

Agenda Packet

COMMUNITY DEVELOPMENT AGENCY

Wednesday, August 23, 2017
12:00 p.m.

Created 8/21/2017 4:15 PM

Notice of Meeting
Community Development Agency

The Community Development Agency will meet on Wednesday, August 23, 2017 at 12:00 p.m. at the City Council Chambers, 309 N. 5th St., Norfolk, Nebraska.

The Agency reserves the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

An agenda for such meeting, kept continuously current, is available at the office of the City Administrator, City of Norfolk, 309 N 5th St, Norfolk, Nebraska, during normal business hours.

Elizabeth A. Deck
Norfolk City Clerk &
CDA Secretary

Publish (August 18, 2017)
1 P.O.P.

COMMUNITY DEVELOPMENT AGENCY

AGENDA

August 23, 2017

Call to Order

1. Call meeting to order
2. Inform the public about the location of the Open Meeting Act posted in the City Council Chambers and accessible to members of the public.
3. Roll Call

Action Items/Discussion Items

- | | |
|--|---------------|
| 4. Approve Agenda | Motion |
| 5. Approve the minutes of the August 7, 2017 agency meeting. | Motion |
| 6. Consideration of approval of the Redevelopment Contract for Fountain Point North Redevelopment Project - Phase I. | Motion |

STAFF MEMORANDUM
COMMUNITY DEVELOPMENT AGENCY

August 23, 2017

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Action Items/Discussion Items

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| 4. Approve Agenda | Motion |
| 5. Approve the minutes of the August 7, 2017 agency meeting. | Motion |

See Enclosure 5.

- | | |
|--|---------------|
| 6. Consideration of approval of the Redevelopment Contract for Fountain Point North Redevelopment Project - Phase I. | Motion |
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This item refers to the redevelopment contract for Phase I of the Fountain Point Redevelopment Project. The CDA, Planning Commission and City Council have approved the redevelopment plan, and this agreement provides the terms to implement the plan. In addition, the City Council will consider the subdivision agreement for the Fountain Point Project at the August 21 regular meeting. This agreement is consistent with the subdivision terms.

See Enclosure 6.

COMMUNITY DEVELOPMENT AGENCY

The Community Development Agency of the City of Norfolk, Nebraska, met in the City Council Chambers, 309 N 5th Street, Norfolk, Nebraska, on Monday, August 7, 2017, beginning at 5:15 p.m.

Chair Josh Moenning called the meeting to order.

Roll call found the following Agency members present: Shane Clausen, Dave Fauss, Corey Granquist, Gary L. Jackson, Jim Lange, Rob Merrill, Josh Moenning, Thad Murren and Dick Pfeil. Absent: None.

City staff members present were City Administrator Andy Colvin, City Attorney Clint Schukei, City Clerk Beth Deck, Police Chief Bill Mizner and Finance Officer Randy Gates.

Notice of the meeting was given in advance by publication in the Norfolk Daily News, and the notice of the meeting was given to the Chair and all members of the Agency prior to the meeting.

The Chair presided and the Secretary recorded the proceedings.

The Chair informed the public about the location of the current copy of the Open Meetings Act posted in the meeting room and accessible to members of the public.

Agenda

Lange moved, seconded by Fauss to approve the agenda as printed. Roll call: Ayes: Clausen, Fauss, Granquist, Jackson, Lange, Merrill, Moenning, Murren and Pfeil. Nays: None. Absent: None. Motion carried.

Minutes

(July 17, 2017)

Lange moved, seconded by Granquist to approve the minutes of the July 17, 2017 Agency meeting as printed. Roll call: Ayes: Clausen, Fauss, Granquist, Jackson, Lange, Merrill, Moenning, Murren and Pfeil. Nays: None. Absent: None. Motion carried.

Resolution No. 2017-10

(Medelman's Lake Redevelopment Plan)

Lange moved, seconded by Merrill to adopt Resolution No. 2017-10 approving Medelman's Lake Redevelopment Area Plan and forward to the City Council.

Tom Huston, 233 S 13th Street, Lincoln, Nebraska provided information to elected officials.

The plan covers approximately 290 acres to be developed over seven (7) phases with 180 lots. Phase I is to develop 18 lots. The final step will be for elected officials to consider the redevelopment agreement which will be forthcoming.

Roll call: Ayes: Clausen, Fauss, Granquist, Jackson, Lange, Merrill, Moenning, Murren and Pfeil. Nays: None. Absent: None. Motion carried. Resolution No. 2017-10 was adopted.

Re-Ratify Assignment
(McIntosh Family, L.L.C.)

Lange moved, seconded by Granquist to re-ratify approval of an Assignment from McIntosh Family L.L.C., a Nebraska limited liability company, to Whitecliff Development, Inc., a Nebraska corporation, of the Meadow Ridge Phase II Redevelopment Contract.

Gates explained that on June 22, 2017, the Community Development Agency approved the Assignment of the Meadow Ridge Phase II Redevelopment Contract to Whitecliff Development Inc. However, Exhibit "A" (the Redevelopment Contract for McIntosh Family, LLC, dated 3-16-2015) was not attached to the Assignment and was not included in the agenda packet. On July 17 the CDA ratified approval of the Assignment with the attached Redevelopment Contract; however, the Register of Deeds won't file this Assignment. She says the Assignment has conflicting legal descriptions. The Redevelopment Contract attached to the Assignment had a metes and bounds legal description of all of Meadow Ridge Phase IV, 2nd Addition; while the Assignment itself just refers to Out Lot A of Meadow Ridge Phase IV, 2nd Addition. The Register of Deeds wants the attachment removed and instead referenced in the Assignment with the book and page number where it is filed in the Register of Deeds Office.

