



City of Omaha
Jean Stothert, Mayor

RECEIVED

2015 JUN 19 PM 2: 16

CITY CLERK
OMAHA, NEBRASKA

June 16, 2015

Planning Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, Nebraska 68183
(402) 444-5150
Telefax (402) 444-6140

James R. Thele
Director

Honorable President

and Members of the City Council,

The attached Ordinance transmits a Tax Increment Financing (TIF) Redevelopment Loan Agreement between Red Brick Development, LLC and the City of Omaha for a redevelopment project located at 5018 Underwood Avenue. The Redevelopment Agreement implements the 5018 Underwood Tax Increment Financing (TIF) Redevelopment Project Plan that provides for the demolition of the existing structure and the construction of a new three-story, mixed-use structure. The new development would include ground floor commercial retail space, office on the second floor, and market rate apartments on the third floor. The apartments will consist of six (6) total units: three (3) studio units, one (1) one bedroom unit, and two (2) two bedroom units. A parking lot with 15 stalls will be developed behind the building, accessible via the alley.

The Redevelopment Agreement authorizes the City's participation in the redevelopment by providing up to \$650,000.00 to offset TIF eligible costs such as acquisition, architectural and engineering fees, any public improvements as required, and may also include demolition, site preparation, environmental. The total estimated project costs are \$4,394,568.00, but are subject to change as final costs come in.

Your favorable consideration of this Ordinance will be appreciated.

Respectfully submitted,

Referred to City Council for Consideration:

James R. Thele 5/29/15
James R. Thele
Planning Director
Date

Jean Stothert 6/4/15
Mayor's Office
Date

Approved:

Stephen B. Curtiss 6/4/15
Stephen B. Curtiss
Finance Director
Date

Robert G. Stubbe 6-4-15
Robert G. Stubbe, P.E.
Public Works Director
Date

ORDINANCE NO. _____

AN ORDINANCE approving a redevelopment and tax increment financing loan agreement between the City of Omaha and Red Brick Development, LLC, a Nebraska limited liability company, to implement the 5018 Underwood Tax Increment Financing (TIF) Redevelopment Project Plan located at 5018 Underwood Avenue which provides for the demolition of the existing structure and the construction of a new three-story, mixed-use structure to include ground floor commercial retail space, a medical office on the second floor, six (6) market rate apartments on the third floor, and 15 parking stalls behind the building; the agreement authorizes the use of up to \$650,000.00 in excess ad valorem taxes (TIF) generated by the development to help fund the cost of the project; and providing for an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA;

Section 1. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached Redevelopment Agreement between the City of Omaha and Red Brick Development, LLC, a Nebraska limited liability company, to authorize the use of up to \$650,000.00 in TIF that will be used to offset TIF eligible costs such as acquisition, architectural and engineering fees, any public improvements as required, and may also include demolition, site preparation, environmental for a project with total estimated costs of \$4,394,568.00, in addition to any other documents necessary or appropriate to implement the Redevelopment Agreement or to consummate the loan.

ORDINANCE NO. _____

PAGE 2

Section 2. Said Redevelopment Agreement contains obligations undertaken pursuant to the Nebraska Community Development Law and Sections 18-2147 through 18-2150, and, are not otherwise obligations of the City of Omaha.

Section 3. This Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

MAYOR OF THE CITY OF OMAHA DATE

PASSED _____

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Omaha

 6/3/15
Asst. City Attorney

2130 dlh

REDEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the City of Omaha, a Nebraska Municipal Corporation in Douglas County, Nebraska, and Red Brick Development, LLC, a Nebraska limited liability company.

RECITALS:

WHEREAS, on December 9, 2014 by Resolution No.1450, the City Council of the City of Omaha approved the 5018 Underwood Tax Increment Financing (TIF) Redevelopment Project Plan for a project located at 5018 Underwood Avenue which provides for the demolition of the existing structure and the construction of a new three-story, mixed-use structure to include ground floor commercial retail space, a medical office on the second floor, six (6) market rate apartments on the third floor, and 15 parking stalls behind the building, accessible via the alley as shown in Exhibit "A", a site plan which is attached hereto and made a part hereof; and,

WHEREAS, the 5018 Underwood Tax Increment Financing (TIF) Redevelopment Project Plan which provides for up to \$650,000.00 in TIF that will be used to offset TIF eligible costs such as such as acquisition, architectural and engineering fees, any public improvements as required, and may also include demolition, site preparation, environmental, for a project with total estimated costs of \$4,394,568.00; and,

WHEREAS, this Agreement is a redevelopment agreement prepared pursuant to the Nebraska Community Development Law in order to implement the above-referenced Redevelopment Plan, and contemplates the use of the excess ad valorem taxes generated by such development.

