

#1136

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REGISTER OF DEEDS, CASS CO., NE David John
#1136 \$124.00

COMPARED

REDEVELOPMENT CONTRACT

This Redevelopment Contract is made and entered into as of the 1 day of March 2012, by and between the Community Development Agency of the City of Plattsmouth, Nebraska ("Agency"), and Westside Development, Inc., a Nebraska corporation ("Redeveloper").

WITNESSETH:

WHEREAS, the City of Plattsmouth, Nebraska (the "City"), in furtherance of the purposes and pursuant to the provisions of Section 12 of Article VIII of the Nebraska Constitution and Sections 18-2101 to 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended (collectively the "Act"), has designated an area partially within and partially adjacent to City as blighted and substandard;

WHEREAS, the Agency has adopted, after approval by the Mayor and Council of the City, that redevelopment plan entitled "Redevelopment Plan Plattsmouth Plaza Redevelopment Area 2011" (the "Redevelopment Plan");

WHEREAS, the Redevelopment Plan provides that it may not be implemented until the "Remaining Lots" as defined in the Redevelopment Plan (in this Redevelopment Contract also, the "Remaining Lots") have been annexed by the City and the City by Ordinance No. 1828 has provided for such annexation and such annexing ordinance is now in full force and effect;

WHEREAS, Agency and Redeveloper desire to enter into this Redevelopment Contract in order to implement the Redevelopment Plan and provide for the redevelopment of lots and lands located in a blighted and substandard area;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Agency and Redeveloper do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally

applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

“Act” means Section 12 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 2007, as amended, and acts amendatory thereof and supplemental thereto.

“Agency” means the Community Development Agency of the City of Plattsmouth, Nebraska.

“City” means the City of Plattsmouth, Nebraska.

“Governing Body” means the Mayor and City Council of the City.

“Holder(s)” means the registered owner or owners of Indebtedness issued by the Agency from time to time outstanding.

“Indebtedness” means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premiums, if any, thereon, incurred by the Agency pursuant to Article III hereof to provide financing for a portion of the Project Costs and secured in whole or in part by TIF Revenues. The Indebtedness as initially issued by the Agency shall consist of the Agency’s Tax Increment Development Revenue Bond (Westside Commercial Addition Project), Series 2011, to be issued in the principal amount of \$2,300,000 and purchased by the Redeveloper as set forth in Section 3.04 of this Redevelopment Contract.

“Liquidated Damages Amount” means the amounts to be repaid to Agency by Redeveloper pursuant to Section 6.02 of this Redevelopment Contract.

“Project” means the improvements to the Redevelopment Project Area, as further described in Exhibit B attached hereto and incorporated herein by reference and, as used herein, shall include the Redevelopment Project Property and additions and improvements thereto. The Project shall include all improvements related to Project Infrastructure Costs and improvements supported by Redeveloper Contributions in Aid of Construction, all as described in Section 3.04 of this Redevelopment Contract.

“Project Infrastructure Cost Certification” means a statement prepared and signed by the Redeveloper verifying the Redeveloper has been legally obligated for the payment of Project Infrastructure Costs identified on Exhibit D.

“Project Costs” means only costs or expenses incurred by Redeveloper for the purposes set forth in §18-2103(12)(a) through (f), inclusive, including the providing for such costs by the exercise of the powers set forth in §18-2107(4) of the Act, including grants in aid of construction to parties for construction of improvements in the Redevelopment Project Area, all as identified on Exhibit D.

“Redeveloper” means Westside Development, Inc., a Nebraska corporation.

“Redevelopment Project Area” means that certain real property situated in the City of Plattsmouth, Cass County, Nebraska which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference. The Redevelopment Project Area is also described on page 5 of the Redevelopment Plan. All such legal descriptions are subject to change based upon any replatting requested by the Redeveloper and approved by the City.

“Redevelopment Project Property” means that part of the Redevelopment Project Area which is the site for the improvements constituting the Project, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference. The Redevelopment Project Property is to exclude dedicated streets, if any, which result from any replatting of the Redevelopment Project Area.

“Redevelopment Contract” means this redevelopment contract between the Agency and Redeveloper with respect to the Project.

“Redevelopment Plan” means the Redevelopment Plan (also defined in the recitals hereto) for the Redevelopment Project Area related to the Project, as attached hereto as Exhibit B, prepared by the Redeveloper, approved by the City and adopted by the Agency pursuant to the Act.