Roll call: Ayes: Clausen, Fauss, Granquist, Jackson, Lange, Merrill, Moenning, Murren and Pfeil. Nays: None. Absent: None. Motion carried.

There being no further business, the Chair declared the meeting adjourned at 5:22 p.m.

Josh Moenning, Chair

ATTEST:

Elizabeth A. Deck, Secretary

(S E A L)

**REDEVELOPMENT CONTRACT
(FOUNTAIN POINT NORTH REDEVELOPMENT PROJECT – PHASE I)**

This Redevelopment Contract is made and entered into as of the ____ day of _____, 2017, by and between the Community Development Agency of the City of Norfolk, Nebraska (“CDA”) and Fountain Point Development, LLC, a Nebraska limited liability company (“Redeveloper”).

RECITALS

A. The CDA is a duly organized and existing community development agency, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Redevelopment Contract.

B. The City of Norfolk (the “City”), in furtherance of the purposes and pursuant to the provisions of Article VIII, Section 12 of the Nebraska Constitution and Neb. Rev. Stat. §§ 18-2101 to 18-2154, as amended (collectively the “Act”), has adopted a Redevelopment Plan for a blighted and substandard area designated by the City, including the Redevelopment Area.

C. Redeveloper owns the Project Site which is located in the Redevelopment Area.

D. Redeveloper submitted a redevelopment project proposal as described in the Redevelopment Plan for the Fountain Point Redevelopment Area to redevelop the Project Site and a sites adjacent thereto in multiple phases, which shall be subject to one or more separate redevelopment agreements.

E. Phase I of the proposed redevelopment project, which is the subject of this Redevelopment Contract and which shall be referred to herein as the “Project”, involves the construction of a new approximately 70,000 to 80,000 square foot medical office building, and construction of a new approximately 87 unit senior living facility, parking lots, and associated improvements.

F. The CDA has approved the Redevelopment Plan which includes the first phase of the Redeveloper’s proposed redevelopment project, including the utilization of tax-increment financing to assist in the cost of the eligible public improvements defined in this Redevelopment Contract.

G. CDA and Redeveloper desire to enter into this Redevelopment Contract for redevelopment of the Project Site.

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

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

A. “Act” means Article VIII, Section 12 of the Nebraska Constitution, Neb. Rev. Stat. §§ 18-2101 through 18-2154, as amended, and acts amendatory thereof and supplemental thereto.

B. “CDA” means the Community Development Agency of the City of Norfolk, Nebraska.

C. “City” means the City of Norfolk, Nebraska.

D. “Effective Date” means one or more effective dates of the Project determined in accordance with Section 3.01 of this Redevelopment Contract for the purpose of dividing the ad valorem taxes generated by the Project pursuant to Section 18-2147 of the Act.

E. “Eligible Project Costs” means only costs or expenses incurred by Redeveloper for Public Improvements that are eligible for reimbursement under the Act.

F. “Lot One” means all that certain real property legally described as Lot One (1), Fountain Point Addition, as surveyed, platted and recorded in the City of Norfolk, Madison County, Nebraska.

G. “Lot Three” means all that certain real property legally described as Lot Three (3), Fountain Point Addition, as surveyed, platted and recorded in the City of Norfolk, Madison County, Nebraska.

H. “Minimum Lot One Valuation” means an amount equal to Thirteen Million Eight Hundred Fifty Thousand and No/100 Dollars (\$13,850,000.00).

I. “Minimum Lot Three Valuation” means an amount equal to Six Million and No/100 Dollars (\$6,000,000.00).

J. “Private Improvements” means all the private improvements to be constructed on the Project Site as more particularly described on Exhibit “A” attached and incorporated by this reference.

K. “Project” means the improvements to the Project Site and adjacent thereto, including the Private Improvements and Public Improvements defined

herein and described on Exhibit "A". For purposes of this Redevelopment Contract, the term "Project" shall not be construed to include subsequent phases of the Redeveloper's overall redevelopment project.

L. "Project Completion Date" means on or before December 31, 2019.

M. "Project Site" means all that certain real property situated in the City, more particularly described on Exhibit "A". The Project Site is comprised of both Lot One and Lot Three.

N. "Public Improvements" shall include all the public improvements more particularly described on Exhibit "A" which are eligible improvements under the Act. The costs of the Public Improvements include the debt service payments of the TIF Indebtedness.

O. "Redeveloper" means Fountain Point Development, LLC, a Nebraska limited liability company or its assignee, which is subject to the written approval of the CDA.

P. "Redevelopment Contract" means this Redevelopment Contract between the CDA and Redeveloper with respect to the Project.

Q. "Redevelopment Area" means the Redevelopment Area that is referred to as the Fountain Point Redevelopment Area and that is legally described in the Redevelopment Plan.

R. "Redevelopment Plan" means the Redevelopment Plan for the Fountain Point Redevelopment Area approved by the City Council of the City on July 17, 2017 pursuant to Resolution No. 2017-47, as amended.

S. "TIF Indebtedness" means any bonds, notes, loans and advances of money or other indebtedness, including interest thereon, issued by the CDA or the City secured in whole or in part by TIF Revenues.

T. "TIF Revenues" or "Tax Increment" means incremental ad valorem taxes generated by the Project which are allocated to and paid to the CDA pursuant to the Act.

Section 1.02 Construction and Interpretation.

