

**BLOCK 38  
REDEVELOPMENT AGREEMENT**

THIS BLOCK 38 REDEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as “**City**”), and BLOCK 38, LLC, a Utah limited liability company, (hereinafter referred to as “**Redeveloper**”).

**RECITALS**

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan as amended (the “**Redevelopment Plan**”) providing for the Catalyst One/Civic Plaza Redevelopment Project in a community redevelopment area generally bounded by 13th, 14th, P and Q Streets, and incorporates all of Lots 1 through 12, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska, a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (“**City Clerk**”). The Redevelopment Plan has been adopted in compliance with the Nebraska Community Development Law codified at *Neb. Rev. Stat.* §§ 18-2101 through 18-2144 (the “**Act**”).

B. Following an earlier public invitation for redevelopment proposals for the Catalyst One/Civic Plaza Redevelopment Project, Redeveloper was selected as the developer of record for the Catalyst One Redevelopment Project and submitted its proposal to redevelop Lots

1 through 6, Block 38, Original Plat of Lincoln, Lincoln, Lancaster County, Nebraska as a mixed use facility with retail/commercial on the ground floor, a multi-story parking garage above the retail/commercial space, three floors of residential units above the garage, and related public improvements (hereinafter referred to as the “**Block 38 Project**”).

C. In regards to the Block 38 Project, the City is the owner of Lots 1-5, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska and Redeveloper is the owner of Lot 6, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska (“**Lot 6**”).

D. The Block 38 Project calls for the City’s acquisition of Lot 6, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska, to be combined with Lots 1-5, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska. The redevelopment project area for the Block 38 Project is generally described as Lots 1-6, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska, including the abutting public street rights of way for 13th, 14th, P and Q Streets and the east-west alley of Block 38 (collectively “**Project Area**”). The Redeveloper and City will use their best efforts to jointly construct a mixed use facility and other public improvements on the Project Area. Pursuant to the Nebraska Condominium Property Act, the Redeveloper and City will create a condominium regime, including condominium units, common elements and limited common elements for the Block 38 Project. Subject to completion of the final design, the condominium regime is expected to include the following mixed-use components (“**Mixed Use Facility**”): three retail/commercial condominium units for approximately 17,234 square feet of first floor space (“**Commercial Units**”) to be conveyed to and owned by Redeveloper, a condominium unit for a street level public parking office (“**Parking Office Unit**”) to be owned by the City, a condominium unit for motor vehicle ingress and egress and a six upper-story parking garage, including a top level transfer deck ceiling, with approximately 630 stalls to be

owned by the City (“**Parking Garage Unit**”), and one condominium unit for three floors of residential space above the Parking Garage Unit consisting of approximately 192 bedrooms in 55 two- and four-bedroom residential dwelling units to be conveyed to and owned by Redeveloper (“**Residential Unit**”). The Commercial Units and the Residential Unit in the Mixed Use Facility are collectively referred to herein as the “**Redeveloper Property**”. The Parking Office Unit and Parking Garage Unit in the Mixed Use Facility are collectively referred to herein as “**City Property**”.

E. The Redevelopment Plan also outlines the redevelopment of Lots 7 and 8, Block 38, Original Plat of Lincoln, Lincoln, Lancaster County, Nebraska into a downtown open space civic plaza redevelopment project (hereinafter referred to as the “**Civic Plaza Project**”). The City is the owner of Lots 7 and 8, Block 38, Original Plat of Lincoln Lancaster County, Nebraska, which comprises the Civic Plaza Project. The site for the Civic Plaza Project is generally described as Lots 7 and 8, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska, and the abutting public street rights of way for 13<sup>th</sup> Street and “P” Streets and the east-west alley of Block 38 (collectively “**Civic Plaza Site**”).

F. Said Project Area and Civic Plaza Site are shown on the map attached hereto as **Exhibit A** and is incorporated herein by this reference. To enhance the Civic Plaza Project programming and maximize the size of the Civic Plaza, the Block 38 Project would (1) reroute the alley traffic circulation over approximately the west 100 feet of the east-west Block 38 alley (“**West Alley Section**”) from the proposed north sixteen (16) feet of the Civic Plaza Project, through the ground level floor of the Mixed Use Facility and connect to “Q” Street instead of 13<sup>th</sup> Street as generally shown on the drawing attached hereto as **Exhibit B** and incorporated herein by this reference and (2) resurface approximately the east 200 feet of the east-west alley

(“**East Alley Section**”) (collectively “**Replacement Alley Traffic Route**”). Upon completion of the Replacement Alley Traffic Route by the City, it is anticipated that the West Alley Section would be vacated subject to title being retained by the City and the Redeveloper would be granted a permit to use portions of the West Alley Section for a sidewalk cafe.

G. The City and Redeveloper are desirous of implementing the redevelopment of the Project Area in accordance with the Redevelopment Plan and the Block 38 Project and mutually agree that the redevelopment of the Project Area 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 Block 38 Project has been undertaken.

H. *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.

I. Redeveloper is willing to enter into this Agreement (1) to acquire the Redeveloper Property in exchange for Lot 6 and other consideration; (2) construct the Commercial Units and Residential Unit improvements on the Redeveloper Property; and (3) pay the Redeveloper’s proportionate share of the Architect’s and Construction Manager’s costs of the Block 38 Project (collectively hereinafter referred to as the “**Redeveloper Improvements**”), provided that, the City acquires Lot 6; relocates the existing tenants on Lot 6; demolishes the existing improvements on Lot 6; completes site preparation on Lots 1 – 6, Block 38; constructs the improvements within the Parking Office Unit and Parking Garage Unit on the City Property; provides the Construction Project Areas (defined below); and constructs, relocates and

reconstructs the utilities, street, curbs and gutters, streetscape improvements and Replacement Alley Traffic Route (collectively “**City Parking Garage Improvements**”).

J. The City is willing to support the above described redevelopment of the Project Area provided Redeveloper is willing to: (1) restrict the use of the Redeveloper Property to certain approved uses and (2) agree to covenants and conditions regarding compulsory maintenance and upkeep of the Redeveloper Improvements to prevent a recurrence of substandard and blighted conditions.

K. The Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the Block 38 Project for the benefit of any public body shall be divided for a period not to exceed fifteen (15) years after the effective date of such provision, in accordance with *Neb. Rev. Stat.* § 18-2147. Said provision is hereinafter referred to as the “**Ad Valorem Tax Provision**” or the “**Tax Increment Provision.**”

L. The City intends to issue tax increment financing indebtedness in tax exempt and/or taxable series bonds (collectively “**TIF Bond**”) to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“**TIF Tax Revenues**”) to provide additional public funding to be used for the City’s construction of the City Parking Garage Improvements.

M. In order to help remove blight and substandard conditions and help prevent a recurrence of substandard and blighted conditions in the Project Area, the City is willing to enter into this Agreement and (1) use parking revenue funds and tax increment financing to construct the City Parking Garage Improvements.

N. The Redeveloper Improvements and the City Parking Garage Improvements are collectively known as the “**Project Improvements.**” The costs of the Project Improvements are collectively known as the “**Project Costs**”. The Project Costs and sources of funds for the Project Improvements are listed on the Sources and Uses of Funds in **Exhibit C**, which is attached hereto and incorporated herein by this reference.

O. The City and Redeveloper desire to enter into this Agreement to implement the redevelopment of the Project Area in accordance with the Redevelopment Plan and the Block 38 Project.

P. The City and Redeveloper mutually agree that the redevelopment of the Project Area 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, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**ARTICLE I  
DESIGN, CONSTRUCTION AND OPERATION  
OF THE MIXED USE FACILITY**

**Section 101. Architect and Parking Garage Engineer.** Due to Block 38 Project complexities, potential conflicts, and the need for shared structural support, circulation and uses within the Mixed Use Facility, the City and Redeveloper have agreed to coordinate the design of the Mixed Use Facility as described herein. The City, at its expense, has entered into a

professional design contract with Sinclair Hille Architects (“**Architects**”), including the Architect’s parking garage engineer subcontractor, Desman Associates (“**Parking Garage Engineer**”), for the City Parking Garage Improvements. In turn, the Redeveloper, at its expense, has entered into a separate professional design contract with the Architect for the Redeveloper Improvements.

**Section 102. Schematic Drawings.** The Architect’s 30% schematic drawings for the Mixed Use Facility (collectively “**Schematic Drawings**”) have been completed based upon the input and consultation with the City and Redeveloper. The Schematic Drawings are summarized on **Exhibit B**. Such Schematic Drawings show the related Project Improvements to be made by the City for the City Parking Garage Improvements and Redeveloper for the Redeveloper Improvements.

**Section 103. Construction Manager—Pre-Construction Phase.** The City and Redeveloper have agreed to jointly cause the construction of the Mixed Use Facility as described herein. As part of said agreement, the City, in consultation with Redeveloper, solicited proposals for an experienced contractor to perform Construction Manager at Risk (“**CMR**”) services for construction of the Redeveloper Improvements and City Parking Garage Improvements in accordance with the Political Subdivisions Construction Alternatives Act (*Neb. Rev. Stat. §§ 13-2901 to 13-2914*) and the City’s adopted procedures for selecting construction managers at risk pursuant to the Act. After an interview process, the City, with Redeveloper’s concurrence, selected and the parties have engaged Sampson Construction Company, Inc. (“Sampson”) as the CMR pursuant to the modified The American Institute of Architects Construction Manager at Risk Contract, AIA Document A133 - 2009 (“**Construction Manager at Risk Contract**”) attached hereto as **Exhibit D**, which is incorporated herein by this reference. Pursuant to the

Construction Manager at Risk Contract, the CMR agreed during the design (preconstruction) phase to work with the Architect to review the design of the City Parking Garage Improvements and the Redeveloper Improvements and during the construction phase to ensure construction is performed in compliance with approved plans and specifications and completed within each party's defined budget and construction schedule.

**Section 104. GMP Documents.** The Architect's 60% drawings for the Mixed Use Facility (collectively "**GMP Documents**") have been completed based upon the input and consultation with the City, Redeveloper and CMR. Such GMP Documents show the related Project Improvements to be made by the City for the City Parking Garage Improvements and Redeveloper for the Redeveloper Improvements. The GMP Documents have been submitted to the Redeveloper and the City's Director of Urban Development for approval.

**Section 105. Acceptable GMPs.** Pursuant to the Construction Manager at Risk Contract, the CMR has used the approved GMP Documents as the design and specification basis to deliver (1) a written guarantee maximum price proposal ("**GMP**") to the City for the City Parking Garage Improvements and (2) a GMP to the Redeveloper for the Redeveloper Improvements.

**Section 106. Construction Manager at Risk Contract.**

A. Acceptable GMPs. The City has received the written GMP for the City Parking Garage Improvements and finds the GMP acceptable to the City. The Redeveloper has received the written GMP for the Redeveloper Improvements and finds the GMP acceptable to the Redeveloper. Subject to (1) execution and approval of this Agreement and (2) the parties successfully exchanging and closing on the Exchange Properties described in Article II below, the City and Redeveloper agree to issue the CMR a notice to proceed to the construction phase of

the Construction Manager at Risk Contract (“**Construction Phase Notice to Proceed**”) for the Mixed Use Facility.

**Section 107. Component Bid Package Outline.** The CMR will submit to the City and Redeveloper for approval an outline of the proposed component bid packages, including proposed component bid packages that the CMR proposes to be bid prior to completion of the Construction Documents (defined below) for all of the Mixed Use Facility (collectively “**Component Bid Package Outline**”).

**Section 108. Mixed Use Facility Construction Documents.** Pursuant to the parties’ contracts with the Architect, the 100% construction drawings and specifications for the City Parking Garage Improvements and for Redeveloper Improvements (collectively “**Construction Documents**”) are to be completed by the date shown on the Timeline attached hereto as **Exhibit E** and incorporated herein by this reference. The Construction Documents will be completed by the Architect and Parking Garage Engineer, with the approval of the City and Redeveloper and the concurrence of the CMR. Such Construction Documents will show the related Project Improvements to be made by the City for the City Parking Garage Improvements and Redeveloper for the Redeveloper Improvements. Such Construction Documents shall be approved by the City and Redeveloper if they are prepared from and in conformance with the GMP Documents and in conformity with the GMPs of the City Parking Garage Improvements and the Redeveloper Improvements and this Agreement. Approval of the Construction Documents or approval of any change to the Construction Documents or the GMPs for the City Parking Garage Improvements and the Redeveloper Improvements shall not be an indication of approval or waiver of any requirements with respect to applicable building and construction laws or codes and shall not subject the City or Redeveloper to any liability to any party or person for

any purpose whatsoever. All improvements to the Mixed Use Facility must be made in compliance with all applicable local, state and federal building and construction laws and codes. The approval hereunder shall not be required for the Commercial Units and Residential Unit interior improvements; however, such interior improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes.

