

Community Development Agency following the 6p.m. City Council meeting
Monday, August 5, 2024 7:00 PM
Columbus Community Building/Community Room
2500 14 Street
Columbus, NE 68601

The Mayor and City Council reserve the right to go into closed session as per Section 84-1410 of the Nebraska Revised Statutes. A current agenda is on file at City Hall, 2500 14 Street, Columbus, Nebraska. For more information, call 402-562-4224 or visit our website at www.columbusne.us.

{{Name: Agenda Item Name}}

1. Statement of compliance with Open Meetings Act and roll call.

84-1407. Act, how cited.

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source: Laws 2004, LB 821, § 34.

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

Annotations

- Nebraska's public meetings laws do not apply to school board deliberations pertaining solely to disputed adjudicative facts. *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).
- The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990).
- The public meetings law is broadly interpreted and liberally construed to obtain the objective of openness in favor of the public, and provisions permitting closed sessions must be narrowly and strictly construed. *Grein v. Board of Education of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).
- Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- A county board of equalization is a public body whose meetings shall be open to the public. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Judicial Resources Commission or subcommittees or subgroups of the commission;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Virtual conferencing means conducting or participating in a meeting electronically or telephonically with interaction among the participants subject to subsection (2) of section 84-1412.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810; Laws 2011, LB366, § 2; Laws 2021, LB83, § 11; Laws 2022, LB922, § 12.

Annotations

- A township is a political subdivision, and as such, a township board is subject to the provisions of the public meetings laws. *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).
- A county agricultural society is a public body to which the provisions of the Nebraska public meetings law are applicable. *Nixon v. Madison Co. Ag. Soc'y*, 217 Neb. 37, 348 N.W.2d 119 (1984).
- Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).
- Although a committee was a subcommittee of a natural resources district board, it was not subject to the Open Meetings Act because there was never a quorum of board members in attendance and the committee did not hold hearings, make policy, or take formal action on behalf of the board. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- Although the Open Meetings Act does not define "subcommittee," a subcommittee is generally defined as a group within a committee to which the committee may refer business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).
- The Open Meetings Act does not require policymakers to remain ignorant of the issues they must decide until the moment the public is invited to comment on a proposed policy. By excluding nonquorum subgroups from the definition of a public body, the Legislature

has balanced the public's need to be heard on matters of public policy with a practical accommodation for a public body's need for information to conduct business. *Koch v. Lower Loup NRD*, 27 Neb. App. 301, 931 N.W.2d 160 (2019).

- As an administrative agency of the county, a county board of equalization is a public body. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- The electors of a township at their annual meeting are a public body under the Open Meetings Act. *State ex rel. Newman v. Columbus Township Bd.*, 15 Neb. App. 656, 735 N.W.2d 399 (2007).
- The meeting at issue in this case was a "meeting" within the parameters of subsection (2) of this section because it involved the discussion of public business, the formation of tentative policy, or the taking of any action of the public power district. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).
- Informational sessions in which the governmental body hears reports are briefings. *Johnson v. Nebraska Environmental Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close

passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB390, § 29; Laws 2012, LB995, § 17.

Annotations

- There is no absolute discovery privilege for communications that occur during a closed session. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).
- If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- The public interest mentioned in this section is that shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. *Grein v. Board of Education*, 216 Neb. 158, 343 N.W.2d 718 (1984).
- Hearing in closed executive session was contrary to this section since there was no showing of necessity or reason under subdivision (1)(a), (b), or (c), but did not result in reversal of board decision. *Simonds v. Board of Examiners*, 213 Neb. 259, 329 N.W.2d 92

(1983).

- Negotiations for the purchase of land need not be conducted at an open meeting but the deliberations of a city council as to whether an offer to purchase real estate should be made should take place in an open meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).
- Public meeting law was not violated where the Board of Regents of the University of Nebraska voted to hold a closed session to consider the university president's resignation, and also discussed the appointment of an interim president during such session. *Meyer v. Board of Regents*, 1 Neb. App. 893, 510 N.W.2d 450 (1993).

84-1411. Meetings of public body; notice; method; contents; when available; right to modify; duties concerning notice; virtual conferencing authorized; requirements; emergency meeting without notice; appearance before public body; applicability of section.

(1) Until January 1, 2025:

(a) Except as provided in subsection (10) of this section, each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (1)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committee, such notice shall be published in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website.

(ii) In the case of the governing body of a city of the second class or village or such body's advisory committee or the governing body of a rural or suburban fire protection district, such notice shall be published by:

(A) Publication in a newspaper of general circulation within the public body's jurisdiction and, if available, on such newspaper's website; or

(B) Posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (1)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(iv) In case of refusal, neglect, or inability of the newspaper to timely publish the notice, the public body shall (A) post such notice on its website, if available, and (B) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(c) In addition to a method of notice required by subdivision (1)(b)(i) or (ii) of this section, such notice may also be provided by any other appropriate method designated by such public body or such advisory committee.

(d) Each public body shall record the methods and dates of such notice in its minutes.

(e) Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours.

Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) Beginning January 1, 2025:

(a) Except as provided in subsection (10) of this section, each public body shall give reasonable advance publicized notice of the time and place of each meeting as provided in this subsection. Such notice shall be transmitted to all members of the public body and to the public.

(b)(i) Except as provided in subdivision (2)(b)(ii) of this section, in the case of a public body described in subdivision (1)(a)(i) of section 84-1409 or such body's advisory committees, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(B)(I) Posting to the newspaper's website, if available, and (II) posting to a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper.

(ii) In the case of the governing body of a city of the second class or village, any advisory committee of such governing body, or the governing body of a rural or suburban fire protection district, such notice shall be given by:

(A)(I) Publication in a newspaper of general circulation within the public body's jurisdiction that is finalized for printing prior to the time and date of the meeting, (II) posting on such newspaper's website, if available, and (III) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers. Such notice shall be placed in the newspaper and on the websites by the newspaper;

(B)(I) Posting to the newspaper's website, if available, and (II) posting on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers if no edition of a newspaper of general circulation within the public body's jurisdiction is to be finalized for printing prior to the time and date of the meeting. Such notice shall be placed in the newspaper and on the websites by the newspaper; or

(C) Posting written notice in three conspicuous public places in such city, village, or district. Such notice shall be posted by the public body in the same three places for each meeting.

(iii) In the case of a public body not described in subdivision (2)(b)(i) or (ii) of this section, such notice shall be given by a method designated by the public body.

(iv) In case of refusal, neglect, or inability of the newspaper to publish the notice, the public

body shall (A) post such notice on its website, if available, (B) submit a post on a statewide website established and maintained as a repository for such notices by a majority of Nebraska newspapers, and (C) post such notice in a conspicuous public place in such public body's jurisdiction. The public body shall keep a written record of such posting. The record of such posting shall be evidence that such posting was done as required and shall be sufficient to fulfill the requirement of publication.

(3)(a) The following entities may hold a meeting by means of virtual conferencing if the requirements of subdivision (3)(b) of this section are met:

(i) A state agency, state board, state commission, state council, or state committee, or an advisory committee of any such state entity;

(ii) An organization, including the governing body, created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act;

(iii) The governing body of a public power district having a chartered territory of more than one county in this state;

(iv) The governing body of a public power and irrigation district having a chartered territory of more than one county in this state;

(v) An educational service unit;

(vi) The Educational Service Unit Coordinating Council;

(vii) An organization, including the governing body, of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act;

(viii) A community college board of governors;

(ix) The Nebraska Brand Committee;

(x) A local public health department;

(xi) A metropolitan utilities district;

(xii) A regional metropolitan transit authority; and

(xiii) A natural resources district.

(b) The requirements for holding a meeting by means of virtual conferencing are as follows:

(i) Reasonable advance publicized notice is given as provided in subsections (1) and (2) of this section, including providing access to a dial-in number or link to the virtual conference;

(ii) In addition to the public's right to participate by virtual conferencing, reasonable arrangements are made to accommodate the public's right to attend at a physical site and participate as provided in section 84-1412, including reasonable seating, in at least one designated site in a building open to the public and identified in the notice, with: At least one member of the entity holding such meeting, or his or her designee, present at each site; a recording of the hearing by audio or visual recording devices; and a reasonable opportunity for input, such as public comment or questions, is provided to at least the same extent as would be

provided if virtual conferencing was not used;

(iii) At least one copy of all documents being considered at the meeting is available at any physical site open to the public where individuals may attend the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act; and

(iv) Except as otherwise provided in this subdivision, subsection (1) of section 70-1014, subsection (2) of section 70-1014.02, or subsection (4) of section 79-2204, no more than one-half of the meetings of the state entities, advisory committees, boards, councils, organizations, or governing bodies are held by virtual conferencing in a calendar year. In the case of (A) an organization created under the Interlocal Cooperation Act that sells electricity or natural gas, (B) an organization created under the Municipal Cooperative Financing Act, (C) a governing body of a risk management pool and any advisory committee of such governing body, or (D) any advisory committee of any state entity created in response to the Opioid Prevention and Treatment Act, such organization, governing body, or committee may hold more than one-half of its meetings by virtual conferencing if such organization holds at least one meeting each calendar year that is not by virtual conferencing.

(4) Virtual conferencing, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(5) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(6) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by virtual conferencing. The provisions of subsection (5) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(7) A public body may allow a member of the public or any other witness to appear before the public body by means of virtual conferencing.

(8)(a) Notwithstanding subsections (3) and (6) of this section, if an emergency is declared by the Governor pursuant to the Emergency Management Act as defined in section 81-829.39, a public body the territorial jurisdiction of which is included in the emergency declaration, in whole or in part, may hold a meeting by virtual conferencing during such emergency if the public body gives reasonable advance publicized notice as described in subsections (1) and (2) of this section. The notice shall include information regarding access for the public and news media. In addition to any formal action taken pertaining to the emergency, the public body may hold such meeting for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action by the public body.

(b) The public body shall provide access by providing a dial-in number or a link to the virtual conference. The public body shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting, and the current version of the Open Meetings Act. Reasonable arrangements shall be made to accommodate the public's right to hear and speak at

the meeting and record the meeting. Subsection (5) of this section shall be complied with in conducting such meetings.

(c) The nature of the emergency shall be stated in the minutes. Complete minutes of such meeting specifying the nature of the emergency and any formal action taken at the meeting shall be made available for inspection as provided in subsection (5) of section 84-1413.

(9) In addition to any other statutory authorization for virtual conferencing, any public body not listed in subdivision (3)(a) of this section may hold a meeting by virtual conferencing if:

(a) The purpose of the virtual meeting is to discuss items that are scheduled to be discussed or acted upon at a subsequent non-virtual open meeting of the public body;

(b) No action is taken by the public body at the virtual meeting; and

(c) The public body complies with subdivisions (3)(b)(i) and (ii) of this section.

(10) This section does not apply to a meeting of the Nebraska Power Review Board or a public power district, a public power and irrigation district, an electric membership association, an electric cooperative company, a municipality having a generation and distribution system, or a registered group of municipalities if such meeting is subject to section 70-1034.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9; Laws 2009, LB361, § 2; Laws 2012, LB735, § 1; Laws 2013, LB510, § 1; Laws 2017, LB318, § 1; Laws 2019, LB212, § 5; Laws 2020, LB148, § 3; Laws 2021, LB83, § 12; Laws 2022, LB742, § 1; Laws 2022, LB908, § 1; Laws 2022, LB922, § 13; Laws 2024, LB287, § 74; Laws 2024, LB399, § 4; Laws 2024, LB1370, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB287, section 74, with LB399, section 4, and LB1370, section 8, to reflect all amendments.

Note: Changes made by LB287 became operative April 17, 2024. Changes made by LB399 became effective July 19, 2024. Changes made by LB1370 became operative July 19, 2024.

Cross References

- **Emergency Management Act**, see section 81-829.36.
- **Intergovernmental Risk Management Act**, see section 44-4301.
- **Interlocal Cooperation Act**, see section 13-801.
- **Joint Public Agency Act**, see section 13-2501.
- **Municipal Cooperative Financing Act**, see section 18-2401.
- **Opioid Prevention and Treatment Act**, see section 71-2485.

Annotations

- Under subsection (1) of this section, the Legislature has imposed only two conditions on

the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

- An emergency is "(a)ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." *Steenblock v. Elkhorn Township Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).
- An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with the requirements of this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).
- When notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m. on the day preceding the meeting is not reasonable advance publicized notice of a meeting as is required by this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).
- Teacher waived right to object to lack of public notice in board of education employment hearing by voluntary participation in the hearing without objection. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).
- A county board of commissioners and a county board of equalization are not required to give separate notices when the notice states only the time and place that the boards meet and directs a citizen to where the agendas for each board can be found. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- A county board of equalization is a public body which is required to give advanced publicized notice of its meetings. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- Notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- True notice of a meeting is not given by burying such in the minutes of a prior board proceeding. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- An agenda notice which merely stated "work order reports" was an inadequate notice under this section because it did not give interested persons knowledge that plans for a 345 kv transmission line through the district was going to be discussed and voted upon at the meeting. Inadequate agenda notice under this section meant there was a substantial violation of the public meeting laws; however, later actions by the board of directors cured the defects in notice, and such actions were in substantial compliance with the statute. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, a camera, video equipment, or any other means of pictorial or sonic reproduction or in writing. Except for closed sessions called pursuant to section 84-1410, a public body shall allow members of the public an opportunity to speak at each meeting.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings, including meetings held by virtual conferencing.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making virtual conferencing available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act; and

(f) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) Each public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at a meeting.