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

(a) This Redevelopment Contract shall be interpreted in accordance with and governed by the laws of the State of Nebraska, including the Act.

(b) Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word "may" shall be deemed

permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.

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

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

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

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by the CDA.

The CDA makes the following representations and findings:

(a) The CDA is a duly organized and validly existing Community Development Agency under the Act.

(b) The CDA deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper for the redevelopment of the Project Site as specified herein.

(c) The Project will achieve the public purposes of the Act by, among other things, increasing employment, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Area.

Section 2.02 Representations of Redeveloper.

Redeveloper makes the following representations and findings:

(a) Redeveloper is a Nebraska limited liability company, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.

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

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

(d) Redeveloper owns the Project Site, in fee simple and free from any liens, encumbrances, or restrictions which would prevent the performance of this Contract by Redeveloper.

(e) Redeveloper shall not assign this Contract to any successor or assignee without the written approval of the CDA.

ARTICLE III OBLIGATIONS OF THE CDA AND PUBLIC IMPROVEMENTS

Section 3.01 Capture of Tax Increment.

Subject to the contingencies described below and to all of the terms and conditions of this Contract, commencing for the tax year of each Effective Date of the Project and continuing thereafter, the CDA shall capture the Tax Increment, as defined below, from the Project pursuant to the Nebraska Community Development Law. The CDA shall capture the Tax Increment generated by the Project for a total period of not to exceed fifteen (15) years following the establishment of the Effective Date in the year in which the Private Improvements on each lot have been completed and included in the assessed valuation of the Project Site and the Project Site is generating the Tax Increment subject to capture by the CDA (the "TIF Period").

The Project Site is composed of two (2) separate lots, as legally described on Exhibit "A". The Redeveloper anticipates that commencement of construction of the Private Improvements on each such lot may not occur simultaneously. In order to optimize the Tax Increment generated by the Project, the Project may have two (2) Effective Dates for purposes of the division of ad valorem taxes pursuant to Section 18-2147 of the Act. Each Effective Date shall be directly related to the timing of construction of the Private Improvements. Commencing on July 1, 2018 and annually on or before each July 1 thereafter until a "Notice to Divide Taxes" has been filed for each lot, the Redeveloper shall notify the CDA in writing whether either or both of the lots should be included in the Notice to Divide Taxes for such year. The CDA shall file the Notice to Divide Taxes with the Madison County Assessor on or prior to August 1 of such year, establishing such year as the Effective Date for the lot(s) identified in the Redeveloper's notice.

Section 3.02 Tax Increment.

The term Tax Increment shall mean, in accordance with Section 18-2147 of the Act, the difference between the ad valorem tax which is produced by the tax

levy (fixed each year by the Madison County Board of Equalization) for the Project Site before the completion of the construction of the Private Improvements, and the ad valorem tax which is produced by the tax levy for the Project Site after completion of construction of the Private Improvements as part of the Project. Due to the anticipated construction schedule of the Private Improvements, it is not expected that the full amount of the annual Tax Increment for the Project will be generated in the first year that a Notice to Divide Tax is filed, but will be generated following completion of construction of all of the Private Improvements comprising the Project. The anticipated Tax Increment for the Project is more particularly described on Exhibit "B" attached hereto and incorporated by this reference.

The parties acknowledge and understand that ad valorem taxes in Nebraska are typically paid in arrears in the year following the year the taxes are levied. Accordingly, the Tax Increment created in the fifteenth (15th) year following the Effective Date pursuant to Section 18-2147 of the Act and this Contract may be paid in the sixteenth (16th) year according to customary practice in Nebraska. Said payment in arrears only affects the timing of tax payments, but does not in any way affect or limit the TIF Period.

Section 3.03 Issuance of TIF Indebtedness.

No sooner than thirty (30) days following the approval and execution of this Contract, the CDA shall incur or issue TIF Indebtedness (the "TIF Note") in an amount not to exceed Three Million Nine Hundred Seventy Thousand and No/100 Dollars (\$3,970,000.00), to be issued to the Redeveloper, or to a lender of the Redeveloper, which shall entitle the holder of the TIF Note to receive the semi-annual incremental tax payments generated by the Project. The TIF Indebtedness, which shall be in the form of a TIF Promissory Note, attached as Exhibit "B-1", shall not be a general obligation of the CDA or City which shall issue such Note solely as a conduit.

If the Redeveloper intends to monetize the TIF Note, it shall locate a lender or other entity to acquire and fund the acquisition of the TIF Note for this TIF Indebtedness. Redeveloper may pledge or assign the TIF Note to such lender and the CDA shall consent to such pledge upon written notification by the Redeveloper to the CDA in substantially the same form as Exhibit "F". The TIF Note issued to Redeveloper shall be secured by a pledge or assignment of the Tax Increment to be captured by the CDA.

Section 3.04 Use of TIF Indebtedness.

The CDA will collect and use the Tax Increment to pay debt service on the TIF Indebtedness incurred as provided in Section 3.03 of this Redevelopment Contract. Notwithstanding the foregoing, the amount of the TIF Note that the CDA agrees to service and repay with the Tax Increment shall not exceed Three Million Nine Hundred Seventy Thousand and No/100 Dollars (\$3,970,000.00) in Eligible Project Costs as certified by Redeveloper pursuant to Section 4.02 and listed on Exhibit "C". The Tax Increment, less the CDA's costs, shall be paid

pursuant to the terms of any TIF Promissory Note and/or TIF resolution issued by the CDA relating to this Project. The uses of the TIF Indebtedness described on Exhibit "C" is intended to be consistent with and fund those costs as described on the Subdivision Agreement between the Redeveloper and the City of Norfolk. These improvements include:

(a) Grading and site preparation of the entirety of Fountain Point North;

(b) Sanitary sewer lines to be installed:

- In Madison Avenue from 37th Street to 40th Street;
- Developer shall contribute to the City Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) of the TIF Indebtedness to assist the City in extending the sanitary sewer line to and in 37th Street;
- In 37th Street from south edge of the redevelopment area to Madison Avenue; and
- City responsible for extending the sanitary sewer line to 37th Street at City cost.

