

**CITY OF LINCOLN  
REDEVELOPMENT AGREEMENT  
(10th & Military Project)**

THIS REDEVELOPMENT AGREEMENT (10th & Military Project) is entered into between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("City"), and **CREEKSIDE VILLAGE, Ltd.**, a Nebraska limited partnership ("Redeveloper").

**RECITALS**

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the Antelope Valley Redevelopment Plan ("Redevelopment Plan") 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. The Redevelopment Plan calls for the City to support residential redevelopment efforts, including a housing project to provide new rental housing for the severely mentally ill and housing for individuals with low to moderate income, and new single-family homes for low and moderate income people ("Redevelopment Project") on property generally bounded on the west by the west boundary of Hayward Park, on the north by the Salt Creek Channel, on the east by North 10th Street, and on the south by the east-west alley north of Claremont Street and legally described as Lot 58, I.T. located in the SE 1/4 of Section 14, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, hereinafter the "Redevelopment Project Site."

C. The Redevelopment Project Site is owned by the City. The western portion of the Redevelopment Project Site has been developed as Hayward Park. The eastern portion of the Project Site was formerly leased to the Department of Defense as a site for the Naval Reserve Armory. In addition, an indoor shooting range and another building were erected on the property. Since 1994, the possession of the Naval buildings has been taken over by the City's Department of Parks and Recreation.

D. Redeveloper is willing to acquire and redevelop that portion of Lot 58 described on Exhibit "A" (hereinafter the "Property") by providing the Services described in Recital F below and the construction of 61 multi-family units as rental housing for low-income individuals and families, a portion of which shall be reserved for severely mentally ill residents, and by constructing 10 single-family attached units for rental and ultimate sale to individuals with low to moderate income, together with a club house/service building that will include meeting and community spaces and offices for case management and other services for the severely mentally ill tenants under Special Permit No. 07047 (10th & Military Community Unit Plan) approved by Resolution No. A-84632 adopted by the City Council for the City of Lincoln on November 26, 2007 and as provided in this Agreement, all as reflected on the Site Plan attached to Special Permit No. 07047 (collectively, "Redeveloper Private Improvements"). In addition, the Redeveloper Improvements shall include geothermal heating and cooling for the dwelling units and xeriscape landscaping to minimize energy consumption and water use, both of which are in the best interests of the City and promote the health, safety, and welfare of the community.

E. The City and Redeveloper acknowledge and agree that the fair market value of the Property is Three Hundred Eighty Thirty Thousand and No/100 Dollars (\$380,000.00).

F. The City has previously entered into an option agreement granting Redeveloper the right and ability to acquire the Property from the City for Ten and No/100 Dollars (\$10.00) and other valuable consideration ("Services") in the amount of the fair market value. The Services to be provided by Redeveloper for the benefit of the Property include, but are not limited to, the following:

- Grading of the Property.
- Demolition of City-owned buildings and improvements currently located on the Property.
- Removal of asbestos from the City-owned buildings located on the Property.
- Renovation of Hayward Park, pursuant to the plans approved by the City as described below, which renovation shall include the grading of the park land and installation of a general purpose athletic field, and the contribution of the sum of Fifty Thousand and No/100 Dollars (\$50,000) by Redeveloper to the Parks and Recreation Department of the City to fund the installation of a walking trail through the park and the replacement of the existing playground equipment with modern equipment.

G. Pursuant to *Neb. Rev. Stat. § 18-2147, et seq.*, the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the Redevelopment Project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date of such provision by the governing body as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and
- That portion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the

authority to be used solely to pay the principle of the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the "Ad Valorem Tax Provision."

H. *Neb. Rev. Stat.* §§ 18-2107 and 18-2150 (Reissue 1997) authorize the City to construct public improvements and provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Redevelopment Project Site in accordance with the Redevelopment Plan. In order to provide such assistance, the City intends to issue tax increment financing indebtedness ("TIF Indebtedness") to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision ("TIF Tax Revenues").

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

J. The City and Redeveloper mutually agree that the redevelopment of the Redevelopment Project Site is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW, THEREFORE, in consideration of the above recitals which are hereby made part of this Agreement and of the mutual covenants contained herein the parties do agree as follows:

1. Evidence of Financial Ability of Redeveloper. Redeveloper shall provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of Redeveloper in connection with the Project. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use in the Project; and shall state the amount and source of equity in the form of an allocation of Low Income Housing Tax Credits and debt financing which is available, or irrevocably committed, to Redeveloper for use in the Project.