“Resolution” means the Resolution of the Agency authorizing the issuance of the Indebtedness, as supplemented from time to time, and also approving this Redevelopment Contract.

“TIF Revenues” means incremental ad valorem taxes generated by the Project which are to be allocated to and paid to the Agency pursuant to the Act,

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

(a) Whenever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word “may” shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such ~~act or thing~~ act or thing.

(b) The phrase “at any time” shall be construed as meaning “at any time or from time to time.”₂

(c) The word “including” shall be construed as meaning “including, but not limited to.”₂

(d) The words "will" and "shall" shall each be construed as mandatory.

(e) The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.

(f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.

(g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II
FINDINGS AND REPRESENTATIONS

Section 2.01 Findings of Agency.

The Agency makes the following findings:

(a) The Agency is a duly organized and validly existing community development agency under the Act.

(b) The Redevelopment Plan has been duly approved by the City and adopted by the Agency pursuant to Section 18-2109 through 18-2117 of the Act.

(c) The Agency deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Redevelopment Project is expected to achieve the public purposes of the Act by among other things, increasing employment, improving public infrastructure, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Project Area.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(2) Based on representations made by the Redeveloper:

(i) the Project would not be economically feasible without the use of tax-increment financing,

(ii) the Project would not occur in the Redevelopment Project Area without the use of tax-increment financing, and

(iii) the costs and benefits of the Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the Agency and have been found to be in the long-term best interest of the community impacted by the Project.

(f) The Agency has determined that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development:

including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

(a) The Redeveloper is a Nebraska corporation, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract. Prior to the execution and delivery of this Redevelopment Contract, the Redeveloper has delivered to the Agency a certificate of good standing, a certified copy of the Redeveloper's Bylaws and a certified copy of the corporate resolution or resolutions authorizing the execution and delivery of this Redevelopment Contract.

(b) The execution and delivery of this Redevelopment Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the Agency, in any other matter materially affecting the ability to Redeveloper to perform its obligations hereunder.

(d) Any financial statements of the Redeveloper delivered to the Agency prior to the date hereof are true and correct in all respects and fairly present the financial condition of the Redeveloper and the Project as of the dates thereof; no materially adverse change has occurred in the financial condition reflected therein since the respective dates thereof; and no additional borrowings have been made by the Redeveloper since the date thereof except in the ordinary course of business, other than the borrowing contemplated hereby or borrowings disclosed to or approved by the Agency.

(e) The Project would not be economically feasible without the use of tax increment financing.

(f) The Project would not occur in the Redevelopment Project Area without the use of tax-increment financing.

ARTICLE III

OBLIGATIONS OF THE AGENCY

Section 3.01 Division of Taxes.

In accordance with Section 18-2147 of the Act and the terms of the Resolution, the Agency hereby provides that any ad valorem tax on the real property located in the Redevelopment Project Area, including but not limited to the Redevelopment Project Property: to wit: that property described on attached Exhibit A, for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this Section 3.01 and also in the Redevelopment Plan. The effective date of this provision for division of ad valorem taxes shall be **January 1, 2013**.

(a) That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the "redevelopment project valuation" (as defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

(b) That portion of the ad valorem tax on real property in the Redevelopment Project Area in excess of such amount (the "Incremental Ad Valorem Tax"), if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Agency (designated in the Resolution as the "Bond Fund") to pay the principal of; the interest on, and any premiums due in connection with the bonds, loans, notes or advances of money to, or indebtedness incurred by whether funded, refunded, assumed, or otherwise, of such Agency for financing or refinancing, in whole or in part, such Project (defined in the Resolution as the Bonds and herein referred to as the Indebtedness). When such bonds, loans, notes, advances of money, or indebtedness, including interest and premium due have been paid, the Agency shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon real property in such Redevelopment Project Area shall be paid into the funds of the respective public bodies.

Section 3.02 Issuance of Indebtedness

The Agency shall issue the Indebtedness to the Redeveloper in the form and principal amount and bearing interest and being subject to such terms and conditions as are specified in the Resolution. No Indebtedness will be issued until Redeveloper has (a) acquired fee title to the Redevelopment Project Property; (b) obtained financing commitments as described in Section

5.01; and (c) entered into a contract for construction of the additions and improvements forming a part of the Project.