**Section 109. Bidding and Construction.** After approval of the Component Bid Package Outline, the CMR will submit the individual bid component package of the City Parking Garage Improvements and Redeveloper Improvements to the Redeveloper and the City's Director of Urban Development for approval. The CMR will competitively bid and award pursuant to the City's procurement process in constructing any of the various component parts of the City Parking Garage Improvements. The Redeveloper, at its election, may also require the CMR to competitively bid and award pursuant to the City's procurement process in constructing any of the various component parts of the Redeveloper Improvements. After the City and Redeveloper approve the Component Bid Package Outline, the City and Redeveloper may authorize the CMR to bid and construct certain component parts of the City Parking Garage Improvements and Redeveloper Improvements prior to the preparation and approval of the Construction Documents in order to meet the Timeline. The City and Redeveloper agree to coordinate with each other and with the CMR on change orders and other related construction and implementation matters pursuant to the Owners Coordination Principals, as described in **Section 903** below.

Section 110. **First Phase and Second Phase Construction.** The Mixed Use Facility will be constructed by the CMR in two parts.



Construction”). The CMR will bill the Redeveloper for the cost of the Second Phase Construction pursuant to the Construction Manager at Risk Contract.

## ARTICLE II.

### EXCHANGE PROPERTIES, SITE ASSEMBLEGE AND OTHER REAL ESTATE MATTERS

#### Section 201. Conveyances.

A. Exchange Properties. The Redeveloper agrees to exchange and transfer to the City Lot 6 which is needed for the City Parking Garage Improvements and the City agrees to exchange and transfer to the Redeveloper the Redeveloper Property after said condominium units are created by the Block 38 Condominium Documents (defined herein). The City and Redeveloper agree to exchange the necessary properties based upon the exchange values defined below and the City agrees to pay the Redeveloper the cash difference. Lot 6 and the Redeveloper Property are sometimes individually referred to as "**Exchange Property**" and collectively as "**Exchange Properties**". The party conveying title of an Exchange Property is sometimes referred to herein as "**Grantor**" and the party receiving title of an Exchange Property is sometimes referred to herein as "**Grantee**".

B. The City agrees to take title and possession of Lot 6, subject to the tenants in possession as described below (“individually "**Tenant Lease**" and collectively "**Tenant Leases**”), unless the Tenant Lease is terminated prior to the Date of Closing:

1. Downtown Building Lease, dated February 11, 2003 by and between SAM Properties, Inc., and Cold Stone Creamery Leasing Company, Inc., a copy which has been provided to the City and is incorporated herein by this

reference and the Sublease, dated March 10, 2003 between the Cold Stone Creamery Leasing Company, Inc (Sublessor) and J & J Hospitality, L.L.C. (Sublessee), a copy which has been provided to the City and is incorporated herein by this reference (collectively “**Cold Stone Lease**”);

2. Lease Agreement, dated April 4, 2003 by and between SAM Properties, Inc., and Chipotle Mexican Grill, Inc., a copy which has been provided to the City and is incorporated herein by this reference (collectively “**Chipotle Lease**”);
3. Downtown Building Lease, dated July 7, 2006 by and between SAM Properties, Inc. and Kee Enterprises, Inc., d/b/a Quiznos Sub, a copy which has been provided to the City and is incorporated herein by this reference; as modified by the Termination of Downtown Building Lease, dated October 26, 2010, a copy which has been provided to the City and is incorporated herein by this reference (collectively “**Quiznos Lease**”); and
4. Downtown Building Lease, dated April 23, 2003 by and between SAM Properties, Inc. and Valentino’s of Lincoln, Inc., dated April 23, 2003, a copy which has been provided to the City and is incorporated herein by this reference (collectively “**Valentino’s Lease**”).

City shall be responsible at its own cost and expense to pay any required tenant relocation costs as required by any federal, state or local relocation laws, including but not limited to, the Nebraska Relocation Assistance Act (Neb. Rev. Stat. Section 76-12114 et seq.) (collectively “**Relocation Laws**”) in order to allow the Block 38 Project to be built on the Project Area.

C. Block 38 Condominium Regime. The City and Redeveloper agree to use their best efforts to create a condominium regime on Lots 1-6, Block 38 (“**Block 38 Condominium Regime**”) based upon condominium documents (e.g., Declaration, Articles and Bylaws) (collectively “**Block 38 Condominium Documents**”) which will create the City Property and Redeveloper Property and to accommodate the implementation, ownership, maintenance, repair, and replacement of the Project Improvements. The City and Redeveloper agree to execute at the Closing (defined below) of the Exchange Properties the Block 38 Condominium Documents in a final form that are acceptable to the Redeveloper and the City and are based upon the Schematic Drawings attached hereto as Exhibit B. The City and Redeveloper acknowledge that the approved Construction Documents and/or the final as-built Mixed Use Facility could cause the need to amend the Block 38 Condominium Documents and the parties agree to cooperate and execute any such amendments to the Block 38 Condominium Documents after the Closing (defined below) of the Exchange Properties. The City and Redeveloper agree to file of record the applicable Block 38 Condominium Documents, including any amendments thereto needed as a result of the approved Construction Documents and/or the final as-built plans for the Mixed Use Facility and the cost of filing of record shall be equally shared between the City and Redeveloper.

D. Lot 6 Exchange Value. The exchange value for Lot 6 shall be One Million Five Hundred Thousand and No/100ths Dollars (\$1,500,000.00).

E. Redeveloper Property Exchange Value For the Mixed Use Facility. The exchange value for the Redeveloper Property shall be based upon a fee simple value of \$28.60 a square foot: \$14.30 per square foot for the first floor Commercial Units (representing ½ of the fee value) and \$1.43 per square foot for each floor of the Residential Unit air rights (representing

the remaining ½ of the \$28.60 fee value (i.e. \$14.30) divided by 10 upper floors) (“**Redeveloper Property Exchange Value For The Mixed Use Facility**”). At Closing for the Exchange Properties within the Mixed Use Facility, the City agrees to pay the Redeveloper in cash or certified funds the difference between the Lot 6 Exchange Value and the Redeveloper Property Exchange Value For The Mixed Use Facility.

F. Redeveloper’s Reimbursement Amount. In addition to the cash payment the City will pay the Redeveloper as described in Section 201 E above, the City agrees to reimburse the Redeveloper at Closing for the following consideration, liabilities and expenses (collectively “**Redeveloper’s Reimbursement Amount**”) that the Redeveloper pays or assumes prior to the Date of Closing under the Tenant Leases as described below:

1. Cold Stone Lease Reimbursement Amount. The Two Hundred Thousand and no/100 Dollars (\$200,000.00) consideration to be paid by the Redeveloper to the leasehold interests of the Cold Stone Lease prior to the Date of Closing to cause the leasehold interests to terminate the Cold Stone Lease and tenancy early, and to obtain the leasehold interests’ release and waiver of any claims for damages or monies owed or might be owed to the leasehold interests under the to be terminated Cold Stone Lease or the Relocation Laws in order to allow the Block 38 Project to be built on Lot 6.
2. Chipotle Lease Reimbursement Amount. The One Hundred and Fifty Thousand and no/100 Dollars (\$150,000.00) consideration to be paid by the Redeveloper to the leasehold interests of the Chipotle Lease prior to the Date of Closing to cause the leasehold interests to modify the Chipotle Lease and relocate the tenancy from Lot 6 to another location to permit construction of the Mixed Use

Facility, and to obtain the leasehold interests' release and waiver of any claims for damages or monies owed or might be owed to the leasehold interests under the modified Chipotle Lease or the Relocation Laws in order to allow the Block 38 Project to be built on Lot 6.

3. Quiznos Lease Reimbursement Amount. The One Hundred and Fifty Thousand and no/100 Dollars (\$150,000.00) consideration that was paid by the Redeveloper to the tenant of the Quiznos Lease to cause the tenant to terminate the Quiznos Lease early, and to obtain the tenant's release and waiver of any claims for damages or monies owed or might be owed to the tenant under the terminated Quiznos Lease or the Relocation Laws in order to allow the Block 38 Project to be built on Lot 6; and

4. Valentino's Lease Reimbursement Amount. The One Hundred Thousand and no/100 Dollars (\$100,000.00) consideration to be paid by the Redeveloper to the tenant of the Valentino's Lease prior to the Date of Closing to cause the tenant to modify the Valentino's Lease and relocate the tenancy from Lot 6 to another location to permit construction of the Mixed Use Facility, and to obtain the tenant's release and waiver of any claims for damages or monies owed or might be owed to the tenant under the modified Valentino's Lease or the Relocation Laws in order to allow the Block 38 Project to be built on Lot 6.

In the event the Date of Closing (defined below) occurs after November 30, 2010, then the Redeveloper's Reimbursement Amount shall be adjusted and increased at a rate of four (4) percent per annum between November 30, 2010 and the Date of Closing.

**Section 202. Closing.**

A. Closing Date. The “**Date of Closing**” or “**Closing**” of the Exchange Properties shall be no later than ten (10) days after the occurrence of the following events: (1) the execution of this Agreement, (2) the Contingencies in **Section 909** have been satisfied or waived and (3) the execution of the Construction Manager at Risk Contract, which ever event is last.

B. Closing Documents.

1. Deliveries at Closing by the Grantor. At each Closing, the Grantor shall deliver to Grantee, and the Grantee shall accept from the Grantor, the following:

(a) A Warranty Deed conveying to Grantee fee simple title to the Exchange Property, subject to the Permitted Exceptions. For purposes hereof, “**Permitted Exceptions**” shall mean (1) covenants, conditions and restrictions of record which shall be approved by Grantee if they do not interfere with Grantee’s intended use of the Project Area; (2) taxes not yet due and payable; (3) public utility easements of record which shall be approved by the Grantee, if they do not interfere with Grantee’s intended use of the Project Area; (4) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which will be satisfied and released by the payment of money at the time of closing and which Grantor is willing to and does so remove at closing; (5) title exceptions caused by the acts or omissions of the Grantee; (6) easements and use restrictions to be granted under this Agreement; (7) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by the Grantee; and (8) the City agrees to take title and possession of Lot 6, subject to the tenants in possession on Lot 6 as described above in **Section 201**.

(b) Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Grantee’s Title Commitment.

2. Documents to be Delivered by Grantee. At each Closing, Grantee shall deliver to the Grantor, and the Grantor shall accept from Grantee such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Grantee's Title Commitment.

3. Evidence of Title. The Grantor shall obtain a title commitment ("**Title Commitment**") for an ALTA owner's title insurance policy ("**Title Policy**") issued by a title insurance company duly authorized to do business in Nebraska and acceptable to the Grantee ("**Title Company**") covering title to the Grantor's Exchange Property and showing the condition of title to the Grantor's Exchange Property. Grantee agrees to review the Title Commitment and advise the Grantor whether the Title Commitment discloses exceptions to title other than Permitted Exceptions or discloses matters that render title to the Grantor's Exchange Property unmarketable. Grantee shall notify Grantor of such title defects within thirty (30) days after receipt of the Title Commitment and the Grantor shall have thirty (30) days after written notice of such defects from Grantee to have the exceptions removed from the Title Commitment or to have the title insurer commit, in writing that is acceptable to the Grantee, to insure against loss or damage that may be occasioned by such exceptions or defects. In the event that Grantee shall be unable or unwilling to correct such title defects within the thirty (30) day period, Grantee shall have the option, by written notice delivered to Grantor after expiration of the thirty (30) day period, to either terminate this Agreement or take title to the Grantor's Exchange Property subject to such exceptions or defects. In the event Grantee provides timely notice to terminate this Agreement, the Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event Grantee elects to take title to such exceptions or defects,

said exceptions or defects shall be deemed to be Permitted Exceptions. One-half of the cost of the Grantee's Title Policy for the Exchange Property shall be paid by each party at the Closing.