(8) Public bodies shall make available at the meeting or the in-state location for virtual conferencing as required by subdivision (6)(c) of this section, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting, either in paper or electronic form. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB962, § 1; Laws 2021, LB83, § 13; Laws 2024, LB43, § 21.

Operative Date: July 19, 2024

Annotations

- To preserve an objection that a public body failed to make documents available at a public meeting as required by subsection (8) of this section, a person who attends a public meeting must not only object to the violation, but must make that objection to the public body or to a member of the public body. *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

84-1413. Meetings; minutes; roll call vote; secret ballot; when; agenda and minutes; required on website; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written or kept as an electronic record and shall be available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing or keeping the minutes is absent due to a serious illness or emergency.

(6) Beginning July 31, 2022, the governing body of a natural resources district, the city council of a city of the metropolitan class, the city council of a city of the primary class, the city council of a city of the first class, the county board of a county with a population greater than twenty-five thousand inhabitants, and the school board of a school district shall make available on such entity's public website the agenda and minutes of any meeting of the governing body. The agenda shall be placed on the website at least twenty-four hours before the meeting of the governing body. Minutes shall be placed on the website at such time as the minutes are available for inspection as provided in subsection (5) of this section. This information shall be available on the public website for at least six months.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB361, § 3; Laws 2015, LB365, § 2; Laws 2016, LB876, § 1; Laws 2021, LB83, § 14; Laws 2022, LB742, § 2.

Annotations

- Under prior law, if a person present at a meeting observes and fails to object to an alleged public meetings laws violation in the form of a failure to conduct rollcall votes before

taking actions on questions or motions pending, that person waives his or her right to object at a later date. *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 944, 653 N.W.2d 240 (2002).

- Subsection (2) of this section does not require the record to state that the vote was by roll call, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. If no intervening rights of third persons have arisen, a board of county commissioners has power to correct the record of the proceedings had at a previous meeting so as to make them speak the truth, particularly where the correction supplies some omitted fact or action and is done not to contradict or change the original record but to have the record show that a certain action was taken or thing done, which the original record fails to show. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).
- Failure by a public governing body, as defined under section 84-1409, R.R.S.1943, to take and record a roll call vote on an action, as required by section 84-1413(2), R.S.Supp.,1980, grants any citizen the right to sue for the purpose of having the action declared void. In this case such failure could not be later corrected by a nunc pro tunc order because there was no showing that a roll call vote on the disputed action was actually taken, and even if it was the record showed it was not recorded until over a year later. Sections 23-1301, R.R.S.1943, and 23-1302, R.R.S.1943, make it the duty of the county clerk to record proceedings of the board of county commissioners. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).
- There is no requirement that a public body make a record of where notice was published or posted. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

Annotations

- The Legislature has granted standing to a broad scope of its citizens for the very limited purpose of challenging meetings allegedly in violation of the Open Meetings Act, so that they may help police the public policy embodied by the act. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).
- Any citizen of the state may commence an action to declare a public body's action void. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).
- The reading of ordinances constitutes a formal action under subsection (1) of this section. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).
- If a person present at a meeting observes a public meetings law violation in the form of an improper closed session and fails to object, that person waives his or her right to object at a later date. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).
- Under the Public Meetings Act, a county lacks capacity to maintain an action to declare its official conduct "void" for noncompliance with the act. *County of York v. Johnson*, 230 Neb. 403, 432 N.W.2d 215 (1988).
- When a petitioner under this section is successful in the district court, that court may allow attorney fees. *Tracy Corp. II v. Nebraska Pub. Serv. Comm.*, 218 Neb. 900, 360 N.W.2d 485 (1984).
- Informal discussions between the Tax Commissioner and the State Board of Equalization in which instructions were clarified, with such clarification leading to the amendment of hearing notices, did not constitute a public meeting subject to the provisions of this section. *Box Butte County v. State Board of Equalization and Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).
- The right to collaterally attack an order made in contravention of the Public Meeting Act must occur within a period of one year as is specifically provided by this section. *Witt v. School District No. 70*, 202 Neb. 63, 273 N.W.2d 669 (1979).
- Statutory change, requiring "publicized notice" for board of education employment hearings, occurring between dates meeting scheduled and conducted, held not to void proceedings. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).
- Voiding an entire meeting is a proper remedy for violations of the Open Meetings Act. Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009).
- Actions by the board of directors were merely voidable under this section, and not void. Pursuant to subsection (3) of this section, the plaintiffs were awarded partial attorney fees because they were successful in having the court declare that the board of directors was in substantial violation of the statute, even though the plaintiffs did not get the relief requested of having the board's actions declared void. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998).

2. Resolution No. R24-90 approving contract with Zegar Investment Properties LLC for the Zegar Investments Redevelopment Project.

DRAFT

RESOLUTION NO. R24-90

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COLUMBUS, NEBRASKA, AS THE GOVERNING BODY OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF COLUMBUS, NEBRASKA, APPROVING A REDEVELOPMENT CONTRACT FOR A REDEVELOPMENT PROJECT UNDERTAKEN BY ZEGAR INVESTMENT PROPERTIES, LLC, AS SET FORTH IN THE "REDEVELOPMENT PLAN FOR THE ZEGAR INVESTMENTS REDEVELOPMENT PROJECT ".

WHEREAS, the mayor and city council of the City of Columbus, Nebraska (the "City"), previously approved a redevelopment plan entitled, "Redevelopment Plan for the Zegar Investments Redevelopment Project" (the "Plan"); and

WHEREAS, the mayor and city council of the City, as the governing body of the Community Development Agency of the City (the "Agency"), has for its consideration, attached hereto and incorporated herein as Exhibit "A", a proposed form of the redevelopment contract by and between Zegar Investment Properties, LLC, as redeveloper, and the Agency, with respect to a redevelopment project specified in the Plan (the "Redevelopment Contract").

NOW, THEREFORE, BE IT RESOLVED, by the mayor and city council of the City, as the governing body of the Agency, that the Redevelopment Contract by and between Zegar Investment Properties, LLC, as redeveloper, and the Agency, in the form presented, is hereby acknowledged and approved. The Agency Chairperson (Mayor) and Secretary (City Clerk) are hereby authorized to execute said Redevelopment Contract in substantially the form presented but with such changes as they shall deem appropriate or necessary. The execution and delivery by the mayor of the Redevelopment Contract, or any such documents, instruments, agreements or certifications relating to such matters contained in the Redevelopment Contract, shall conclusively establish their authority with respect thereto and the authorization and approval thereof.

INTRODUCED BY COUNCIL MEMBER _____

PASSED AND ADOPTED THIS _____ DAY OF _____, 2024.

CHAIRPERSON (MAYOR)

ATTEST:

SECRETARY (CITY CLERK)

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Michael Savels". The signature is fluid and cursive, with the first name "Michael" and last name "Savels" clearly distinguishable.

SPECIAL CITY ATTORNEY

EXHIBIT "A"
Redevelopment Contract

(See attached)

6446983.1

REDEVELOPMENT CONTRACT
(The Zegar Investments Redevelopment Project)

This Redevelopment Contract for the Zegar Investments Redevelopment Project (“**Redevelopment Contract**”) is made and entered into as of the ____ day of _____, 2024, by and between the Community Development Agency of the City of Columbus, Nebraska (the “**Agency**”), and Zegar Investment Properties, LLC, a Nebraska limited liability company (together with its permitted successors and assigns, “**Redeveloper**”). The Agency and/or Redeveloper may be referred to hereinafter as the “**Party**” or collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, in conformance with the Nebraska Community Development Law, sections 18-2101 et seq., of the Nebraska Revised Statutes (the “**Act**”), the Mayor and City Council of the City of Columbus, Nebraska (the “**City**”), has adopted and approved a plan entitled, “Redevelopment Plan for the Zegar Investments Redevelopment Project,” as may be amended and supplemented (the “**Plan**”), for the real estate described on Exhibit “A”, attached hereto and incorporated herein (the “**Project Site**”), which is located in the City, and which has previously been declared blighted and substandard or otherwise eligible for redevelopment by the Mayor and City Council of the City; and

WHEREAS, the Agency has encouraged and induced Redeveloper to engage in certain development activities and construct improvements in the Project Site and Redeveloper is not willing to incur the substantial investment necessary for such redevelopment of the Project Site without the assistance of tax-increment financing (“**TIF**”) provided by the Agency to Redeveloper in this Redevelopment Contract; and

WHEREAS, pursuant to the Plan, Redeveloper is undertaking the phased construction of approximately 84 multifamily dwelling units, tenant garages, and approximately 10,750 square feet of commercial space, together with such public improvements associated therewith, within the Project Site, all as more particularly described in the Plan, and as shown on the preliminary site plan attached hereto and incorporated herein as Exhibit “B” (collectively, said improvements are referred to in this Redevelopment Contract as the “**Redevelopment Project**”); and

WHEREAS, the real property within the Project Site, other than easements for public utilities, is to be privately owned by Redeveloper; and

WHEREAS, the Agency proposes to authorize the issuance of a tax increment revenue bond (the “**Bond**”), to provide for eligible costs relating to the Redevelopment Project, as shall be more specifically described in a resolution to be adopted by the governing body of the Agency (the “**Bond Resolution**”); and

WHEREAS, Redeveloper seeks the assistance of the Agency for the costs of the eligible improvements for the Redevelopment Project and therefore is willing to agree to the conditions herein set forth as an inducement to the Agency to issue the Bond as provided in the Bond Resolution.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the Agency and Redeveloper do hereby agree, covenant and warrant as follows:

Section 1. Representations, Warranties and Covenants of Redeveloper.

Redeveloper hereby represents, covenants and warrants as follows:

- (a) Redeveloper is a limited liability company duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its certificate of organization or operating agreement(s), is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.
- (b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct, operate and maintain the Redevelopment Project in accordance with the terms of this Redevelopment Contract and the Plan, or amendments thereof, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations). Throughout the term of this Redevelopment Contract and subject to the provisions of Section 20 of this Redevelopment Contract, in the event of any casualty damage to the Redevelopment Project, as and to the extent owned by Redeveloper, Redeveloper agrees to repair and reconstruct such damaged portion or portions of the Redevelopment Project so that such reconstructed real property has a taxable value at least equal to the value as most recently determined prior to the event or events of casualty loss. Redeveloper agrees to substantially effect such repair and reconstruction whether or not insurance proceeds are sufficient or available for such purposes.
- (c) Redeveloper shall endeavor in good faith to complete the Redevelopment Project on or before December 31, 2029, at an estimated cost of \$19,741,000.
- (d) Redeveloper has not received notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the Project Site or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation.
- (e) Redeveloper will use its best efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the Redevelopment Project to be lawfully constructed, occupied or operated.
- (f) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any

evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.

- (g) To the best of the knowledge of Redeveloper, Redeveloper is not aware of any hazardous waste or other significant environmental pollution condition or hazard existing on or within the Project Site.
- (h) Redeveloper acknowledges and agrees that neither the Agency nor the City shall be obligated to pay any costs related to the Redevelopment Project other than costs to be paid from available grant monies derived from ad valorem incremental real estate taxes generated from the Redevelopment Project (“**TIF Revenues**”), if any, and Redeveloper hereby undertakes and agrees to pay any and all such cost. All costs (both public and private) of the Redevelopment Project shall be paid in full and there are and shall be no construction liens filed against the Project Site or any of the improvements thereon. Redeveloper agrees to provide for the construction of both the Redevelopment Project public and private improvements located within the Project Site as described in the Plan or as described in this Redevelopment Contract, except to the extent that the Agency or the City shall agree otherwise by separate written agreement with Redeveloper.
- (i) Redeveloper agrees and covenants for itself, its successors and assigns that as long as this Redevelopment Contract is in effect, 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 Redevelopment Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Redevelopment 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 Redevelopment Project.
- (j) Redeveloper agrees that any contractor providing services related to the Redevelopment Project will utilize the federal immigration verification system, as defined in Section 4-114 of the Nebraska Revised Statutes, to determine the work eligibility status of new employees physically performing services on the Redevelopment Project.
- (k) Redeveloper owns the Project Site, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.
- (l) Any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors’ general liability and completed operations of at

least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and a penal bond as required by the Act and Section 10 of this Redevelopment Contract. The Agency, the City and Redeveloper shall be named as additional insureds on each such policy. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Redevelopment 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 Redeveloper shall also carry insurance on all stored materials. Upon the request of the Agency or City, the contractor or Redeveloper, as the case may be, shall furnish the Agency and the City with a certificate of insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Agency and the City prior written notice in the event of cancellation of or material change in any of the policies.

