subject to reimbursement as provided in Section 304 (Use of TIF Proceeds) below, shall cause the Public Improvements to be designed in accordance with the City’s Standard Specifications and final construction documents shall be submitted to the Director of Urban Development Department, Director of the Public Works and Utilities Department and the Director of Parks and Recreation Department for review and approval. The Preliminary Plans for the Public Improvements will be submitted to the Historic Preservation Commission for review. The Public Improvements will be installed and constructed pursuant to the City’s executive order construction process. Kinport, at its expense, subject to reimbursement as provided in Section 304 (Use of TIF Proceeds) below, will pay for construction administration, inspection, staking and testing of the Public Improvements as part of the construction and inspection process.

**D. Approvals**. City shall so approve or reject the Preliminary Plans and Construction Documents for the Kinport Private Improvements and Public Improvements within fourteen (14) days after receipt of the applicable documents and/or any report and action of the Historic Preservation Commission. Such Preliminary Plans and Construction Documents for the Private Improvements shall be reviewed by the Mayor or his designee and approved only if they are prepared from and in substantial conformance with the approved Project Drawings and the provisions of this Agreement. The Public Improvements shall be submitted to the Director of the Public Works and Utilities Department for review and approval pursuant to the City's executive order construction process. If the City rejects the applicable plans, the City shall deliver to

Kinport notice thereof accompanied by an explanation of the reasons for such rejection. If rejected, Kinport shall work with the architect or engineer to submit corrected Preliminary Plans and Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Preliminary Plans and Construction Documents shall be approved or rejected as provided above for original submittals.

**E. Approval Limitation.** City review and approval of the Preliminary Plans and Construction Documents for the Private Improvements does not apply to the building permit review process and is not a substitute for nor an elimination of the requirement that the Redeveloper apply for and receive any necessary building permits for construction of the Private Improvements.

**Section 104. Construction of Redevelopment Project Improvements.**

**A. Construction of Private Improvements.** Kappa Foundation, through an anticipated Minimum Investment of Four Million and No/100 Dollars (\$4,000,000.00), shall at its own cost and expense construct the Kappa Foundation Private Improvements substantially in conformance with the Kappa Foundation Construction Documents. Kinport, through an anticipated Minimum Investment of Nine Million and No/100 Dollars (\$9,000,000.00), shall at its own cost and expense construct the Kinport Private Improvements substantially in conformance with the Kinport Preliminary Plans and the Kinport Construction Documents. All Private Improvements shall be constructed in compliance with all applicable local, state, and federal building and construction laws and codes. Kinport agrees to secure and maintain all permits and licenses necessary for its use of the Holdrege/Idylwild Project including, but not limited to, necessary building permits and inspections.

1. Professional Design. All Private Improvements shall have the architectural or engineering features, detailing, and design elements in accordance with this Agreement. All accessory building walls, screening walls or fences, and canopy columns shall be in substantial conformity with the applicable City design standards.

2. Energy Efficiency. Construction of the Private Improvements shall utilize energy efficient building practices to the extent that they are reasonably available on a cost-effective basis. Specifically, Redeveloper shall use the standard established by U.S. Green Building Council through its Leadership in Energy and Environmental Design (“LEED”) Green Building Rating Systems as a guideline for the design and construction of the Private Improvements.

**B. Construction of Public Improvements.** Kinport shall, at its own cost and expense, subject to reimbursement as provided below, design, construct, and implement the City Park Improvements and the Idylwild Drive Median Improvements. The City Park Improvements and Idylwild Drive Median Improvements will be constructed through the City’s executive order construction process. The City shall not have any obligations to fund the City Park Improvements and the Idylwild Drive Median Improvements or make grants to Kinport for such purpose in excess of the available TIF Proceeds lawfully available and granted to Kinport as described in Section 303 (Grant of Funds) below and the approximately \$60,000 donation that the City has or is to receive from SAM Properties, Inc. Kinport shall meet its obligations to fund the City Park Improvements and the Idylwild Drive Median Improvements or make grants to Kinport for such purpose by expending (i) the estimated TIF Proceeds of approximately \$140,000 that will be lawfully available and granted to Kinport as described in Section 303 (Grant of Funds) below and (ii) the approximately \$60,000 donation that the City has or is to

receive from Sam Properties, Inc and then granted to Kinport as described in Section 303 (Grant of Funds) below. To the extent required by law, contracts for construction of the Public Improvements shall be bid in accordance with City procedures.

**Section 105. Payment of Costs for Private Improvements.**

**A. Complete Construction.** Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Agreement, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct said 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 persons, firms, or organizations performing any work on the Private Improvements or furnishing any materials, equipment, or supplies for construction of the said improvements. 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.

**B. Certificate of Completion.** Promptly after the Redeveloper provides the City the proper documentation that all persons, firms or organizations who performed labor or furnished materials, equipment, or supplies in the prosecution of the Private Improvements has been properly paid or satisfactorily secured, the City shall upon request by each Redeveloper cause a final inspection to be made of the of the respective Private Improvements. If the respective work has been completed according to this Agreement, the City shall execute and

deliver to such Redeveloper the City's acceptance of the Redeveloper's Certificate of Completion, the form of which are shown on Exhibit "F-1" and Exhibit "F-2", which are attached hereto and incorporated herein by this reference. Such certification by the City shall be a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of such Redeveloper to construct the applicable Private Improvements. If the City shall refuse or fail to provide the certification in accordance with the provisions of this Section after being requested to do so by Redeveloper, the City shall, within fifteen (15) days after written request by Redeveloper, provide Redeveloper with a written statement indicating in what respect Redeveloper has failed to complete the Private Improvements subject to such certification in accordance with the provisions of Section 105 and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such certification. As used herein, the term "**completion**" shall mean substantial completion of the Private Improvements so that they may be reasonably used for their intended purposes but need not include the tenant finish improvements required for occupancy by such tenant.

C. **Certificates Recorded.** The Certificate of Completion shall be recorded by the City or Redeveloper in the office of the Register of Deeds for Lancaster County, Nebraska.

**Section 106. Cost Certification.** Kinport shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to construction of the eligible Redevelopment Project Improvement Costs. Kinport shall timely submit receipts, invoices, or proof of payment concurrently with the request for payment of eligible Redevelopment Project

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.

**Section 107. Duty to Maintain.** Each Redeveloper shall, following construction of its respective Private Improvements and during the useful and functional life of such improvements, keep the same 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 a building the Private Improvements including the routine and reasonable preventive maintenance of their service facilities including, but not limited to, 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 related 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, parking areas, and private roadways, 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.

## **ARTICLE II**

### **SECURITY AND RESTRICTIONS**

#### **Section 201. Penal Bond.**

**A. Penal Bond Amount.** Pursuant to Neb. Rev. Stat. § 18-2151, the Redeveloper shall collectively furnish or cause to be furnished to the City, prior to commencement of construction of the Private Improvements, a penal bond(s) in a total amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) with a corporate surety authorized to do business in the State of Nebraska. Such penal bond(s) shall be

conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in the construction of the Private Improvements. Proof of such penal bond shall be supplied to the City prior to commencement of construction of the applicable Private Improvements ready for construction. The City shall be supplied, upon written demand, with copies of all lien waivers of each of the Redeveloper's contractors, or his or her subcontractors who performed labor or applied materials performed or used in the construction of the Private Improvements and shall be entitled to inspect at reasonable times all records of Redeveloper or their agents regarding such lien waiver procedures. If this alternative is used, proof of such penal bond shall be supplied to the City prior to the start of construction of the Private Improvements.