(c) Water lines to be installed:

- From highway 275 to the south line of Lot 3 in 37th Street;
- In Madison Avenue from 37th Street to 40th Street; and
- In 40th Street from Highway 25 to the south line of Lot 4.

(d) Street improvements and storm sewer improvements:

- Redeveloper shall install street paving in 37th Street from Highway 275 (using the existing paving where possible as installed by NDOT) as a two (2) lane street, to include a right turn lane at Madison Avenue, to the south line of Lot 3;
- Madison Avenue as a two (2) lane road from 37th Street to 40th Street; and
- 40th Street shall be constructed as part of the development of Lot 4 as provided in the Subdivision Agreement between Redeveloper and the City of Norfolk.

(e) Sidewalks/Trails to be installed:

- A eight (8) foot trail along the west side of 37th Street from Highway 275 to the south line of redevelopment area;
- A four (4) foot sidewalk on the south side of Madison Avenue and an eight (8) foot trail on the north side of Madison Avenue; and
- An eight (8) foot sidewalk on the east side of 40th Street when it is constructed.

Section 3.05 Tax Increment Receipts.

The CDA will collect and hold the receipts of the Tax Increment for payment on the TIF Note. Such Tax Increment receipts shall be used for no purpose other than to pay TIF Indebtedness issued pursuant to Section 3.03 above.

Section 3.06 Projected TIF Sources and Uses.

In addition to the TIF Indebtedness calculation formula set forth on Exhibit "B", the anticipated TIF sources and uses are set forth on the attached and incorporated Exhibit "C". The Projected Uses of the TIF funds are eligible under the Act, and are estimates which shall be confirmed upon construction completion and certified by the Redeveloper under Section 4.02 below.

**ARTICLE IV
OBLIGATIONS OF REDEVELOPER**

Section 4.01 Construction of Project; Insurance.

(a) Redeveloper will complete the Public Improvements and the Private Improvements as described on Exhibit "A" and install all equipment necessary to operate the Public Improvements and the Private Improvements no later than the Project Completion Date. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Public Improvements and the Private Improvements. Until construction of the Public Improvements and the Private Improvements has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the CDA as to the actual progress of Redeveloper with respect to construction of the Public Improvements and the Private Improvements. Promptly after substantial completion by Redeveloper of the Public Improvements and the Private Improvements, Redeveloper shall notify the CDA of the completion and request that the CDA issue a Certificate of Completion, the form of which is attached as Exhibit "D" and incorporated by this reference. Once issued by the CDA, the Certificate of Completion shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of Redeveloper to construct the Public Improvements and the Private Improvements, and Redeveloper shall be entitled to record the Certificate of Completion.

(b) Any contractor chosen by Redeveloper or Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond as required by the Act. The CDA shall be named as an additional insured. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "special causes of loss" insurance for physical loss or damage.

Section 4.02 Cost Certification.

Redeveloper shall submit to the CDA a certification of Eligible Project Costs, after expenditure of such project costs to verify the uses described on Exhibit "C". Redeveloper may, at its option, submit one or more partial Eligible Project Costs Certifications prior to expenditure of all Eligible Project Costs providing certification of receipt of billings for work in progress. All Eligible Project Costs Certifications shall be subject to review and approval by the CDA prior to the funding of such eligible costs.

Section 4.03 No Discrimination.

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

Section 4.04 Pay Real Estate Taxes.

(a) Redeveloper intends to create a taxable real property valuation of Lot One of not less than the Minimum Lot One Valuation set forth in Section 1.01(H) above, and a taxable real property valuation of Lot Three of not less than the Minimum Lot Three Valuation set forth in Section 1.01(I) above, no later than as of the Project Completion Date. During the period of this Contract, Redeveloper, its successors and assigns, will: (1) not protest a real estate property valuation of Lot One to a sum less than or equal to the Minimum Lot One Valuation; (2) not protest a real estate property valuation of Lot Three to a sum less than or equal to the Minimum Lot Three Valuation; and (3) not convey the Project Site or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

(b) If, during the period of this Contract, Lot One is assessed at less than the Minimum Lot One Valuation, Redeveloper shall either: (1) seek to protest the valuation of Lot One upwards such that the valuation is equal to or greater than the Minimum Lot One Valuation; and/or (2) make a payment in lieu of taxes to the CDA upon thirty (30) days written notice in the amount of the shortfall equal to the amount the anticipated Tax Increment, as set forth on Exhibit "B", exceeds the actual Tax Increment for such lot; provided, however, that Redeveloper shall only be obligated to make such payment in lieu of taxes to the extent that the actual Tax Increment is insufficient to meet the current debt service payments on the TIF Promissory Note. Redeveloper may assign the right and obligation to make the payment in lieu of taxes to the successor in interest of Lot 1 upon written notice to the CDA. If Redeveloper is required to pay any such shortfall as a payment in lieu of taxes, the Redeveloper shall be entitled to receive reimbursement of any such shortfall payment to the extent TIF Revenues later become available during the TIF Period in an amount in excess of the amount necessary to meet the current debt

service payments. Any such shortfall amounts not reimbursed at the end of the TIF Period shall be forgiven.