- (m) At all times during the term of this Redevelopment Contract, Redeveloper shall maintain policies insuring the improvements located within the Project Site in an amount equal to one-hundred percent (100%) of their full insurable value.
- (n) With respect to the Redevelopment Project, Redeveloper has not pursued or received, and will not pursue or receive, tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act, or a refund of the City's local option sales tax revenue.
- (o) Redeveloper represents and warrants that the Redevelopment Project would not be financially feasible without the use of TIF, and therefore would not occur but-for the grant of TIF provided hereunder.
- (p) Redeveloper represents and warrants that it has received, or will receive within no more than one (1) year from the date herefrom, sufficient financing to complete the Redevelopment Project. In accordance therewith, upon demand therefor from the Agency from time to time, Redeveloper shall provide the Agency with sufficient evidence of Redeveloper's financial ability to carry out the Redevelopment Project.

Section 2. Incorporation of Plan; Agency to Issue Bond.

This Redevelopment Contract hereby incorporates the Plan by this reference. The Agency and Redeveloper anticipate that the Redevelopment Project and related construction will be undertaken and constructed in multiple Phases (defined below). The Parties anticipate that a total of one (1) bond will be issued for the Redevelopment Project (i.e., one bond for all Phases). Each Phase is anticipated to have a different "**Effective Date**" (as defined in the Act) for the division of TIF Revenues, along with a new increment period. The increment period for each Phase will end after the applicable 15-year period or when the Bond is paid in full, whichever occurs first.

Establishment of each Phase shall be directly related to the construction of the private improvements completed each year as part of the Redevelopment Project. Commencing on July

1st of the first year in which the Redevelopment Project improvements are being completed, and annually on or before each July 1st thereafter, Redeveloper shall notify the Agency in writing of the lot(s) to be included in the "**Notice to Divide Taxes**" (as detailed under Section 18-2147 of the Act) for the respective Phase in such year. The lot(s) identified by Redeveloper in a given year shall constitute a "**Phase**" of the Redevelopment Project. The written notice shall include the legal description of the lot(s) in the Phase, the Effective Date for the Phase, the base year valuation for the lot(s), and such other provisions as may be deemed necessary by the Agency including usual and customary representations. The Agency shall file the Notice to Divide Taxes with the Platte County Assessor on or prior to August 1 of such year, establishing such year as the Effective Date for the lots identified in Redeveloper's notice. Notwithstanding the foregoing, any lots within the Redevelopment Project Area which have not been included as part of a prior Phase as of January 1, 2030, shall be included within the Notice to Divide Taxes for the 2030 calendar year, irrespective of the progress of construction on such lots (i.e., no Phase may have an Effective Date, and no further Notices to Divide Taxes will be filed in relation to the Redevelopment Project, after 2030).

In order to provide for payment of some of the TIF-eligible costs for the Redevelopment Project set forth in the Plan and this Redevelopment Contract, as described in Exhibit "C", attached hereto and incorporated herein (the "**Eligible Costs**"), the Agency shall proceed to issue the Bond on a form approved by the Agency, in the principal amount not to exceed Two Million Two Hundred Sixty-Eight Thousand Two Hundred Ninety-Three & 00/100 Dollars (\$2,268,293), at a rate of interest not to exceed 7.40% per annum, pursuant to such terms and conditions as the Agency reasonably determines appropriate, as shall be set forth in the Bond Resolution.

The Bond shall constitute a limited obligation of the Agency payable exclusively from that portion of the TIF Revenues generated from the Redevelopment Project pursuant to section 18-2147 of the Act and collected for a period not to exceed fifteen (15) years from the Effective Date of each Phase. Upon receipt, the Agency shall deposit the TIF Revenues in a special TIF fund, pursuant to the Bond Resolution, and thereafter disburse said proceeds to the holder of the Bond to provide for reimbursement of all or a portion of the costs of the Eligible Costs, to the extent paid by Redeveloper. To qualify as Eligible Costs, Redeveloper must first certify such costs to the Agency via the provision of paid invoices or other evidence acceptable to the Agency, in the Agency's sole discretion. Redeveloper may, at its option, submit one or more partial Eligible Costs certifications prior to expenditure of all Eligible Costs providing certification of receipt of billings for work in progress.

The Agency shall have no obligation to disburse TIF Revenues in excess of the aggregate sum of Eligible Costs certified to and accepted by the Agency, in the Agency's reasonable discretion. If Redeveloper fails to submit Eligible Cost in an amount equal to or greater than the original principal amount on the Bond, the principal and interest amounts on the Bond shall be reduced to the amount of Eligible Costs received/approved by the Agency; and Redeveloper shall cooperate with respect to all actions reasonably necessary, in the Agency's discretion, to accomplish the same.

Provided there is no duplication of costs, the Agency acknowledges and agrees that the TIF Revenues derived from a particular Phase may be applied towards the Eligible Costs incurred

within a different Phase, as all such Phases and Eligible Costs are a part of the single Redevelopment Project.

Unless otherwise determined by the governing body of the Agency, the proceeds of the Bond shall be applied to the costs described above. The Bond shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes.

Section 3. Covenants With Respect to Taxation of Project Site.

Redeveloper agrees with respect to the Redevelopment Project as follows:

- (a) Until the termination of this Redevelopment Contract, the Redevelopment Project shall be operated for the use substantially similar to that contemplated in the Plan and no sale or conveyance of such property shall be made to any person or entity for ownership or use which would cause the real property within the Project Site to be eligible for exemption from ad valorem taxes under Section 77-202 R.R.S. Neb. 2009, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.
- (b) Redeveloper intends to create a taxable real property valuation for the Project Site (inclusive of all lots/units therein) of not less than \$14,275,600 by January 1, 2030 (the "**Project Minimum Valuation**"). During the period that this Redevelopment Contract is in effect, Redeveloper, its successors and assigns, shall not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Platte County, Nebraska, for purposes of local ad valorem real estate taxes, on any portion or lot within the Project Site, if such protest would result in a reduction to an amount below the Minimum Valuation for the entire Project Site. The prohibition in the preceding sentence shall apply to each and every tax parcel within the Project Site.
- (c) If Redeveloper has monetized the Bond by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender. If, during the period of this Redevelopment Contract and after the filing of a notice to divide, a portion of the Project Site is assessed at less than the Minimum Valuation, Redeveloper agrees to defer receipt of any shortfall in TIF Revenues caused thereby. If Redeveloper is required to defer the receipt of any such shortfall amounts, Redeveloper shall be entitled to receive reimbursement of any such shortfall payment to the extent TIF Revenues later become available during the division period prescribed by the Act (for each Phase) in an amount in excess of the amount necessary to meet the current debt service payments. Redeveloper shall forgive any such shortfall amounts not reimbursed at the end of the division period prescribed by the Act (for each Phase).
- (d) Redeveloper, its successors and assigns, including subsequent purchasers of land within the Project Site, further agree as follows:

- (i) to pay all local ad valorem real estate taxes for the Project Site as levied and assessed before the same become delinquent; and
- (ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the Redevelopment Project or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings; and
- (iii) not to seek any tax deferral or tax abatement with respect to local ad valorem taxes, either as presently or prospectively authorized under any law of the State of Nebraska or federal law with respect to the Redevelopment Project; and
- (iv) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which are assessed, levied, confirmed, imposed or become payable with respect to the Redevelopment Project; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body; and
- (v) to retain copies of all supporting documents (as defined under section 18-2119(4) of the Act) generated and/or received by Redeveloper in relation to the Redevelopment Project or Plan until the expiration of three years following the end of the last fiscal year in which ad valorem taxes were divided in relation to the Redevelopment Project.

Section 4. Release and Indemnification.

Redeveloper hereby releases from and covenants and agrees that the Agency and the City, together with their governing body, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purpose of this Section 4, collectively the “**Indemnified Parties**”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect arising from the Redevelopment Project or within the Project Site. Provided, however, such release shall not be deemed to include such liability actions as arise directly out of the willful misconduct of the Agency or the City.

Additionally, the Indemnified Parties shall not have any pecuniary obligation or monetary liability under this Redevelopment Contract. The obligation of the Indemnified Parties on the

Bond or any indebtedness contemplated hereunder shall be limited solely to the incremental ad valorem taxes generated from the Redevelopment Project pledged as security for such indebtedness. Specifically, but without limitation, the Indemnified Parties shall not be liable to Redeveloper or any other third party for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder.

Section 5. Covenants to Run with the Land; Easement; Recording of Redevelopment Contract.

Redeveloper and Agency agree and acknowledge that this Redevelopment Contract and the undertakings of Redeveloper and the Agency as herein provided for shall be considered as and constitute covenants running with the land binding upon Redeveloper and the Agency and their successors and assigns and upon each successive owner of the Project Site or any portion thereof. Redeveloper hereby acknowledges and agrees that by the terms of this Redevelopment Contract it is binding and obligating any and all of its interest in the Project Site, now or hereafter acquired, and hereby covenants and warrants for the benefit of the Agency and the registered owner of the Bond that Redeveloper shall defend such interest in the Project Site against the claims and interests of any and all persons. Redeveloper and the Agency agree and acknowledge that a memorandum of this Redevelopment Contract, in substantially the same form attached hereto and incorporated herein as Exhibit "D", shall be recorded at the expense of Redeveloper against all real estate located in the Project Site and shall remain of record until the Bond has been paid in full or matured. The Agency shall have the authority to execute such memorandum(s) without additional public determinations or meetings. As and to the extent that this Redevelopment Contract does not have priority by order of recording over each and every mortgage or other instrument securing indebtedness of Redeveloper, Redeveloper hereby agrees to obtain the written agreement in recordable form from each mortgagee or other encumbrancer having any such priority, which written form acknowledges and agrees to the terms of this Redevelopment Contract. Redeveloper agrees to provide the Agency with a title report or other evidence as to the status of title to the Project Site after the recording of this Redevelopment Contract and before the issuance of the Bond. After the Bond has been paid in full, Redeveloper or any successor or assign of Redeveloper shall have the right to request in writing and the Agency shall, upon such request, execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Contract and of the covenants and undertakings herein provided. The Agency shall have the right, from time to time in its sole and reasonable discretion, to release specific parcels or lots located within the Project Site from any or all of the specific provisions of this Redevelopment Contract.

Section 6. Default and Remedies upon Default.

Redeveloper and Agency agree with respect to any defaults or failures of performance by Redeveloper or Agency as follows:

- (a) The following shall constitute “**Events of Default**” under the terms of this Redevelopment Contract:

- (i) failure by Redeveloper or Agency to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;
 - (ii) any representation or warranty made herein by Redeveloper or Agency proves untrue in any respect reasonably deemed to be material by the Agency or Redeveloper;
 - (iii) an event of default or material breach by or attributable to Redeveloper or Agency relating to the Redevelopment Project or any portion thereof, including, without limitation, breach of the terms of any agreement or other instrument relating to the financing or construction thereof; or
 - (iv) Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of Redeveloper or any part of its property or commences any proceeding related to Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against Redeveloper any such proceedings and Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for Redeveloper or any part of its property or suffers any such receivership or trusteeship.
- (b) Whenever an Event of Default occurs, in addition to all other remedies available to the Agency or Redeveloper at law or in equity, the Agency or Redeveloper may: (1) suspend its performance under this Redevelopment Contract until receiving adequate assurances from Redeveloper or Agency that Redeveloper or Agency has cured the default and will continue performance under this Redevelopment Contract; and/or (2) take such action at law or in equity as the Agency or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Contract; provided that the remedy of specific performance against Redeveloper shall not include or be construed to include the covenant to build or construct the Redevelopment Project.
- (c) In addition to the remedies under Section 6(b), the Agency shall have the following additional remedies upon an Event of Default by Redeveloper:
- (i) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, the City or Agency shall have the right, but not the obligation, to cure such breach on behalf of Redeveloper with respect to the construction of the improvements

characterized as Eligible Costs. If the City or Agency elects to cure a breach of Redeveloper, Redeveloper shall reimburse the City or Agency for the documented and reasonable costs of curing Redeveloper's breach within 30 days of demand from City or Agency given to Redeveloper. If Redeveloper's breach can be cured by the payment of Eligible Costs, the City or Agency may cure such defect and obtain reimbursement, with notice to Redeveloper, via a set off to the principal amount of the Bond equal to the Eligible Costs reasonably expended by the City or Agency. The Eligible Costs expended by the City or Agency must be certified by the City or Agency to the holder of the grant proceeds and all subsequent distributions of TIF Revenues shall be distributed to the City or Agency, as applicable, until such Eligible Costs expended by the City or Agency have been reimbursed in full. Interest shall accrue on the amount expended by the City or Agency at the rate provided in the Bond and such interest shall commence from the date that the Agency gives notice to Redeveloper of Redeveloper's Event of Default.