IN CONSIDERATION OF THESE MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

The following terms, whether plural or singular, shall have the following meanings for purposes of this Agreement.

- 1.1 “City” shall mean - the City of Omaha, Nebraska, a Municipal Corporation of the metropolitan class or such successor entity lawfully established pursuant to the applicable provision of the Nebraska Community Development Act.
- 1.2 “Owner” shall mean – Red Brick Development, LLC
- 1.3 “Director” shall mean - the Director of the City of Omaha Planning Department.
- 1.4 “Redevelopment Project” shall mean – the demolition of the existing structure and the construction of a new three-story, mixed-use structure as shown on the Site Plan Exhibit “A”.
- 1.5 “Redevelopment Site” shall mean - the area legally described on Exhibit “B”, attached hereto.
- 1.6 “Redevelopment Note (TIF Funds/TIF Proceeds)” shall mean - any obligation issued by the City and secured by the excess ad valorem taxes generated within the Redevelopment Site.
- 1.7 “Excess ad valorem taxes” shall mean - the additional real estate property taxes generated by this Redevelopment Project pursuant to Section 18-2147 of the Nebraska Revised Statutes.
- 1.8 “Division Date Year” for the purposes of this Agreement, Redevelopment Note and the statute shall mean – the agreed upon date that the Excess ad valorem Taxes shall be divided shall be January 1, 2016, and shall continue for 15 years thereafter or until the Redevelopment Note is paid in full and discharged, whichever occurs first. City and the Owner agree that the base year valuation of the Redevelopment Site shall be January 1, 2015.

SECTION 2. OBLIGATIONS OF THE CITY

The City shall:

- 2.1 execute and deliver to the Owner at closing the Redevelopment Note in substantially the same form as the copy attached hereto as Exhibit “C”.
- 2.2 grant Redevelopment Loan proceeds to the Owner in the sum of \$650,000.00.

- 2.3 pay debt retirement principal and interest from the Excess Ad Valorem Taxes (TIF tax proceeds). Interest on monies in the special fund shall accrue first to debt retirement interest and then to principal.
- 2.4 ensure that prior to expenditure or disbursement of Redevelopment Loan proceeds, the following shall be obtained, to wit:
 - 2.4.1 Owner shall provide the Director with evidence, acceptable to the Director, that the private funds have been irrevocably committed to the Redevelopment Project in the amount sufficient to complete the redevelopment project.
 - 2.4.2 Owner shall provide evidence of, and maintain adequate performance and labor materials bonds during the period of construction of the project. The City shall be specified as a co-obligee.
- 2.5 establish a special fund under Section 18-2147 of the Nebraska Revised Statutes for the purpose of collecting the excess ad valorem taxes generated by the Redevelopment Project. Monies collected and held in the special fund shall be used for no purpose other than to repay the Redevelopment Loan.

SECTION 3. OBLIGATIONS OF THE OWNER

The Owner shall:

- 3.1 complete the Redevelopment Project on or before June 30, 2017, creating an increase in real property taxable base by reason of such construction of at least \$3,127,594.00.
- 3.2 cause all real estate taxes and assessments levied on the Redevelopment Project to be paid prior to the time such become delinquent.
- 3.3 loan redevelopment funds to the City in the principal amount of \$650,000.00 as set forth in Section 2.1, which, when combined with other private funds available, will be sufficient to construct the redevelopment project. Execution and delivery of the Redevelopment Promissory Note shall be at closing, which shall be as soon as reasonably possible after execution of this Agreement but not more than 60 days thereafter. At closing, the loan to be accomplished by this Section and the obligation of the City to use the redevelopment loan proceeds for redevelopment purposes under Section 2.2 may be accomplished by offset so that the Owner retains the loan proceeds. If the City so requests, the Owner shall, from time-to-time, furnish the City with satisfactory evidence as to the use and application of the redevelopment loan proceeds.
 - 3.3.1 Such loan funds shall be disbursed as provided in Section 2.