Section 4.05 No Assignment or Conveyance.

Redeveloper shall not convey, assign or transfer the Project Site, any interest therein, or this Contract without the prior written consent of the CDA, which shall not be unreasonably withheld and which the CDA may make subject to any terms or conditions it reasonably deems appropriate, except for the following assignments as security for indebtedness, which shall be permitted without consent of the CDA:

(a) previously incurred by Redeveloper or incurred by Redeveloper after the applicable Effective Date for Project costs or any subsequent physical improvements to the Project Site with the outstanding principal amount of all such indebtedness (whether incurred prior to or after the Effective Date) secured by the Project Site which shall have lien priority over the obligations of Redeveloper pursuant to this Redevelopment Contract, or

(b) any additional or subsequent conveyance as security for indebtedness incurred by Redeveloper for Project costs or any subsequent physical improvements to the Project Site provided that any such conveyance shall be subject to the obligations of Redeveloper pursuant to this Redevelopment Contract.

Section 4.06 Agency Costs.

Redeveloper shall reimburse the Agency and the City, as applicable, for legal fees and costs incurred by the City or the Agency in connection with this Redevelopment Contract and the issuance of the Bond. The total amount to be reimbursed pursuant to this provision shall not exceed \$7,500.00.

**ARTICLE V
FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES**

Section 5.01 Financing.

Redeveloper shall pay all costs for the construction of the Private Improvements and the Public Improvements. Redeveloper shall be responsible for arranging all necessary financing for the construction of the Public Improvements and Private Improvements, including, with respect to the Public Improvements, the TIF Indebtedness.

Section 5.02 Encumbrances.

Redeveloper shall not create any lien, encumbrance or mortgage on the Project or the Project Site except: (a) encumbrances which secure indebtedness incurred to acquire, construct and equip the Project or for any other physical improvements to the Project Site, (b) easements and rights of entry granted by

Redeveloper, (c) construction and materialman liens that may be filed in connection with the construction of the Private Improvements so long as any such lien is discharged or bonded within 90 days of completion of the Private Improvements, and (d) any other liens so long as any such lien is satisfied and released or substitute security is posted in lieu thereof within 90 days of Redeveloper receiving notice thereof.

ARTICLE VI DEFAULT, REMEDIES; INDEMNIFICATION

Section 6.01 General Remedies of the CDA and Redeveloper.

Subject to the further provisions of this Article VI, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by either party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform or in breach of its obligations; provided that, in view of the additional remedies of the CDA set out in Section 6.02, the remedy of specific performance by Redeveloper shall not include or be construed to include the covenant to build or construct the Private Improvements or Project.

Section 6.02 Additional Remedies of the CDA.

In the event that:

- (a) Redeveloper, or successor in interest, shall fail to commence and subsequently complete the construction of the Project on or before the Project Completion Date, or shall abandon construction work for any period of 120 days (not including any period covered pursuant to the terms of Section 6.04 below);
- (b) Redeveloper, or successor in interest, shall fail to pay real estate taxes or assessments on the Project Site or any part thereof when due, and such taxes or assessments or payments in lieu of taxes shall not have been paid, or provisions satisfactory to the CDA made for such payment within thirty (30) days following written notice from the CDA;
- (c) Redeveloper does not maintain an assessed valuation equal to or greater than the Minimum Lot One Valuation and Minimum Lot Three Valuation, respectively, for each of developed Lot One and Lot Three

for the term of this Contract and fails to satisfy the obligations of Section 4.04(b) of this Contract; or

- (d) There is, in violation of Section 4.05 of this Redevelopment Contract, transfer of the Project Site or any part thereof, and such failure or action by Redeveloper has not been cured within 30 days following written notice from the CDA,

then Redeveloper shall be in default of this Redevelopment Contract; and in the event that such failure to perform, breach or default is not cured in the period herein provided, the parties agree that the damages caused to the CDA would be difficult to determine with certainty. To the extent that such failure results in the fact that the CDA is not able to capture the full amount of the anticipated Tax Increment contemplated hereunder, Redeveloper shall be obligated, on an annual basis, to remit the sum by which the anticipated Tax Increment exceeds the actual Tax Increment.

Section 6.03 Remedies in the Event of Other Redeveloper Defaults.

In the event Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 6.02), and such failure has not been cured within 30 days following written notice from the CDA, then Redeveloper shall be in default. In such an instance, the CDA may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that the default covered by this Section shall not give rise to a right of rescission or termination of this Redevelopment Contract.

Section 6.04 Limitation of Liability; Indemnification.

(a) Notwithstanding anything in this Article VI or this Redevelopment Contract to the contrary, neither the CDA, the City, nor their officers, directors, employees, agents or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The obligation of the CDA on any TIF Indebtedness shall be limited solely to the Tax Increment pledged as security for such TIF Indebtedness. Specifically, but without limitation, neither the City nor the CDA shall be liable for any costs, liabilities, actions, demands, or damages for failure of any representations, warranties or obligations hereunder. Redeveloper releases the CDA and the City from and agrees that the CDA and the City shall not be liable for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Private Improvements. Provided, however, such release shall not be deemed to include such liability actions as arise directly out of the willful misconduct of the CDA or the City.