**B. Payment and Performance Bond Alternative.** The City shall accept, in lieu of the requirements in Section 201.A. above, a payment bond supplied by Redeveloper's general contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the general contractor. The penal amount of the bond shall be Two Million Five Hundred Thousand Dollars (\$2,500,000). As required by Neb. Rev. Stat. § 52-141, recorded notice of the bond must be filed of record against the Project Site. If this alternative is used, proof of said payment and recording shall be provided to the City prior to the start of construction of the Private Improvements. The lien waiver shall be provided upon completion of the Private Improvements.

**C. Security Acceptable to the City Attorney.** The City shall accept, in lieu of the requirements in Section 201A or B. above, a similar performance bond, escrow, or other security agreement approved by the City Law Department. If this alternative is used, proof of said

security shall be provided to the City prior to the start of construction of the applicable Private Improvements.

**Section 202. Indemnifications.**

**A. Kappa Foundation Indemnification.** Kappa Foundation agrees to indemnify and hold City and Kinport harmless to the extent of any payments in connection with carrying out construction of the Kappa Foundation Private Improvements the City or Kinport may be required to make, for failure of Kappa Foundation to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in construction of the Kappa Foundation Private Improvements. This Section survives any termination of this Agreement.

**B. Kinport Indemnification.** Kinport agrees to indemnify and hold City and Kappa Foundation harmless to the extent of any payments in connection with carrying out construction of the Kinport Private Improvements the City or Kappa Foundation may be required to make, for failure of Kinport to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in construction of the Kinport Private Improvements. This Section survives any termination of this Agreement.

**Section 203. Use Restrictions.** Redeveloper agrees that during the Tax Increment Period no portion of the Redeveloper Property shall be used for any of the following uses:

**A.** The retail sale of alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sell alcoholic beverages for consumption off the premises and restaurants allowing the removal of an unsealed bottle of wine pursuant to Neb. Rev. Stat. §53-123.04, as amended;

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

**C.** Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

**D.** A sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service. The foregoing exclusion shall not include pay for view video/audio services, internet and other forms of telecommunication/communication systems offered or available to guests in the ordinary course of hotel business and trade or to Lincoln residents.

**E.** Any business whose predominant operation is 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.

**F.** 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 live horse-racing, off-site pari-mutual and simulcast horse-racing, keno, bingo, and the retail sale of lottery tickets as permitted by applicable law.

**G.** Any business involving the sale of weapons, self-service laundromats for nonresidents or non-occupants, illegal activities, or sale of any illegal goods or products.

**H.** Off premises signs as defined in Section 27.69.020 of the Lincoln Municipal Code.

**I.** Any business providing payday loans, liens, check cashing services, or other similar services, except for banks, savings and loans, insurance company, investment companies, stock brokers, credit unions and automated teller machines.

**J.** Cell towers.

**Section 204. Construction Administration.**

**A. Redevelopment Project Improvements.** Kappa Foundation shall be responsible for all components of the Kappa Foundation Private Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. Kinport shall be responsible for all components of the Kinport Private Improvements and Public Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. Kinport shall be entitled to charge a reasonable administrative fee for such services described above for Public Improvements. Each Redeveloper will be solely responsible for payment of all construction costs attributable to the applicable Redevelopment Project Undertakings subject to the terms and conditions of this Agreement.

**B. City Inspection** Upon notification being provided by Kinport to the City that the Public Improvements, or any portion thereof, to be constructed under this Agreement

have been completed, the City shall inspect or cause to be inspected said Public Improvements so as to make certain that said improvements are properly constructed according to applicable standard specifications.

**Section 205. Timing of Construction.** Kinport and Kappa Foundation respectively will use commercially reasonable efforts to commence the East Phase of the Kinport Private Improvements and Kappa Foundation Private Improvements, within eight (8) months following the Commencement Date of this Agreement and to complete the respective Private Improvements within eighteen (18) months following the commencement of construction. Kinport will use commercially reasonable efforts to complete the West Phase of the Kinport Private Improvements and Public Improvements, within thirty-six (36) months following the Commencement Date of this Agreement, subject to market conditions and market demand.

**Section 206. Repayment of Land Purchase Assistance.** In the event Kinport fails to timely commence construction of the East Phase of Kinport Private Improvements in accordance with Section 205 above, subject to Kinport's right to cure in Section 501 and/or for delay of performance for cause beyond the control of Kinport pursuant to Section 503, Kinport shall upon demand of the City reimburse the City for the Land Purchase Assistance. Said payment shall be made within thirty (30) days following receipt of the notice of demand for payment.

**Section 207. Condominium Regime.** Kinport reserves the right to subject the Kinport Private Improvements to a condominium regime to facilitate the separation and financing of the various components. Kinport shall obtain the City's consent to the condominium declaration, which consent shall not be unreasonably withheld or delayed.

**ARTICLE III**  
**TAX AGREEMENT**

**Section 301. Issuance of TIF Indebtedness.** As soon as is practicable following the Commencement Date of this Agreement and as set forth in this Article III of this Agreement, the City shall issue TIF Indebtedness evidenced by the TIF Bond in the estimated amount of the tax increment to be generated on the Holdrege/Idylwild Project (“**TIF Bond**”) to be purchased by Kinport or Kinport's Lender ("TIF Bond Purchaser") and shall receive TIF Bond Proceeds from the TIF Bond Purchaser to be deposited into a City fund account (the “**City Project Account**”) and expended in the priority set forth in this Agreement. The TIF Bond shall specifically provide that any shortfall in anticipated TIF Tax Revenues from the Private Improvements and related improvements for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and improvements thereon, shall be borne entirely by the TIF Bond Purchaser without recourse of any kind against the City. The City and Kinport agree that the City Finance Director on behalf of the City shall have the authority to determine all the other necessary and reasonable details and mechanics of the TIF Indebtedness, TIF Bond, TIF Tax Revenues, Project Account and the grant of funds for the eligible TIF cost of the Redevelopment Project Undertakings.

**Section 302. Valuation of Private Improvements.** The City intends to use the Ad Valorem Tax Provision to generate TIF Tax Revenues which shall be used to pay debt service on the TIF Indebtedness. The TIF Tax Revenues are to be derived from the increased valuation of the Project Site, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Nebraska Community Development Law which will be attributable to the redevelopment contemplated under this Agreement. Each Redeveloper agrees

not to contest any taxable valuation assessed for its respective portion of the Project Site and improvements thereon which does not exceed the following values, commencing on the effective date of the Ad Valorem Tax Provision and continuing for a period of not to exceed fifteen (15) years after said effective date 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:

- Kappa Foundation Property Not to Protest Total \$3,000,000
- Kinport Property and SAM Not to Protest Total \$7,400,000

The term “**Prorata Share**” is based upon the above Not to Protest Total and shall mean the following:

Kappa Foundation Prorata Share:	29%
Kinport Prorata Share	<u>71%</u>
Total	100%

**Section 303. Grant of Funds.** In order to support redevelopment of the Redevelopment Area and as an inducement for the Redeveloper to construct the Private 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 Kinport in the total amount of the TIF Proceeds less the City’s cost to issue the TIF Bond (“**Grant Funds**”), to reimburse Kinport for the cost of the priority items identified in Section 304 (Use of TIF Proceeds) below, provided that only costs incurred after the Commencement Date of this Agreement shall be eligible for payment. In addition, City agrees to make a grant or grants to Kinport in the total amount of the donation (approximately \$60,000) that the City is to receive from SAM Properties, Inc. to reimburse Kinport for a portion of the City Park Improvements and the Idylwild Drive Median Improvements. In order to receive

reimbursement from Grant Funds, Kinport 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.