Such information shall be provided in a form satisfactory to the Finance Director of the City, and evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan.

Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement. The City agrees and acknowledges that this Agreement and Redeveloper's obligation to perform under this Agreement shall be contingent upon Redeveloper's receipt of an allocation of Low-Income Housing Tax Credits from the Nebraska Finance Authority in an amount sufficient to enable Redeveloper to construct the Project. Redeveloper represents that it received an allocation of Low Income Housing Tax Credits from the Nebraska Investment Finance Authority on March 27, 2009, and shall provide evidence of such allocation to the Finance Director of the city as required by this paragraph.

2. Construction of Redeveloper Private Improvements. Redeveloper at its own cost and expense shall construct the Redeveloper Private Improvements as defined in Recital D above and more fully described on Exhibit "B" attached and incorporated by

this reference. The Redeveloper Private Improvements are depicted on the Site Plan attached as Exhibit "D" and incorporated by this reference. Redeveloper will use commercially reasonable efforts to substantially complete construction of the Redeveloper Private Improvements within twenty-four (24) months following the commencement of construction. The City shall accept, in lieu of the penal bond described in paragraph 3 below, the payment and performance bond supplied by Redeveloper's general contractor in an amount equal to the costs of the Redeveloper Private Improvements and a lien waiver from the general contractor. Proof of said payment and performance bond and lien waiver shall be provided to the City prior to the start of construction of the Redeveloper Private Improvements. The Redeveloper Private Improvements shall include a community building in which Redeveloper shall construct a meeting room in which the City and other community groups shall be allowed access for the limited purpose of holding neighborhood meetings and forums. In addition, Redeveloper shall install a mailbox for outbound mail for use by the general public (collectively, "Community Uses").

3. Penal Bond. Pursuant to *Neb. Rev. Stat. § 18-2151*, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Redeveloper Private Improvements, a penal bond in an amount of Ten Thousand and No/100 Dollars (\$10,000.00) with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall be conditioned upon Redeveloper or Redeveloper's contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper's contractor, or his or her subcontractors with labor or materials performed or used in the prosecution of the Redeveloper Private Improvements. Proof of such penal bond shall be supplied to the City prior to the construction of the Redeveloper Private Improvements.

4. Indemnification. Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Redeveloper Private Improvements the City may be required to make 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 Private Improvements.

5. Duty to Maintain. Redeveloper shall, following construction, keep the Redeveloper Private 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 multifamily buildings including the routine and reasonable preventive maintenance of the buildings 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. The City acknowledges that the ten (10) townhome units being constructed as part of the Redeveloper Private Improvements shall be occupied by income-eligible tenants who will have the option to purchase the units and who will have the obligation to maintain such units as more fully described in Exhibit "B". Redeveloper shall inspect and monitor the units to ensure that the

maintenance obligation is being performed. This paragraph shall expire upon the expiration of the Tax Increment Period.

6. Reimbursement of TIF Proceeds. Redeveloper agrees to repay the City the TIF Proceeds expended on the Redeveloper Private Improvements provided for in Paragraph 12 below in the event Redeveloper fails to substantially complete the Redeveloper Private Improvements as provided in Paragraph 2 above and/or fails to maintain the Redeveloper Private Improvements as provided in Paragraph 5 above.

7. Rental Units.

A. Severally Mentally Ill. Redeveloper shall use twenty (20) of the 61 multi-family units constructed as part of the Redeveloper Private Improvements for rental solely to households which have at least one (1) occupant with a severe mental illness.

B. Low to Moderate Income. Redeveloper shall designate and use all remaining multi-family units, except for the resident manager apartment constructed as part of the Redeveloper Private Improvements for rental solely to low income persons who initially qualify as tenants earning no more than 60% of area median income of Lincoln, Nebraska.

8. Single-Family Dwellings Attached (i.e. Townhomes). Redeveloper shall use its best efforts to ensure that all 10 single-family dwellings constructed as part of the Redeveloper Private Improvements are occupied by low income owner-occupants who initially qualify as tenants earning no more than 60% of median income pursuant to the NIFA CROWN Program more fully described on Exhibit "B", the terms of which are acceptable to the City.