- (ii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, following written notice from the Agency to Redeveloper of such Event of Default, the Agency may withhold any TIF Revenues received, and shall not be required to remit said TIF Revenues as debt service on the Bond unless and until Redeveloper cures the Event of Default.
 - (iii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing and uncured for a period of more than sixty (60) days after written notice from the Agency to Redeveloper of such Event of Default, unless Redeveloper has commenced to cure the same and is diligently prosecuting the same to completion, the Agency may, upon further written notice to Redeveloper, terminate and void the Bond, in which case Redeveloper shall reimburse the Agency in amount equal to all TIF Revenues previously paid towards the Bond, within thirty (30) days' of the Agency's written notice.
- (d) No remedy herein conferred upon or reserved to the Agency or the registered owner of the Bond is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- (e) If any provision of this Redevelopment Contract is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular

breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

- (f) Anything in this Section 6 to the contrary notwithstanding, none of the events described in subsection 6(a)(iv) above shall, on their own, constitute an Event of Default after the Redevelopment Project has been completed.

Section 7. Status of Agency and City.

Neither the Agency nor the City is or shall be regarded as the partner, joint venturer or other jointly acting party with Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the Agency herein provided for are undertaken solely pursuant to the provisions of sections 18-2101 to 18-2150 of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. Redeveloper acknowledges that Redeveloper or its successors and assigns are and shall remain in control of the Redevelopment Project for all purposes provided that Redeveloper acknowledges and agrees that the City is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Redevelopment Project.

Section 8. Manner of Sale of Bond.

Redeveloper agrees either to purchase the Bond for the principal amount thereof or to find a purchaser for the Bond upon terms and conditions acceptable to the Agency. Neither the Agency nor the City under the terms of this Redevelopment Contract undertakes any responsibility with respects to the sale or placement of the Bond. Any such sale or placement of the Bond shall be by means of a private placement to a financial institution or other institutional buyer capable of evaluating the risks of investment in the Bond or to Redeveloper. Any such purchaser, including Redeveloper, shall provide to the Agency an investment letter setting forth the understanding as to purchase for investment and not for any further distribution, in form and substance approved by the Agency, in its sole discretion. The loan to be accomplished by this Section, and the obligation of the Agency to remit the TIF revenues for the Redevelopment Project as debt service on the Bond, may be accomplished by offset so that no bankable currency is exchanged between the Parties at closing of the Bond, notwithstanding other payments required hereunder. If the Agency so requests, Redeveloper shall, from time to time, furnish the Agency with satisfactory evidence as to the use and application of the TIF revenues.

Section 9. Reimbursement of Agency and City Fees.

Upon the full execution of this Redevelopment Contract, Redeveloper shall reimburse the Agency for its legal fees incurred in relation to the Redevelopment Project in the amount of \$12,000. Such reimbursement shall be payable directly to the Agency's special counsel, at the direction of the Agency. Additionally, prior to or contemporaneously with issuance of the Bond, Redeveloper shall reimburse the Agency in the amount of \$3,000 for its legal fees incurred in relation to issuance of the Bond. Such reimbursement shall be payable directly to the Agency's special counsel, at the direction of the Agency.

Section 10. Indemnification and Penal Bond

Redeveloper hereby agrees to indemnify and save the Agency and City harmless for any payment or liability to which the Agency or City may become subject for carrying out of any contract entered into by Redeveloper with respect to the Redevelopment Project. Redeveloper agrees to provide to the Agency evidence that there is in effect a bond for the payment costs as required under Section 18-2151 of the Act.

Section 11. Additional Parties Added as Redeveloper.

The Parties specifically agree that additional parties or entities may be admitted to and included within the meaning of the term “Redeveloper” upon the mutual written consent of both Parties.

Section 12. Redevelopment Contract Binding Upon Successors and Assigns.

This Redevelopment Contract is made for the benefit of Redeveloper, the Agency and the registered owners from time to time of the Bond as third party beneficiaries. This Redevelopment Contract shall be binding upon the Agency and Redeveloper, and any successors or assigns thereof. Redeveloper may assign its interest in the Redevelopment Project only upon receipt of prior written consent from the Agency. Notwithstanding the foregoing, and subject to the below terms, the Agency shall consent to any assignment of this Redevelopment Contract to a single-purpose entity that Redeveloper, or Redeveloper’s principals, maintains a controlling and majority interest in. The Agency and Redeveloper acknowledge and agree that, in the event Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the Assignee). No assignment by Redeveloper to the Assignee shall be effective until a written instrument binding the Assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the Assignee and recorded in the real estate records of Platte County, Nebraska, with respect to the Project Site.

Section 13. Titles of Sections.

Any titles of the several Sections of this Redevelopment Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 14. Notices.

Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given to the relevant Party at its address set forth below, or such other address as such Party may hereafter specify by notice to the other given by United States mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

- (a) in the case of Redeveloper, if mailed to or delivered personally to:

Zegar Investment Properties, LLC
c/o Scott Zegar
2050 33rd Ave, Suite 10
Columbus, NE 68601

With a copy to:

Cline Williams Wright Johnson & Oldfather, L.L.P.
c/o Andrew Willis
233 South 13th Street; Suite 19
Lincoln, NE 68508

- (b) in the case of Agency, if mailed to or delivered personally to:

City of Columbus, Nebraska
c/o City Administrator
2500 14th Street, Suite 3
P.O. Box 1677
Columbus, NE 68602

Each such notice, request or other communication shall be effective (i) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (ii) if given by any other means, when delivered at the addresses specified in this Section or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this Section.

Section 15. Severability.

If any provision of this Redevelopment Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs in this Redevelopment Contract shall not affect the remaining portions of this Redevelopment Contract or any part thereof.

Section 16. Counterparts.

This Redevelopment Contract may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 17. Law Governing.

The Parties agree that this Redevelopment Contract shall be governed and construed in accordance with the laws of Nebraska.

Section 18. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.

Section 19. Termination.

This Redevelopment Contract shall commence as of the date first above written and shall automatically terminate (if not otherwise terminated earlier pursuant to the terms of this Redevelopment Contract) upon the earlier of maturity of the Bond or payment of all principal and interest owed toward the Bond.

Section 20. Force Majeure Event.

No Party shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Contract in the event that a delay in the performance of such obligations is caused by a Force Majeure Event. A “**Force Majeure Event**” means any failure or delay in performance by a Party that is proximately caused by unforeseeable causes beyond its control and without its fault or negligence, such as acts of God, wars or insurrections, pandemics, and epidemics, among others. In the event of the occurrence of any such delay due to a Force Majeure Event, the time or times for performance of the obligations of the delayed Party shall be extended for the period of Force Majeure Event, as determined by the mutual agreement of the Parties. Any Party claiming such excused delay as the result of a Force Majeure Event shall, within twenty (20) days after the beginning of any such Force Majeure Event, notify the other Party in writing of the cause or causes thereof, and request an extension for the period of the delay.

Section 21. Effect of Redevelopment Contract.

This Redevelopment Contract (including the Plan as incorporated by reference) constitutes the entire understanding by and between the Parties concerning the subject matter hereof, and supersedes and replaces all prior agreements. No other prior or contemporaneous representations, inducements, promises or agreements, oral or otherwise, between or among the Parties relating to the subject matter hereof and not embodied in this Redevelopment Contract shall be of any force and effect.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the Agency and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF COLUMBUS, NEBRASKA

By: _____
Chairperson

ATTEST:

Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, Chairperson, and _____, Secretary, of the governing body of the Community Development Agency of the City of Columbus, Nebraska on behalf of such agency.

Notary Public

ZEGAR INVESTMENT PROPERTIES, LLC,
a Nebraska limited liability company

By: _____

Name: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of Zegar Investment Properties, LLC, a Nebraska limited liability company, on behalf of the company.

Notary Public

Exhibit "A"
Project Site

Legal Description:

Lots 1 through 3, Block A, Cuzzin's Corner 4th Addition, Columbus, Platte County, Nebraska;
AND

Lots 1 and 2, Block B, Cuzzin's Corner 4th Addition, Columbus, Platte County, Nebraska.

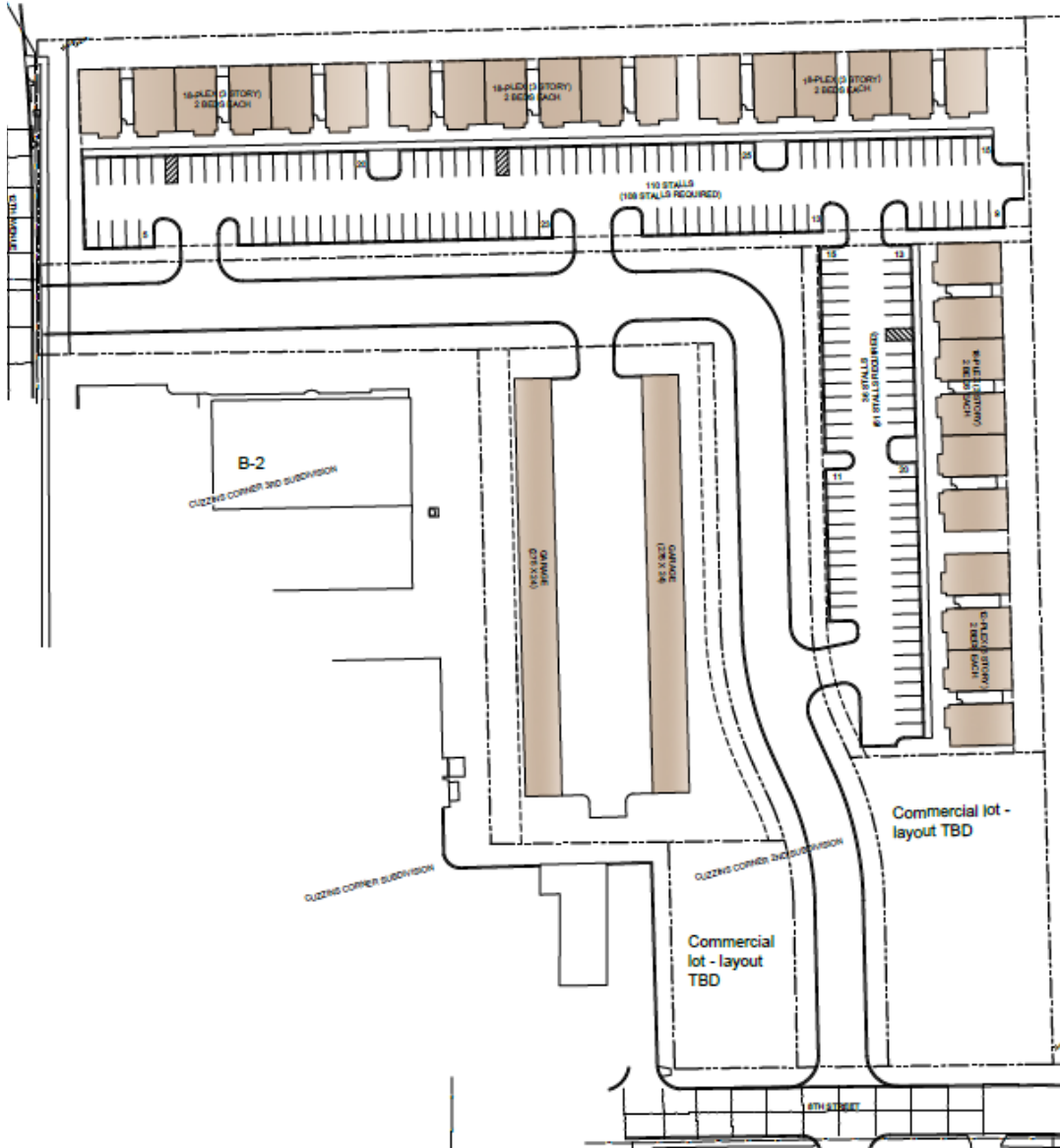
* In the event Redeveloper subdivides or replats the Project Site, the legal description(s) of such subdivided or replatted parcel(s) comprising the Project Site, upon final approval of the City with respect thereto, shall replace and supersede the above legal description.

Depiction:



* Project Site outlined in red.

Exhibit "B"
Redevelopment Project Conceptual Site Plans



* The above is a preliminary site plan and is subject to change.

Projected TIF Sources and Uses

Projected Sources and Assumptions:

| | | | | |
|-----------------------------|------------|--------|------------|------------|
| <u>General Assumptions:</u> | Tax Levy | 1.8246 | Base Value | |
| | Interest | 7.4% | Current | \$252,080 |
| | TIF Period | 15 | total sf | 234,884.47 |
| | | | \$/sf | \$0.93 |

| Lot | Final Value | | |
|--------------------|-------------|---------------|-------------|
| | Units | \$/SF or Unit | Final Value |
| 1, A - apartments | 54 | \$140,000 | \$7,560,000 |
| 2, A - apartments | 30 | \$140,000 | \$4,200,000 |
| 3, A - commercial | 10,000 | \$130 | \$1,300,000 |
| 1, B - garages | 13,200 | \$58 | \$765,600 |
| 2, B - coffee shop | 750 | \$600 | \$450,000 |

Total Base Value: \$252,080
 Total Final Value: \$14,275,600
 Total TIF Revenues: \$14,023,520
 Bond Principal Amount: \$2,268,293

* The above figures are projections and subject to change.