**Section 304. Use of TIF Proceeds.** The TIF Proceeds shall be deposited into the City Project Account to be used for payment of the City's TIF Bond cost of issuance and the grant of funds for the costs of the following Redevelopment Project Undertakings to the extent available. The TIF Proceeds from the Project Site 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: Reimburse Kinport for costs of Land Purchase Assistance in the Redevelopment Area.

THIRD PRIORITY: Reimburse Kinport for costs of Idylwild Park Improvements and Idylwild Drive Median Improvements.

FOURTH PRIORITY: In the event TIF Proceeds are available, reimburse Kinport or City for costs of other capital public improvements or capital replacement of public improvements within the City Park and/or Idylwild Drive right-of-way between Holdrege and Apple Street which are incurred within the Tax Increment Period.

In the event there is not enough available TIF Proceeds to complete the Third Priority and/or Fourth Priority item(s) as shown above, the City and Kinport are authorized to use good faith efforts to agree to reduce the scope, scale, size or phasing of the priority item(s). If the City and Kinport fail to agree upon a reduction, the TIF Proceeds will be expended based upon the stated priority to the extent TIF Proceeds are available. The grants are restricted and earmarked

for the funding of TIF eligible Redevelopment Project Undertakings as described herein and Kinport does not have discretionary judgment over the applications of said Grant Funds.

**Section 305. Debt Service for TIF Indebtedness.** The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of and/or interest on the TIF Indebtedness with interest at a rate per annum not to exceed ten percent (10.0%). Any debt service on the TIF Indebtedness (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City. Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Private Improvements not needed or required to pay the TIF Bond Purchasers for the TIF Indebtedness shall be expended by the City for priorities described above in Section 304 (Use of TIF Proceeds) and then returned to the applicable taxing authorities as provided in the Community Development Law.

**Section 306. Tax Increment Deficiency on TIF Bond.**

**A. Kinport Purchased TIF Bond.** If Kinport purchases the TIF Bond, any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and any improvements located thereon shall be borne entirely by Kinport without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, Kinport as purchaser of the TIF Bond agrees to defer payment of the same for each year that there exists a deficiency such TIF Tax Revenues bring during the Tax Increment Period. If Kinport is required to defer any such payments, the City shall reimburse all sums deferred plus interest (at the same interest rate of the then outstanding TIF Bond) if and when TIF Tax Revenues do become available from the Ad

Valorem Tax Provision to meet current debt service and reimburse Kinport for such deferred payments. In the event the TIF Indebtedness for the Project Site is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness shall be forgiven. In the event that any deficiency payments made by Kinport as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Kinport agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

**B. Lender Purchased TIF Bond.** If Kinport's Lender purchases the TIF Bond, any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and any improvements located thereon shall be borne entirely by Kinport without recourse of any kind against the City. In the event of and to the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, Kinport agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request from the City. If Kinport is required to pay any such deficiency, the City shall reimburse all sums paid by Kinport for such purposes plus interest (at the same interest rate of the then outstanding TIF Bond) if and when TIF Tax Revenues do become available from the Ad Valorem Provision to meet current debt service and reimburse Kinport for such deficiency payments. In the event that any deficiency payments made by Kinport as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Kinport agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

**Section 307. Reimbursement of Grants.** Subject to Section 501 (Remedies) below, each Redeveloper agrees to repay the City its Prorata Share of any grant or grants of funds as

provided for in Section 303 (Grant of Funds) and Section 304 (Use of TIF Proceeds) above in the event such Redeveloper fails to substantially complete its respective East Phase of the Private Improvement Improvements as provided in Section 205 (Timing of Construction) above and, upon such repayment of the of the grant funds, this Agreement shall be null and void in regards to said Redeveloper and its portion of the Project Site and the improvements located thereon. Subject to Section 501 (Remedies) below, in the event a Redeveloper fails to maintain its respective Private Improvements as provided in Section 107 (Duty to Maintain) above, then said Redeveloper shall reimburse the City its Prorata Share of the proportionate share (1/15) of the grant funds for said Private Improvements provided for in Section 303 (Grant of Funds) above, for each year a Redeveloper fails to maintain its respective Private Improvements.

**Section 308. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the effective date of the Ad Valorem Provision hereof or so long as the TIF Bond remains outstanding whichever period of time is shorter (tax increment period), convey the Private Improvements within the 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.

**Section 309. Agreement to Pay Taxes.** Each Redeveloper agrees to pay all real property taxes levied upon its respective portion of the Project Site and improvements thereon 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.

**Section 310. Insurance Damage or Destruction of Private Improvements.** During the construction period of the respective Private Improvements, each Redeveloper agrees to keep its 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 of its respective Private Improvements but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, each Redeveloper agrees to restore its respective Private Improvements to their 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 such Redeveloper fails to restore the same for any reason, said Redeveloper shall pay to the City the amount of tax increment received by the City for said Project Site in the preceding year times the number of years remaining in the Tax Increment Period. During the Tax Increment Period, each Redeveloper shall include by restrictive covenant an enforceable obligation on said 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 said Redeveloper or other owner or tenant's obligation to restore its respective Private Improvements to their prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

**Section 311. Condemnation.** If during the Tax Increment Period, all or any portion of the 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 said

property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

**Section 312. Termination.** The provisions of Article III of this Agreement shall terminate for the Project Site upon expiration of the Tax Increment Period.

## **ARTICLE IV**

### **MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

**Section 401. Definitions.**

**A. Holder.** For the purpose of this Agreement, the term “**Holder**” in reference to a Mortgage (defined below) shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such Mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the Mortgagee.

**B. Mortgage.** For the purpose of this Agreement, the term “**Mortgage**” shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

**Section 402. Financing Creating Encumbrances Restricted.** Prior to completion of Private Improvements, neither Redeveloper, nor any successors in interest with respect to the Project Site shall engage in any financing or any other transaction creating any Mortgage upon the 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 Project Site except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure its respective Private Improvements. Each 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 its portion of the Project Site, and shall promptly notify the City of any Mortgage that has been created on or attached to its portion of the Project Site whether by

voluntary act of such Redeveloper or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any portion of the Project Site and which is contested by said Redeveloper, then said 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 such Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, each Redeveloper agrees that, prior to completion of its respective Private Improvements, any loan proceeds secured by any interest in its portion of the Project Site shall be used solely for the payment of costs and expenses related to the development of its respective Private Improvements. Each Redeveloper shall provide a copy of all bank approvals related to its respective Private Improvements to the Director of Urban Development in a timely fashion.

**Section 403. Mortgage Holder Obligations.** Each Mortgage Holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempt from those provisions of this Agreement which require construction and completion of the Private Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the Holder of the Mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the Holder of the Mortgage; provided, however, no person, including the Holder of a Mortgage authorized by this Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Agreement.

**Section 404. Copy of Notice of Default to Mortgage Holder.** Whenever the City shall deliver any notice or demand to a Redeveloper with respect to any breach or default by such 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 said other Redeveloper and each Holder of any Mortgage against its portion of the Project Site at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

**Section 405. Mortgage Holder Option to Cure Default.** If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of the Private Improvements by a Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand referred to in Section 404 (Copy of Notice of Default) above 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 Private Improvements, nothing contained in this Section or any other Section of this Agreement shall be deemed to permit or authorize Holder to modify this Agreement as approved by the City. If the Holder commences efforts to cure the default within such sixty (60) day period and the default cannot, in the exercise of due diligence, be cured within such period, the Holder shall have the right to diligently continue to cure the defaults. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Agreement.