9. Redeveloper Public Improvements/Approval of Plans.

A. Improvements. Redeveloper on behalf of the City shall, to the extent TIF Proceeds are available, construct the following improvements through the City's bidding procedures, if required, and executive order construction process:

(i) Street construction of North 9<sup>th</sup> Street and Court Street as reflected on the Site Plan;

(ii) Water mains, sanitary sewer lines, curbs, gutters, and storm sewer improvements in Court Street and North 9<sup>th</sup> Street rights-of-way;

(iii) Re-grading Hayward Park to approximately zero net fill;

(iv) Renovation of Hayward Park, including the installation of a general purpose athletic field and the contribution of Fifty Thousand and No/100 Dollars (\$50,000.00) by Redeveloper to the Parks and Recreation Department of the City of Lincoln to fund the installation of the walking trail through the park and the replacement of playground equipment and picnic tables and benches.;

(v) Installation of the sidewalks, street trees, and any other approved streetscape in the public rights-of-way surrounding the Redevelopment Project Site.

In addition to the Redeveloper Public Improvements, Redeveloper intends to install a ground-based geothermal heating and cooling system which shall be an eligible expenditure under the Act for the use of funds held in the Project account pursuant to paragraph 12 below. (Collectively referred to as "Redeveloper Public Improvements").

B. Schematic Design Drawings; Construction Documents; Approval; Changes.

(i) Schematic Design Drawings. Redeveloper has prepared Schematic Drawings for the Redeveloper Public Improvements and the Redeveloper Private Improvements to be constructed by Redeveloper on the Redevelopment Project

Site. The Schematic Drawings show all Redeveloper Private Improvements to be made on the Property and the Redeveloper Public Improvements to be made in the public right-of-way and Hayward Park within and adjacent to the Redeveloper Project Site.

The Schematic Drawings of the Redeveloper Private Improvements and the Redeveloper Public Improvements have been submitted to and approved by the City for approval for conformance with the Project, the Redevelopment Plan, and this Agreement.

(ii) Construction Documents. Redeveloper shall prepare or have prepared detailed, final construction plans and specifications for the Redeveloper Public Improvements to be constructed on the Redevelopment Project Site including adjacent rights-of-way (the "Construction Documents"). The Construction Documents for the Redeveloper Public Improvements shall be submitted to the Director of the Public Works Department for review and approval. The Construction Documents shall be approved only if they are prepared from and in conformance with the approved Schematic Drawings and in conformity with the Project and this Agreement and the Design Standards of the City of Lincoln, as modified by the terms of the Community Unit Plan approved for this Project by the City. Approval of the Construction Documents or approval of any changes thereto 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 to any liability to any party or person for any purpose whatsoever. All Redeveloper Private Improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes. The approval hereunder shall not be required for tenant interior improvements within the Redeveloper Private Improvements; however, such improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes.

(iii) Changes in Construction Documents. Redeveloper and the City shall work with the design professional to submit any material changes in the Construction Documents affecting adjacent Redeveloper Public Improvements for approval or disapproval of such amendments to the Director of Public Works. If the Construction documents, as amended by the proposed change, are deemed by the Director of Public Works to be in conformity with the Project and this Agreement, the Director shall approve the proposed amendment and notify Redeveloper in writing of its approval. Otherwise, the Director shall disapprove the proposed amendment and shall notify Redeveloper of the specific areas wherein such amendment is not in conformance with the Project. Redeveloper may resubmit the amendment after correction to eliminate the items of nonconformance.

(iv) Approval. The City shall so approve or reject said Schematic Drawings, Construction Documents, and/or amendments thereto within fourteen (14) days after receipt thereof and, if rejected, Redeveloper shall work with the design professional to submit corrected Schematic Drawings, Construction Documents, and/or amendments thereto, within fourteen (14) days after the date of receiving the written rejection notice of the latest submitted Schematic Drawings, Construction Documents, and/or amendments thereto, and the reasons for such rejection, and such corrected Schematic Drawings, Construction Documents, and/or amendments thereto shall be approved or rejected as hereinbefore provided. However, if the Schematic Drawings, Construction Documents, and/or any amendments thereto are in conformance with the Project and this Agreement, the City shall be obligated to pay the additional costs and fees of the design professional incurred as a result of the City's rejection of the conforming Schematic Drawings, Construction Documents, and/or amendments thereto.

10. Administration. Redeveloper shall be responsible for all components of the

Redeveloper Private Improvements and Redeveloper Public Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper will be solely responsible for payment of all construction costs for the Redeveloper Private Improvements and Redeveloper Public Improvements regardless of any expectation for reimbursement hereunder.