C. Tests. As part of the design of the Block 38 Project, the City, at its expense, has caused environmental, survey, geotechnical investigations and other investigations (collectively "**Tests**") of the Project Area. The Tests results are satisfactory for the City's proposed use and redevelopment of Block 6 and the Block 38 Redevelopment Project. The City has provided the Redeveloper with a copy of the Tests for its review and approval. Prior to Closing, the Redeveloper, at the Redeveloper's expense, shall have the right to obtain a Limited Subsurface Investigation a/k/a Phase II Investigation with respect to the Redeveloper Property, including sampling of soils and water for hazardous materials and/or substances as determined appropriate by the consulting ESA engineer selected and hired by the Redeveloper. In the event any areas of concern on the Redeveloper Property reasonably require remediation including sampling or professional fees, then the City and Redeveloper agree that such event will be deemed to be a material change in the scope of the Block 38 Project requiring a written amendment or termination under **Section 503** of this Agreement. To the knowledge of the Grantor and during the time in which Grantor owned the Exchange Property, neither Grantor nor any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Exchange Property or transported to or from the Exchange Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively "**Hazardous Materials**"). To the knowledge of the Grantor, there is no proceeding or inquiry by any governmental authority with respect to the presence of such Hazardous Materials on the Exchange Property or the migration thereof from or to other property. For the purpose of this

Agreement, Hazardous Materials shall include but not be limited to substances defined as “hazardous substances”, “hazardous materials”, or “toxic substances” in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq; and in the regulations adopted and publications promulgated pursuant to said laws.

**Section 203. Property Taxes and Assessments.** Real estate taxes and special assessments for the Downtown Lincoln Management and/or Maintenance Business Improvement Districts for the Exchange Property prior to the Date of Closing shall be paid by Grantor. Taxes for the year of the Date of Closing shall be prorated to the date of Closing and shall be prorated based upon Lancaster County’s then most current land use property valuation or exemption and upon the most current tax rate as determined by the Lancaster County Board of Equalization. Title hereunder shall be delivered free and clear of all other special assessments levied or assessed as of the date of this Agreement; provided that, special assessments for the Downtown Lincoln management or maintenance business improvement districts shall be shown as liens and the special assessment amounts for the year of the Date of Closing shall be prorated to the Date of Closing.

**Section 204. Title and Possession of Project Area.** At each Closing, title to and possession of the Grantor’s Exchange Property shall be conveyed by the Grantor to Grantee under the terms and conditions set forth herein.

**Section 205. Right to Effectuate Exchange.** The City acknowledges that the Redeveloper may undertake an Internal Revenue Code Section 1031 tax deferred exchange of their interest in the all or any portion of the Exchange Property. Both parties’ rights and

obligations under this Agreement may be assigned to facilitate such exchange(s). The parties agree to cooperate with the other party and any assignee of the Redeveloper to enable the Redeveloper to qualify for such exchange(s); provided that such cooperation shall not require the City to incur any additional costs or liability and the City shall be able to realize all intended benefits of this Agreement.

**Section 206. Replacement Alley Traffic Route; Use of Public Right of Way Space.**

To enhance the Civic Plaza Project, the Block 38 Project will implement the Replacement Alley Traffic Route. As the current abutting Lot 6 property owner, the Redeveloper has delivered to the City the necessary petition to vacate and quit claim deed, in a form acceptable to the City Attorney to vacate the West Alley Section. In order to implement the Mixed Use Facility, it will be necessary for the City Council to vacate the West Alley Section, subject to the City retaining title to said vacated West Alley Section, provided that the operative date of said vacation shall not go into effect until immediately after satisfaction of the following events:

- A. A public access route through the ground level floor of the Mixed Use Facility as generally shown on **Exhibit B** has been legally created in the Condominium Documents and said Condominium Documents have been filed of record in the Lancaster County Register of Deeds Office; and
- B. Completion and opening of the Replacement Alley Traffic Route.

In addition, the implementation of the Mixed Use Facility will require the City to issue the necessary approvals and permits to allow the construction, operation, maintenance, repair and replacement of Mixed Use Facility footings, columns and related Project Improvements within the public right of way located along the east edge of North 13<sup>th</sup> Street, the south edge of “Q” Street and the west edge of North 14<sup>th</sup> Street.

**Section 207. Sidewalk Cafés.** The parties anticipate that one or more of the Commercial Units, or portions thereof, will be used as a restaurant(s) and the restaurant(s) will desire to have sidewalk cafes (1) within the sidewalk portion of 13<sup>th</sup> Street, “Q” Street, and/or 14<sup>th</sup> Street right-of-way and (2) within the West Alley Section (i.e. the north edge of the Civic Plaza). Any proposed sidewalk café within the sidewalk portion of 13<sup>th</sup> Street, “Q” Street, and/or 14<sup>th</sup> Street right-of-way or the West Alley Section will be required to apply and be approved under Chapter 14.50 (Outdoor Café) of the Lincoln Municipal Code.

**Section 208. Use Of Civic Plaza Site and Abutting Streets For Construction Purposes.** The City, at its expense, shall temporarily clear improvements and make the Civic Plaza Site, West Alley Section and the sidewalks, on-street parking stalls, traffic lanes and east-west alley as shown on **Exhibit F**, which is attach hereto and incorporated herein by this reference, for use as a construction staging, storage area and delivery/parking of construction trailers, vehicles and equipment used in the construction of the Mixed Use Facility (collectively “**Construction Project Areas**”), including securing any necessary permits and approvals for the Construction Project Areas. The City shall provide the Mixed Use Facility Construction Project Areas at its expense, and not at the expense of the Redeveloper or the CMR, in order to construct the City Parking Garage Improvements within the context of a Mixed Use Facility; provided that, if required, the City and Redeveloper shall be responsible to each pay one half of the following expenses:

- A. **Covered Walkways and Fencing.** The City may require the CMR to provide an eight-foot wide protected or covered walkways along the abutting streets and as described in Section 14.29.20, Lincoln Municipal Code.

**Section 209. Real Estate Commission.** City and Redeveloper represent(s) and warrant(s) to each other that they have dealt with no real estate brokers or agents in connection with the negotiation of this Agreement. In the event any claims arise for real estate commissions, fees, or compensation in connection with this transaction, the party or parties so incurring or causing such claims shall indemnify and hold harmless the other party or parties from any loss or damage which said other party or parties suffers because of said claims. The parties acknowledge that Zach Wiegert of Wiegert Properties, LLC is a licensed Real Estate Broker in the State of Nebraska and is a principal of the managing partner of the Redeveloper; William D. Scott is a licensed Real Estate Broker in the State of Nebraska and is a principal of WRK Development Co., LLC, a Nebraska limited liability company (“WRK”), who is a principal of the Redeveloper. Josh J Berger, Jordan J. Berger and John R. Thompson are licensed Real Estate Salespersons in the State of Nebraska and are employees of WRK.

### **ARTICLE III. REDEVELOPER'S RESPONSIBILITIES**

**Section 301. Evidence of Financial Ability of Redeveloper.** Redeveloper shall provide in confidence to the City Finance Director such evidence of availability of finances necessary for purposes of carrying out the commitments of Redeveloper in connection with the construction of the Redeveloper Improvements as the City may reasonably require. Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the City's obligations under Article IV of this Agreement.

**Section 302. Preconstruction and Construction of Project Improvements.** Subject to the terms and conditions of this Agreement, the Redeveloper at its own cost and expense shall, acquire, design, construct and complete the Redeveloper Improvements in conformity with the

approved Construction Documents through a minimum investment of Fourteen Million Seven Hundred and Seventy-Four Thousand Nine Hundred and Sixteen and No/100 Dollars (\$14,774,916).

A. Redeveloper Improvements Design. Redeveloper, at its expense, will pay for the professional design services of the Architect pursuant to its contract with the Architect for the design completion of the Redeveloper Improvements portion of the Schematic Drawings, the GMP Documents and for Construction Documents that are acceptable to the Redeveloper.

B. Construction of Redeveloper Improvements. Subject to the terms and conditions of this Agreement, the Redeveloper, at its expense, will pay for the construction of the Redeveloper Improvements. Redeveloper shall cause the CMR to bid the Redeveloper Improvements according to the Construction Manager at Risk Contract and subject to all applicable ordinances, provisions of the city charter and state statutes. The construction of the Redeveloper Improvements will be subject to the following requirements:

1. Energy Efficiency. Construction of the Redeveloper Improvements shall utilize energy efficient building practices.
2. Landscaping. All mechanical units and condensing units shall be visually screened from public street view. Large trash receptacles for the Redeveloper Property uses and any outside storage areas shall be screened on three sides with a masonry screen wall. Redeveloper shall submit a landscape plan to the Director of Urban Development for his review and approval which will not be unreasonably withheld.
3. Permits and Approvals. Redeveloper agrees to secure all permits and licenses necessary for its intended use of the Redeveloper Improvements including, but not limited to, necessary building permits and inspections.

4. Time for Completion of Improvements. The development and construction of the Redeveloper Improvements (except for interior finish within the Commercial Units and Residential Unit) shall be completed as shown on the Timeline.

D. Payment of Costs. Redeveloper agrees to use commercially reasonable efforts to acquire the Redeveloper Property and complete construction of the Redeveloper Improvements as provided in this Agreement, and to pay in a timely manner the CMR the GMP for the Redeveloper Improvements. Such payment shall be made promptly after completion of the Redeveloper Improvements in accordance with the Construction Manager at Risk Contract with the CMR and all the provisions of this Agreement relating to the obligations of Redeveloper to construct the Redeveloper Improvements.

**Section 303. Redeveloper's Certificate of Completion.**

A. Certificate of Completion. Promptly after completion by Redeveloper's investment in the Redeveloper Improvements, as specified above, and completion of the Redeveloper Improvements in accordance with all provisions of the this Agreement, and promptly after the Redeveloper provides the City with the proper documentation that the CMR has been properly paid for the Redeveloper Improvements, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Redeveloper Improvements required to be constructed by Redeveloper. If the work has been completed in conformance with this Agreement, the City shall issue to Redeveloper a Certificate of Completion, the form of which is attached hereto as **Exhibit G** and incorporated herein by this reference. The issuance of the Redeveloper's Certificate of Completion by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Agreement with respect to the

obligations of Redeveloper and its successors and assign to construct the Redeveloper Improvements.

B. Procedure. If the City shall refuse or fail to issue a Redeveloper's Certificate of Completion after a final inspection has been requested and performed, the City shall, within thirty (30) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Redeveloper Improvements in accordance with the provisions of this Agreement or is otherwise in default, 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. The Redeveloper's Certificate of Completion may be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska. As used herein, the term "completion" shall mean substantial completion of the Redeveloper Improvements for their intended purpose.

**Section 304. Duty to Maintain**. Pursuant to the Block 38 Condominium Documents, the Redeveloper shall, following construction, keep the Redeveloper Improvements in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the Redeveloper Improvements buildings including the routine and reasonable preventive maintenance of the Redeveloper Improvements and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including

replacement and replanting), removal of snow and ice from sidewalks, and driveways 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.

**Section 305. Construction Administration.** Redeveloper shall be responsible for all components of the Redeveloper Improvements constructed by Redeveloper including construction management, coordination of contractors and regulatory permitting and other requirements. The Redeveloper will be solely responsible for payment of all construction costs for the Redeveloper Improvements.

**Section 306. Redeveloper's Penal Bond.** Pursuant to *Neb. Rev. Stat.* §18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to Redeveloper's commencement of construction of any Redeveloper Improvements, a penal bond in an amount equal to the costs of the Redeveloper Improvements with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons supplying or furnishing the Redeveloper with labor or materials performed or used in the prosecution of the Redeveloper Improvements and will indemnify and save harmless the City to the extent of any payments in connection with the carrying out of such contracts which the City may be required to make under the law. Proof of such penal bond shall be supplied to the City prior to the construction of the Redeveloper Improvements. As a form of the penal bond described above, the Redeveloper may obtain and keep in force at all times prior to and until recording of the Certificate of Completion, a title insurance policy, in a form and process acceptable to the City Attorney's Office, insuring the City against loss by the Redeveloper of title or interest in Redeveloper Property and in the

real property portion of the Redeveloper Improvements by reason of construction liens, mechanic's liens or similar liens. Proof of such title insurance policy shall be promptly supplied to the City. The City shall be supplied, upon written demand, with copies of all lien waivers of Redeveloper's contractor, or his or her subcontractors who performed labor or applied materials performed or used in the prosecution of the Redeveloper Improvements, and shall be entitled to inspect at reasonable times all records of Redeveloper or their agents regarding such lien waiver procedures.

**Section 307. Indemnification.** To the fullest extent permitted by law, Redeveloper agrees to indemnify and hold harmless the City, its officers, agents and employees to the extent of any payments for the Redeveloper Improvements that the City may be required to make in connection with the Redeveloper's failure to carry out construction of any Redeveloper Improvements or for failure of Redeveloper or Redeveloper's contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper's contractor or his or her subcontractors with labor or materials performed or used in construction of the Redeveloper Improvements.