- 3.3.2 Such loan shall bear a 4.5% interest rate.
- 3.3.3 The principal shall be repaid by the City from the special fund established pursuant to Section 2.5, as excess ad valorem taxes, pursuant to the Redevelopment Plan and Section 18-2147 of the Nebraska Revised Statutes, become available to the City for such use. To the extent of such excess ad valorem taxes are unavailable to the City, the loan shall be forgiven and the obligations of the Owner shall remain unaffected.
- 3.4 provide the City with quarterly progress reports during the redevelopment and allow the City reasonable access upon written request to Owner to any relevant financial records pertaining to the Redevelopment Project.
- 3.5 during the period that the Redevelopment Note (TIF Funds) is outstanding, (1) not protest an anticipated real estate improvement base valuation on the Redevelopment Site certified as of January 1, 2015 or less prior to and during construction; and not protest an anticipated real estate improvement base valuation on the Redevelopment Site certified as of January 1, 2015 **plus** \$3,127,594.00 (excess valuation) or less after substantial completion or occupancy of the Redevelopment Site; (2) not convey the Redevelopment Site or structures thereon to any entity which would be exempt from the payment of real estate taxes, not apply for exemption of real estate taxes from the county or the state, or cause the nonpayment of such real estate taxes; if the county and/or state award the exemption of real estate taxes, this TIF will be rendered void and cancelled; (3) not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying land of the Redevelopment Site; (4) maintain insurance for ninety percent (90%) of the full value of the structures on the Redevelopment Site; (5) in the event of casualty, apply such insurance proceeds to their reconstruction and (6) cause all real estate taxes and assessments levied on the Redevelopment Site to be paid prior to the time such become delinquent. In lieu of the above, the Owner may surrender any remaining amount outstanding of the Redevelopment Promissory Note to City. Each of the foregoing covenants shall be referenced in a Notice of Redevelopment Agreement to be recorded with the Douglas County, Nebraska Register of Deeds. The Owner agrees to include the same restrictions to be included in any subsequent sale, assignment, sale-leaseback or other transfer of the property, but shall not be responsible otherwise for the actions of the third parties if these covenants are breached by such third parties if the Owner no longer owns the property.
- 3.6 shall provide the City of Omaha Finance Department with an executed copy of the Redevelopment Promissory Note prior to disbursement of any proceeds for repayment of such Note pursuant to Section 2.5, so that such payment can be noted on the Note and the Note returned to Owner.

SECTION 4. PROVISIONS OF THE AGREEMENT

- 4.1 Equal Employment Opportunity Clause. Annexed hereto as Exhibit “D” and made a part hereof by reference are the equal employment provisions of this Agreement, wherein the “Owner” is referred to as “Contractor”.
- 4.2 Non-discrimination. The Owner shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.
- 4.3 Captions. Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.
- 4.4 Applicable Law. Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.
- 4.5 Interest to the City. Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha Agreement. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the Agreement voidable by the Mayor or Council.
- 4.6 Merger. This Agreement shall not be merged into any other oral or written Agreement, lease or deed of any type.
- 4.7 Modification. This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties.
- 4.8 Assignment. The Owner may not assign its rights under this Agreement without the express prior written consent of the City; such consent not to be unreasonably withheld. The Mayor may, without City Council approval, approve, in writing, the assignment of all rights hereunder to a successor entity owned by, or under common control with Owner.
- 4.9 Strict Compliance. All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

4.10 This Agreement shall be binding upon the Owner's successors and assigns, and shall run with the land described in Exhibit "B", attached hereto, to the benefit of the City of Omaha.

SECTION 5. AUTHORIZED REPRESENTATIVE

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for the purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

- (1) City of Omaha:
James R. Thele
Planning Director
City Planning Department
Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, NE 68183
- Legal Service
c/o City Clerk
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183
- (2) Owner:
Red Brick Development, LLC
c/o First Management Inc.
1941 S. 42nd St., Ste. 550
Omaha, Nebraska 68105
Attention: Kurt Davey, Chief Executive Member/President

Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this ____ day of _____, 2015.