Projected TIF Uses:

| | |
|----------------------------------------------|--------------------|
| Land Acquisition | \$286,000 |
| Dirt Work and Infill | \$600,000 |
| Water Extension | \$94,000 |
| Sanitary Sewer | \$83,000 |
| Storm Sewer | \$220,000 |
| Paving | \$250,000 |
| Façade, Energy Efficiency, and Landscaping** | \$625,000 |
| Architectural and Engineering Fees | \$90,000 |
| Legal Fees | \$15,000 |
| City Fees | \$15,000 |
| TOTAL | \$2,278,000 |

* The above figures are only estimates of the Eligible Costs and such actual costs will be reflected in the cost certifications required under Section 2 of the Redevelopment Contract.

** Redeveloper is planning to use enhanced façade materials and landscaping to make the buildings more durable and to give them a clean, inviting, modern appearance. With respect to energy efficiency, Redeveloper will evaluate higher-end windows, air barriers, HVAC systems, and water heating. Redeveloper is also considering infrastructure for electric car charging and solar electric panels on the roof to generate power. All such enhancements shall be subject to City review in relation to their eligibility for reimbursement from TIF.

*** All Eligible Costs contemplated in the Plan and not otherwise specified herein shall be included as Eligible Costs for purposes of this Redevelopment Contract under this Exhibit "C".

Exhibit "D"
Form of Redevelopment Contract Memorandum for Recording

(See Attached)

When Recorded Mail To:
City of Columbus, Nebraska
c/o City Administrator
2500 14th Street, Suite 3
P.O. Box 1677
Columbus, NE 68602

MEMORANDUM OF REDEVELOPMENT CONTRACT

This Memorandum of Redevelopment Contract (“Memorandum”) is made this ___ day of _____, 20___, by and between the Community Development Agency of the City of Columbus, Nebraska (“Agency”) and Zegar Investment Properties, LLC, a Nebraska limited liability company (“Redeveloper”).

1. **Redevelopment Contract.** Agency and Redeveloper have entered into that certain Redevelopment Contract dated as of _____, 20___ (“Redevelopment Contract”), describing the public and private improvements being made by the Redeveloper in the Project Site, including the real property owned by Redeveloper and legally described as:

Lots 1 through 3, Block A, Cuzzin’s Corner 4th Addition, Columbus, Platte County, Nebraska; AND

Lots 1 and 2, Block B, Cuzzin’s Corner 4th Addition, Columbus, Platte County, Nebraska.

Notwithstanding the above legal description, in the event Redeveloper subdivides or replats the Project Site as part of the Redevelopment Project, the legal description(s) for the Project Site derived from any such subdivision or replat approved by the City of Columbus, Nebraska, shall supersede the legal description provided above.

2. **Tax Increment Financing.** The Redevelopment Contract provides for the capture of the tax-increment financing (“TIF”) revenues by the Agency of the improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the effective date (as defined in the Nebraska Community Development Law) of each Phase of the Redevelopment Project. The TIF revenues so captured by the Agency shall be used to reimburse Redeveloper for construction

of the Eligible Costs described in the Redevelopment Contract via debt service payments on a TIF bond issued by the Agency.

3. **Redevelopment Project Valuation.** The Redevelopment Contract establishes that Redeveloper intends to create a taxable real property valuation for the Project Site (inclusive of all lots/units therein) of not less than \$14,275,600 by January 1, 2030 (the "Project Minimum Valuation"). During the period that the Redevelopment Contract is in effect, Redeveloper, its successors and assigns, shall not protest a real estate property valuation, as determined by the appropriate assessing and taxing officials of Platte County, Nebraska, for purposes of local ad valorem real estate taxes, on any portion or lot within the Project Site, if such protest would result in a reduction to an amount below the Minimum Valuation for the entire Project Site. The prohibition in the preceding sentence shall apply to each and every tax parcel within the Project Site.

4. **Remaining Terms.** The rest and remaining terms of the Redevelopment Contract are hereby incorporated into this Memorandum as if they were set forth in full. All capitalized terms in this Memorandum that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract. A full and correct copy of the Redevelopment Contract may be inspected at the Agency offices in Columbus, Nebraska.

5. **Termination of Memorandum.** Unless terminated sooner in accordance with the terms of the Redevelopment Contract, this Memorandum shall be deemed to automatically terminate and be released from the above-described real property upon the payoff or maturity of the Bond.

(Signatures Follow)

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF COLUMBUS, NEBRASKA

By: _____
Chairperson

ATTEST:

Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ and _____, the Chairperson and Secretary, respectively, of the Community Development Agency of the City of Columbus, Nebraska, on behalf of said agency.

(S E A L)

Notary Public

ZEGAR INVESTMENT PROPERTIES, LLC,
a Nebraska limited liability company

By: _____

Name: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of Zegar Investment Properties, LLC, a Nebraska limited liability company, on behalf of the company.

(S E A L)

Notary Public

3. Resolution No. R24-91 approving contract with Vitality Apartments LLC for the 8th Street Residential Subdivision Redevelopment Project.

DRAFT

RESOLUTION NO. R24-91

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COLUMBUS, NEBRASKA, AS THE GOVERNING BODY OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF COLUMBUS, NEBRASKA, APPROVING A REDEVELOPMENT CONTRACT FOR A REDEVELOPMENT PROJECT UNDERTAKEN BY VITALITY APARTMENTS, LLC, AS SET FORTH IN THE "REDEVELOPMENT PLAN FOR THE 8TH STREET RESIDENTIAL SUBDIVISION REDEVELOPMENT PROJECT".

WHEREAS, the mayor and city council of the City of Columbus, Nebraska (the "City"), previously approved a redevelopment plan entitled, "Redevelopment Plan for the 8th Street Residential Subdivision Redevelopment Project" (the "Plan"); and

WHEREAS, the mayor and city council of the City, as the governing body of the Community Development Agency of the City (the "Agency"), has for its consideration, attached hereto and incorporated herein as Exhibit "A", a proposed form of the redevelopment contract by and between Vitality Apartments, LLC, as redeveloper, and the Agency, with respect to a redevelopment project specified in the Plan (the "Redevelopment Contract").

NOW, THEREFORE, BE IT RESOLVED, by the mayor and city council of the City, as the governing body of the Agency, that the Redevelopment Contract by and between Vitality Apartments, LLC, as redeveloper, and the Agency, in the form presented, is hereby acknowledged and approved. The Agency Chairperson (Mayor) and Secretary (City Clerk) are hereby authorized to execute said Redevelopment Contract in substantially the form presented but with such changes as they shall deem appropriate or necessary. The execution and delivery by the Mayor of the Redevelopment Contract, or any such documents, instruments, agreements or certifications relating to such matters contained in the Redevelopment Contract, shall conclusively establish their authority with respect thereto and the authorization and approval thereof.

INTRODUCED BY COUNCIL MEMBER _____

PASSED AND ADOPTED THIS _____ DAY OF _____, 2024.

CHAIRPERSON (MAYOR)

ATTEST:

SECRETARY (CITY CLERK)

APPROVED AS TO FORM:

Michael Savels

SPECIAL CITY ATTORNEY

EXHIBIT "A"
Redevelopment Contract

(See attached)

6446992.1

REDEVELOPMENT CONTRACT
(The 8th Street Residential Subdivision Redevelopment Project – Multifamily Phase)

This Redevelopment Contract for the 8th Street Residential Subdivision Redevelopment Project – Multifamily Phase (“**Redevelopment Contract**”) is made and entered into as of _____, 20____, by and between the Community Development Agency of the City of Columbus, Nebraska (the “**Agency**”), the City of Columbus, Nebraska (the “**City**”), and Vitality Apartments, LLC, a Nebraska limited liability company (“**Redeveloper**”). The Agency, City and/or Redeveloper may be referred to hereinafter individually as a “**Party**”, or collectively as the “**Parties**”.

WITNESSETH:

WHEREAS, pursuant to the Nebraska Community Development Law, Sections 18-2101, et seq. (the “**Act**”), the Mayor and City Council of the City adopted and approved a plan entitled “Redevelopment Plan for the 8th Street Residential Subdivision Redevelopment Project” (the “**Plan**”), setting forth a redevelopment project for the real estate described on Exhibit A, attached hereto and incorporated herein (the “**Redevelopment Area**”), which is located in the City, and which has previously been declared by the Mayor and City Council as a blighted and substandard area that is eligible for redevelopment; and

WHEREAS, the Agency has encouraged and induced Redeveloper to engage in certain development activities and construct improvements in the Project Site, and Redeveloper is not willing to incur the substantial investment necessary for such redevelopment of the Project Site without the assistance of tax-increment financing (“**TIF**”) provided by the Agency to Redeveloper in this Redevelopment Contract; and

WHEREAS, the Plan contemplates the construction of a mixed-density residential subdivision within the Redevelopment Area (referred to herein as the “**Redevelopment Project**”); and

WHEREAS, Redeveloper, pursuant to the Plan, intends to construct the multifamily portion of the Redevelopment Project within the Redevelopment Area, as depicted on the site plan attached hereto and incorporated herein as Exhibit C, all as more particularly described in the Plan (collectively, said improvements are referred to in this Redevelopment Contract as the “**Multifamily Project**”); and

WHEREAS, the Multifamily Project will occur on a portion of the Redevelopment Area, as set forth under Exhibit B, attached hereto and incorporated herein (the “**Project Site**”); and

WHEREAS, the City is undertaking certain public infrastructure and other public improvements within the Redevelopment Area as part of the Redevelopment Project (the “**City Improvements**”); and

WHEREAS, the real property within the Project Site, other than easements for public utilities and/or public rights-of-way, is or shall be privately owned by Redeveloper; and

WHEREAS, the Agency proposes to authorize issuance of its tax increment revenue bond, to provide for eligible costs relating to the Multifamily Project (the “**Redeveloper Bond**”), as shall be more particularly described in the resolution of the Agency authorizing issuance of the Redeveloper Bond (the “**Bond Resolution**”); and

WHEREAS, the Agency has separately authorized, or will authorize, issuance of its tax increment revenue bond to the City, to provide for eligible costs relating to the City Improvements (the “**City Bond**”); and

WHEREAS, the incremental ad valorem real estate taxes derived from the Redevelopment Project (the “**TIF Revenues**”) shall be pledged towards the payment of the Redeveloper Bond and City Bond, pursuant to, and in accordance with, the terms of this Redevelopment Contract; and

WHEREAS, Redeveloper seeks the assistance of the Agency for the costs of the eligible improvements for the Multifamily Project and is therefore willing to agree to the conditions herein set forth as an inducement to the Agency to issue the Redeveloper Bond as provided in the Bond Resolution.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the Agency, City, and Redeveloper do hereby agree, covenant, and warrant as follows:

Section 1. Representations, Warranties, and Covenants of Redeveloper.

Redeveloper hereby represents, covenants, and warrants as follows:

- (a) Redeveloper is a Nebraska limited liability company duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its certificate of organization or operating agreement(s), is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.
- (b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct, operate and maintain the Multifamily Project in accordance with the terms of this Redevelopment Contract and the Plan, or amendments thereof, the CCREs and Affordability Covenants (each defined below, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations).
- (c) Throughout the term of this Redevelopment Contract and subject to the provisions of Section 21 of this Redevelopment Contract, in the event of any casualty damage to the Multifamily Project, Redeveloper or its successors and assigns

agrees to repair and reconstruct such damaged portion or portions of the Multifamily Project so that such reconstructed real property has a taxable value at least equal to the value as most recently determined prior to the event or events of casualty loss. Redeveloper agrees to substantially effect such repair and reconstruction whether or not insurance proceeds are sufficient or available for such purposes.

- (d) Redeveloper or its assignee shall complete the Multifamily Project on or before December 31, 2026, at an estimated cost of \$36,124,400.
- (e) Redeveloper has not received, nor is it aware of, notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the Project Site or the construction of the Multifamily Project thereon may be or will be in violation of any law or regulation.
- (f) Redeveloper will use its best efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the Multifamily Project to be lawfully constructed, occupied or operated.
- (g) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.
- (h) To the best of the knowledge of Redeveloper, Redeveloper is not aware of any hazardous waste or other significant environmental pollution condition or hazard existing on or within the Project Site.
- (i) Redeveloper acknowledges and agrees that neither the Agency nor the City shall be obligated to pay any costs related to the Multifamily Project other than costs to be paid from available TIF Revenues, if any, and Redeveloper hereby undertakes and agrees to pay any and all such costs. All costs of the Multifamily Project shall be paid in full and there are and shall be no construction liens unpaid against the Project Site or any of the improvements thereon.
- (j) Redeveloper agrees and covenants for itself, its successors and assigns that while this Redevelopment Contract is in effect, 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 Multifamily Project. Redeveloper, for itself and its successors and

assigns, agrees that during the construction of the Multifamily 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 Multifamily Project.