The Redeveloper agrees to purchase the Indebtedness at a price equal to the principal amount thereof in a private placement satisfactory to the Agency as to its terms and participants (including any pledgee thereof). Neither the Agency nor the City shall have any obligation to provide for the sale of the Indebtedness. It is the sole responsibility of the Redeveloper to effect the sale of the Indebtedness by purchasing the Indebtedness in accordance with the terms of this Redevelopment Contract and the Resolution. If the Indebtedness cannot be issued and sold to the Redeveloper in a private placement under terms acceptable to the Agency, this Redevelopment Contract shall cease to be in force and effect and the Agency and the City shall have no further obligations hereunder. Redeveloper acknowledges that it is its understanding and the Agency's understanding that interest on the Indebtedness will be includable in gross income for federal income tax purposes and subject to Nebraska State income taxation.

Section 3.03 Pledge of Revenues.

Under the terms of the Resolution, the Agency pledges 100% of the available annual TIF Revenues as security for and to provide payment of the Indebtedness as the same fall due (including payment of any mandatory redemption amounts set for the Indebtedness in accordance with the terms of the Resolution).

Section 3.04 Purchase and Pledge of Indebtedness/Grant of Net Proceeds of Indebtedness.

The Redeveloper has agreed to purchase the Indebtedness from the Agency for a price equal to the principal amount thereof and has also made arrangements for The Jones National Bank and Trust Company of Seward, Seward, Nebraska, (the "Bank") to take a pledge interest in the Indebtedness in order to secure indebtedness of the Redeveloper to the Bank. In addition, the Bank has agreed, by separate instrument delivered to the Agency, to act as disbursing agent for the Agency with respect to the grant to be made from the proceeds of the Indebtedness to the Redeveloper upon the terms and conditions set forth in this Section 3.04. \$15,000 from the proceeds of the Indebtedness shall be paid to the Agency for applying to the Agency's costs incurred in connection with this Redevelopment Contract and the issuance of the Indebtedness. 100% of the net proceeds of the Indebtedness shall then be deposited by the Agency for disbursing by the Bank to the Redeveloper in accordance with the terms of the Redevelopment Plan and this Redevelopment Contract. In accordance with the terms of the Redevelopment Plan, the Redeveloper is to receive grant amounts sufficient to pay the costs of the site preparation and utilities as described on Exhibit D (the "Project Infrastructure Costs") with such costs anticipated to require grant amounts estimated at \$1,006,110. In addition the Redevelopment Plan provides for and grant amounts under this Redevelopment Contract are permitted to be paid to the Redeveloper for making construction contributions ("Redeveloper Contributions in Aid of Construction") to any purchaser or lessee of one or more lots within the Redevelopment Project Area who undertakes improvements resulting in increased taxable valuation for the Redevelopment Project Area, with such grants estimated at \$1,278,890. Any investment earnings on amounts held by the Bank as disbursing agent shall also be applied to

make the grants described in this Section 3.04. Disbursement of grant funds may be requested and certified by the Redeveloper or by the City (but only in the case of reimbursement for costs of sanitary sewer lift station improvements serving the Redevelopment Project Area) from time to time as needed and in one or more advances in accordance with the following requirements:

Project Infrastructure Costs: The Bank acting as disbursing agent for the Agency is hereby directed to make disbursement of amounts from the proceeds of the Indebtedness for Project Infrastructure Costs upon receipt of the following items:

(1) To the Redeveloper upon the furnishing of contractors', architects' or engineers' invoices showing amounts due for construction costs incurred by the Redeveloper for Project Infrastructure Costs.

(2) In the case of costs for the sanitary sewer lift station to serve the Redevelopment Project Area, to the City upon the furnishing of contractors', architects' or engineers' invoices showing amounts due for construction costs incurred by the City for Project Infrastructure Costs related to such sanitary sewer lift station.

(3) Evidence that there is in effect materials and labor payment bonds, as appropriate, from the City with respect to the sanitary sewer lift station construction and from the Redeveloper in case of any other Project Infrastructure Costs.

(4) Any such additional requirements with respect to the Redeveloper's disbursement requests as the Bank (in its dual capacity of disbursing agent for the Agency and pledgee of the Indebtedness) shall deem appropriate.