**Section 406. Rights Applicable to Other Forms of Encumbrance.** The rights and obligations of this Agreement relating to Mortgages of any portion of the Project Site shall apply to any other type of encumbrance on any of the 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.

**Section 407. Termination.** The provisions of Article IV of this Agreement shall terminate upon City's issuance to a Redeveloper of said Redeveloper's respective Certificate of Building Completion for all its respective Private Improvements to be constructed on its portion of the Project Site pursuant to this Agreement.

## **ARTICLE V**

### **REMEDIES**

**Section 501. In General.** Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement, the party in default, or its successors, 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.

**Section 502. 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 or prosecuting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

**Section 503. Delay in Performance For Causes Beyond Control of Party ("Force Majeure").** The parties and 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 thirty (30) days after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

**Section 504. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by any 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 or parties. A waiver of any right of a party conferred by this Agreement shall be effective only if in writing and only to the extent specified in writing.

## ARTICLE VI

### REPRESENTATIONS OF THE REDEVELOPER AND CITY

**Section 601. Representations.** Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

**Section 602. Restrictions on Assignments of Rights or Obligations.** Redeveloper represents and agrees that prior to completion of the Private Improvements provided for above there shall be no sale or transfer of the 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;

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.

D. Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion.

**Section 603. Redeveloper Representations and Warranties.** Redeveloper represents and warrants to the parties as follows:

A. **Organization; Power; Good Standing.** Kappa Foundation is a Nebraska nonprofit corporation duly organized and validly existing in good standing under the laws of Nebraska. Kappa Foundation 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. Kinport is a Nebraska corporation duly organized and validly existing in good standing under the laws of Nebraska. Kinport 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.

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

**C. Effect of Agreement.** The execution, delivery and performance of this Agreement by each Redeveloper has been duly authorized by all necessary action by such 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 such Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which such Redeveloper is a party.

**Section 604. City Representations to Redeveloper.** City represents and warrants to the Redeveloper as follows:

**A. Requisite Power and Authority.** The City has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

**B. 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.

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

**D. City Maintenance.** Upon completion and the City's acceptance of the Public Improvements to be constructed as part of the Redevelopment Project, ownership and responsibility to maintain the Public Improvements will vest in the City.

**Section 605. 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 or for any amount which may become due to Redeveloper or any successors under the terms of this Agreement.

## ARTICLE VII

### MISCELLANEOUS

**Section 701. Persons Authorized to Issue Approvals.** For purposes of this Agreement and the approvals and disapprovals required hereunder, the parties shall be entitled to rely on the written approval or disapproval of (i) the City Council, the Mayor, the Director of the

Urban Development Department, the Director of the Parks and Recreation Department or the Director of the Public Works and Utilities Department, or its successor, as constituting approval or disapproval of the City; (ii) the President of Kappa Foundation, or its successor, as constituting approval or disapproval of Kappa Foundation; and (iii) the President of Kinport Corporation, or its successor, as constituting approval or disapproval of Kinport. The Mayor is hereby authorized to take such action as the Mayor may deem necessary or advisable in order to carry out this Agreement, including, but not limited to, the authority to make ministerial alterations, changes or additions to the foregoing described Public Improvements and to this Agreement.

**Section 702. Notices and Demands.** A notice under this Agreement by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to:

If to the City: Mayor  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

With a copy to: City Attorney  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

If to Kappa Foundation Kappa Foundation  
c/o Roger Wehrbein  
5812 Highway 66  
Plattsmouth, NE 68048

With a copy to: Seacrest & Kalkowski, PC, LLO  
Attn: Kent Seacrest  
1111 Lincoln Mall, Suite 350  
Lincoln, NE 68508

If to Kinport

Kinport Corporation  
c/o President  
440 North 8<sup>th</sup> Street, Suite 140  
Lincoln, NE 68508

With a copy to:

Seacrest & Kalkowski, PC, LLO  
Attn: Kent Seacrest  
1111 Lincoln Mall, Suite 350  
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.

**Section 703. Approval Not Unreasonably Withheld and Timely Approval.** Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

**Section 704. Access to Project Site.** During construction of the Private Improvements, the other parties shall permit the representatives of the City to enter all areas of the Project Site 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 Private Improvements. No

compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided in this Section. The City's right of access granted under this Section as it applies to a Redeveloper's respective Private Improvements within the Project Area shall terminate for any Building upon issuance by the City of said Redeveloper's Certificate of Completion.

**Section 705. Provisions Run With the Land.** This Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest. This Agreement or a Memorandum hereof, substantially similar to the Memorandum attached hereto as Exhibit "G", and incorporated herein by this reference, shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site, at Kinport's expense. Except as otherwise provided herein, the provisions and covenants of this Agreement shall terminate upon issuance by the City of the Certificate of Completion and the City's acceptance of the Public Improvements and dedication or conveyance of any related public easements.

**Section 706. Equal Employment Opportunity.** Pursuant to requirements of Section 11.08.160 of the Lincoln Municipal Code and Neb. Rev. Stat. § 48-1122 (Reissue 2010), Redeveloper, and its successors and transferees, agree that, during the performance of this Agreement, it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of race, religion, sex, color, national origin, ancestry, disability, age or marital status. Redeveloper further agrees to require that its contractor and subcontractors shall agree to conform to said requirements.

**Section 707. 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.

**Section 708. Titles of Articles and Sections.** Titles of the Articles and Sections and other parts of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

**Section 709. Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to Kinport for TIF Eligible Redevelopment Project Undertakings are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of Kinport and should not be construed as income to Kinport under the Internal Revenue Code Section 61 (I.R.C. § 61), as may be amended.

**Section 710. Certain Public Improvements.** Notwithstanding any contrary provisions herein, certain Public Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Public Improvements with Private Improvements. Kinport shall timely submit architect, engineer or other professional designer estimates or contractor's estimates for said Public Improvements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and

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

**Section 711. Integrated Contract; Severance Provisions; Interpretation; Governing Law.** It is intended by the parties that this Agreement and the incorporated, attached, and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which remain in full force and effect unless such court action shall materially change the intent of this Agreement. As this Agreement has been negotiated drafted through the efforts of the parties, any uncertainty or ambiguity shall be interpreted according to the application of rules of interpretation generally and not against either party for the reason that said party drafted that portion of the Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 712. Successors and Assigns.** The provisions of this Agreement shall be binding upon each Redeveloper and its successors and assigns; provided, however, that the obligations of the Redeveloper pursuant to this Agreement shall be binding upon such Redeveloper and its successors and assigns only during their respective periods of ownership.

**Section 713. Purpose of Agreement.** This Agreement has been entered into by the City to provide financing for the Holdrege/Idylwild Project, an approved project within the Redevelopment Plan.

**Section 714. Expiration.** Except as otherwise provided herein, this Redevelopment Agreement shall terminate and expire upon (i) the completion of the Private Improvements, and (ii) the expiration of the Tax Increment Provision.

**Section 715. Counterparts.** This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

**Section 716. Effective Date of the Ad Valorem Tax Provision.** The effective date of the Ad Valorem Tax Provision shall be the date Kinport closes on its acquisition of the SAM Property and the City will deliver written notice to the County Assessor on or before the following August 1 to divide the property taxes in the Project Area and use the last certified valuation for the preceding year to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147 (3).

**Section 717. Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

- Exhibit A – Redevelopment Area Map and Legal Description
- Exhibit B – Redeveloper Property
- Exhibit C – Uses and Sources of Funds
- Exhibit D – Public Improvements (City Park and Idylwild Drive Median)
- Exhibit E – Project Drawings
- Exhibit F-1 – Certificate of Completion (Kappa Foundation)
- Exhibit F-2 – Certificate of Completion (Kinport)
- Exhibit G – Memorandum of Redevelopment Agreement and Use Restrictions

[SIGNATURES PAGES FOLLOW]





Executed by Kinport this \_\_\_\_ day of \_\_\_\_\_, 2012.