- (k) Redeveloper agrees that any contractor providing services related to the Multifamily Project will utilize the federal immigration verification system, as defined in Section 4-114 of the Nebraska Revised Statutes, as amended or transferred, to determine the work eligibility status of new employees physically performing services on the Multifamily Project.
- (l) Prior to commencement of construction of the Multifamily Project, Redeveloper will own all real property within the Project Site, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.
- (m) Any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and a penal bond as required by the Act and Section 11 of this Redevelopment Contract, if applicable. The Agency, the City and Redeveloper shall be named as additional insureds on such policies. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Multifamily 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 or Redeveloper, as the case may be, with respect to any specific contract, shall also carry insurance on all stored materials. Upon request of the Agency or City, the contractor or Redeveloper, as the case may be, shall furnish the Agency and the City with a certificate of insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Agency and the City prior written notice in the event of cancellation of or material change in any of the policies.
- (n) At all times during the term of this Redevelopment Contract, Redeveloper shall maintain policies insuring the improvements located within the Project Site in an amount equal to one-hundred percent (100%) of their full insurable value.
- (o) With respect to the Multifamily Project, Redeveloper has not pursued or received, and will not pursue or receive, tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act, or a refund of the City's local option sales tax revenue.

- (p) Redeveloper represents and warrants that the Multifamily Project would not be financially feasible without the use of TIF, and therefore would not occur but-for the grant of TIF provided hereunder.
- (q) Subject to the approval rights contained herein, Redeveloper acknowledges and consents to the Agency filing those certain covenants, conditions, restrictions, and easements related to the construction, use and ownership of the residential subdivision comprising the Redevelopment Project, inclusive of the Multifamily Project and Project Site (referred to herein as the “CCREs”). Redeveloper further acknowledges and consents to the Agency filing those certain affordability covenants and restrictions governing the amount of rent which may be charged and/or the sale prices for the residential units constructed as part of the Redevelopment Project, inclusive of the Multifamily Project and Project Site (referred to herein as the “Affordability Covenants”). In accordance therewith, Redeveloper agrees to strictly comply with the CCREs and Affordability Covenants with respect to the Multifamily Project and/or Project Site. Redeveloper acknowledges and agrees that any action by the City or the Agency under this Redevelopment Contract shall not be deemed to be an approval, warranty, or other certification by the City or the Agency as to Redeveloper’s compliance under the CCREs or Affordability Covenants. The rights and obligations of the Parties under this Redevelopment Contract are conditioned upon Redeveloper's review and approval of the CCREs and Affordability Covenants prior to said documents being filed against the Project Site. In the event the CCREs and Affordability Covenants are not acceptable to Redeveloper for Redeveloper's intended use and operation of the Project Site, Redeveloper may terminate this Redevelopment Contract via written notice to the Agency and this Redevelopment Contract shall be void ab initio. Redeveloper acknowledges and agrees that if the Agency files the CCREs and Affordability Covenants against the Project Site, and Redeveloper subsequently closes on the purchase and sale of the Project Site, such act shall be deemed as an acceptance and approval of the CCREs and Affordability Covenants by Redeveloper.
- (r) Redeveloper acknowledges and agrees that vehicular ingress and egress to/from the Project Site shall be limited to two (2) driveway access points from 8th Street, at locations approved by the City, provided that the City may, in its discretion, approve an additional access point in the rear of the Project Site to connect with future development.
- (s) As part of the Multifamily Project, Redeveloper shall construct and maintain post-construction stormwater treatment and detention facility, with overflow discharge piping to the 8th Street storm sewer system, subject to the City’s oversight and approval.
- (t) Prior to commencement of construction of the Redevelopment Project, in addition to any other plan approval requirements under the CCREs, Redeveloper shall submit a landscaping plan for the entire Project Site to the City. Such landscaping

plan shall be subject to the City's review and approval, not to be unreasonably withheld.

- (u) As part of the Multifamily Project, Redeveloper shall construct two (2) sidewalk connections to the 8th Street trail being constructed by the City as part of the City Improvements for the Redevelopment Project.
- (v) Any exterior lighting within the Project Site shall be designed and constructed to be directed downward and pointed towards the interior of the Project Site, as to eliminate light pollution to neighboring properties.

Section 2. City Improvements; City Bond; Development Outside of Project Site; Conveyance of Project Site to Redeveloper.

For the benefit of the Redevelopment Area, the City will construct the City Improvements, as shown and/or described in the Plan. Among other sources, the City will finance the City Improvements via the Agency's issuance of the City Bond. The principal amount of the City Bond shall equal the difference between the amount of TIF authorized under the Plan, as may be amended, and the principal amount of the Redeveloper Bond, as set forth under Section 3, below. The interest rate for the City Bond shall be determined by the Agency, in its reasonable discretion. Debt service payments on the City Bond shall be funded from the TIF Revenues in accordance with the priority of payment set forth in Section 3 of this Redevelopment Contract. The City Bond and Redeveloper Bond are collectively referred to herein as the "**Bonds**".

As detailed above, the City Improvements will benefit the entire Redevelopment Area, inclusive of, but not limited to, the Project Site. The City and Agency anticipate that the Redevelopment Project will result in the development and redevelopment of the other parcels within the Redevelopment Area outside of the Project Site (such parcels being referred to herein as the "**Future Development Sites**"). In accordance with the Plan, the prospective development of the Future Development Sites constitutes additional phases of the Redevelopment Project, from which the TIF Revenues will be allocated as debt service on both the City Bond and Redeveloper Bond (in addition to the TIF Revenues derived from the Multifamily Project). Notwithstanding the foregoing, the Parties shall not have any obligations or liabilities to one another with respect to the Future Development Sites and/or the prospective development thereon, other than their respective obligations provided hereunder. Additionally, this Redevelopment Contract shall not confer any rights or remedies upon any person or entity, including but not limited to the owner(s) or future owner(s) of the Future Development Sites, other than the Parties hereto and their respective successors and permitted assigns.

Following the full execution of this Redevelopment Contract, Redeveloper and the Agency shall enter into a mutually-agreeable purchase and sale contract for the Project Site. In accordance therewith, the rights and obligations of the Parties under this Redevelopment

Contract are conditioned upon Redeveloper and Agency closing on the sale of the Project Site to Redeveloper. In the event the purchase and sale contract for the Project Site between Redeveloper and Agency is terminated prior to such closing, this Redevelopment Contract shall be void ab initio.

Section 3. Incorporation of Plan; Redeveloper Bond; Priority.

This Redevelopment Contract hereby incorporates the Plan by this reference. In order to provide for payment of some of the eligible improvements for the Multifamily Project set forth in the Plan and this Redevelopment Contract, as described in Exhibit D, attached hereto and incorporated herein (the "**Eligible Costs**"), the Agency shall proceed to issue the Redeveloper Bond on a form provided by the Agency and set forth in the Bond Resolution, in the principal amount not to exceed \$3,350,000, at an interest rate not to exceed 6.50%. In consideration of Redeveloper undertaking the Multifamily Project, the Agency shall issue the Redeveloper Bond to Redeveloper no earlier than thirty (30) days following the Agency's adoption of the Bond Resolution. At closing of the Redeveloper Bond, the loan to be accomplished by this Section and the obligation of the Agency to use the TIF Revenues for redevelopment purposes under this Redevelopment Contract may be accomplished by offset so that the Redeveloper retains the TIF Revenues and no bankable currency is exchanged at closing of the Redeveloper Bond, except as otherwise provided herein. The Redeveloper Bond shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes.

The "**Effective Date**" (as defined in the Act) for the division of TIF Revenues with respect to the Redevelopment Project, or portion thereof, shall be January 1 of the year in which a "Notice to Divide Tax for Community Redevelopment Project" (the "**Notice to Divide**") is filed with the offices of the Platte County Treasurer and Assessor, pursuant to Section 18-2147 of the Act, with respect to the Redevelopment Area, or portion thereof. The "redevelopment project valuation" (as defined in the Act) shall be the assessed value attributable to the Redevelopment Area, or applicable portion thereof, on January 1 of the year prior to the Effective Date. Redeveloper shall provide written notice to the Agency requesting filing of the Notice to Divide prior to July 1 of the calendar year in which Redeveloper wishes to establish the Effective Date for the Project Site. Upon receipt of said timely notice, and in conformance with Section 18-2147 of the Act, the Agency shall file the Notice to Divide for the Project Site on or before August 1 of such year. If Redeveloper fails to timely request filing of the Notice to Divide in accordance with this paragraph, neither the Agency nor City shall be liable for any damages stemming therefrom, including but not limited to, any loss, or potential loss, in TIF Revenues related to the failure to establish the Effective Date in the year desired. With respect to the Future Development Sites, the Agency shall determine, in its sole and exclusive discretion, the timing for filing of the Notice(s) to Divide. As between the Project Site and the Future Development Sites, it is anticipated that the various parcels within the Redevelopment Area may be subject to different Notices to Divide, and thereby have different Effective Dates. The parcel or collection of parcels included within the same Notice to Divide is referred to herein as a "**Phase**".

The Bonds shall constitute a limited obligation of the Agency payable exclusively from the TIF Revenues generated from the Redevelopment Project pursuant to Section 18-2147 of the

Act and collected for a period not to exceed fifteen (15) tax years from the Effective Date of each Phase. Prior to receipt of any TIF Revenues, the Agency shall create a special fund established solely to make payments on the Bonds. Upon receipt of the TIF Revenues, the Agency shall first deposit the TIF Revenues into the special fund, and shall disburse said funds to the holders of the Bonds (but only from available TIF Revenues), at the times provided in the Bonds, in accordance with the following priority:

- (a) Fifty percent (50%) of annual TIF Revenues derived from the Redevelopment Project on the entire Redevelopment Area shall be disbursed and allocated towards debt service on the Redeveloper Bond.
- (b) Fifty percent (50%) of annual TIF Revenues derived from the Redevelopment Project on the entire Redevelopment Area shall be disbursed and allocated towards debt service on the City Bond.
- (c) Following the full payment of all principal and interest on either the Redeveloper Bond or City Bond, one hundred percent (100%) of the TIF Revenues derived from the Redevelopment Project on the entire Redevelopment Area shall be disbursed and allocated towards debt service on the portion of the Bonds that remains outstanding, until full payment or final maturity thereof, whichever occurs first.

The principal amount paid on the Redeveloper Bond and City Bond, as applicable, shall not exceed the aggregate amount of Eligible Costs incurred by Redeveloper and City, respectively, as evidenced by paid invoices or other materials tendered to the Agency ("**Eligible Costs Certifications**"). Each such reimbursement hereunder shall be and constitute a grant to Redeveloper or City, as applicable, made under the terms of this Redevelopment Contract and the Act. Redeveloper and City may submit one or more partial Eligible Costs Certifications prior to expenditure of all Eligible Costs providing certification of receipt of billings for work in progress. All Eligible Costs Certifications shall be subject to review and approval by the Agency prior to the funding of such Eligible Costs. If Redeveloper fails to submit Eligible Cost Certifications in an amount equal to or greater than the principal amount on the Redeveloper Bond upon completion of the Multifamily Project, the principal and interest amounts on the Redeveloper Bond shall be reduced to the amount of Eligible Costs Certifications received/approved by the Agency; and Redeveloper shall cooperate with respect to all actions reasonably necessary, in the Agency's discretion, to accomplish the same.

Section 4. Workforce Housing Project; Conditions Related Thereto.

As set forth in the Plan, and pursuant to the Act and the workforce housing incentive plan adopted by the City in accordance therewith (the "**Incentive Plan**"), this Redevelopment Contract specifically contemplates and authorizes the use of TIF for the residential improvements constructed as part of the Multifamily Project that meet the criteria set forth under Section 18-2103(32)(c) of the Act, as may be adjusted from time to time (referred to herein as "**Workforce Housing TIF**").

So long as the residential units constructed as part of the Multifamily Project comply with the criteria set forth under 18-2103(32)(c) of the Act, such improvements shall be considered “Workforce Housing” under the Act, and shall be eligible for treatment as such with respect to the City’s administration of TIF (i.e., such improvement shall constitute Eligible Costs).

If some, but not all, of the residential units constructed by Redeveloper meet the eligibility criteria for Workforce Housing TIF, only the qualifying units shall be eligible for Workforce Housing TIF. Any ineligible portion(s) or unit(s) shall still qualify for normal TIF, but the hard construction costs of the private improvements associated with such ineligible unit(s) shall not be considered Eligible Costs.

To ensure compliance with the foregoing, upon Redeveloper’s submission of any Eligible Cost Certification which includes costs associated with the hard construction costs for private improvements (i.e., the construction of the physical apartment building(s) and units therein), such Eligible Cost Certification shall be supported and/or supplemented by sufficient documentation evidencing that the residential units associated therewith met the criteria under 18-2103(32)(c) of the Act. Unless and until the Agency receives the same, such improvements will not be deemed as Eligible Costs.

Section 5. Covenants With Respect to Taxation of Project Site.