11. Acquisition of the Property. The Property is currently owned by and held in the name of the City. Upon the lapse of thirty (30) days after the approval of this Agreement by the City and the execution of this Agreement by Redeveloper and the City, Redeveloper shall acquire ownership of the Property pursuant to the terms of this paragraph 11. In exchange for those Services described below and the Community Uses as described in paragraph 2 above, the City shall convey title to the Property to Redeveloper.

A. Services. The consideration being delivered to the City shall consist of the following "Services" being performed by Redeveloper for the benefit of the City and the Project, which shall include but not be limited to:

i. The removal of any asbestos-containing material from the City-owned structures located on the Property at a cost estimated to be \$135,000;

ii. The demolition of the City-owned structures and removal of existing pavement from the Property at a cost estimated to be \$115,000;

iii. The grading of the Property at a cost estimated to be \$80,000;

and

iv. The renovation of Hayward Park pursuant to the plans and specifications described above, which renovations shall include the regrading of Hayward Park, and the creation and seeding of a sloped general purpose athletic field, and contribution of the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) by

Redeveloper to the Parks and Recreation Department of the City to fund the installation of a walking trail through the park and replacement of existing playground equipment and picnic tables and benches. (collectively, the "Services"). The Services described in items i, ii, and iii, above shall be completed by Redeveloper within nine (9) months following conveyance of title of the Property to Redeveloper.

B. Inspections. Redeveloper may make such investigations, inspections, and reviews of the Property to determine that the Property is satisfactory for Redeveloper's intended Project, including environmental site assessments, engineering studies, soil tests, soil borings, and similar tests. Redeveloper shall be responsible for obtaining such audits, inspections, tests, or borings. In addition, Redeveloper shall be responsible for satisfying itself with the location of all required utilities. In the event that Redeveloper in its sole discretion is not satisfied with the results of any of its investigations with respect to the Property, Redeveloper may terminate this Agreement, at which time it shall become null and void.

C. Title Insurance. Redeveloper shall obtain a title insurance commitment for an ALTA owner's title insurance policy issued by a title company authorized to do business in the State of Nebraska (the "Title Company") in an amount equal to the stated value of the Services. The title insurance commitment shall propose to insure Redeveloper for such value. Redeveloper shall take title to the Property subject to those permitted exceptions, which shall include covenants, conditions, and restrictions of record which shall be approved by Redeveloper if they do not interfere with Redeveloper's intended use of the Property; taxes not yet due and payable; public utility easements of record which do not interfere with Redeveloper's intended use of the Property; exceptions pertaining to liens or encumbrances which may be removed by the payment of money and which the City is willing to remove at the time of closing; and

easements and use restrictions to be granted under this Redevelopment Agreement and any other title exceptions shown on the Title Commitment which are not properly and timely objected to by the Redeveloper.

If the Title Commitment shall disclose exceptions to title other than the Permitted Exceptions noted above, including liens or encumbrances which may be removed by the payment of money and which the City is not willing to remove at Closing, or disclose matters that render title to the City Parcels unmarketable, Redeveloper shall notify City of same within thirty (30) days after receipt of the Title Commitment, and City shall have fifteen (15) days after written notice of such defect from Redeveloper to have the exceptions removed from the Title Commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or defects. In the event that City shall be unable or unwilling to correct such title defects, including its unwillingness to remove liens or encumbrances which may be removed by the payment of money, within the fifteen (15) day period, Redeveloper shall have the option, by written notice delivered to City after expiration of the fifteen (15) day period, to either terminate this Agreement or take title to the City Parcels subject to such exceptions or defects. In the event Redeveloper 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 Redeveloper elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions.

Redeveloper shall be responsible for the cost of the owner's title insurance policy.

D. Deed. At closing, the City shall cause fee simple title to the Property to be conveyed to Redeveloper by warranty deed on the date of final settlement subject to the Permitted Exceptions. To the extent that the transaction is not otherwise exempt

from the documentary stamp tax assessed in the State of Nebraska, the City shall be responsible for such cost.

E. Closing and Possession. The City shall deliver possession of the Property to Redeveloper on the date of final settlement. Prior to the date of final settlement, the City shall grant the Redeveloper a right of entry granting Redeveloper access to the Redevelopment Project Site for the limited purpose of asbestos removal, demolition of the improvements thereon, and grading of the Redevelopment Project Site..