(b) Redeveloper agrees to indemnify, defend (at the CDA's and/or the City's option) and hold harmless the CDA, the City, their respective employees, officials, agents, representatives and volunteers from and against any and all

liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature, arising out of or in connection with any aspect of the acts, omissions, negligence or willful misconduct of Redeveloper, its employees, agents, officers, contractors or subcontractors, or Redeveloper's performance or failure to perform under the terms and conditions of this Redevelopment Contract. Such indemnification, hold harmless and defense obligation shall exclude only such liability actions as arise directly out of acts, omissions, or willful misconduct of the CDA or the City. The indemnification and defense obligations set forth herein shall survive the termination of this Redevelopment Contract.

ARTICLE VII MISCELLANEOUS

Section 7.01 Memorandum.

A Memorandum of this Redevelopment Contract in the form attached hereto as Exhibit "E" and incorporated by this reference shall be recorded with the Madison County Register of Deeds for the Project.

Section 7.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including the Act.

Section 7.03 Binding Effect; Amendment.

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

Section 7.04 No Agency or Partnership.

This Redevelopment Contract is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between the CDA and the City, on the one hand, and Redeveloper, on the other hand, nor between the CDA and the City, on the one hand, and any officer, employee, contractor or representative of Redeveloper, on the other hand. No joint employment is intended or created by this Redevelopment Contract for any purpose. Redeveloper agrees to so inform its employees, agents, contractors and subcontractors who are involved in the implementation of or construction under this Redevelopment Contract.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the CDA and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

“CDA”

COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF
NORFOLK, NEBRASKA

ATTEST:

By: _____ By: _____
Secretary Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ and _____, Chairman and Secretary respectively of the Community Development Agency of the City of Norfolk, Nebraska, a public body corporate and politic, on behalf of the Agency.

Notary Public

“REDEVELOPER”
FOUNTAIN POINT DEVELOPMENT,
LLC, a Nebraska limited liability
company

Michael J. Anderson, Manager

David Ostdiek, Manager

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Michael J. Anderson, Manager for Fountain Point Development, LLC, on behalf of the company.

Notary Public

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by David Ostdiek, Manager for Fountain Point Development, LLC, on behalf of the company.

Notary Public

TABLE OF EXHIBITS:

Exhibit "A" – Description of Project
Exhibit "B" – TIF Indebtedness
Exhibit "B-1" – TIF Note
Exhibit "C" – Projected TIF Sources and Uses
Exhibit "D" – Certificate of Completion
Exhibit "E" – Memorandum of Redevelopment Contract
Exhibit "F" – Form of Investor Letter

EXHIBIT "A"

DESCRIPTION OF PROJECT

The Project undertaken by Redeveloper on the Project Site, defined as the real estate legally described as:

Lot One (1) and Lot Three (3), Fountain Point Addition, as surveyed, platted and recorded in the City of Norfolk, Madison County, Nebraska,

shall consist of the following:

- (a) **Private Improvements.** The private improvements to be constructed by the Redeveloper on the Project Site include: (a) a new approximately 70,000 to 80,000 square foot medical office building on Lot One; and (b) a new approximately 87 unit senior living facility on Lot Three, parking lots, and associated improvements.
- (b) **Public Improvements.** Site preparation, installation and extension of public utilities, installation of streets and sidewalks, improvements to Highway 275 and 37th Street, landscaping, hardscaping and streetscaping, and other improvements which qualify as eligible expenditures for public improvements under the Act as determined in the Redevelopment Contract; paid for, in part, by the tax increment generated by the Private Improvements.

The Project constitutes one phase of the overall Fountain Point North Redevelopment Project described in the Redevelopment Plan. All Public Improvements for this Project shall be public improvements for the overall redevelopment project, and all public improvements anticipated for other phases of the overall project shall be deemed to be Public Improvements for this Project.

EXHIBIT "B"

TIF INDEBTEDNESS

1. **Principal Amount.** The principal amount of the TIF Indebtedness shall be the amount, together with interest accruing thereon, which can be amortized by the Maturity Date, solely from the Tax Increment Revenues based upon the current aggregate ad valorem tax rate applicable to the Project Site multiplied by an assumed valuation of Lot One of \$13,850,000.00, plus an assumed valuation of Lot Three of \$6,000,000.00, less the base valuation, subject to required debt service coverage, required reserve, and cost of issuance, but such principal amount shall not exceed Three Million Nine Hundred Seventy Thousand and No/100 Dollars (\$3,970,000.00).
2. **Anticipated Tax Increment:** Approximately \$397,000.00 annually, comprised of: (a) \$273,000.00 from the medical office building on Lot 1; and (b) \$124,000.00 from the senior living facility on Lot 3.
3. **Payments.** Semi-annually with interest only until real estate taxes are fully collected for the tax year of the applicable Effective Date in an amount sufficient to fully amortize the TIF Indebtedness on or before the Maturity Date.
4. **Maturity Date.** The Maturity Date shall be December 31 of the year that is fifteen (15) years after the Effective Date established for each lot in the Project.