Redeveloper agrees with respect to the Multifamily Project as follows:

- (a) Until the termination of this Redevelopment Contract, the Multifamily Project shall be operated for the use substantially similar to that contemplated in the Plan and this Redevelopment Contract, and no sale or conveyance of the Project Site (inclusive of the improvements thereon), or a portion thereof, shall be made to any person or entity for ownership or use which would cause the real property within the Project Site to be eligible for exemption from ad valorem taxes under Section 77-202 of the Nebraska Revised Statutes, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.
- (b) Redeveloper intends to create a taxable real property valuation of not less than \$26,400,000 within the Project Site (the “**Minimum Valuation**”) no later than January 1, 2027. From and after the effective date of this Redevelopment Contract, and so long as the Redeveloper Bond remains outstanding and unpaid, Redeveloper, together with its successors and assigns, including subsequent purchasers of land within the Project Site, shall not protest any taxable valuation assessed for the Project Site, as determined by the appropriate assessing and taxing officials of Platte County, Nebraska, for purposes of local ad valorem real estate taxes, to an amount below the Minimum Valuation.
- (c) If, during the period of this Redevelopment Contract, Redeveloper’s 50% allocation of the TIF Revenues from the Redevelopment Project on the entire

Redevelopment Area are not sufficient to provide debt service on the Redeveloper Bond: (1) if Redeveloper has monetized the Redeveloper Bond by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender; and (2) in the event of a shortfall of TIF Revenues available as debt service on the Redeveloper Bond, Redeveloper agrees to defer receipt of any such shortfall. If Redeveloper defers the receipt of any such shortfall amounts as required hereunder, Redeveloper shall, subject to the payment priorities set forth under Section 3, be entitled to receive reimbursement of any such shortfall payment to the extent TIF Revenues later become available during the division period prescribed by the Act in an amount in excess of the amount necessary to meet the current debt service payments. Redeveloper shall and hereby does unconditionally forgive any such shortfall amounts remaining unpaid on the Redeveloper Bond at the end of the period for the division of ad valorem real estate taxes prescribed by the Act. Redeveloper shall have no obligations with respect to any shortfall on the City Bond.

- (d) Redeveloper, its successors and assigns, including subsequent purchasers of land within the Project Site, further agree as follows:
- (i) to pay all local ad valorem real estate taxes for the Project Site as levied and assessed before the same become delinquent; and
 - (ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the Project Site or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings; and
 - (iii) not to seek any tax deferral or tax abatement with respect to local ad valorem taxes, either as presently or prospectively authorized under any law of the State of Nebraska or federal law with respect to the Project Site; and
 - (iv) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which are assessed, levied, confirmed, imposed or become payable with respect to the Project Site or Multifamily Project; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body; and
 - (v) to retain copies of all supporting documents (as defined under Section 18-2119(4) of the Act) generated and received by Redeveloper in relation to

the Multifamily Project or Plan until the expiration of three years following the end of the last fiscal year in which TIF are divided in relation to the Redevelopment Project. This Section 5(d)(v) shall survive the expiration or termination of this Redevelopment Contract.

Section 6. Release and Indemnification.

Redeveloper hereby releases from and covenants and agrees that the Agency and the City, together with their governing body, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purpose of this Section 6, collectively, the “**Indemnified Parties**”), shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect arising from the Multifamily Project or within the Project Site. Provided, however, such release shall not be deemed to include such liability actions arising directly out of the willful misconduct of the Agency or the City.

Additionally, the Indemnified Parties shall not have any pecuniary obligation or monetary liability under this Redevelopment Contract with respect to the Multifamily Project or Project Site. The obligation of the Indemnified Parties on the Bonds or any indebtedness contemplated hereunder shall be limited solely to the TIF Revenues generated by the Redevelopment Project pledged as security for such indebtedness. Specifically, but without limitation, the Indemnified Parties shall not be liable to Redeveloper or any other third party for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder.

Section 7. Covenants to Run with the Land; Easement; Recording of Redevelopment Contract.

Redeveloper and Agency agree and acknowledge that this Redevelopment Contract and the undertakings of Redeveloper and the Agency as herein provided for shall be considered as and constitute covenants running with the land binding upon Redeveloper and the Agency and their successors and assigns and upon each successive owner of the Project Site or any portion thereof. Redeveloper hereby acknowledges and agrees that by the terms of this Redevelopment Contract it is binding and obligating any and all of its interest in the Project Site, now or hereafter acquired, and hereby covenants and warrants for the benefit of the Agency and the registered owner of the Redeveloper Bond that Redeveloper shall defend such interest in the Project Site against the claims and interests of any and all persons. Redeveloper shall record a memorandum of this Redevelopment Contract, in a form approved by the Agency, against all real estate located in the Project Site and such document shall remain of record until termination of this Redevelopment Contract. The Agency and City shall have the authority to execute the memorandum without additional public determinations or meetings. As and to the extent that this Redevelopment Contract does not have priority by order of recording over each and every mortgage or other instrument securing indebtedness of Redeveloper, Redeveloper hereby agrees to obtain the written agreement in recordable form from each mortgagee or other encumbrancer having any such priority, which written form acknowledges and agrees to the terms of this

Redevelopment Contract, unless waived in writing by the Agency. Redeveloper agrees to provide the Agency with a title report or other evidence as to the status of title to the Project Site after the recording of the memorandum of this Redevelopment Contract. After the Redeveloper Bond has been paid in full, Redeveloper or any successor or assign of Redeveloper shall have the right to request in writing and the Agency shall, upon such request, execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Contract and of the covenants and undertakings herein provided. The Agency shall have the right, from time to time in its sole and reasonable discretion, to release specific parcels or lots located within the Redevelopment Area, other than the Project Site, from any or all of the specific provisions of this Redevelopment Contract.

Section 8. Default and Remedies upon Default.

Redeveloper and Agency agree with respect to any defaults or failures of performance by Redeveloper or Agency as follows:

- (a) The following shall constitute “Events of Default” under the terms of this Redevelopment Contract:
 - (i) failure by Redeveloper or Agency to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;
 - (ii) any representation or warranty made herein by Redeveloper or Agency proves untrue in any respect reasonably deemed to be material by the other Party;
 - (iii) an event of default or material breach by or attributable to Redeveloper relating to the Multifamily Project or any portion thereof, including, without limitation, breach of the terms of any agreement or other instrument relating to the financing or construction thereof; or
 - (iv) Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of Redeveloper or any part of its property or commences any proceeding related to Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against Redeveloper any such proceedings and Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for Redeveloper or any part of its property or suffers any such receivership or trusteeship.

- (v) an event of default or material breach by or attributable to Redeveloper, or in relation to the Multifamily Project and/or Project Site, under the CCRES or Affordability Covenants.
- (b) Whenever an Event of Default occurs, and is not cured within thirty (30) days after written notice from a non-defaulting Party, in addition to all other remedies available to the Agency or Redeveloper at law or in equity, the Agency or Redeveloper may: (1) suspend its performance under this Redevelopment Contract until receiving adequate assurances from Redeveloper or Agency that Redeveloper or Agency has cured the default and will continue performance under this Redevelopment Contract; and/or (2) take such action at law or in equity as the Agency or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Contract; provided that the remedy of specific performance against Redeveloper shall not include or be construed to include the covenant to build or construct the Multifamily Project.
- (c) In addition to the remedies under Section 8(b), the Agency shall have the following additional remedies upon an Event of Default by Redeveloper:
 - (i) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, the City or Agency shall have the right, but not the obligation, to cure such breach on behalf of Redeveloper with respect to the construction of the improvements characterized as Eligible Costs. If the City or Agency elects to cure a breach of Redeveloper, Redeveloper shall reimburse the City or Agency for the documented and reasonable costs of curing Redeveloper's breach within 30 days of demand from City or Agency given to Redeveloper. If Redeveloper's breach can be cured by the payment of Eligible Costs, the City or Agency may cure such defect and obtain reimbursement, with notice to Redeveloper, via a set off to the principal amount of the Redeveloper Bond equal to the Eligible Costs reasonably expended by the City or Agency. The Eligible Costs expended by the City or Agency must be certified by the City or Agency to the holder of the grant proceeds and all subsequent distributions of TIF Revenues shall be distributed to the City or Agency, as applicable, until such Eligible Costs expended by the City or Agency have been reimbursed in full. Interest shall accrue on the amount expended by the City or Agency at the rate provided in the Redeveloper Bond and such interest shall commence from the date that the Agency gives notice to Redeveloper of Redeveloper's Event of Default.
 - (ii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, following written notice from the Agency to Redeveloper of such Event of Default, the Agency may withhold any TIF Revenues received, and shall not be

required to remit said TIF Revenues as debt service on the Redeveloper Bond unless and until Redeveloper cures the Event of Default.

- (iii) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing and uncured for a period of more than sixty (60) days after written notice from the Agency to Redeveloper of such Event of Default, unless Redeveloper has commenced to cure the same and is diligently prosecuting the same to completion, the Agency may, upon further written notice to Redeveloper, terminate and void the Redeveloper Bond, in which case Redeveloper shall reimburse the Agency in amount equal to all TIF Revenues previously paid towards the Redeveloper Bond, within thirty (30) days' of the Agency's written notice.
- (d) No remedy herein conferred upon or reserved to the Agency or the registered owner of the Redeveloper Bond is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- (e) If any provision of this Redevelopment Contract is breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
- (f) Anything in this Section 8 to the contrary notwithstanding, none of the events described in subsection 8(a)(iv) above shall, on their own, constitute an Event of Default after the Multifamily Project has been completed.

Section 9. Status of Agency and City.

Neither the Agency nor the City is or shall be regarded as the partner, joint venturer or other jointly acting party with Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the Agency herein provided for are undertaken solely pursuant to the provisions of Sections 18-2101 to 18-2150 of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. Redeveloper acknowledges that Redeveloper or its successors and assigns are and shall remain in control of the Multifamily Project for all purposes provided that Redeveloper acknowledges and agrees that the City is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Multifamily Project.

Section 10. Manner of Sale of Bond; Payment of Agency's Legal Fees.

Redeveloper agrees either to purchase the Redeveloper Bond for the principal amount thereof or to find a purchaser for the Redeveloper Bond upon terms and conditions acceptable to the Agency. The loan to be accomplished by this Section, and the obligation of the Agency to remit the TIF Revenues for the Redevelopment Project as debt service on the Redeveloper Bond, may be accomplished by offset in consideration of Redeveloper's warranties and obligations hereunder, so that Redeveloper retains the TIF Revenues and no bankable currency is exchanged between the Parties at closing of the Redeveloper Bond, except as otherwise required hereunder. If the Agency so requests, Redeveloper shall, from time to time, furnish the Agency with satisfactory evidence as to the use and application of the TIF Revenues.

Upon full execution and effectiveness of this Redevelopment Contract, Redeveloper shall reimburse the Agency for its legal fees incurred in relation to the Multifamily Project in the amount of \$12,000. Prior to or contemporaneously with issuance of the Redeveloper Bond, Redeveloper shall reimburse the Agency for its legal fees incurred in relation to the issuance of the Redeveloper Bond in the additional amount of \$3,000. Such reimbursements shall be payable directly to the Agency or Agency's special counsel, at the direction of the Agency.

Section 11. Indemnification and Penal Bond

Redeveloper hereby agrees to indemnify and save the City and Agency harmless from any payment or liability to which the City or Agency may become subject for carrying out of any contract entered into by Redeveloper with respect to the Multifamily Project. Redeveloper agrees to procure, through itself or its contractors, a bond (or bonds) for the payment of costs to the extent required under Section 18-2151 of the Act. The City and Agency shall be included as co-obligees on any such bond (or bonds). Prior to undertaking any construction upon public lands or within a public right-of-way, as applicable, Redeveloper shall provide a copy of such bond (or bonds) to the Agency, evidencing that the same is in effect in accordance with the requirements of this Section.

Section 12. Additional Parties Added as Redeveloper.

The Parties specifically agree that additional parties or entities may be admitted to and included within the meaning of the term "Redeveloper" upon the mutual written consent of both Parties.

Section 13. Redevelopment Contract Binding Upon Successors and Assigns.

This Redevelopment Contract is made for the benefit of Redeveloper, the Agency, the City and the registered owners from time to time of the Bonds as third party beneficiaries. This Redevelopment Contract shall be binding upon the Agency, City and Redeveloper, and any successors or assigns thereof. Redeveloper may assign its interests under this Redevelopment Contract, in whole or in part, and/or convey the Project Site, or a portion thereof, to an unrelated third party, upon the prior written approval of the Agency and City, not to be unreasonably withheld. The Agency, City and Redeveloper acknowledge and agree that, in the event

Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the assignee). No assignment by Redeveloper to the assignee shall be effective until a written instrument binding the assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the assignee and recorded in the real estate records of Platte County, Nebraska, with respect to the Project Site.

Section 14. Titles of Sections.

Any titles of the several Sections of this Redevelopment Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 15. Notices.

Except as otherwise specified herein, all notices hereunder shall be in writing and shall be given to the relevant Party at its address set forth below, or such other address as such Party may hereafter specify by notice to the other given by United States mail or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

- (a) in the case of Redeveloper, if mailed to or delivered personally to:

Vitality Apartments, LLC
c/o Spencer Lombardo
18210 Camelback Ave.
Omaha, NE 68136

with a copy to:

Cline Williams Wright Johnson & Oldfather, L.L.P.
c/o Andrew Willis
233 South 13th Street; Suite 19
Lincoln, NE 68508

- (b) in the case of Agency and/or City, if mailed to or delivered personally to:

City of Columbus, Nebraska
c/o City Administrator
2500 14^t Street, Suite 3
P.O. Box 1677
Columbus, NE 68602

Each such notice, request or other communication shall be effective (i) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (ii) if given by any other means, when delivered at the addresses specified in this Section 14 or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this Section.