#### **ARTICLE IV. CITY RESPONSIBILITIES**

**Section 401. City Parking Garage Improvements.**

A. Site Assemblage. The City is the current owner of Lots 1-5, Block 38, Original Plat of Lincoln, Lancaster County, Nebraska and said lands are free and clear of tenants (except for daily parkers). After the Closing of the Exchange Properties and the execution and filing of the Block 38 Condominium Documents, the City will be the owner of the Parking Office Unit

and the Parking Garage Unit and the Redeveloper will be owner of the Commercial Units and the Residential Units within the Mixed Use Facility. With the cooperation of the Redeveloper, the City, at its expense, will acquire any remaining leasehold interest in the Tenant Leases for Lot 6 and will acquire any required temporary and permanent easements necessary for the construction and operation of the Mixed Use Facility (collectively “**Remaining Real Estate Interests**”) as soon as reasonably possible after the approval of this Agreement. The costs of acquiring the Remaining Real Estate Interests, including, but not limited to, the amount of any relocation expenses under any federal, state or local laws, condemnation awards, court costs, expert witness fees, testing fees, and interest shall be paid by the City.

B. City Parking Garage Improvements Design. City, at its expense, will pay for the professional design services of the Architect and Parking Garage Engineer pursuant to its contract with the Architect for the design completion of the City Parking Garage Improvements portion of the Schematic Drawings, the GMP Documents and for Construction Documents that are acceptable to the City.

C. Construction of City Parking Garage Improvements. Subject to the terms and conditions of this Agreement, the City, at its expense, will acquire Lot 6, relocate the tenants on Lot 6, and pay for the construction of the City Parking Garage Improvements. The City shall cause the CMR to bid the City Parking Garage Improvements according to the City’s procedures and subject to all applicable ordinances, provisions of the Lincoln City Charter and state statutes. The City will exercise its best efforts to cause the City Parking Garage Improvements to be completed by not later than the completion deadline for the Redeveloper Improvements as shown on the Timeline.

D. The City, at its expense, will construct the Replacement Alley Traffic Route, including but not limited to, (1) relocating the current LES overhead power lines running within the east-west alley and burying underground said power lines; (2) the related costs to connect and convert electrical service lines and level of service between the relocated underground power lines and the buildings located on the south half of Block 38 (“**South Block Neighbors**”), including provide the proper and updated electric systems to and within said South Block Neighbors; (3) repaving the East Alley Section of the of the east-west alley; (4) and any other reasonably related utilities, lighting, trash or other improvements or modifications necessary to properly implement and accommodate the Replacement Alley Traffic Route as it may touch or concern the Civic Plaza or the South Block Neighbors.

**Section 402. Gated Top Floor Parking.** The top floor (seventh floor) of the Parking Garage is shown to have approximately one hundred and fourteen (114) parking stalls. The Redeveloper and City agree that the parking area on the top parking floor of the Parking Garage will be completely segregated by wall, fencing or gated for reserved parking by providing gates for controlled motor vehicle and pedestrian access points (collectively “**Gated Parking Area**”) and the capital construction costs for said fencing and gates shall be paid by the Redeveloper. Thereafter, the Redeveloper, at its expense, will assist in maintaining and monitoring the **Gated Parking Area** on a daily basis. The City, at its expense, will be responsible for the Gated Parking Area as part of its on-going responsibilities for the Parking Garage, including being able to have access at any time to the Gated Parking Area. The City, at its expense, shall be responsible for capital maintenance, repair and replacement of the Gated Parking Area. The City and Redeveloper will work together to coordinate and provide proper access controls to the

Gated Parking Area. The City, at its expense, may relocate said fencing and gates and expand the Gated Parking Area to another lower level to provide additional reserved parking.

**Section 403. Residential Unit's Parking Rights.** The owner of the Residential Unit shall have the following three parking rights (A. One Time Right to Lease; B. Rights to Lease; and C. Mutual Agreement) for the benefit of the Residential Unit in the Parking Garage:

A. One Time Right to Lease. The owner of the Residential Unit shall have the following one time parking right ("One Time Right to Lease") for the benefit of the Residential Unit in the Parking Garage, which parking rights shall run with the Residential Unit for the Parking Term defined below:

1. Rights to Lease Up To 114 Parking Stalls. Upon opening of the City Parking Garage Improvements and after completion of the Redeveloper Improvements, the owner of the Residential Unit shall have a one time right to lease one-hundred and fourteen (114) parking stalls in the Gated Parking Area of the Parking Garage on a 24-hour/7 days-per-week basis. The owner of the Residential Unit shall provide the City written notice of its desire to exercise the One Time Right to Lease by providing the City written notice on or before August 15, 2012. The "Parking Term" for the One Time Right to Lease shall start on August 15, 2012 (unless the Director of Urban Development Department and the Redeveloper agree to a different start date) and continuing until the earlier of the following two dates: (a) the date the Redeveloper pays off in full its permanent original or refinance loan(s) on the Residential Unit and the holder thereof releases its lien on the Residential Unit; or (b) twenty-five (25)

years, whichever period of time is shorter. The monthly charge for the one-hundred and fourteen (114) parking stalls shall be as follows:

- a. For the first thirty-six (36) months (months 1 through 36) of the Parking Term, the monthly parking rate shall be \$50 per stall times one-hundred and fourteen (114) parking stalls;
- b. For the next sixty (60) months (months 37 through 97) of the Parking Term, the monthly parking rate shall be fifteen percent (15%) less than the standard unreserved monthly rate the City is then currently charging monthly parkers in the Parking Garage times one-hundred and fourteen (114) parking stalls; and
- c. For the ninety-eighth (98<sup>th</sup>) month through the end of the Parking Term, the monthly parking rate shall be ten percent (10%) less than the standard unreserved monthly rate the City is then currently charging monthly parkers in the Parking Garage times one-hundred and fourteen (114) parking stalls.

The above-referenced parking may only be obtained and used by owner of the Residential Unit or its agent for parking associated with the residential dwellings located within the Residential Unit. The owner of the Residential Unit may at any time during the Parking Term provide written notice to the City of the owner of the Residential Unit's right to terminate the One Time Right to Lease, in which case, the owner of the Residential Unit may then elect to exercise its rights under the Rights to Lease described in the next subsection below.

**B. Rights to Lease.** The owner of the Residential Unit shall have the following parking rights ("Rights to Lease") for the benefit of the Residential Unit in the Parking Garage,

which parking rights shall run with the Residential Unit for a term of fifty (50) years starting on August 15, 2012 and ending on August 14, 2062 (unless the Director of Urban Development Department and the Redeveloper agree to a different start date for the fifty year term):

1. Rights to Lease Up To 55 Parking Stalls. Upon opening of the City Parking Garage Improvements and after completion of the Redeveloper Improvements, the owner of the Residential Unit shall have the permanent right to lease up to fifty-five (55) parking stalls in the Gated Parking Area of the Parking Garage on a 24-hour/7 days-per-week basis under parking permits issued by the City equal to the standard unreserved monthly rate the City is then currently charging monthly parkers in the Parking Garage. Thereafter, the City may modify said standard unreserved monthly rate by from time to time to reflect the market value for said parking stalls. The above-referenced parking permits may only be obtained and used by the owner of the Residential Unit or its agent for parking associated with the residential dwellings located within the Residential Unit. If the owner of the Residential Unit does not exercise any or all of the above rights to lease parking stalls upon opening of the Redeveloper Improvements, the owner of the Residential Unit shall have the following continuing right to lease parking stalls as follows:

a. After the opening of the Redeveloper Improvements, the owner of the Residential Unit may exercise continuously at any time any or all of the remaining rights to lease up to 55 parking stalls by giving the City five (5)

business days advance written notice of the owner's request to lease monthly parking stalls.

(1) In the event the City has available parking stall(s) within the Gated Parking Area upon receipt of the owner's request, then the City will immediately issue the available number of parking permit(s) within the Gated Parking Area.

(2) In the event the City cannot immediately fulfill all or a portion of the owner's request by providing parking stall(s) within the Gated Parking Area, then the City will offer any available monthly parking permit(s) to the owner of the Residential Unit for said unfulfilled request within the remaining lower level monthly parking areas of the Parking Garage ("**Other Parking Area**"). The owner of the Residential Unit, at its election, may accept the City's parking permit(s) for all or a portion of the available parking within the Other Parking Area in or toward temporary satisfaction of the owner's right to leave up to 55 parking stalls in the Gated Parking Area.

(3) In the event the City cannot immediately fulfill all or a portion of the owner's request by providing monthly parking stall(s) within the Gated Parking Area as described in **Section 403 B. 1 a (1)** above or **Section 403 B. 1 a (2)** above, or in the event owner does not accept the City's parking permits in the Other Parking Area then the City shall have the duty and obligation to terminate as soon as reasonably possible any existing monthly

parking permits issued to monthly parkers who are not residences of the dwelling units in the Residential Unit in order to accommodate owner's request for parking permits under this Section by providing the required notice to vacate a month to month parking lease in the Gated Parking Area. Following such termination, the City will issue to the owner the requested number of parking permit(s) within the applicable Gated Parking Area.

2. Parking Rights for the Balance of Gated Parking Area. Upon opening of the City Parking Garage Improvements and after completion of the Redeveloper Improvements, the owner of the Residential Unit shall have the right to lease up to the total number of parking stalls in the Gated Parking Area, minus the 55 parking stalls described in Section 403 A above (approximately 59 parking stalls) on a 24-hour/7 days-per-week basis under parking permits issued by the City equal to the standard unreserved monthly rate the City is then currently charging monthly parkers in the Parking Garage. Thereafter, the City may modify said unreserved monthly rate from time to time to reflect the market value for said leased parking stalls. The above-referenced parking permits may only be obtained and used by the owner of the Residential Unit or its agent for parking associated with the residential dwellings located within the Residential Unit. If the owner of the Residential Unit does not exercise any or all of the above rights to lease parking stalls upon opening of the Redeveloper Improvements, the owner of the Residential Unit shall have the continuing right to lease parking stalls as follows:

a. Subject to availability, the owner of the Residential Unit may exercise any or all of the remaining parking right(s) described above after the opening of the Redeveloper Improvements by notifying the City at any time thereafter and requesting monthly parking stall(s).

(1) In the event the City has available parking stall(s) within the Gated Parking Area upon receipt of the owner's request, then the City will issue the available number of parking permit(s) within the Gated Parking Area.

(2) In the event the City cannot fulfill all or a portion of the owner's request by providing parking stall(s) within the Gated Parking Area, then the City will offer any available monthly parking permit(s) to the owner of the Residential Unit for said unfulfilled request within the Other Parking Area. The owner, at its election, may accept the City's parking permit(s) for all or a portion of the available parking within the Other Parking Area.

(3) In the event the City cannot fulfill all or a portion of the owner's request by providing parking stalls within the Gated Parking Area as described in **Section 403 B. 2 a (1)** above or the Other Parking Area as described in **Section 403 B. 2 a (2)** above, then the City shall place any such unfilled requests for monthly parking permits at the head of a waiting list to be compiled by the City or its agent operating the City Parking Garage Improvements for (1) the Gated Parking Area ("**Gated Parking Area Waiting List**") and (2) the Other Parking Area ("**Other Parking Area Waiting List**"). In the event the City thereafter has available parking stall(s) within the Gated

Parking Area or Other Parking Area, then the City will offer said stall(s) to the owner of the Residential Unit and if the owner of the Residential Unit accepts, then the City will issue the available number of parking permit(s) within the applicable Gated Parking Area or Other Parking Area.

(4) Notwithstanding the above, owner of the Residential Unit understands and agrees that the City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing monthly parking permits to accommodate owner's request for parking permits under this subsection.

C. Mutual Agreement. In the event the One Time Right to Lease or Rights to Lease are not viable to the owner of the Residential Unit, then the Director of Urban Development Department is hereby authorized to make changes or amendments to the parking rights as the Director and owner of the Residential Unit may mutually deem necessary or advisable in order to properly provide reasonable parking to the Residential Units and properly maintain the City parking programs (collectively "Mutual Agreement").

D. The owner of the Residential Unit shall have the right to condominiumize or subdivide the Residential Unit into individual residential dwellings pursuant to the Block 38 Condominium Regime and to subdivide and assign the above parking rights to individual residential dwellings located within the Residential Unit. The assigned parking rights may only be obtained and used by the owner of the individual residential dwelling for parking by the occupant(s) of the residential dwelling.

E. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in other City garages and in particular, shall be subject to regular and timely payment of the monthly parking charges charged to other monthly parkers in the Parking Garage as the same may from time to time be established or revised by the City.

**Section 404. City Duty to Maintain.** Pursuant to the Block 38 Condominium Documents, the City shall, following construction, keep the City Parking Garage Improvements in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the City Parking Garage Improvements including the routine and reasonable preventive maintenance of the City Parking Garage Improvements and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes.

**Section 405. Indemnification by City.** To the fullest extent permitted by law, City agrees to indemnify and hold harmless the Redeveloper, its manger, members, officers, agents and employees to the extent of any payments for the City Parking Garage Improvements that the Redeveloper may be required to make in connection with the City's failure to carry out

construction of any City Parking Improvements or for failure of the City or the CMR to make payments of all amounts lawfully due to all persons supplying or furnishing the CMR or its subcontractors with labor or materials performed or used in construction of the City Parking Garage Improvements.

## **ARTICLE V. REPRESENTATIONS**

**Section 501. Development of Mixed Use Facility.** Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of such property and not for speculation in land holding.

**Section 502. Restrictions on Assignments of Rights or Obligations.** Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion by the City, there shall be no sale or transfer of Redeveloper or assignment of rights or obligations under this Agreement to any party without the prior written approval of the City, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. Except as otherwise provided in this Agreement, the City shall be entitled to require as conditions to any such 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 agreed to be subject to all of the conditions and restrictions to which

Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper's interest in the Project Area or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Redeveloper Property and the construction of the Redeveloper Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Redeveloper Improvements.

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. The restrictions set forth in this **Section 502** shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion by the City.

**Section 503. Change in Scope, Termination of Project.** City and Redeveloper agree that any material change in the scope of the Block 38 Project including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Uses and Sources of Funds for the Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of Redeveloper to obtain the necessary governmental approvals and permits from the City to construct the Redeveloper Improvements as reflected on the GMP Documents or the Construction Documents, Redeveloper may terminate this Agreement by delivering written notice to the City of default pursuant to **Section 801** including the opportunity to cure the same.

**Section 504. Use Restrictions of the Redeveloper Property.** Redeveloper's intended use of the Redeveloper Improvements as reflected on the Construction Documents is in compliance with the Redevelopment Plan and any applicable zoning and local ordinances. Redeveloper agrees that no portion of the Redeveloper Property and Redeveloper Improvements shall be used for any of the following uses:

- A. A liquor store selling alcoholic beverages for consumption off-the premises, but excluding micro brewing establishments that sells alcoholic beverage for consumptions off the premises;
- 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 Lincoln residents;

E. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience or food 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 keno, bingo, and the retail sale of lottery tickets as permitted by applicable law;

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

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

Redeveloper further agrees that each of the above use restrictions shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Redeveloper Property and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall survive Closing. The above use restrictions against the Redeveloper Property shall be included in a Memorandum of Agreement which the parties will prepare, execute and file of record at the time of Closing.

## **ARTICLE VI.**

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

**Section 601. Limitation Upon Encumbrance of Property.** Prior to issuance of the Redeveloper's Certificate of Completion by the City, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Redeveloper Property, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to the Redeveloper Property, except for the purposes of

obtaining funds only to the extent necessary to design, construct, maintain, repair and replace the Redeveloper Improvements. All such mortgages, financial encumbrances, or monetary liens shall provide that they are subject to the terms and conditions of this Agreement, except as provided in **Section 602** below, and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Redeveloper Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Redeveloper Improvements whether by voluntary act of any of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Redeveloper Property and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond, security or title insurance coverage insuring over such encumbrance or lien is posted with the Clerk of the District Court pursuant to *Neb. Rev. Stat. § 52-142* to permit the City to avoid foreclosure of such encumbrance or lien.

**Section 602. Mortgage Holder Obligations.** Each mortgage holder who obtains title to the Redeveloper Property 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 exempted from those provisions of this Agreement which require construction and completion of the Redeveloper 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 Redeveloper Property 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 Redeveloper 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 603. Copy of Notice of Default to Mortgage Holder.** Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder as shown in the records of the City or as provided by such mortgage holder.

**Section 604. Mortgage Holder's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in **Section 801**, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership 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 as referred to in **Section 801**, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such 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 default.

**Section 605. City's Option to Purchase Redeveloper Property.** In any case where the holder of any mortgage obtains title to the Redeveloper Improvements as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion, the City shall (and any additional mortgage instrument made after the date of this Agreement with respect to the Redeveloper Property prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) be entitled, at its option, to a conveyance to it of the Redeveloper Property upon payment to such holder of an amount equal to the sum of:

- (1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (2) All expense with regard to foreclosure;
- (3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Redeveloper Improvements;
- (4) The depreciated cost of any improvement made by such holder;
- (5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and
- (6) All other reasonable holding costs actually incurred as to the Redeveloper Property.

The City's option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to the Redeveloper Property and notifies the City, unless the City waives the option prior to the end of such 90 day period.

**Section 606. Mortgage Rights Applicable to Other Forms of Encumbrance.** The rights and obligations of this Agreement relating to mortgages of the Redeveloper Property prior to issuance of the Redeveloper’s Certificate of Completion shall apply to any other type of encumbrance on the Redeveloper Property, and any of the state 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, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

**Section 607. Termination of Provisions.** The provisions of Article VI shall terminate upon issuance by the City to the Redeveloper the Redeveloper’s Certificate of Completion.

## **ARTICLE VII. TAX AGREEMENT**

**Section 701. Issuance of TIF Indebtedness.** As soon as is practicable following the execution of this Agreement, the City shall issue TIF Indebtedness in the estimated amount of \$1,722,988 (the “**TIF Bond**”) to be purchased by Redeveloper or Redeveloper’s lender and receive TIF Bond Proceeds from the purchaser (“**TIF Bond Purchaser**”) to be deposited into a fund account (the “**Project Account**”) and expended in the following priority:

FIRST PRIORITY: Reimburse City for the cost of issuing the TIF Indebtedness.

SECOND PRIORITY: Apply the remaining balance of the TIF Bond proceeds towards the cost of the City Parking Garage Improvements.

The City and Redeveloper agree that the form of the TIF Bond and funding mechanism of the TIF Proceeds will be set up similar to a line of credit so that the TIF Bond

Purchaser is required to pay the Bond Proceeds to the City on or before the date the City needs funds in the Project Account in order for the City to acquire Lot 6 and fund the later stages of the City Parking Garage Improvements. Subject to the terms of this Agreement, the City Finance Director on behalf of the City shall have the authority to determine the timing of issuing the TIF Indebtedness and all the other necessary details of the TIF Indebtedness.

**Section 702. Tax Increment Deficiency on Redeveloper Purchased TIF Bond.**

Any shortfall in the TIF Tax Revenues from the Tax Increment Provision such that the cost of repaying the TIF Indebtedness cannot be paid in accordance with the terms of the TIF Bond for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper 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, the Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes together with interest at the rate of nine percent (9%) per annum if and when TIF Tax Revenues do become available to meet current debt service and reimburse Redeveloper for such deficiency payments.

**Section 703. Reimbursement of TIF Proceeds. Intentionally omitted.**

**Section 704. 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 not to exceed nine percent (9.0%) per annum. 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. In the event that the TIF Tax Revenues are not sufficient to pay in full the principal of and interest on the TIF Bonds, such insufficiency shall not under any circumstances be considered an event of default under this Agreement, the TIF Bonds, or the ordinance authorizing their issuance. 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. Only costs expended after the effective date of this Agreement shall be eligible for payment. Any excess TIF Tax Revenues resulting from the Tax Increment Provision required to service the TIF Indebtedness not needed or required to pay for the scheduled payment of the TIF Indebtedness shall be expended by the City to pay the TIF Indebtedness earlier than the scheduled payment of the TIF Indebtedness. 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 Area, shall be borne entirely by the Redeveloper without recourse of any kind against the City.

**Section 704. Tax Increment Deficiency on Redeveloper Purchased TIF Bond.**

A. Redeveloper Purchased TIF Bond. If the Redeveloper purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper 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, the Redeveloper as purchaser of the TIF Bond agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment

Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred plus interest if and when TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness shall be forgiven.

B. Lender Purchased TIF Bond. If Redeveloper's Lender purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper 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, the Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes plus interest if and when TIF Tax Revenues do become available from the Ad Valorem Provisions to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness will immediately be paid by Redeveloper.

**Section 705. Valuation of Property Within the Project Area.** The City intends to use the Tax Increment Provision to generate approximately One Million Seven Hundred Twenty-Two Thousand Nine Hundred and Eighty-Eight and No/100 Dollars (\$1,722,988.00) ("**TIF Proceeds**") which shall be used to finance the issuance of the TIF Indebtedness and the

assistance to Redeveloper in accordance with this Agreement. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service for the TIF Indebtedness will be derived from the increased valuation from redeveloping the Redeveloper Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property and improvements thereon which does not exceed the following values commencing tax year 2011 and continuing for a period of not to exceed fifteen (15) years after the effective date hereof 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:

Not to Protest Amount            \$12,966,020

The Not to Protest Amount shall be included in the Memorandum of Agreement.

**Section 706. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to Redeveloper the Redeveloper's Certificate of Completion, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "**Tax Increment Period**"), convey the Redeveloper Property to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries.

**Section 707. Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the Redeveloper Property prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper

shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Redeveloper Property and improvements for tax purposes except as provided in **Section 706**.

**Section 708. Insurance.**

A. Redeveloper agrees to keep the Redeveloper Property and Redeveloper Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section may, at Redeveloper's option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance described in the Block 38 Condominium Documents or other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to restore the Redeveloper 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.

B. The City, at the City's expense, agrees to maintain insurance on the City Parking Improvements as described in the in Block 38 Condominium Documents. In the event of any insured damage or destruction, the City agrees to restore the City Parking 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.

**Section 709. Condemnation.** In the event that during the Tax Increment Period all or a substantial portion of the Redeveloper Property is condemned by a condemning authority other than the City, and such 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 condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

**Section 710. Termination of Provisions.** The provisions of Article VII shall terminate upon the end of the Tax Increment Period.

**Section 711. Successors and Assigns.** The provisions of this Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

## **TITLE VIII. REMEDIES**

**Section 801. In General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City, Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice,

except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such 30 day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

**Section 802. Other Rights and Remedies; No Waiver by Delay.** The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 803. Delay in Performance For Causes Beyond Control of Party (“Force Majeure”).** For the purpose of any provisions of this Agreement, the City and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this Section 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 the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this Section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

**Section 804. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

## **ARTICLE IX. MISCELLANEOUS**

### **Section 901. Representations and Warranties of Parties.**

A. Redeveloper represents and warrants to City as follows:

i. Organization; Power; Good Standing. Redeveloper is a limited liability company duly organized and validly existing in good standing under the laws of Utah. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate their properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

ii. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by

bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

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

B. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Agreement by City have been duly authorized by all necessary action by 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.

**Section 902. Conflicts of Interest; City Representatives Not Individually Liable.**

No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Agreement.

**Section 903. Owners Coordination Principals.**

A. City agrees that the City shall design, construct, and place in service the City Parking Garage Improvements, or cause the same to be designed, constructed, and placed in service in accordance with the Timeline. Redeveloper agrees that the Redeveloper shall design, construct, and place in service the Redeveloper Improvements, or cause the same to be designed, constructed, and placed in service in accordance with the Timeline. Yet the interrelationship between the City Parking Garage Improvements and the Redeveloper Improvements depend upon shared design, support, circulation, construction and maintenance of the Mixed Use Facility. These interrelationships and dependences are complex and potential issues and conflicts could arise. The parties agree to use their best efforts to carefully dialogue with each other and coordinate decisions as “one owner”. In turn, the parties agree to communicate with the Architect and the CMR as “one owner” to insure an efficient integrated project.

B. Administrators as Authorized Person to Issue Approvals. The City hereby designates the Mayor of the City of Lincoln, or his designee, to serve as the City Administrator (“**City Administrator**”) for the Mixed Use Facility. The Redeveloper hereby designates Zach Wiegert to service, or his designee, to serve as the Redeveloper Administrator (“**Redeveloper Administrator**”) for the Mixed Use Facility. For purposes of

this Agreement and the approvals and disapprovals required hereunder, (1) Redeveloper shall be entitled to rely on the written approval or disapproval of the City Administrator as authorized in this Agreement, as constituting the approval or disapproval required by the City until the Redeveloper receives further written notice from the City, and (2) City shall be entitled to rely on the written approval or disapproval of the Redeveloper Administrator as authorized in this Agreement, as constituting the approval or disapproval required by the Redeveloper until the City receives further written notice from the Redeveloper. The City Administrator and Redeveloper Administrator are hereby authorized by agreement between the Administrators to amend or modify the order of priority and the amount of TIF Proceeds for the priority items as shown in **Section 701** and to modify the Timeline. 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 City Parking Garage Improvements.