**“Kinport”**

**KINPORT CORPORATION**, a Nebraska corporation

By: \_\_\_\_\_  
President

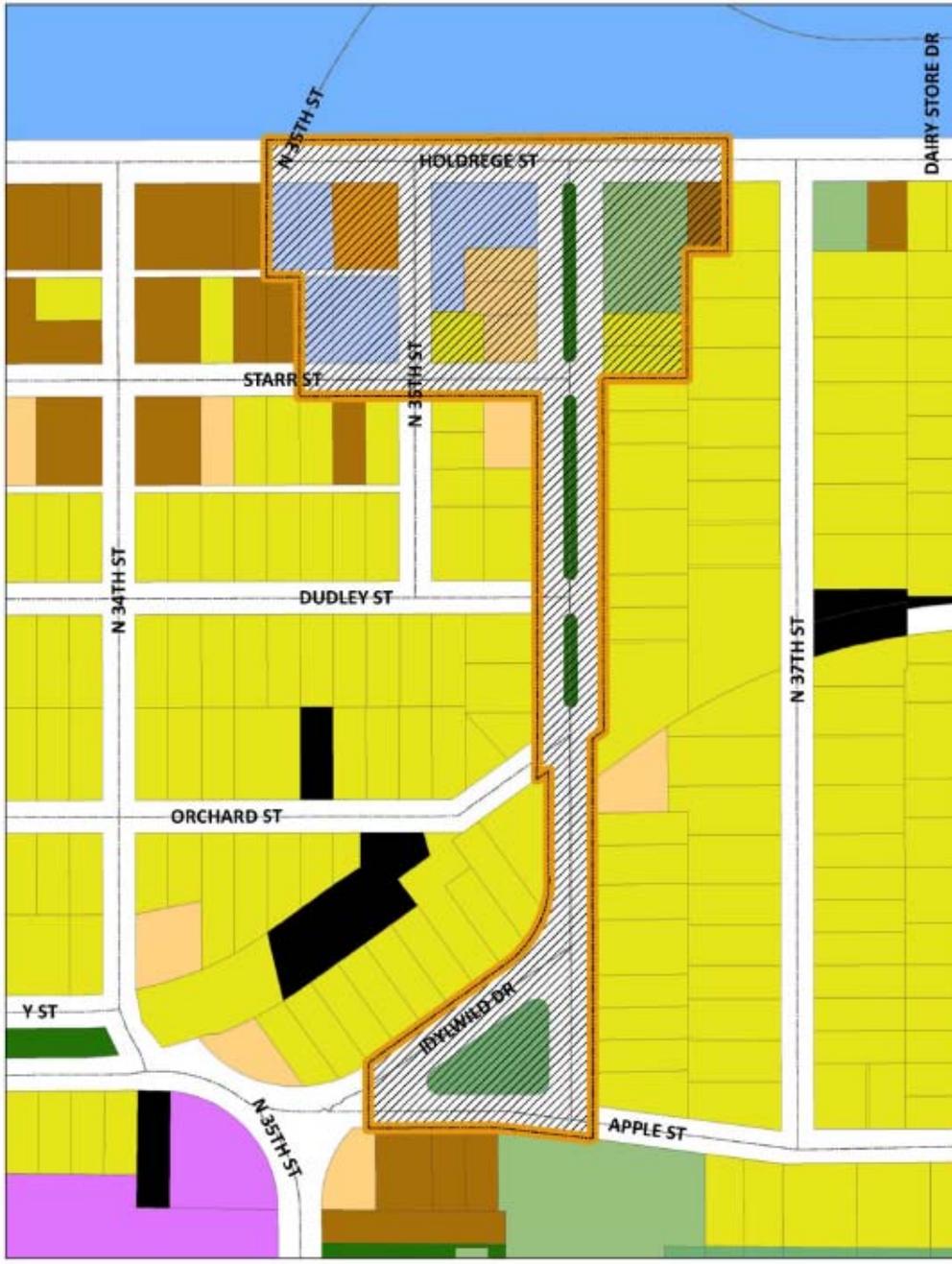
STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, President of **Kinport Corporation**, a Nebraska corporation, on behalf of the corporation.

(Seal)

\_\_\_\_\_  
Notary Public

## Exhibit "A" Redevelopment Area



Holdrege/Idylwild Redevelopment Plan - Exhibit 2 - Existing Land Use



The Holdrege/Idylwild Redevelopment Area boundary is generally described as follows. An area within the City of Lincoln, Lancaster County, Nebraska that includes the following:

Paines Subdivision Lots 1-6; Idylwild Place Block 1, Lots 1-4 and 14-16; Idylwild Place 1<sup>st</sup> Addition Lot 3 and the north ½ of the adjacent vacated alley; Woods Brothers University Addition Block 1, Lots 1-6; University Park Subdivision the North 6 feet of the West 60 feet of Lot 46 and all of Lot 48; vacated North 35<sup>th</sup> Street between Starr Street and Holdrege Street and the east 200.10 feet of the west-east alley in Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska; and the center boulevard medians and Idylwild Park, all within the right-of-ways of Idylwild Drive and Apple Street, as well as portion of the right-of-ways of Holdrege, Starr, and 35<sup>th</sup> Street that are included with the Holdrege/Idylwild Redevelopment Area.

## Exhibit "B"

### Redeveloper Property

#### Kappa Foundation Property:

Owned by Kappa Foundation and located within the Redevelopment Area:

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block One (1), Woods Bros. University Addition; and the North 6 feet of the West 60 feet of Lot Forty-Six (46), and all of Lot Forty-Eight (48), University Park, all in Lincoln, Lancaster County, Nebraska.

#### Kinport Property:

Owned by Kinport and located within the Redevelopment Area:

Lots 3 and 4, Paine's Subdivision, Lincoln, Lancaster County, Nebraska

Owned by Kinport and located outside the Redevelopment Area:

**Lot 5, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

**Lot 13, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

Owned by Kinport and located within the Redevelopment Area, but will not be redeveloped:

Lots 5, Paine's Subdivision, Lincoln, Lancaster County, Nebraska

Vacated ROW owned by Kinport

North 35<sup>th</sup> Street between Starr Street to Holdrege Street and the east 200.10 feet of the west-east alley in Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska

#### SAM Property:

Currently owned by SAM and to be acquired by Kinport and located within the Redevelopment Area:

**Parcel 1: Lots 1, 2, 3, 4, 14, 15 and 16, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

**Parcel 2: Lot 3, First Addition to Idyl-Wild Place, Lincoln, Lancaster County, Nebraska, together with the North Half of the vacated alley abutting thereto -AND- Lots 1 and 2, Paine's Subdivision, Lincoln, Lancaster County, Nebraska**

#### Harrold Property:

Owned by Jay E. Harrold and located within the Redevelopment Area, but will not be redeveloped:

Lots 6, Paine's Subdivision, Lincoln, Lancaster County, Nebraska

Exhibit "C"  
Uses and Sources of Funds

Phase 1 -Holdrege & Idylwild Redevelopment (East Block)