Redeveloper Contributions in Aid of Construction: The Bank acting as disbursing agent for the Agency is hereby directed to make disbursements of amounts from proceeds of the Indebtedness for Contributions in Aid of Construction upon receipt of the following items:

(1) Evidence that the Redeveloper has made arrangements for the sale or leasing of one or more lots (each a "Redevelopment Property") within the Redevelopment Project Area to a lessee or purchaser (each a "Redevelopment Area Business").

(2) Evidence that the Redevelopment Area Business plans to conduct retail sales operations upon its Redevelopment Property, until not less than 60% of the Redevelopment Project Area by square footage is to be devoted to retail sales activities (including square footage devoted to retail operations and parking for retail operations).

(3) A certification from the Redeveloper that the Redevelopment Area Business has expended amounts for costs, in form and substance satisfactory to the Agency and accompanied by such supporting evidence as the Agency may require, for improvements to real estate (including construction of one or more buildings, parking facilities and any other improvements contributing to the taxable value of land).

(4) A certification from the Redeveloper as to the amount requested for the specific Contribution in Aid of Construction.

All Contributions in Aid of Construction shall be paid in reimbursement for amounts expended for improvements to real estate within the Redevelopment Project Area. In the event that the Redeveloper determines to engage in a Redevelopment Undertaking on its own or in cooperation with any other person or entity, the Redeveloper shall be eligible for receipt of a Contribution in Aid of Construction so long as the Bank as disbursing agent receives the items set forth above relating to the improvements being undertaken by the Redeveloper. The Bank shall, upon request by the Agency, provide to the Agency copies of each of the items of documentation required to be furnished to it under the terms of this Section 3.04. In the event that all amounts of grant funds held by the Bank as disbursing agent have not been disbursed within five years from the date of this Redevelopment Contract, all such undisbursed amounts shall be transferred by the Bank to the Agency and applied by the Agency to the early optional redemption of the Indebtedness in accordance with the terms of the Resolution.

In addition to the requirements for disbursement by the Bank as agent for the Agency as set forth above, the making of the grant described in this Redevelopment Contract shall be subject to the following conditions, each of which must be satisfied by the Redeveloper prior to the payment of any grant funds:

(1) The Indebtedness shall have been issued and proceeds received by the Agency as provided in Section 3.02 of this Redevelopment Contract.

(2) The Redeveloper shall furnish evidence satisfactory to the Agency that the Redeveloper has marketable title to the Redevelopment Project Property (such evidence shall be in the form of a title insurance policy which may be in the form of an owners policy, or at the option of the Agency, in the form of a mortgagee's policy naming the Agency as an insured and in an amount acceptable to the Agency).

Notwithstanding the foregoing, the aggregate amount of the grant advances shall not exceed the amount of Project Costs as certified pursuant to Section 4.02 of this Redevelopment Contract.

Section 3.05 Creation of Fund.

In the Resolution, the Agency has provided for the creation of a special fund (the "Bond Fund" as defined in the Resolution) to collect and hold the TIF Revenues pledged to the payment

of the Indebtedness. Such special fund shall be used for no purpose other than to pay (including any redemptions of principal made in accordance with the terms of the Resolution and this Redevelopment Contract) the Indebtedness issued pursuant to this Article III.

Section 3.06 Annexation of Real Estate.

The City shall have provided for the timely annexation of the real property shown on attached Exhibit A (the "Remaining Lots" as defined in the Redevelopment Plan).

Section 3.07 Abandonment of Public Right-of-Way.

As and when the requirements of the Redevelopment Area Businesses have been determined, the City expects to enter into an agreement with the Redeveloper to provide for the vacation of so much of Westside Drive and any presently existing water and sanitary sewer lines within the Redevelopment Project Area consistent with the requirements of any Redevelopment Area Business, provided that, in the event of any such agreement, the Redeveloper shall be responsible to provide for any replacement water and sewer lines required for the redevelopment of the Redevelopment Project Area. In the event that any water line serving the City's cemetery is required to be reconfigured or replaced in connection with the redevelopment of the Redevelopment Project Area, the Redeveloper shall provide a replacement water line satisfactory to the City providing substantially equivalent service to that provided by any presently existing line. In the event that Westside Drive is to be replaced with a public street in dedicated right of way under the terms of any replating of the Redevelopment Project Area, such public street shall be constructed to meet all applicable standards of the City for public streets of similar size and function. In the event that the Redeveloper determines to replace Westside Drive with a traffic way which does not meet requirements for a public street meeting all applicable standards of the City for public streets of similar size and function, the Redeveloper shall be responsible for all costs of repair and maintenance of such private traffic way.