C. Administrators 'One Owner' Coordination. The Administrators will coordinate with each other in their work with the Architect and the CMR. As point persons for design and construction issues, the Administrators are responsible for providing timely direction and clarification between City, Redeveloper, Architect and CMR, where possible. The Administrators will provide detail review and input on design issues and work with the CMR to be sure the improvements are completed within the Uses and Sources of Funds and the Timeline. The Administrators also will make recommendations

on the GMP Documents, GMPs and Construction Documents. The Administrators will at all times during the work for the Mixed Use Facility:

1. Require the Architect, CMR and all consultants engaged with respect to the work to conduct their work, in cooperation with each other and with the Administrators, so that (1) all applicable parties will be kept reasonably appraised of all aspects of the work, and (2) CMR can coordinate the installation of any improvements, fixtures or equipment;

2. Make a reasonable effort to deliver to the CMR and each applicable party a copy of all notices and correspondence, including, but not limited to, any notice of default, sent or received relating to the work or the Project Area, unless such notice or correspondence shows that a copy has been delivered to the CMR and applicable party; and

3. Instruct the Architect and all consultants engaged with respect to the work to provide the CMR with a duplicate copy of all notices, correspondence, reports, drawings or specifications, and other documentation delivered or received by either of them simultaneously with their delivery, including, but not limited to, advance notice of weekly progress meetings.

E. Requested Modifications. As design and construction proceeds, the need for compromises and modifications could also arise. In the event that the Administrators or a party desires any additions or modifications to the other party's improvements ("**Requested Modification**") the Administrators or requesting party shall submit a written request along with plans and specifications for the Requested Modifications (that

are coordinated with the Architect, the CMR and other consultants) to the other party for its approval. All Requested Modifications to the design or construction contracts can be jointly approved by the parties' Administrators.

**Section 904. Equal Employment Opportunity.** Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Redeveloper Improvements provided for in this Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Section 905. Notices and Demands.** A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, in the case of Redeveloper, to Block 38, LLC, c/o Woodbury Corporation, 2733 E. Parleys Way, Suite 300, Salt Lake City, Utah, 84109; *with a copy to:* WRK, 440 N. 8th Street, Suite 140, Lincoln, Nebraska 68508; *and a copy to:* Woodbury Corporation, 2733 E. Parleys Way, Suite 300, Salt Lake City, Utah, 84109, Attn: Office of General Counsel; *and a copy to:* Woodbury Corporation, 728 Q Street, Suite C, Lincoln, NE, 68508, Attn: Zach Wiegert; and, in

the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, *with a copy* to City Attorney, 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508; or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

**Section 906. 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 907. Access to the Redeveloper Property.** Redeveloper shall permit the representatives of the City to enter all of the Redeveloper Property and at any and all reasonable times, as the City may deem necessary for the purposes of this Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Redeveloper Improvements. Similarly, the City shall permit Redeveloper such entry upon the City Property and public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for

in this Section. The City's right of access granted under this Section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion. The Redeveloper's right of access shall terminate upon substantial completion of the Parking Garage Improvements as determined by the City. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

**Section 908. Termination of Provisions; Binding.** The provisions and covenants of this Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion contemplated herein, except as otherwise set forth herein. This Agreement shall run with the Project Area and shall inure to and bind the undersigned parties, successors and assigns.

**Section 909. Conditions Precedent.**

A. The City's performance of this Agreement is contingent upon the following: (1) the City accepting the title and environmental condition of Lot 6 and (2) the City Council for the City approving the necessary agreements, resolutions and ordinances for the implementation of the Block 38 Project.

B. The Redeveloper's performance under this Agreement is contingent upon the following: (1) the Redeveloper entering into a satisfactory written agreement with Chipotle Mexican Grill, Inc ("Chipotle Tenant") which terminates or modifies the Chipotle Lease to (a) cause the Chipotle Tenant to vacate its leasehold premise in Lot 6 as shown on the Timeline and (b) cause the release, termination or modification of the Chipotle Tenant's rights, title and interests in the Chipotle Lease on the Chipotle Tenant's leasehold premises on Lot 6 to permit the Parties to construct the Mixed Use Facility on

the Project Area as shown on the Timeline; (2) Redeveloper entering into a satisfactory written agreement with Valentino's of Lincoln, Inc. ("Valentino's Tenant") which terminates or modifies the Valentino's Lease to (a) cause the Valentino's Tenant to vacate its leasehold premise in Lot 6 as shown on the Timeline and (b) cause the release, termination or modification of the Valentino's Tenant's rights, title and interests in the Valentino's Lease on the Valentino's Tenant's leasehold premises on Lot 6 to permit the Parties to construct the Mixed Use Facility on the Project Area as shown on the Timeline; and (3) Redeveloper accepting the title and environmental condition to the Redeveloper Property.

C. The City's and Redeveloper's performance of this Agreement is contingent upon (1) the City and Redeveloper negotiating, executing and recording the Block 38 Condominium Documents prior to Closing; (2) City vacating the West Alley Section pursuant to Section 206; (3) City issuing the necessary approvals and permits to allow the construction, operation, maintenance, repair and replacement of Mixed Use Facility footings, columns and related Project Improvements pursuant to Section 206; and (4) the City and Redeveloper negotiating, executing and recording a memorandum of this Agreement at the time of Closing.

**Section 910. Federal Immigration Verification System Requirements.** In accordance with *Neb. Rev. Stat.* §§ 4-108 through 4-114, the Redeveloper agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal

Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Redeveloper shall not discriminate against any employee or applicant for employment to be employed in the performance of this Section pursuant to the requirements of state law and 8 USCA 1324b. The Redeveloper shall require any contractor constructing the Redeveloper Improvements on behalf of Redeveloper to comply with the provisions of this Section.

**Section 911. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 912. Mutual Cooperation.** The parties agree to mutually cooperate in constructing the various improvements each is to construct in the remaining Project Area so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time.

**Section 913. Integrated Contract; Severance of Provisions; 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 shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 914. Definitions.**

A. For the purpose of this Agreement, the term “holder” in reference to a mortgage 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. The term “mortgage” shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

**Section 915. Audit.** 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. City shall be subject to audit by Redeveloper with regard to the collection, disbursement, and/or funding of any of the sales and uses set forth in **Exhibit C** and shall make a available to Redeveloper and/or any auditor working on behalf of Redeveloper copies of all financial and performance-related records and materials germane to this Agreement and **Exhibit C**.

**Section 916. Expiration.** Except as otherwise provided herein, the terms and provisions of this Redevelopment Agreement shall expire upon the expiration of the Tax Increment Provision.

**Section 917. Memorandum Recording.** The parties shall also negotiate, execute and file of record a Memorandum of Agreement of this Agreement. The City, at its expense, shall record the Memorandum with the Register of Deeds of Lancaster County, Nebraska, against the Redeveloper Property and the City Property.

**ARTICLE X.  
EASEMENTS TO BE GRANTED**

**Section 1001. Intention.** It is the intention of the City and Redeveloper that the Redeveloper Improvements and the City Parking Garage Improvements have all necessary and reasonably desirable easements for support, installation, construction, maintenance, repair, replacement, improvements, ingress and egress. City and Redeveloper deem it desirable to impose a general plan of easements, covenants, conditions, reservations and restrictions to provide for the foregoing in the Block 38 Condominium Documents.

Executed by City this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

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

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

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

Executed by Redeveloper this \_\_\_\_ day of \_\_\_\_\_, 2010.

**BLOCK 38, L.L.C.,**  
a Utah limited liability company

By: Woodbury Corporation,  
a Utah corporation, as Manager

By \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBITS

Exhibit A - Map of Project Area (Project Area and Civic Plaza Site)