12. Issuance of TIF Indebtedness. On or after thirty days following the approval and execution of this Agreement, which date is after the remonstrative period of this Agreement or as soon thereafter as is practicable, the City shall issue TIF Indebtedness in the estimated amount of \$720,700 (as calculated on Exhibit "E") to be purchased by Redeveloper or a lender ("TIF Bond Purchaser") and receive TIF Proceeds from the TIF Bond Purchaser to be deposited into a fund account for payment of the City's TIF Bond cost of issuance and the Eligible Project Costs (the "Project Account"). The City shall not issue the TIF Indebtedness until the condition precedent described in paragraph 1 has been satisfied. TIF Proceeds shall be expended in the following priority:

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

SECOND PRIORITY: The Redeveloper Public Improvements listed in paragraph 9(A).

THIRD PRIORITY: The installation of the ground coupled geothermal heating and cooling system designed for the Project as described on Exhibit "C".

FOURTH PRIORITY: Landscaping, consisting of the installation of xeriscape on the Property to minimize water consumption of the Project.

13. Valuation of Property Within the Project Area. The City intends to use the Ad Valorem Tax Provision to generate approximately Seven Hundred Twenty-Five Thousand and No/100 Dollars (\$725,000.00) ("TIF Proceeds") which shall be used to finance the issuance of the TIF Indebtedness and the assistance to Redeveloper in accordance with this Redevelopment Agreement. 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 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 Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Property and improvements thereon which does not exceed Three Million Nine Hundred Eighty Two Thousand Nineteen and No/ 100 Dollars (\$3,982,019.00) 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.

14. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date hereof or so long as the TIF Indebtedness remains outstanding whichever period of time is shorter (tax increment period), convey the Property or any portion thereof to any entity which will result in such property being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions.

15. Financing Creating Encumbrances Restricted.

A. Prior to completion of Redeveloper Private Improvements, neither Redeveloper nor any successors in interest with respect to the Property shall engage in any financing or any other transaction creating any Mortgage upon the Property,

whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any the Property, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the Redeveloper Private Improvements. Redeveloper or any successor in interest as Redeveloper shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to the Property, and shall promptly notify the City of any Mortgage that has been created on or attached to the Property whether by voluntary act of Redeveloper or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of the Property and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Redeveloper's lender to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of Redeveloper Private Improvements, any loan proceeds secured by any interest in the Property shall be used solely for the payment of costs and expenses related to the development of the Property. Redeveloper shall provide a copy of all draw requests and bank approvals related to the Redeveloper Private Improvements to the Director of Urban Development in a timely fashion.

B. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time when any casualty damage to the Redeveloper Private Improvements has occurred and has not been fully restored, any party who obtains title to any portion of the Property from or through Redeveloper or the holder of any Mortgage or any other purchaser at foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said party

and to complete construction or restoration within twenty-four (24) months from the date of such acquisition.

C. Notice of Default. 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 at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

D. Option to Cure. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of the Redeveloper Private Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

E. Rights Applicable to Other Forms of Encumbrance(Deed of Trust). The rights and obligations of this Agreement relating to Mortgages of any portion of the Property shall apply to any other type of encumbrance on any of the Property, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

16. Damage or Destruction of Redeveloper' Private Improvements. During the construction period, Redeveloper agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction,

Redeveloper agrees to restore the Redeveloper Private Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, and shall diligently pursue the same to completion. In the event Redeveloper fails to restore the same for any reason, Redeveloper shall pay to the city the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period. During the tax increment period, Redeveloper shall include by restrictive covenant an enforceable obligation on Redeveloper or other owner or tenant in possession to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to Redeveloper or other owner or tenant's obligation to restore the Redeveloper Private Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

17. Condemnation. If during the Tax Increment Period, all or any portion of the Property is condemned by a condemning authority other than the City, and the condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemner an interest in the Property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

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

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

Redeveloper's rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld, conditioned, or delayed), other than mortgages and involuntary transfers by reason of death, insolvency, or incompetence. The City shall be entitled to require, as conditions to any required approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Redeveloper; and

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Agreement; and

C. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefore shall be indicated to Redeveloper in writing.

20. Representations and Warranties of Parties.

A. Redeveloper represents and warrants to City as follows:

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

ii. Authority Relative to Agreement. This Agreement has been

dilly 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 have 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 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 City, and will not violate any instrument, agreement, order,

judgment, decree, statute, regulation, or any other restriction of any kind to which City is a party.

21. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Redeveloper, the party in default shall, upon written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. If the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

22. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

23. Delay in Performance For Causes Beyond Control of Party. The parties or their successors or assigns shall not be in default of their obligations for delay in performance due to causes beyond their reasonable control and without their fault, including but not limited to acts of God, acts of the public enemy, acts of the federal or state government or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, shortages of labor or materials, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this section is that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of improvements shall be extended for the period of delay. However, in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall within twenty (20) days after the beginning of the delay

of performance notify the other party in writing of the cause and the reasonably expected length of delay.

24. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Property prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the lots or improvements for tax purposes.

25. Tax Increment Deficiency on TIF Indebtedness. The obligation of the City on the TIF Indebtedness shall be limited solely to the TIF Tax Revenues from the Ad Valorem Tax Provision pledged as security for such TIF Indebtedness. To the extent of any deficiency in such TIF Tax Revenues for required debt service on the TIF Indebtedness, one of the following provisions shall apply: (a) if Redeveloper is the purchaser or holder of the TIF Indebtedness, Redeveloper agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period and further forgive any remaining debt on the TIF Indebtedness in the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period; or (b) if a lender is the purchaser or holder of the TIF Indebtedness, Redeveloper agrees to pay the amount of the deficiency to the City within thirty (30) days of a written request of the City and shall pay the same for each year that there exists a deficiency in the Tax Increment Provision. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purpose if and when Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deficiency payments.

26. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of anyone or more remedies shall not preclude the exercise by it of any other remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if in writing and only to the extent specified in writing.

27. Conflicts of Interest: City Representatives Not Individually Liable. No official or employee of the City shall be personally liable to Redeveloper or any successors in interest due to any default or breach by the City under the terms of this Agreement.

28. Notices and Demands. A notice under this Agreement by a party to the other parties shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to Redeveloper at 5631 South 48th Street, #220, Lincoln, NE 68516; and to the City at Mayor's Office, 555 South 10th Street, Lincoln, NE 68508, with a copy to City Attorney's Office, 575 South 10th Street, Lincoln, NE 68508, or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this section.

29. Access to Redevelopment Project Area. During construction of the Redeveloper Private Improvements, Redeveloper shall permit the representatives of the City to enter all areas of the Property and at any and all reasonable times, as the City may deem necessary for the purposes of inspection of work being performed in connection with the construction of the facility.

30. Provisions Run With the Land. This Agreement shall run with the Property and shall inure to and bind the parties and their successors in interest. This Redevelopment Agreement or a Memorandum hereof shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Property.

31. Headings. Headings of the sections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

32. Severance and Governing Law. Invalidation of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect. This Agreement shall be construed and governed by the laws of Nebraska.

33. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the TIF Indebtedness, whichever first occurs; provided the City and Redeveloper each agree to execute any release necessary to be filed of record to evidence such expiration or termination,

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

Executed by **City** this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

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

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

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

STATE OF NEBRASKA        )  
  )ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

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

Executed by **Redeveloper** this \_\_\_\_ day of \_\_\_\_\_, 2009.

**CREEKSIDE VILLAGE, LP**  
a Nebraska limited partnership

By: Hoppe Brothers , LLC, a  
Nebraska limited liability company,  
its General Partner

By: \_\_\_\_\_  
Ward F. Hoppe, Member

and

By: \_\_\_\_\_  
John L. Hoppe, Jr., Member

STATE OF NEBRASKA        )  
  )ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009, by Ward F. Hoppe and John L. Hoppe, Jr., Members of Hoppe Brothers, LLC, a Nebraska limited liability company, general partner of Creekside Village, LP, a Nebraska limited partnership, on behalf of the partnership.

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

**Exhibit List**

- Exhibit "A"   Legal Description of the Property
- Exhibit "B"   Redeveloper Private Improvements
- Exhibit "C"   Redeveloper Public Improvements
- Exhibit "D"   Site Map of Project
- Exhibit "E"   TIF Indebtedness

## EXHIBIT "A"

### Legal Description of the Property

A Parcel of land located in Lot 58 of Irregular Tracts, Section 14, Township 10 North, Range 06 East of the Prime Meridian, Lincoln, Lancaster County, Nebraska.