Section 3.08 Development Fees.

The Redeveloper agrees to pay all water and sewer impact fees required by and in accordance with the ordinance or ordinances of the City relating to such impact fees, with such fees to be paid in full at the time of any final plat approval.

ARTICLE IV

OBLIGATIONS OF REDEVELOPER

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Project and install all infrastructure, improvements, buildings, fixtures, equipment and furnishings necessary to operate the Project. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, Redeveloper shall

make reports in such detail and at such times as may be reasonably requested by the Agency as to the actual progress of Redeveloper with respect to construction of the Project. Promptly after completion by the Redeveloper of the Project, the Redeveloper shall furnish to the Agency a Certificate of Completion (supported by such architect's or engineer's certificates as are required under the terms of the contract documents) for each structure or element of infrastructure completed. The issuance of one or more certificates of occupancy for the Project (one certificate for each building which is to be constructed for each of the Redevelopment Area Businesses) and the execution and delivery of the Certificate of Completion by the Redeveloper and approval thereof by the governing body of the Agency shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper and its successors and assigns to provide for the construction of the Project.

(b) Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond or bonds as required by the Act or as is otherwise required by law. The City, the Agency and the Redeveloper shall be named as additional insured. Any contractor chosen by the Redeveloper or the Redeveloper itself, as owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor with respect to any specific contract or the Redeveloper shall also carry insurance on all stored materials. The contractor or the Redeveloper, as the case may be, shall furnish the Agency with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Agency prior written notice in the event of cancellation of or material change in any of the policies.

Section 4.02 Cost Certification.

Redeveloper shall submit to Agency a certification of the estimated Project Costs, on or before the issuance of the Indebtedness which shall contain information showing the anticipated payments or obligations for payment of the Public Infrastructure Costs specified on the attached Exhibit D. On or before the final disbursement of grant funds as provided for in Section 3.04 of this Redevelopment Contract, the Redeveloper shall submit to the Agency a final certification of Project costs showing all amounts expended by the Redeveloper for both Project Infrastructure Costs and Redeveloper Contributions in Aid of Construction.

Section 4.03 Legal Costs.

Redeveloper acknowledges and agrees that, from the proceeds of the Indebtedness prior to the disbursement of any grant amounts to the Bank as disbursing agent, there shall be retained by the Agency a sum, not to exceed \$15,000, for payment of the legal costs, including for the City Attorney and the City's and Agency's special counsel, incurred by the Agency associated with the issuance of the Indebtedness, such amount being in addition to all amounts previously paid to the Agency for paying its related legal expenses. Redeveloper understands that the law firm

assisting the City and the Agency with the issuance of the Indebtedness represents the Agency and the City and not the Redeveloper and that such firm will not be providing any approving opinion with respect to the Indebtedness.

Section 4.04 No Discrimination.

Redeveloper agrees and covenants for itself its successors and assigns that it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Project.

Section 4.05 Pay Real Estate Taxes.

Redeveloper intends to create a taxable real property valuation for the Redevelopment Project Property in excess of the Redevelopment Project Valuation, as defined in §18-2103 (21) of the Act, (the "Excess Valuation") for the Redevelopment Project Property and in the Redevelopment Area, of Three Million Dollars (\$3,000,000) no later than **January 1, 2013**. Additionally, Redeveloper intends to create additional taxable real property valuation for the Redevelopment Project Property in excess of the Redevelopment Project Valuation, as defined in §18-2103(21) of the Act, for the Redevelopment Project Property and in the Redevelopment Project Area by January 1, 2017, of Fifteen Million Dollars (\$15,000,000).

Section 4.06 Assignment or Conveyance.

This Redevelopment Contract shall not be assigned by the Redeveloper without the written consent of the Agency. Any transfer (including any lease for a term longer than one year) or conveyance of the any portion of the Redevelopment Project Property, or any interest therein, prior to the termination of the 15 year period commencing on the effective date specified in Section 3.01 hereof by the Redeveloper shall be subject to the terms and conditions of this Redevelopment Contract.

Section 4.07 Federal Immigration Verification System.