Exhibit "B"

EXHIBIT “B-1”

**TIF NOTE
(See Attached)**

Exhibit “B-1”

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

Registered

Registered

No. 1

\$_____

UNITED STATES OF AMERICA
STATE OF NEBRASKA
THE COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF NORFOLK, NEBRASKA

COMMUNITY REDEVELOPMENT REVENUE NOTE
(FOUNTAIN POINT NORTH REDEVELOPMENT PROJECT – PHASE I)
SERIES 201__A

Maturity Date	Original Issuance Date
	_____, 20__

Registered Holder	Principal Amount
Fountain Point Development, LLC	\$_____

THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF NORFOLK, NEBRASKA (the "Issuer"), a body politic and corporate organized and existing under the laws of the State of Nebraska, for value received hereby promises to pay, solely from the source and as hereinafter provided, to the Registered Holder identified above, or registered assigns, the Principal Amount identified above at the office of the Norfolk City Treasurer, as Paying Agent and Registrar, from the Original Issuance Date identified above. Accrued interest for _____ shall be made in the form of Interest only payments in two (2) installments annually due July 15 and November 15, 2018. Thereafter principal shall be payable in two (2) equal semi-annual installments due July 15 and November 15, and each July 15 and November 15 thereafter through November 15, 2032. The 2032 tax liability shall be divided when the 2032 tax payments are made in 2033. Payments on this Note will be made by check or draft mailed to the Registered Holder in whose name this Note is registered at the close of business on the calendar day next preceding the applicable payment date at his address as it appears on such note registration books. The principal of this Note is payable in any coin or currency of the United

Exhibit "B-1"

States of America which on the respective dates of payment is legal tender for the payment of public and private debts.

This Note is designated The Community Development Agency of the City of Norfolk, Nebraska Redevelopment Revenue Note (Fountain Point North Redevelopment Project – Phase I), Series 201__A, aggregating Three Million Nine Hundred Seventy Thousand and 00/100 Dollars (\$3,970,000.00) (the “Note”) in principal amount which has been issued pursuant to the Section 12 of Article VIII of the Nebraska Constitution and Neb. Rev. Stat. §§ 18-2101 through 18-2154, as amended and supplemented (the “Act”) and under and pursuant to a Resolution adopted by the Governing Body of the Issuer (the “Resolution”), to aid in the financing of a redevelopment project pursuant to the Act. This Note does not represent a debt or pledge of the faith or credit of the Issuer or grant to the Registered Holder of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof nor is this Note a general obligation of the Issuer, or the individual officials, officers or agents thereof. This Note is payable solely and only out of the Tax Increment Revenues generated by the Project as identified in the Redevelopment Contract by and between the Issuer and the Registered Holder hereof. All such revenue has been duly pledged for that purpose.

THIS NOTE DOES NOT NOW AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF NORFOLK, NEBRASKA, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, NOR SHALL THIS NOTE EVER GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF NORFOLK, NEBRASKA, A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No recourse shall be had for the payment of the principal on this Note, or for any claim based hereon or upon any obligation, covenant or agreement contained in the Redevelopment Contract against any past, present or future employee, member or elected official of the Issuer, or any incorporator, officer, director, member or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, officer, director or member as such is hereby expressly waived and released as a condition of and in consideration of the issuance of this Note.

It is hereby certified and recited and the Issuer has found: that the Project is an eligible “redevelopment project” as defined in the Act; that the issuance of this Note and the construction of the Project will promote the public welfare and carry out the purposes of the Act by, among other things, contributing to the development of a blighted and substandard area of the City of Norfolk, Nebraska, pursuant to a Redevelopment Plan adopted by the City; that all acts, conditions and things required to be done precedent to and in the issuance of this Note have

Exhibit “B-1”

been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and, that this Note does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations.

This Note is transferable only upon the books of the Issuer kept for that purpose at the office of the Registrar by the Registered Holder hereof in person, or by his duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Holder or his duly authorized attorney, together with a purchase letter, and thereupon a new registered Note or Notes in the same aggregate principal amounts shall be issued to the transferee in exchange therefor, and upon payment of the charges therein prescribed. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and interest due hereon and for all other purposes.

The Note is issuable in the form of a registered Note without coupons. Subject to such conditions and upon the payment of such charges provided in the Resolution, the owner of any registered Note or Notes may surrender the same (together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney), in exchange for an equal aggregate principal amount of registered Notes of any other authorized denominations.

The Note is prepayable at any time in whole or in part, at a prepayment price of par, to the extent there are any funds in the debt service fund in excess of amounts necessary to pay scheduled debt service or in the event the Redeveloper directs the Issuer that it wishes to prepay the Note.

Prepayments shall reduce the number, but not the amount, of scheduled debt service payments on the Note, in inverse order of maturity.

It is hereby certified and recited that all conditions, acts and things required by law and the Redevelopment Contract to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed and that the issue of this Note, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by the laws of the State of Nebraska.

This Note shall not be entitled to any benefit under the Redevelopment Contract referred to herein or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Registrar of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF NORFOLK, NEBRASKA has caused this Note to be signed in its

Exhibit "B-1"

name and on its behalf by the signature of its Chairman and attested by the signature of its Secretary, as of the Original Issuance Date identified above.

THE COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF NORFOLK,
NEBRASKA

ATTEST:

Secretary

By: _____
Chairman

CERTIFICATE OF AUTHENTICATION

This Note is delivered pursuant to the within-mentioned Resolution.

Norfolk City Treasurer,
as Paying Agent and Registrar

By: _____
Authorized Signature

Exhibit "B-1"

EXHIBIT "C"

PROJECTED TIF SOURCES AND USES

1. PROJECTED TIF SOURCES

Summary:

	<u>Lot One</u>	<u>Lot Three</u>
TIF Sources	\$2,728,000	\$1,242,000
Total:		\$3,970,000

TIF Sources Calculations

Assumptions:

Lot One Base Value:	\$18,300	Tax Levy (2016):	1.97406
Lot Three Base Value:	\$9,700	Interest Rate:	5.0%
Lot One Final Value:	\$13,850,000	TIF Period (yrs):	14years/phase
Lot Three Final Value:	\$6,000,000		

	Lot One	Lot Three
Base Value	\$18,300	\$9,700
Base Taxes	\$360	\$190
Completed Value	\$13,850,000	\$6,000,000
Annual Taxes	\$273,600	\$124,500
Annual Tax Increment	\$273,000	\$124,000
Total TIF Sources	\$2,728,000	\$1,242,000

*Note: This chart presents the projections for each developed lot. The annual tax increment generated will vary based on construction schedule of each lot.