Beginning at the Southeast Corner of Lot 58, I.T., thence on the West right of way line of 10<sup>th</sup> Street on an assumed bearing of North 00 degrees 00 minutes 00 seconds West for a distance of 93.93 feet; thence continuing along the West right of way line of 10<sup>th</sup> Street north 06 degrees 30 minutes 51 seconds west for a distance of 513.08 feet; thence south 89 degrees 31 minutes 26 seconds West for a distance of 185.13 feet; thence on a curve to the left with a radius of 110.00 feet for an arc length of 80.32 feet with a tangent length of 42.04 feet and a delta of 41 degrees 50 minutes 3 seconds and a chord length of 78.54 feet and a chord bearing of South 68 degrees 36 minutes 25 seconds West; thence South 47 degrees 41 minutes 24 seconds West for a distance of 224.37 feet; thence North 42 degrees 18 minutes 36 seconds West for a distance of 10.00 feet; thence South 47 degrees 41 minutes 24 seconds West for a distance of 60.00 feet; thence South 42 degrees 18 minutes 36 seconds East for a distance of 152.86 feet; thence on a curve to the right with a radius of 270.00 feet for an arc length of 199.05 feet with a tangent length of 104.29 feet and a delta of 42 degrees 14 minutes 20 seconds and a chord length of 194.57 feet and a chord bearing of South 21 degrees 11 minutes 26 seconds East; thence South 00 degrees 04 minutes 18 seconds East for a distance of 189.51 feet to a point at the intersection of the West right of way line of 9th street and the South line of said Lot 58; thence on the South line of said Lot 58, South 89 degrees 07 minutes 21 seconds East for a distance of 360.06 feet to the point of beginning.

Parcel contains 6.067 acres more or less.

## **EXHIBIT "B"**

### **REDEVELOPER PRIVATE IMPROVEMENTS**

The Redeveloper Private Improvements to be constructed on the Property shall consist of a total of seventy-one (71) dwelling units, including:

(a) Sixty-one (61) multifamily units contained in eight (8) structures which will serve as rental housing for qualifying low-income individuals and families, a portion of which shall be reserved for severely mentally ill residents;

(b) Ten (10) attached single-family dwelling units for rent and ultimate sale to individuals and families who qualify as low to moderate income households under the "CROWN" (Credits Rent to Own) Program administered by the Nebraska Investment Finance Authority ("NIFA"). The CROWN Program involves:

(i) the lease of the dwelling units to qualifying tenants at restricted rents for the initial qualified holding period of fifteen (15) years,

(ii) the creation and funding of an escrow account (\$50/month) to be used by the tenants to pay for downpayment and closing cost purposes toward the purchase of the townhome,

(iii) the mandatory home-ownership education classes for the tenants, covering budgeting, maintenance, home-financing, and relevant topics, and

(iv) the option to purchase the townhome at the end of the qualified holding period at the program price;

(c) Clubhouse/service building with meeting and community rooms and office space for case management and supportive services to be provided to residents; and

(d) Driveways, parking lots, and other amenities as reflected on the Site Plan.

## **EXHIBIT "C"**

### **REDEVELOPER PUBLIC IMPROVEMENTS**

The Redeveloper Public Improvements to be installed on the Redevelopment Project Site shall include:

(a) Street construction consisting of Court Street west of North 10<sup>th</sup> Street and North 9<sup>h</sup> Street located west of Lot 58, as shown on the Site Plan;