Exhibit B–Schematic Drawings

Exhibit C - Uses and Sources of Funds for Mixed Use Facility

Exhibit D - Construction Manager at Risk Contract

Exhibit E - Timeline

Exhibit F – Mixed Use Construction Project Areas

Exhibit G - Certificate of Completion of Improvements

EXHIBIT A  
Map of the Project Area

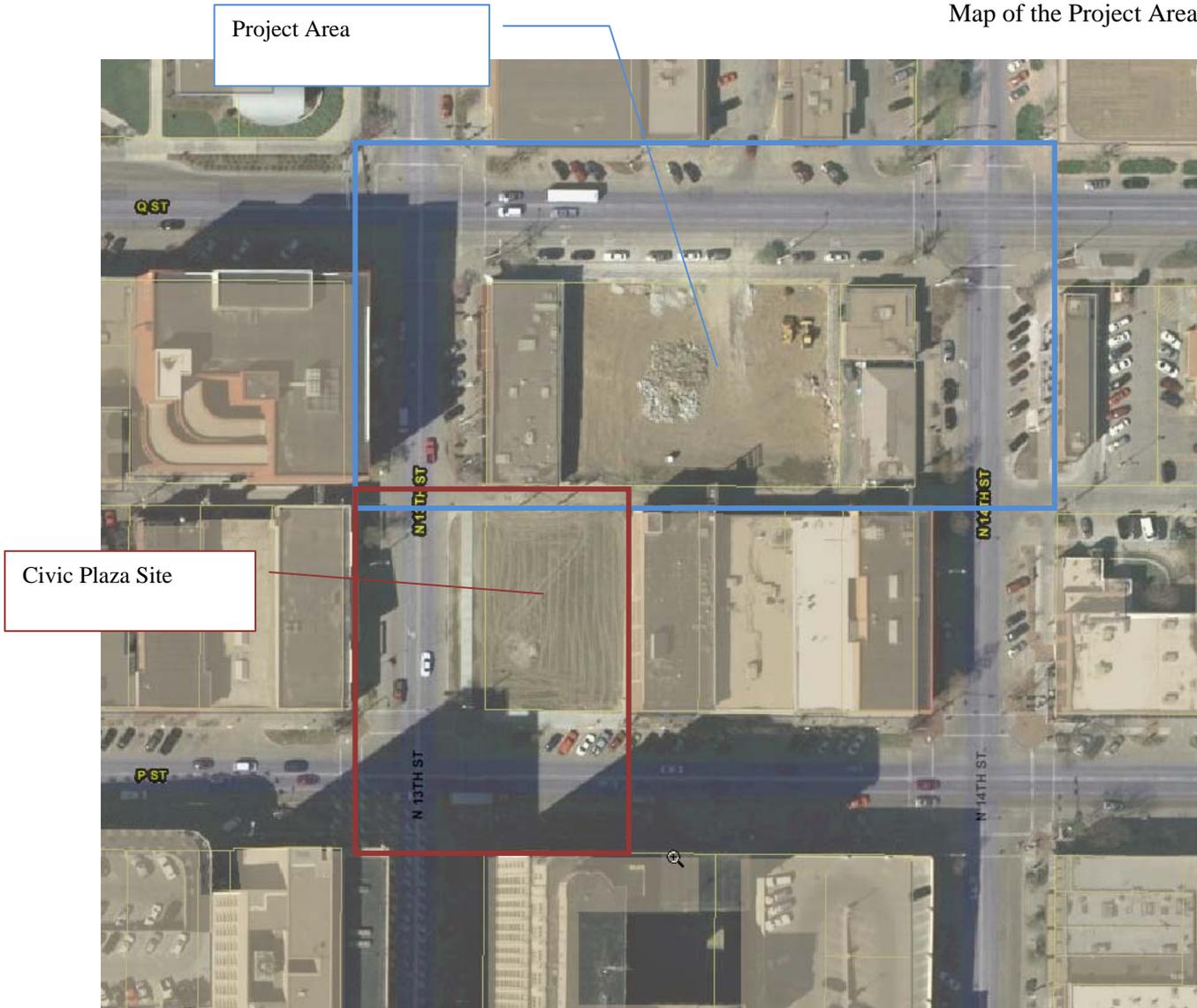
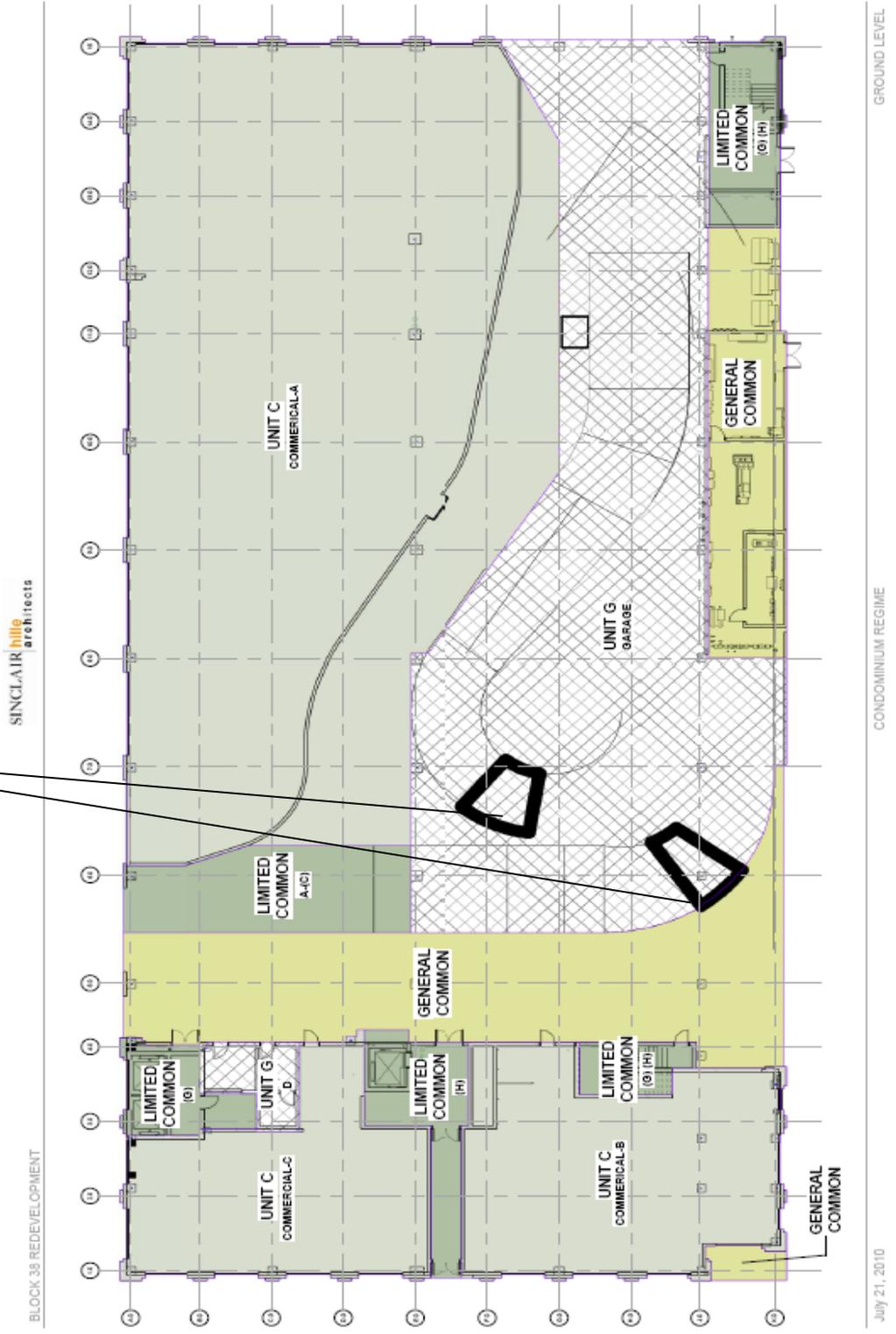
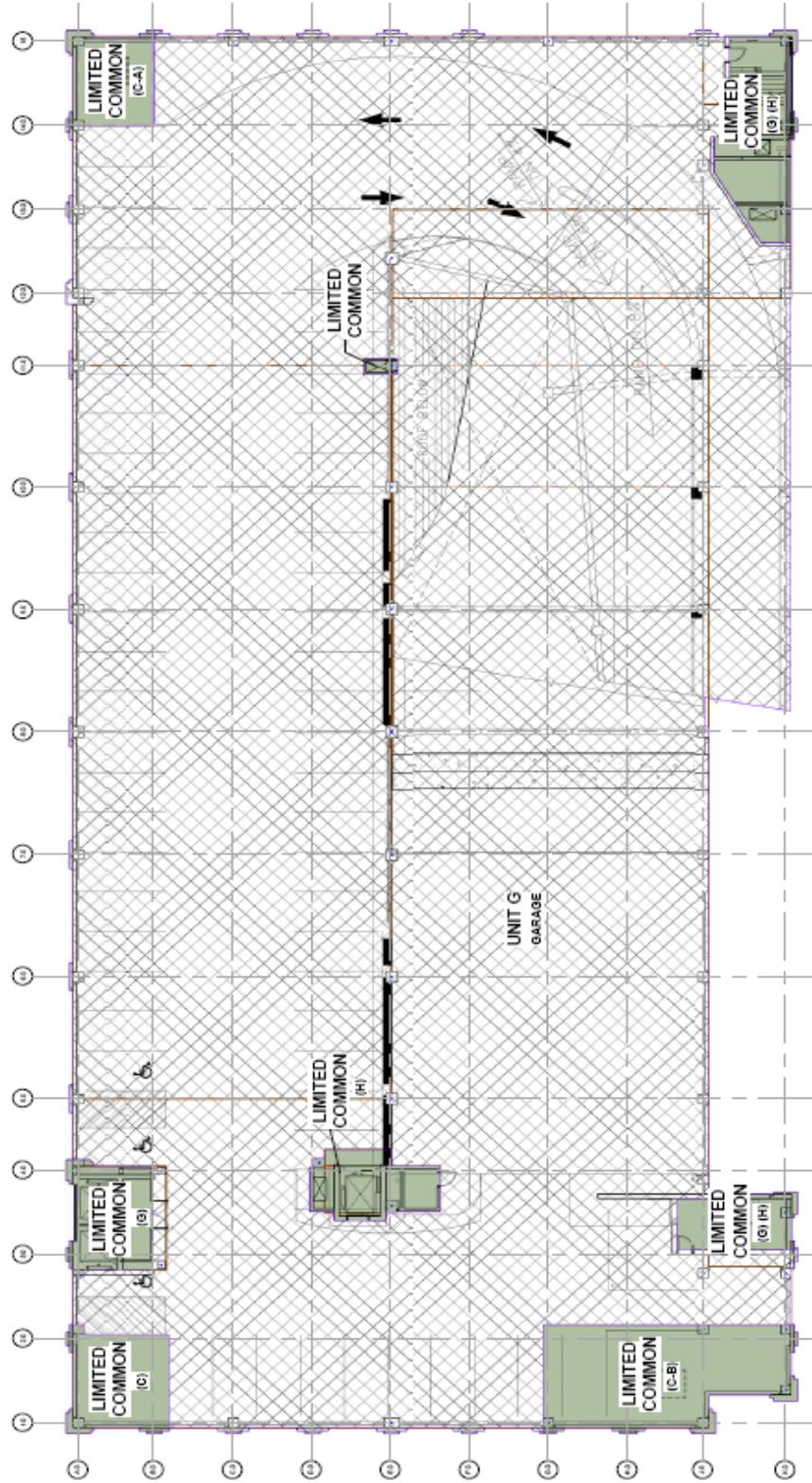
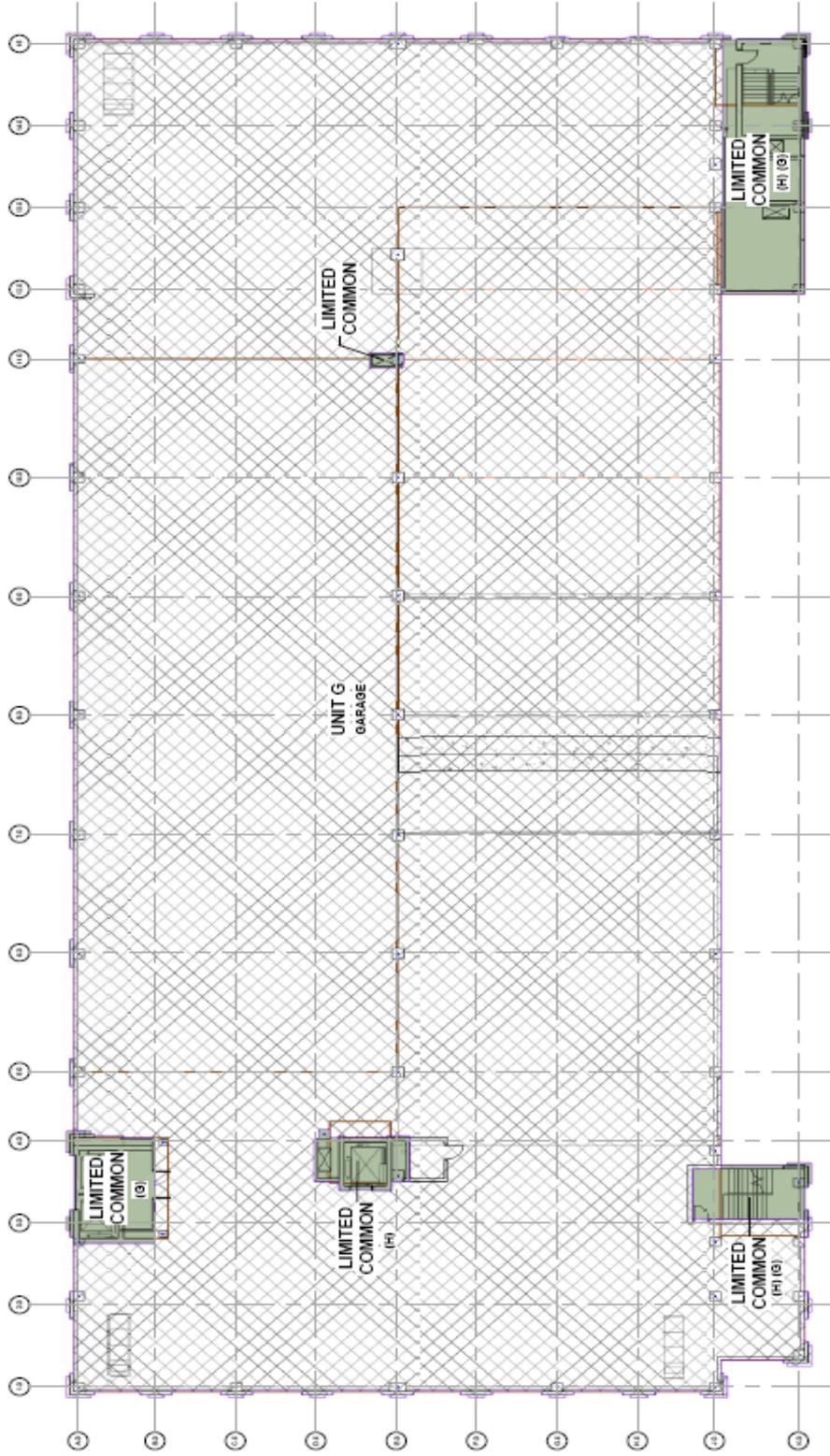