ATTEST:

CITY OF OMAHA:

CITY CLERK OF THE CITY OF OMAHA

MAYOR OF THE CITY OF OMAHA

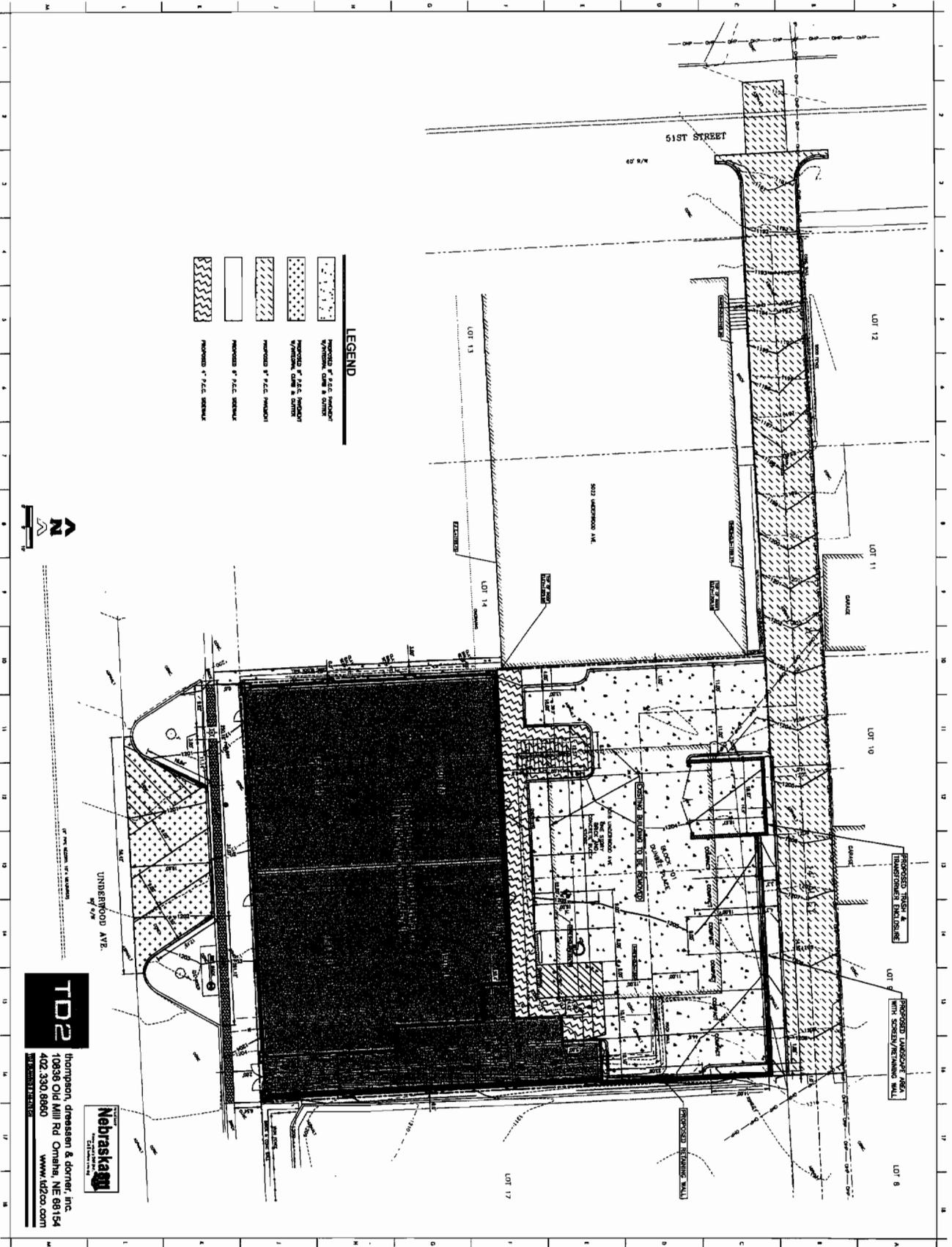
APPROVED AS TO FORM:



Asst. CITY ATTORNEY

u/12/15

2130 dlh



LEGEND

[Pattern: Dotted]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND
[Pattern: Stippled]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND
[Pattern: Diagonal Lines]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND
[Pattern: Horizontal Lines]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND
[Pattern: Vertical Lines]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND
[Pattern: Wavy]	PROPOSED 4" P.C.C. FINISHES OVER 1/2" SAND



TD2
 Thompson, Dassen & Dornier, Inc.
 10836 Old Mill Rd Omaha, NE 68154
 402.330.0850
 www.td2co.com



C-SP1

NOT FOR CONSTRUCTION
PROGRESS PRINT
APRIL 24, 2015

SITE PLAN REVIEW ONLY

CONSULTANTS
 ARCHITECT: [Name]
 ENGINEER: [Name]
 LANDSCAPE ARCHITECT: [Name]
 CIVIL ENGINEER: [Name]

ALLEN ROYER ARCHITECTS
 1916 Campus Drive
 Omaha, NE 68102
 402.341.1344
 info@royer.com



Dundee Mixed-Use
 5015 Underwood Avenue
 Omaha, NE 68132

EXHIBIT "C"

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE " '33 ACT") AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE CITY OF OMAHA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF OMAHA TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

REDEVELOPMENT PROMISSORY NOTE

\$650,000.00 _____, 2015

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay Red Brick Development, LLC, c/o First Management Inc., 1941 S. 42nd St., Ste. 550, Omaha, Nebraska 68105, Attention: Kurt Davey, Chief Executive Member/President, ("Holder"), and/or its assigns, the principal sum of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00), together with interest thereon at the rate of 4.50% per annum from the date of the execution of this Note until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in that certain Redevelopment Agreement dated the _____ day of _____, 2015, by and between the Borrower and the Holder (the "Redevelopment Agreement") are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wallstreet Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.

The Borrower may prepay the principal amount outstanding in whole or in part, without the prior consent of the Holder.

In the event the monies collected and held in that special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing at a date fifteen (15) years from the division date year, and all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment Agreement, have been collected by the Borrower and have been paid, immediately upon being available, towards the retirement of the amounts due hereunder, then, at said date fifteen (15) years from the division date year, the Holder shall waiver any unpaid portion of the principal and interest due upon written request of the Borrower.

In the event this Redevelopment Promissory Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection.

The Borrower shall be in default in the event the Borrower shall fail to pay, when due, any amount required hereunder.

Unless prohibited by law, the Holder may, at its option, declare the entire unpaid balance of principal and interest immediately due and payable without notice or demand at any time after default.

The Holder may at any time before or after default, exercise its right to set off all or any portion of the indebtedness evidenced hereby against any liability or indebtedness of the Holder to the Borrower without prior notice to the Borrower.

Demand, presentment, protest and notice of nonpayment under this Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment Promissory Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Redevelopment Promissory Note to the Borrower or the Holder shall be in writing and shall be given by regular mail to the Holder or Borrower, or at such other address as either party may designate by notice in writing.

This Redevelopment Promissory Note shall be governed by and construed in accordance with the Laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.

CITY OF OMAHA, A Municipal Corporation

By: _____
Mayor of the City of Omaha

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Omaha

 6/3/15

City Attorney

EXHIBIT "D"

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this Agreement, "Provider" agrees as follows:

- (1) Provider shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. Provider shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. Provider agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
- (2) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity, or national origin, age, disability.
- (3) Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of Provider's commitments under the Equal Employment Opportunity Clause of the City and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Provider shall furnish to the City Contract Compliance Officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information required by Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the City Contract Compliance Officer shall be those which are related to Paragraphs (1) through (7) of this Exhibit and only after reasonable advance written notice is given to Provider. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.
- (5) Provider shall take such actions as the City may reasonably direct as a means of enforcing the provisions of Paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event Provider becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as necessary to protect the interests of the City and to effectuate the provisions of this division; and in the case of contracts receiving Federal assistance, Provider or the City may request the United States to enter into such litigation to protect the interests of the United States.

(6) Provider shall file, if any, compliance reports with Provider in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the City Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of Provider.

(7) The Provider shall include the provisions of Paragraphs (1) through (7) of this Section, "Equal Employment Opportunity Clause", and Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each sub-Provider or vendor.