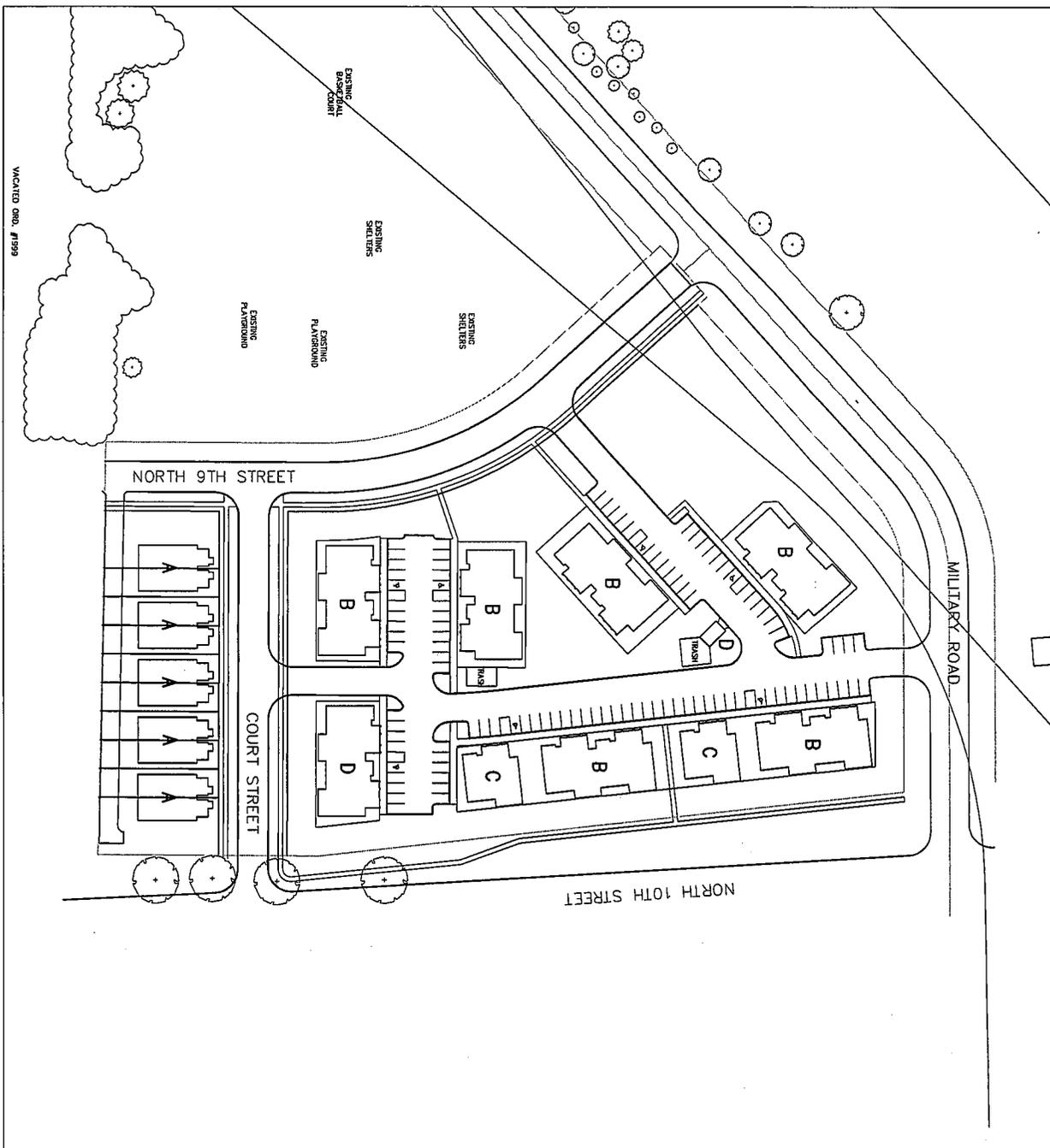
(b) Water mains, sanitary sewer lines, curb, gutter, and storm sewer improvements within the rights-of-way of Court Street and North 9<sup>th</sup> Street;

(c) Landscaping and the installation of streetscape in the public rights-of-way and the installation of xeriscape on Lot 58 to conserve water consumption on the Redevelopment Project Site;

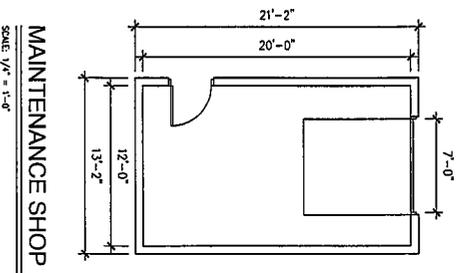
(d) Regrading Hayward Park to approximately zero net fill which shall include a sloped general purpose athletic field and the contribution of Fifty Thousand and No/100 Dollars (\$50,000.00) to the Parks and Recreation Department of the City for the installation of a walking trail through the park and the replacement of equipment and tables/benches.

(Collectively, (a) through (c) shall be the Redeveloper Public Improvements, and item (d) below is an eligible expenditure under the Act.)

(e) Geothermal heating and cooling improvements for the Redeveloper Private Improvements.



VACATED ORB. #199



**EXHIBIT "E"**

**TIF INDEBTEDNESS**

1. **Principal Amount.** The principal amount of the TIF Indebtedness shall be the amount, together with interest accruing thereon, which can be amortized by December 1, 2024, solely from the Tax Increment Revenues based upon the current aggregate ad valorem tax rate applicable to the Redevelopment Project Site multiplied by an assumed incremental valuation of approximately Four Million and No/ 100 Dollars (\$4,000,000.00). Due to the fact that Redeveloper or its lender shall purchase the TIF Indebtedness, the City shall not require the maintenance of any minimum debt service coverage or the posting of any reserves. The City shall receive its cost of issuance from the Project account realized upon the sale of the TIF Indebtedness.
2. **Payments.** Semi-annually with interest only until real estate taxes are fully collected for the tax year 2011 in an amount sufficient to fully amortize the TIF Indebtedness on or before December 31, 2024.
3. **Maturity Date.** On or before December 31, 2024.