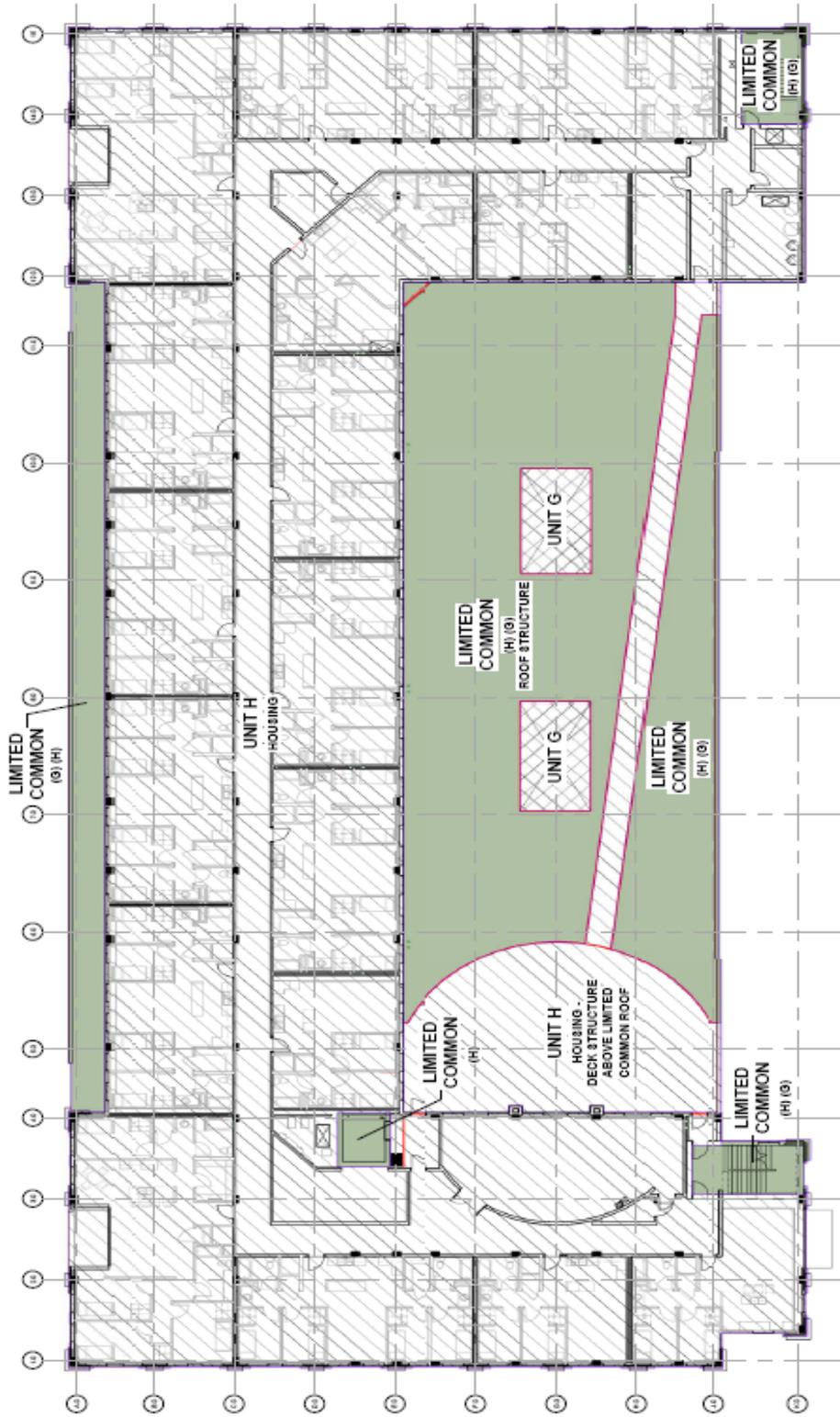
EXHIBIT B  
 Schematic Drawings  
 Illustrative-- subject to change

Josh, we need to remove two black









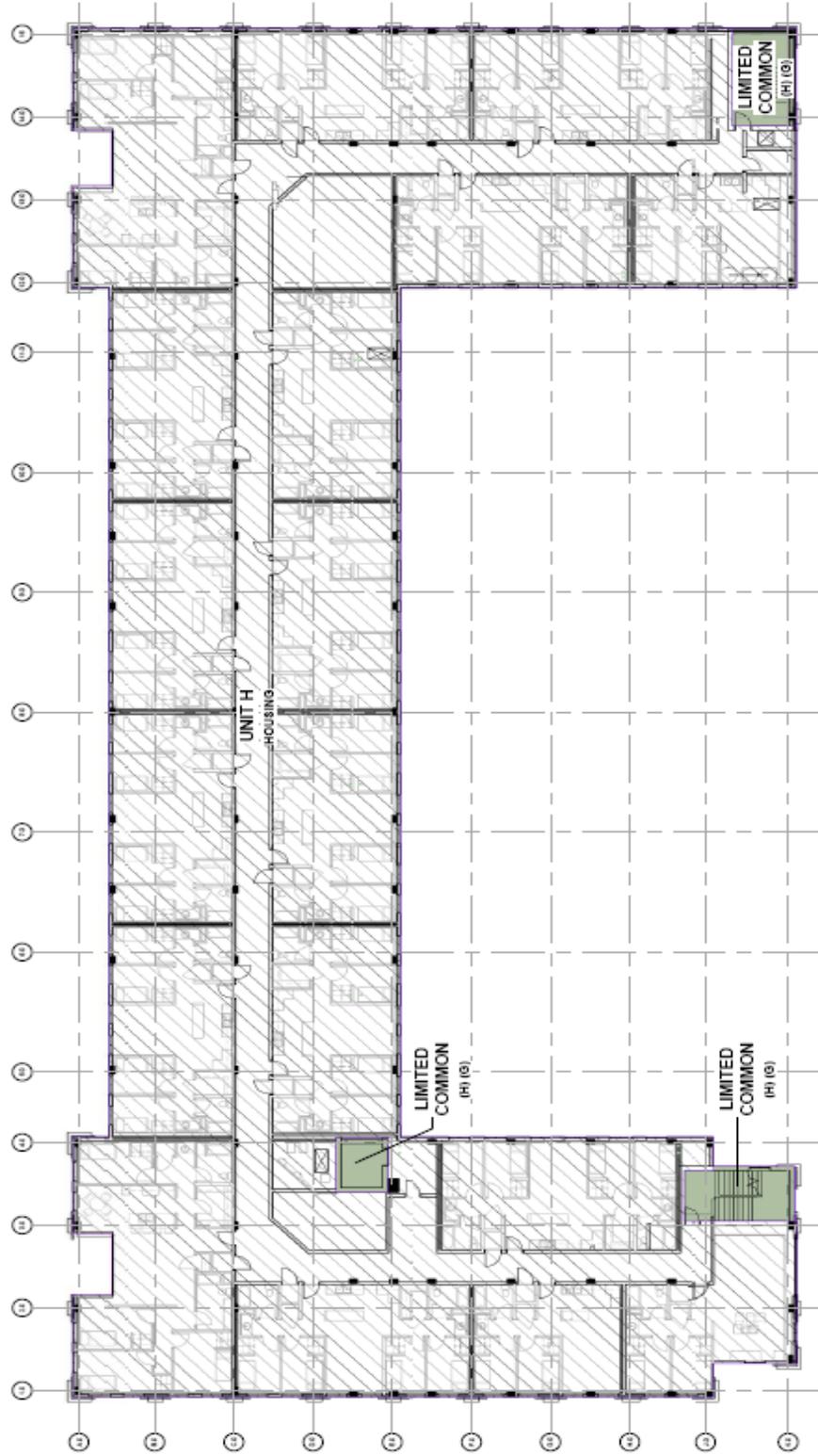


EXHIBIT C  
Uses and Sources of Funds  
Mixed Use Facility  
Subject to change

Block 38 Redevelopment Project-Project One Mixed Use Facility			(Draft: 10/29/2010)			
USES			SOURCES			
#	Description	Total Costs	Redeveloper Contribution	Tax Increment Financing (TIF)	Parking Revenue Funds	Total Sources
1	Lot 6 Acquisitions	\$ 1,500,000			\$ 1,500,000	\$ 1,500,000
2	Tenant Relocations	\$ 600,000			\$ 600,000	\$ 600,000
3	Utilities	\$ 300,000			\$ 300,000	\$ 300,000
4	Rights of Way Improvements	\$ 190,000			\$ 190,000	\$ 190,000
	<b>City's Maximum GMP Budget Amount</b>	<u>\$ 14,041,577</u>		\$ 1,722,988	<u>\$ 12,318,589</u>	<u>\$ 14,041,577</u>
		\$ 14,231,577		\$ 1,722,988	\$ 12,508,589	\$ 14,231,577
5	City's Contingency (2%)	\$ 284,632			\$ 284,632	\$ 284,632
6	<b>City's Total Project Costs</b>	<b>\$ 16,916,209</b>		<b>\$ 1,722,988</b>	<b>\$ 15,193,221</b>	<b>\$ 16,916,209</b>
6	Retail	\$ 1,078,945	\$ 1,078,945			\$ 1,078,945
	Residential	<u>\$ 10,010,227</u>	<u>\$ 10,010,227</u>			<u>\$ 10,010,227</u>
	<b>Redeveloper's Maximum GMP Budget Amount</b>	\$ 11,089,172	\$ 11,089,172			\$ 11,089,172
8	Soft Costs	\$ 2,252,218	\$ 2,252,218			\$ 2,252,218
9	Tenant Improvements	\$ 709,187	\$ 709,187			\$ 709,187
10	Acquisition of Condominium Units	\$ 449,648	\$ 449,648			\$ 449,648
11	<b>Redeveloper's Total Project Costs</b>	<b>\$ 14,500,225</b>	<b>\$ 14,500,225</b>			<b>\$ 14,500,225</b>

EXHIBIT D  
Construction Manager At Risk Contract

The executed Construction Manager At Risk Contract (The American Institute of Architects Construction Manager at Risk Contract, AIA Document A133 – 2009, dated September \_\_\_\_, 2010 by and between the City, Redeveloper and Sampson) is hereby incorporated herein by this reference and is on file with the City Clerk's Office.

EXHIBIT E  
Timeline  
Subject to Change

<b>Project One Mixed Use Facility 10/21/2010</b>		
#	Activity	Date
1.	Completion of GMP Documents (60% design)	October 1, 2010
2.	CM at Risk provides Guarantee Maximum Price	October 22, 2010
3.	Walker Report sent to Parking Revenue Bond underwriters	October 22, 2010
4.	Parties approve Guarantee Maximum Prices (GPMs)	October 26, 2010
5.	City requests LES to begin electrical line relocation design	October 26, 2010
6.	Construction Manager at Risk Contract Executed	October 26, 2010
7.	Parties approve Component Bid Package Outline	October 26, 2010
8.	City holds neighborhood briefing meetings	November 1, 2010
9.	Director's Meeting regarding two Bond Ordinances	October 27, 2010
10.	City Council Introduction Legal Documents (Two Bond Ordinances, and Redevelopment Agreement)	November 1, 2010
11.	Planning Commission Hearing regarding Street and Alley Vacation requests	November 3, 2010
12.	City Council Public Hearing on Legal Documents	November 8, 2010
13.	Rating Agency rate Parking Revenue Bonds	November 8, 2010
14.	City Council approves Legal Documents	November 15, 2010
15.	Mayor signs Construction Manger at Risk Contract	November 16, 2010
16.	City provides LES notice to proceed with electric line relocation/construction	November 16, 2010
17.	First Component Bid Package(s) advertised	November 16, 2010
18.	City Council Approval of Vacation requests	November 22, 2010
19.	Ordinances 10 day effective date	November 25, 2010
20.	Parking Revenue Bonds sold	November 30, 2010
21.	TIF Indebtedness issued and acquired by the Redeveloper	November 30, 2010
22.	City acquires Remaining Real Estate Interests	November 30, 2010
23.	Closing of the Exchange Properties	November 30, 2010
24.	City/Redeveloper gives Notice to Proceed to CMR	November 30, 2010
25.	Construction Manager at Risk bids and awards first Component Bid Package(s)	November 30, 2010
26.	Tenants vacate Block 38 Redevelopment Project Area	January 1, 2010
27.	Demolition and Site Preparation	January 2, 2010
28.	Completion of Construction Documents	January 2, 2011
29.	Construction Starts	January 2, 2011
30.	Completion of Parking Garage	January 2, 2012

31.	Completion of Commercial Units	
32.	Completion of Residential Unit	August 1, 2012
33.	Completion of Redeveloper Improvements	July 1, 2012
34.	Execution of Redeveloper's Certificate of Completion	July 7, 2012

Exhibit F  
Mixed Use Facility Construction Project Areas  
Subject to Change

SINCLAIR **hille** architects

BLOCK 38 REDEVELOPMENT



- Install Site Construction Fence: August 9, 2010
- Site Utility Work: September 2010 - January 2010
- Demo 232 N 13th Street Building: November 2010
- New Construction to begin: November 2010
- Construction Substantial Completion: June 2012

**CERTIFICATE OF COMPLETION OF IMPROVEMENTS**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned certifies, represents and warrants to the City of Lincoln, Nebraska, the conclusive determination and certification with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit:

[INSERT LEGAL DESCRIPTION], Lincoln, Lancaster County, Nebraska,

that the Redeveloper Improvements required to be constructed by the Redeveloper upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2010, and recorded as Instrument No. \_\_\_\_\_ in the office of the Register of Deeds for Lancaster County, Nebraska.

**BLOCK 38, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Woodbury Corporation, a Utah corporation, as Manager of Block 38, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

(Seal)

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

ACCEPTED by the City of Lincoln, Nebraska, this \_\_\_\_ day of \_\_\_\_\_,  
201\_\_.

ATTEST:

**CITY OF LINCOLN, NEBRASKA**

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

\_\_\_\_\_  
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, on behalf of the City.

(Seal)

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