The Redeveloper agrees that Redeveloper and any contractor for the improvements to be reimbursed as a part of the Project Infrastructure Costs shall be required to agree to use a federal immigration verification system (as defined in §4-114, R.S. Supp. 2010) to determine the work eligibility status of new employees physically performing services on the Project and to comply with all applicable requirements of §4-114, R.S. Supp. 2010.

ARTICLE V**FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES**Section 5.01 Financing.

Redeveloper shall pay all costs related to the redevelopment of the Redevelopment Project Area and the Redevelopment Project Property which are in excess of the amounts paid from the proceeds of the grant provided for from the proceeds of the Indebtedness and granted to Redeveloper. Prior to issuance of the Indebtedness, Redeveloper shall provide Agency with evidence satisfactory to the Agency that private funds have been committed to the Redeveloper in amounts sufficient to complete all portions of the Project included in the Project Infrastructure Costs. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.

Any mortgage lien or deed of trust or other encumbrance on the Redevelopment Project Property shall either be subject to the terms of this Redevelopment Contract because of its having been filed after the recording of notice of this Redevelopment Contract or shall be expressly made subject to the terms of this Redevelopment Contract by written instrument in recordable form furnished to the Agency prior to the issuance of the Indebtedness.

ARTICLE VI**DEFAULT, REMEDIES; INDEMNIFICATION**Section 6.01 General Remedies of Agency and Redeveloper.

Subject to the further provisions of this Article VI, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform or in breach of its obligations. The Redeveloper hereby acknowledges and agrees that the Agency shall have completed its required performances and satisfied all of its obligations under this Redevelopment Contract upon the issuance of the Indebtedness and the subsequent payment of grant amounts to the Redeveloper as set forth in Section 3.04 (less the amount required to be paid for the Agency's legal expenses). The Agency's obligation to apply TIF Revenues is set forth in the Resolution and shall be performed in accordance with the terms of the Resolution.

Section 6.02 Additional Remedies of Agency

In the event that (each such event an “event of default”):

- (a) the Redeveloper, or its successor in interest, shall fail to complete the infrastructure construction of the improvements included in the Public Infrastructure Costs on or before January 1, 2013, or shall abandon construction work related to the Public Infrastructure Costs, once commenced, for any period of 90 days,
- (b) the Redeveloper, or its successor in interest, shall fail to pay real estate taxes or assessments on the Redevelopment Project Property or any part thereof when due; and
- (c) there is a violation of any other provision of this Redevelopment Contract, and such failure or action by the Redeveloper has not been cured within 30 days following written notice from Agency, then the Redeveloper shall be in default of this Redevelopment Contract.

In the event of such failure to perform, breach or default occurs and is not cured in the period herein provided, the parties agree that the damages caused to the Agency would be difficult to determine with certainty and that a reasonable estimation of the amount of damages that could be incurred is the amount of the grant to Redeveloper pursuant to Section 3.04 of this Redevelopment Contract, less any reductions in the principal amount of the Indebtedness, plus interest on such amounts as provided herein (the “**Liquidated Damages Amount**”). Upon the occurrence of an event of default, the Liquidated Damages Amount shall be paid by Redeveloper to Agency within 30 days of demand from Agency given to the Redeveloper.

Interest shall accrue on the Liquidated Damages Amount at the rate of seven percent (7%) per annum and interest shall commence from the date that the Agency gives notice to the Redeveloper demanding payment.

Payment of the Liquidated Damages Amount shall not relieve Redeveloper of its obligation to pay real estate taxes or assessments with respect to the Redevelopment Project Property and the Project.

Redeveloper, on or before contracting for work included within the Public Infrastructure Costs, shall furnish to the Agency copies of labor and materials payment bonds and performance bonds for each contract entered into by Redeveloper related to Public Infrastructure Costs. Each such bond shall show the Agency as well as the Redeveloper as beneficiary of any such bond, as and to the extent commercially obtainable (as determined in the discretion of the Agency). In addition, the Redeveloper shall provide a penal bond with good and sufficient surety to be approved by the Agency, conditioned that the Redeveloper shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing to any contractor or his or her subcontractors (for each contract entered into by Redeveloper related to Public Infrastructure Costs) with labor or materials performed or used in the prosecution of the work

provided for in such contract, and will indemnify and save harmless the Agency to the extent of any payments in connection with the carrying out of such contracts which the Agency may be required to make under the law.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 6.02), the Redeveloper shall be in default. In such an instance, the Agency may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that any defaults covered by this Section shall not give rise to a right or rescission on termination of this Redevelopment Contract, and shall not be covered by the Liquidated Damages Amount.