ITEM	DESCRIPTION	AMOUNT	
<b>Base Value</b>		<b>2012 Assessed Value</b>	
	East Block		
3513 Holdrege		\$	154,100.00
1423 Idylwild		\$	105,200.00
1417 Idylwild		\$	105,200.00
1430 Idylwild		\$	527,300.00
1400 Idylwild		\$	105,300.00
1358 Idylwild		\$	94,900.00
3611 Holdrege		\$	155,400.00
		<b>TOTAL 2012 BASE VALUE</b>	<b>\$ 1,247,400.00</b>

<b>Phase 1 Renovated Value</b>		<b>Development Cost</b>	
East Block		\$	4,000,000.00
AGR		\$	4,000,000.00
		<b>RENOVATED VALUE</b>	<b>\$ 8,000,000.00</b>

<b>Analysis</b>			
New Assessed Value (NTP)	Discounted (80%)	\$	6,400,000.00
Increment Value	New Assessed Value - Base Assessed Value	\$	5,152,600.00
Annual TIF Generated	Increment x 0.0202521 [2011 Tax Rate]	\$	104,351.07
Coverage Rate [Required by Lender for Mill Levy Risk ]	Annual TIF Increment Generated / 1.1 DSC	\$	94,864.61
Bond Note Issues		\$	796,827.11
		<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 796,827.11</b>

Phase 2 -Holdrege & Idylwild Redevelopment (West Block)

ITEM	DESCRIPTION	AMOUNT	
<b>Base Value</b>	<b>West Block</b>	<b>2012 Assessed Value</b>	
3435 Holdrege		\$	45,900.00
3457 Holdrege		\$	752,400.00
S. lot next to parking		\$	56,000.00
		<b>TOTAL 2012 BASE VALUE</b>	<b>\$ 854,300.00</b>

<b>Phase 2 Renovated Value</b>		<b>Development Cost</b>	
West Block		\$	5,000,000.00
		<b>RENOVATED VALUE</b>	<b>\$ 5,000,000.00</b>

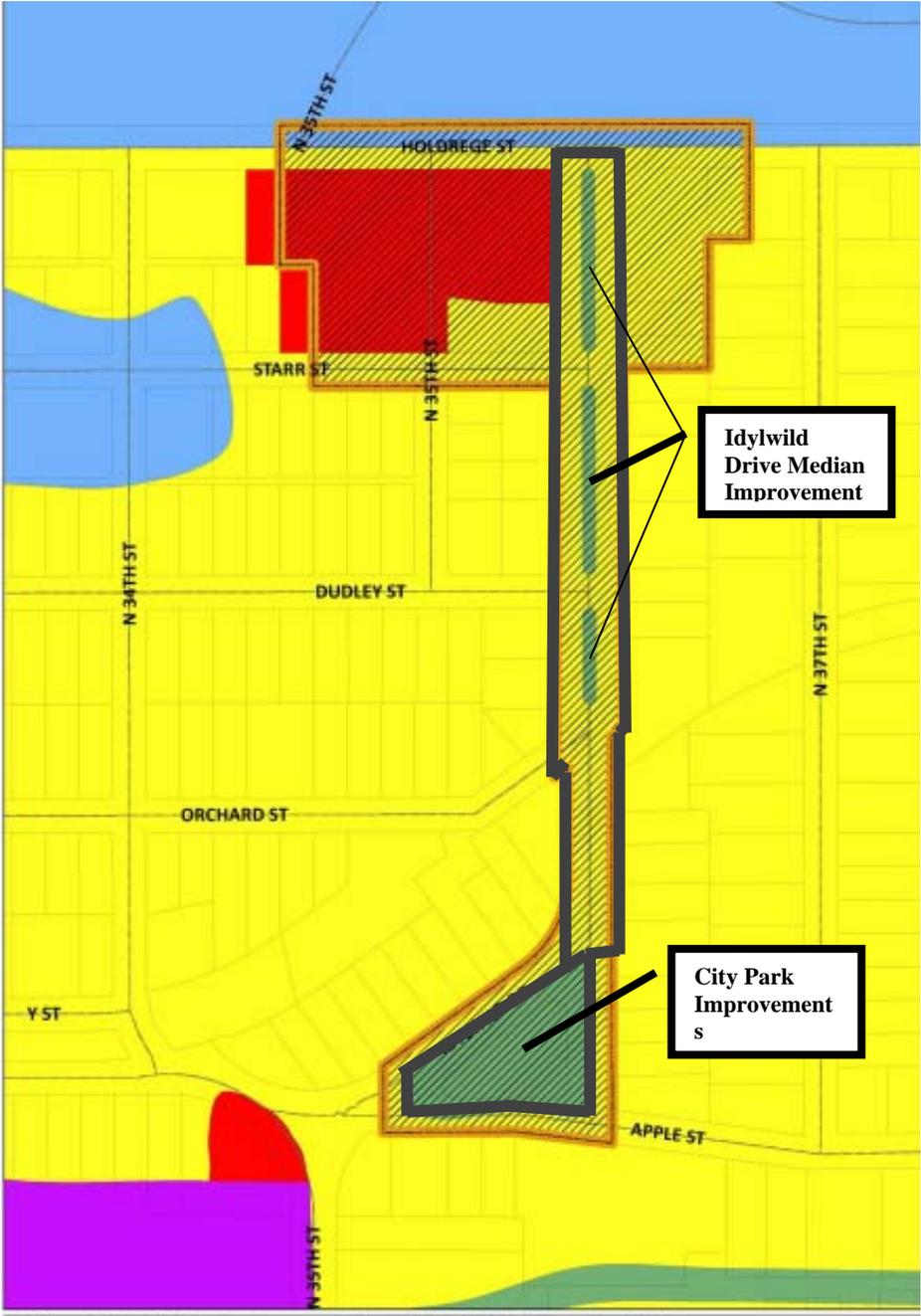
<b>Analysis</b>			
New Assessed Value (NTP)	Discounted (80%)	\$	4,000,000.00
Increment Value	New Assessed Value - Base Assessed Value	\$	3,145,700.00
Annual TIF Generated	Increment x 0.0202521 [2011 Tax Rate]	\$	63,707.09
Coverage Rate [Required by Lender for Mill Levy Risk ]	Annual TIF Increment Generated / 1.1 DSC	\$	57,915.54
Bond Note Issues		\$	463,172.89
		<b>TOTAL FUNDS AVAILBLE</b>	<b>\$ 463,172.89</b>

### Sources and Uses of Funds

ITEM	DESCRIPTION	AMOUNT
<b>Sources of Funds</b>		
Traditional Redeveloper Sources		
Kinport		\$ 9,013,876.00
AGR		\$ 4,000,000.00
Additional Redeveloper Sources		\$ 60,000.00
TIF Funds		\$ 1,260,000.00
	<b>TOTAL SOURCES AVAILABLE</b>	<b>\$ 14,333,876.00</b>

<b>Uses of Funds</b>		
Redeveloper	Design and Construction	\$ 13,000,000.00
	Street & Alley Vacation	\$ 13,876.00
Public sector	City Bond Issuance Costs	\$ 10,000.00
	Capitalized Interest	\$ 50,000.00
	Idylwild Park Improvements and Idylwild Drive Median Improvements	
	Streetscape (\$140K Developer & \$60K Valentino's)	\$ 200,000.00
	Land Purchase Assistance	\$ 1,060,000.00
	<b>TOTAL USES AVAILABLE</b>	<b>\$ 14,333,876.00</b>