Section 16. Severability.

If any provision of this Redevelopment Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs in this Redevelopment Contract shall not affect the remaining portions of this Redevelopment Contract or any part thereof.

Section 17. Counterparts.

This Redevelopment Contract may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 18. Law Governing.

The Parties agree that this Redevelopment Contract shall be governed and construed in accordance with the laws of Nebraska.

Section 19. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.

Section 20. Termination.

This Redevelopment Contract shall commence as of the date first above written and shall terminate upon the earlier of the date on which TIF Revenues for the Redevelopment Project may no longer be divided under Section 18-2147 of the Act, or payment of all principal and interest owed toward the Bonds.

Section 21. Force Majeure Event.

No Party shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Contract in the event that a delay in the performance of such obligations is caused by a Force Majeure Event. A “**Force Majeure Event**” means any failure or delay in performance by a Party that is proximately caused by

unforeseeable causes beyond its control and without its fault or negligence, such as acts of God, wars or insurrections, pandemics, and epidemics, among others. In the event of the occurrence of any such delay due to a Force Majeure Event, the time or times for performance of the obligations of the delayed Party shall be extended for the period of Force Majeure Event, as determined by the mutual agreement of the Parties. Any Party claiming such excused delay as the result of a Force Majeure Event shall, within twenty (20) days after the beginning of any such Force Majeure Event, notify the other Party in writing of the cause or causes thereof, and request an extension for the period of the delay.

Section 22. Effect of Redevelopment Contract.

This Redevelopment Contract (including the Plan as incorporated by reference) constitutes the entire understanding by and between the Parties concerning the subject matter hereof, and supersedes and replaces all prior agreements. No other prior or contemporaneous representations, inducements, promises or agreements, oral or otherwise, between or among the Parties relating to the subject matter hereof and not embodied in this Redevelopment Contract shall be of any force and effect.

(Signatures on following pages)

IN WITNESS WHEREOF, the Agency and Redeveloper have caused this Redevelopment Contract to be executed by their duly authorized representatives.

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF COLUMBUS, NEBRASKA

By: _____
Chairperson

ATTEST:

Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, Chairperson, and _____, Secretary, of the Community Development Agency of the City of Columbus, Nebraska on behalf of such agency.

Notary Public

VITALITY APARTMENTS, LLC,
a Nebraska limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, the _____ of Vitality Apartments, LLC, a Nebraska limited liability company, on behalf of the company.

Notary Public

Exhibit A
Redevelopment Area

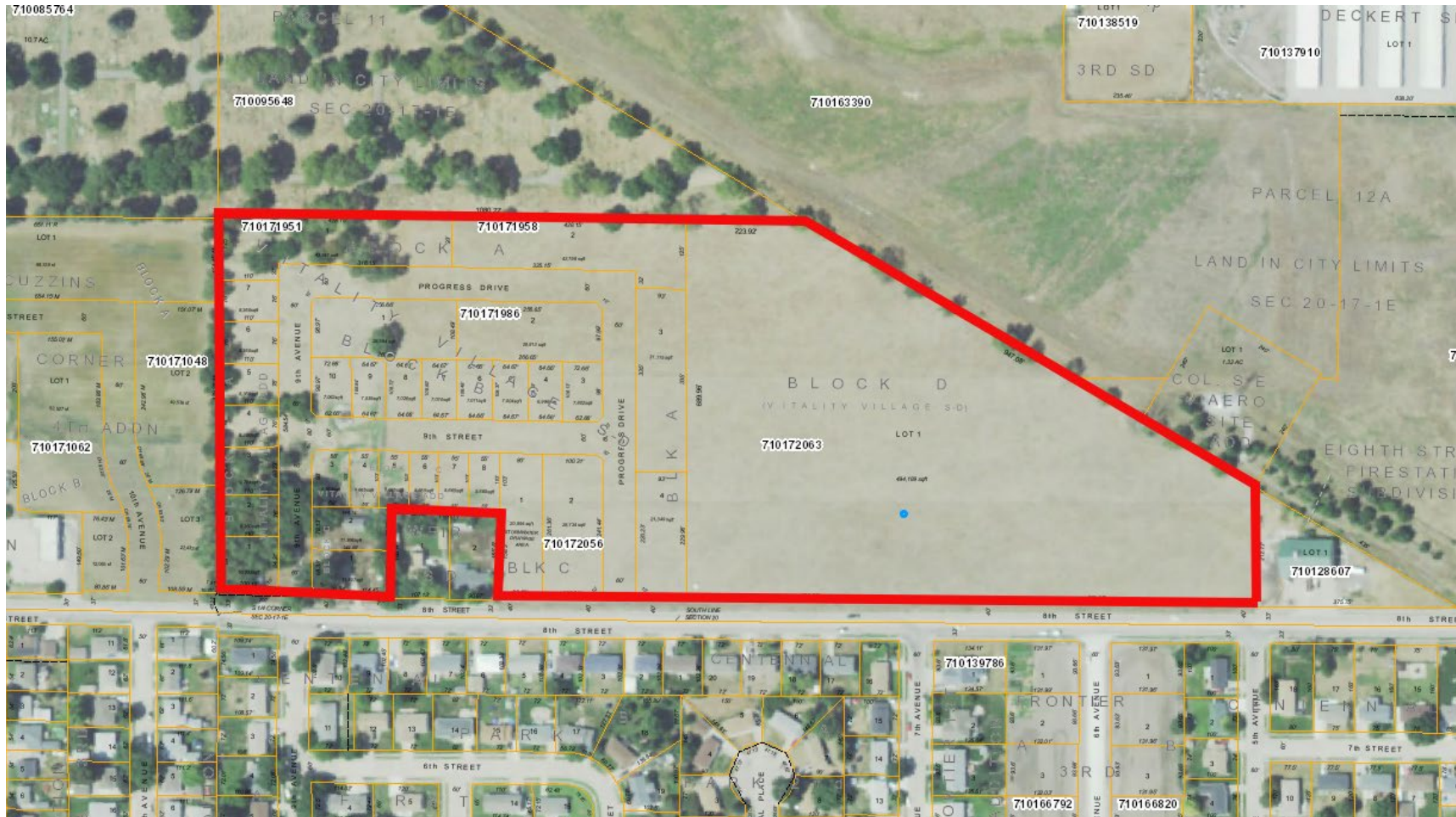
Legal Description:

Lots 1-4, Block A, and Lots 1-10, Block B, and Lots 1 and 2, Block C, and Lot 1, Block D, all in Vitality Village Subdivision, a Subdivision of Lots 8-11, Block A, and Lots 1-12, Block B, and Lots 9-13, Block C, and Lots 1 and 2, Block D, Vitality Village Addition to the City of Columbus, Platte County, Nebraska; AND

Lots 1-7, Block A, and Lots 1-8, Block C, all in Vitality Village Addition to the City of Columbus, Platte County, Nebraska.

* In the event the Redevelopment Area is replatted or subdivided as part of the Redevelopment Project, the legal description(s) for the Redevelopment Area derived from any such replat or subdivision approved by the City of Columbus, Nebraska, shall supersede the legal description provided above.

Redevelopment Area Depiction:



* Redevelopment Area outlined in red

Exhibit B
Project Site

Legal Description:

Lot 1, Block D, Vitality Village Subdivision, a Subdivision of Lots 8-11, Block A, and Lots 1-12, Block B, and Lots 9-13, Block C, and Lots 1 and 2, Block D, Vitality Village Addition to the City of Columbus, Platte County, Nebraska.

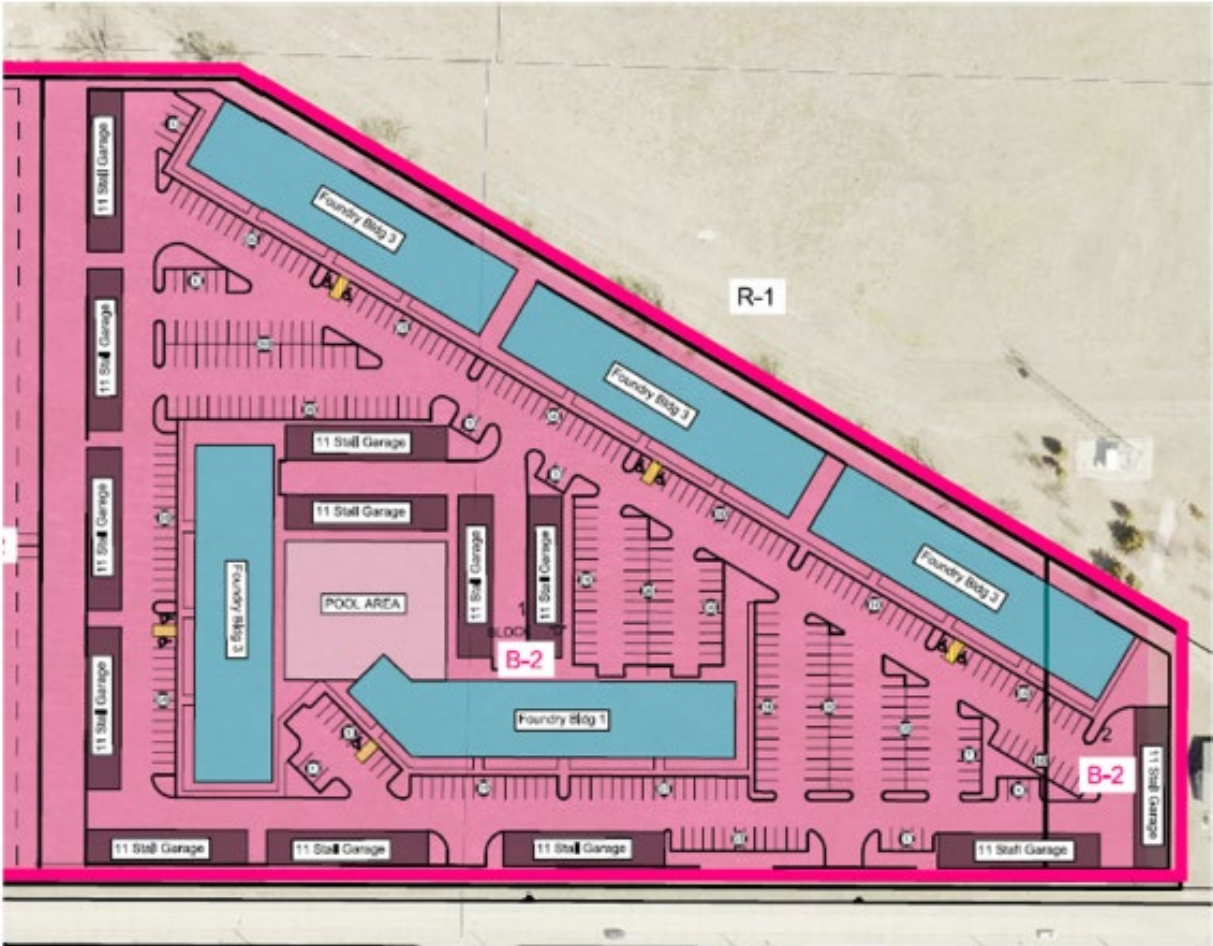
* In the event the Project Site is replatted or subdivided as part of the Redevelopment Project, the legal description(s) for the Project Site derived from any such replat or subdivision approved by the City of Columbus, Nebraska, shall supersede the legal description provided above.

Project Site Depiction:



* Project Site outlined in red

Exhibit C
Multifamily Project Plan



Conceptual Renderings:



* The site plans contained under this Exhibit C are for reference purposes only and are subject to change.

Exhibit D
Projected TIF Uses

Redeveloper's Eligible Costs/Projected TIF Uses

| | |
|------------------------------------|---------------------|
| Land Acquisition: | \$350,400 |
| Workforce Housing Improvements:*** | \$31,440,000 |
| Architecture and Engineering: | \$339,000 |
| Legal Fees: | \$15,000 |
| TOTAL: | \$32,144,400 |

City's Eligible Costs/Projected TIF Uses

| | |
|-------------------------------------|--------------------|
| Land Acquisition: | \$790,965 |
| Mobilization & Site Preparation: | \$51,925 |
| Storm Water: | \$78,300 |
| Paving: | \$1,763,550 |
| Storm Sewer: | \$758,000 |
| Water: | \$415,400 |
| Sanitary Sewer: | \$428,500 |
| Contingency: | \$428,664 |
| Legal and Consulting Fees: | \$42,886 |
| 8 th Street Roundabouts: | \$3,300,000 |
| TOTAL: | \$8,058,170 |

* The above figures are only estimates of the Eligible Costs and other costs, and such actual costs will be reflected in the Eligible Costs Certifications required under Section 3 of the Redevelopment Contract.

** All Eligible Costs contemplated in the Plan and not otherwise specified herein shall be included as Eligible Costs for purposes of this Redevelopment Contract under this Exhibit D.

*** Subject to meeting the criteria of Workforce Housing TIF, as detailed under Section 4 of the Redevelopment Contract.

4. Adjournment.