Section 6.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the Agency nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Area for redevelopment, or the beginning and completion of construction of the Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Agency or of the Redeveloper with respect to construction of the Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay.

Section 6.05 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the City, the Agency, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the Agency under this Redevelopment Contract shall be the issuance of the Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, as specifically set forth in Sections 3.02 and 3.04 and payment of funds pledged pursuant to the Resolution. The obligation of the City and Agency on any Indebtedness shall be limited solely to the payment of the TIF Revenues and other funds pledged on the Indebtedness as set forth in the Resolution. Specifically, but without limitation, neither the City nor Agency shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder, ~~and~~ The Redeveloper releases the City and Agency from, agrees that neither the City nor Agency shall be liable for, and agrees to indemnify and hold the City and Agency harmless from any liability for any loss or damage to property or

any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project.

The Redeveloper will indemnify and hold each of the City and Agency and their directors, officers, agents, employees and members of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorneys' fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the term of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, whether or not related to the Project, or resulting from or in any way connected with specified events, including the management of the Project, or in any way related to the enforcement of this Redevelopment Contract or any other cause pertaining to the Project.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Notice Recording.

This Redevelopment Contract shall be recorded in the office of the Register of Deeds of Cass County, Nebraska. The covenants and agreements set forth herein shall be and constitute covenants running with the land with respect to the Redevelopment Project Property and shall remain in force and effect until the Indebtedness has been paid in full.

Section 7.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 7.03 Binding Effect: Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound.

STATE OF NEBRASKA)
)
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this 1st day of March, 2012, by Steven K. Wiley President of Westside Development, Inc., on behalf of the corporation.



Sandra J. Meyer
Notary Public

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROJECT AREA

Lots Two through Nine, inclusive, Westside Commercial Addition to the City of Plattsmouth, Cass County, Nebraska, including all of Westside Drive and all of First Avenue north of and adjacent to the said Westside Commercial Addition (subject to replatting as described in this Redevelopment Contract).

EXHIBIT B
REDEVELOPMENT PLAN

EXHIBIT C
INDEBTEDNESS

1. Principal Amount: to be set at \$2,300,000
2. Payments: Semi-annually (with principal to be paid from available amounts as mandatory redemptions, after payment of accrued interest), with payments limited to net annual TIF Revenues.
3. Interest Rate: To be determined by the Redeveloper but not to exceed 5% per annum.
4. Maturity Date: On or before December 31, 2027.
5. Time for Issuance: At Redeveloper's request as agreed to by the Agency but not earlier than 30 days after passage and approval of the Resolution

Exhibit D
Project Costs

Public Infrastructure Costs:

Exhibit 4 to the Plan sets forth certain cost estimates provided by the Redeveloper for the following items:

- Public right-of-way landscaping
- Site preparation and retaining walls
- Additional charge for water loop under highway
- Sanitary sewer including lift station upgrades and engineering
- Water line and engineering
- Interior street paving and engineering
- First Avenue paving and engineering
- Underground electrical and engineering
- Storm sewer and engineering
- Grading and erosion control
- Platting

The Agency's estimate for lift station upgrades and engineering is \$200,000. To the extent that the City's costs exceed \$200,000 for such improvements, such costs are to be borne by the City and not by the Redeveloper.

Public Infrastructure Costs are also to include impact fees related to subdivision approval, as to be incurred by the Redeveloper under the terms of Ordinances Nos. 1832 and 1747. The Redeveloper has identified the five acre (more or less) tract of the Project Area for which the initial impact fee of \$38,250 is to apply as set forth on Attachment 1 to this Exhibit D.

Public Infrastructure Costs are also to include amounts related to the City's costs for Highway 75 improvements adjacent to the Project Area, provided that such costs shall be paid from the proceeds of the Indebtedness only as and to the extent of the difference between actual costs for lift station upgrades and engineering and the estimated amount of \$200,000 as set forth above.

Redeveloper Contributions in Aid of Construction:

Grants in aid of construction to parties who construct private improvements in the Redevelopment Project Area which may include the Redeveloper or parties related to the Redeveloper.