# Exhibit "D" Public Improvements



Holdrege/Idylwild Redevelopment Plan - Exhibit 8 - Future Land Use



Exhibit "E"  
Project Drawings

Kappa Foundation Private Improvements

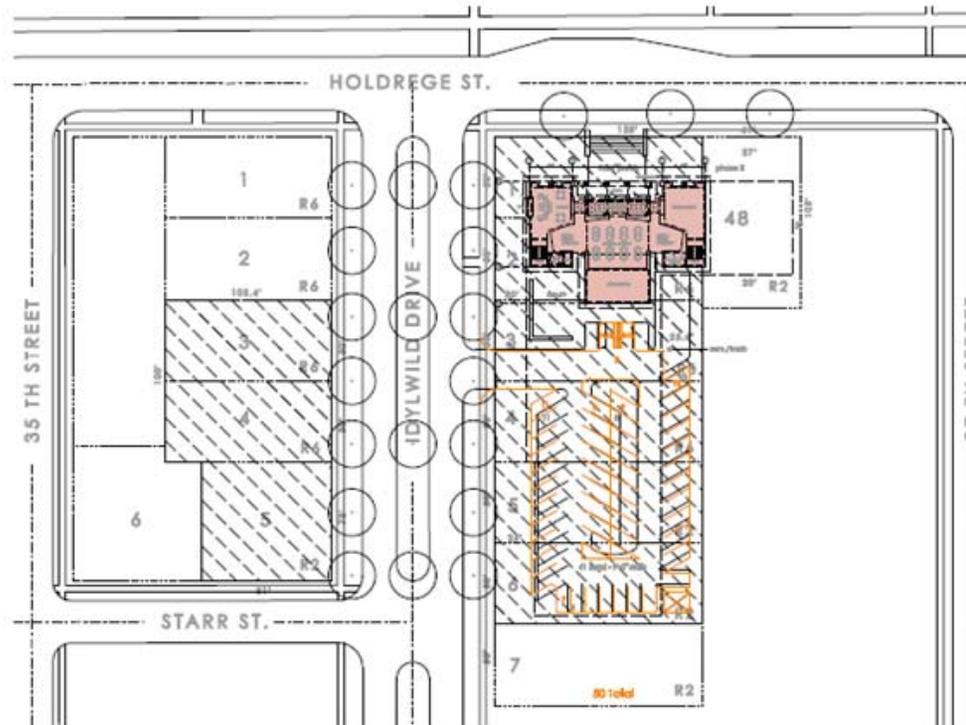


ALPHA GAMMA RHO - NEW FRATERNITY HOUSE  
LINCOLN, NEBRASKA

ΑΓΡ

NURTURE • GROW • GIVE • REPEAT

ALPHA GAMMA RHO  
Lincoln, Nebraska



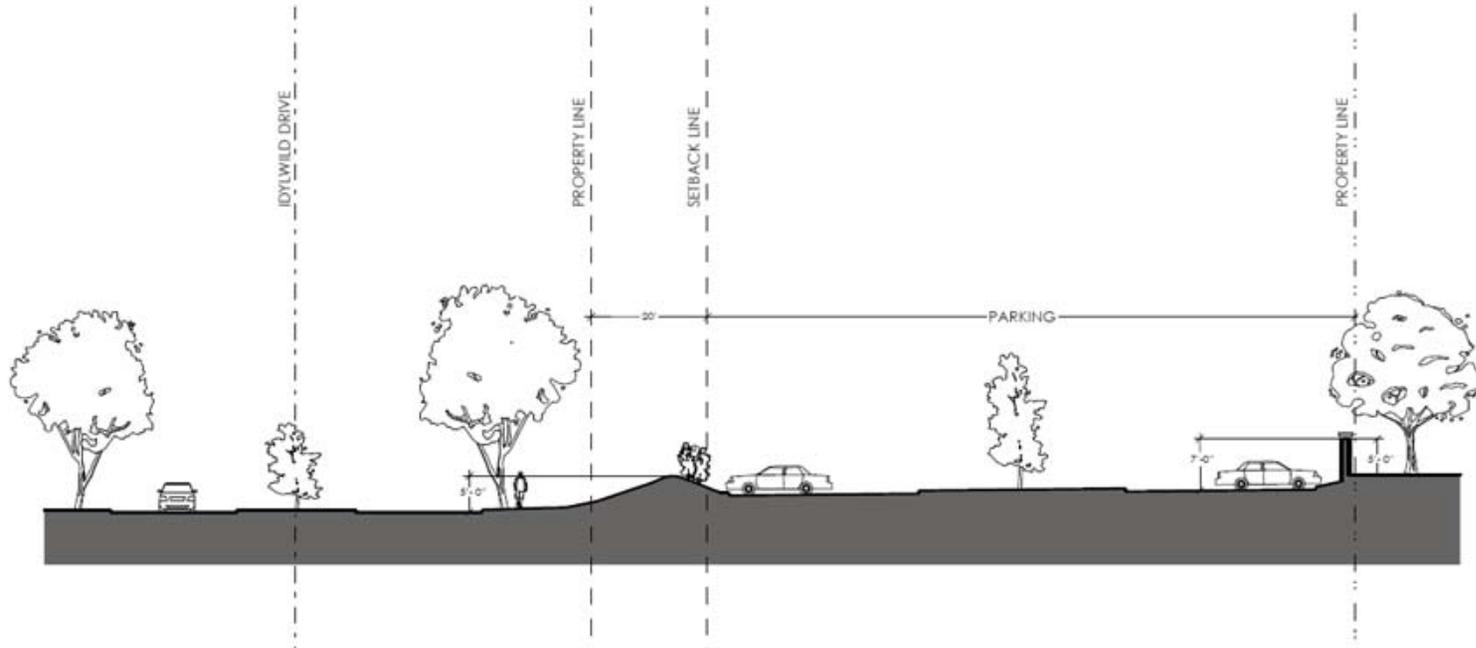
June 2011

ATP

NURTURE • GROW • GIVE • REPEAT



ALPHA GAMMA RHO  
Lincoln, Nebraska



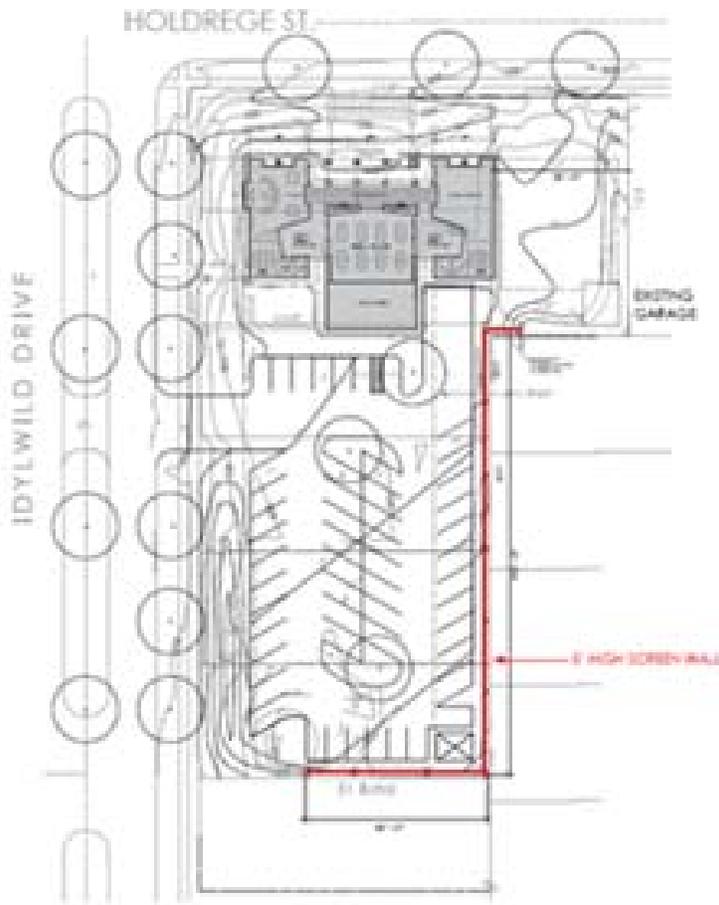
SITE SECTION THROUGH PARKING  
September 8, 2011

AGP  
NURTURE • GROW • GIVE • REPEAT



CURVED CONCRETE WALL

SINCLAIR **hilltop** architects



ATP

NURTURE • GROW • GIVE • REPEAT

## Kinport Private Improvements





Exhibit "F-1"  
Certificate of Completion  
Kappa Foundation

**CERTIFICATE OF COMPLETION OF  
KAPPA FOUNDATION PRIVATE IMPROVEMENTS**

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

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), Block One (1), Woods Bros. University Addition; and the North 6 feet of the West 60 feet of Lot Forty-Six (46), and all of Lot Forty-Eight (48), University Park, all in Lincoln, Lancaster County, Nebraska.

all the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT (Holdrege/Idylwild Redevelopment Project) ("**Agreement**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("**City**"), **KAPPA FOUNDATION**, a Nebraska nonprofit corporation and its successors and assigns ("**Kappa Foundation**"); and **KINPORT CORPORATION**, a Nebraska corporation, and its successors and assigns ("**Kinport**"), said Agreement dated as of \_\_\_\_\_, 2012 and recorded as Instrument No. \_\_\_\_\_, in the office

of the Register of Deeds for Lancaster County, Nebraska.

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

IN WITNESS WHEREOF, the City and Kappa Foundation have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LINCOLN, NEBRASKA**, a  
municipal corporation

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public

**“Kappa Foundation”**

**KAPPA FOUNDATION**, a Nebraska  
nonprofit corporation

By: \_\_\_\_\_  
President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, President of **Kappa Foundation**, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

(Seal)

\_\_\_\_\_  
Notary Public

Exhibit "F-2"  
Certificate of Completion  
Kinport

**CERTIFICATE OF COMPLETION OF  
KINPORT PRIVATE IMPROVEMENTS**

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

Lots 3 and 4, Paine's Subdivision, Lincoln, Lancaster County, Nebraska

**Lot 5, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

**Lot 13, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

**Parcel 1: Lots 1, 2, 3, 4, 14, 15 and 16, Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska**

**Parcel 2: Lot 3, First Addition to Idyl-Wild Place, Lincoln, Lancaster County, Nebraska, together with the North Half of the vacated alley abutting thereto -AND- Lots 1 and 2, Paine's Subdivision, Lincoln, Lancaster County, Nebraska**

all the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT (Holdrege/Idylwild Redevelopment Project) ("**Agreement**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("**City**"), **KAPPA FOUNDATION**, a Nebraska nonprofit corporation and its

successors and assigns (“**Kappa Foundation**”); and **KINPORT CORPORATION**, a Nebraska corporation, and its successors and assigns (“**Kinport**”), said Agreement dated as of \_\_\_\_\_, 2012 and recorded as Instrument No. \_\_\_\_\_, in the office of the Register of Deeds for Lancaster County, Nebraska.

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

IN WITNESS WHEREOF, the City and Kinport have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LINCOLN, NEBRASKA**, a municipal corporation

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public

**“Kinport”**

**KINPORT**, a Nebraska corporation

By: \_\_\_\_\_  
President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, President of **Kinport**, a Nebraska corporation, on behalf of the corporation.

(Seal)

\_\_\_\_\_  
Notary Public

Exhibit "G"  
Memorandum

**MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS**

THIS MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS ("**Memorandum**") is made and entered into as of the date of execution hereof by the last signatory hereto as indicated below (the "**Effective Date**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska and its successors and assigns ("**City**"); **KAPPA FOUNDATION**, a Nebraska nonprofit corporation and its successors and assigns ("**Kappa Foundation**"); and **KINPORT CORPORATION**, a Nebraska corporation, and its successors and assigns ("**Kinport**"). Kappa Foundation and Kinport are sometimes referred to herein individually as "**Redeveloper**" and collectively as "**Redevelopers**".

1. **Redevelopment Agreement.** The City, Kappa Foundation and Kinport entered into that certain Redevelopment Agreement dated as of this even date, describing the Public Improvements being made on behalf of the City in the Redevelopment Area and the Private Improvements being made to real property owned by (or to be owned by) the Redeveloper and legally described in Exhibit 1, attached hereto and incorporated herein by this reference.

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City of the private improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Redevelopment Project effective date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the public improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

4. **Use Restrictions of the Property.** The Redeveloper agrees that during the Tax Increment Period no portion of the Project Area shall be used for any of the following uses:

A. The retail sale of alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sell alcoholic beverages for consumption off the premises and restaurants allowing the removal of an unsealed bottle of wine pursuant to Neb. Rev. Stat. §53-123.04, as amended;

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

C. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

D. A sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service. The foregoing exclusion shall not include pay for view video/audio services, internet and other forms of telecommunication/communication systems offered or available to guests in the ordinary course of hotel business and trade or to Lincoln residents;

E. Any business whose predominant operation is 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;

F. 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 live horse-racing, off-site pari-mutual and simulcast horse-racing, keno, bingo, and the retail sale of lottery tickets as permitted by applicable law;

G. Any business involving the sale of weapons, self-service laundromats for nonresidents or non-occupants, illegal activities, or sale of any illegal goods or products;

H. Off premises signs as defined in Section 27.69.020 of the Lincoln Municipal Code;

I. Any business providing payday loans, liens, check cashing services, or other similar services, except for banks, savings and loans, insurance company, investment companies, stock brokers, credit unions and automated teller machines; and

J. Cell towers.

5. **Inquiries.** Further inquiries regarding this Memorandum may be made to the following parties:

If to the City: Mayor  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

With a copy to: City Attorney  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

If to Kappa Foundation Kappa Foundation  
c/o \_\_\_\_\_  
\_\_\_\_\_  
Lincoln, NE \_\_\_\_\_

With a copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Kinport Kinport Corporation  
c/o President  
440 North 8<sup>th</sup> Street, Suite 140  
Lincoln, NE 68508



Executed by Kappa Foundation this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**“Kappa Foundation”**

**KAPPA FOUNDATION**, a Nebraska nonprofit corporation

By: \_\_\_\_\_  
President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, President of **Kappa Foundation**, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

(Seal)

\_\_\_\_\_  
Notary Public



Exhibit 1

**Memorandum of Redevelopment Agreement & Use Restrictions**

Legal Description for Redevelopment Project

The Holdrege/Idylwild Redevelopment Area boundary is generally described as follows and area within the City of Lincoln, Lancaster County, Nebraska that includes the following:

Paines Subdivision Lots 1-6; Idylwild Place Block 1, Lots 1-4 and 14-16; Idylwild Place 1<sup>st</sup> Addition Lot 3 and the north ½ of the adjacent vacated alley; Woods Brothers University Addition Block 1, Lots 1-6; University Park Subdivision the North 6 feet of the West 60 feet of Lot 46 and all of Lot 48; vacated North 35<sup>th</sup> Street between Starr Street and Holdrege Street and the east 200.10 feet of the west-east alley in Block 1, Idyl-Wild Place, Lincoln, Lancaster County, Nebraska; and the center boulevard medians and Idylwild Park, all within the right-of-ways of Idylwild Drive and Apple Street, as well as portion of the right-of-ways of Holdrege, Starr, and 35<sup>th</sup> Street that are included with the Holdrege/Idylwild Redevelopment Area.