2. PROJECTED TIF USES

	Total
a. Site Acquisition	\$400,000
b. Sanitary Sewer	\$252,000
c. Water	\$310,000
d. Paving/Storm Sewer	\$1,405,000
e. Sewer Extension to 37 th St.	\$250,000
f. Site Preparation	\$825,000
g. Street Lighting	\$50,000
h. Internal Streets/Drives	\$750,000
i. Sidewalks/Landscaping	\$150,000

Exhibit "C"

j. Capitalized Interest	\$350,000
Total Uses	\$4,742,000

*All costs are estimates and are subject to final confirmation and adjustment upon construction completion.

**Eligible TIF Uses are projected to be approximately \$4,742,000, but the TIF Revenue Projection is limited to \$3,970,000 which is the sum generated by the projected incremental taxes. In the Cost Certification required by Section 4.02, Redeveloper shall be obligated to only demonstrate eligible expenditures in the amount of \$3,970,000.

EXHIBIT “D”

CERTIFICATE OF COMPLETION

The Community Development Agency of the City of Norfolk, Nebraska, a municipal corporation in the State of Nebraska (the “CDA”), hereby makes the conclusive determination and certification that, with regard to the following real property situated in the City of Norfolk, Madison County, Nebraska, to wit:

Lot One (1) and Lot Three (3), Fountain Point Addition, as surveyed, platted and recorded in the City of Norfolk, Madison County, Nebraska,

(“Redeveloper Property”), all the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the REDEVELOPMENT CONTRACT (Fountain Point North Redevelopment Project – Phase I) by and between the Community Development Agency of the City of Norfolk, Nebraska, a municipal corporation in the State of Nebraska, and Fountain Point Development, LLC, a Nebraska limited liability company, and its successors and assigns (“Redeveloper”), said Contract dated as of _____, 2017 and a Memorandum of which is recorded as Instrument No. _____, in the office of the Register of Deeds for Madison County, Nebraska.

The CDA further makes the conclusive determination that the Private Improvements (as defined in the Contract) to the above-described Redeveloper Property are presently in conformance with the Contract.

IN WITNESS WHEREOF, the CDA and Redeveloper have executed this instrument this _____ day of _____, 201__.

“CDA”

COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF
NORFOLK, NEBRASKA

_____, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, Chairperson of the Community Development Agency of the City of Norfolk, Nebraska, on behalf of the Agency.

Notary Public

Exhibit “D”

Fountain Point Development, LLC, a
Nebraska limited liability company

By: _____
Name: _____
Title: Manager

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, Manager of Fountain Point Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

After recording return to:
Heather A. Carver
Cline Williams Wright Johnson
& Oldfather, L.L.P.
Sterling Ridge
12910 Pierce Street, Suite 200
Omaha, Nebraska 68144

EXHIBIT "E"

MEMORANDUM OF REDEVELOPMENT CONTRACT (FOUNTAIN POINT NORTH REDEVELOPMENT PROJECT – PHASE I)

This Memorandum of Redevelopment Contract ("Memorandum") is made this ____ day of _____, 2017 by and between the Community Development Agency of the City of Norfolk, Nebraska ("CDA") and Fountain Point Development, LLC, a Nebraska limited liability company ("Redeveloper").

1. **Redevelopment Contract.** CDA and Redeveloper have entered into that certain Redevelopment Contract dated as of this even date, describing the public improvements being made by the CDA in the Redevelopment Area and the private improvements being made to real property owned by Redeveloper and legally described as:

Lot One (1) and Lot Three (3), Fountain Point Addition, as surveyed, platted and recorded in the City of Norfolk, Madison County, Nebraska.

2. **Tax Increment Financing.** The Redevelopment Contract provides for the capture of the Tax Increment, as defined therein, by the CDA of the private improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Effective Date applicable to each lot in the Project Site. The Tax

Exhibit "E"

Increment so captured by the CDA shall be used to make the public improvements as described in the Redevelopment Contract.

3. **Minimum Lot Valuation.** The Redevelopment Contract establishes a minimum taxable real property valuation for each lot in the Project Site of not less than Thirteen Million Eight Hundred Fifty Thousand and No/100 Dollars (\$13,850,000.00) with respect to Lot One (the “Minimum Lot One Valuation”), and not less than Six Million and No/100 Dollars (\$6,000,000.00) with respect to Lot Three (the “Minimum Lot Three Valuation”). The Redevelopment Contract further provides that neither Redeveloper, nor its successors and assigns, shall: (a) protest the real property valuation of any lot in the Project to a sum less than the Minimum Lot One Valuation or the Minimum Lot Three Valuation, as applicable; or (b) convey the Project Site, any lot in the Project Site, or structures thereon to any entity which would be exempt from the payment of real estate taxes or cause the nonpayment of such real estate taxes.

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. A full and correct copy of the Redevelopment Contract may be inspected at the CDA offices in Norfolk, Nebraska.

[SIGNATURE PAGES TO FOLLOW]

“CDA”

COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF
NORFOLK, NEBRASKA

_____, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Chairperson of the Community Development Agency of the City of Norfolk, Nebraska, on behalf of the Agency.

Notary Public

Exhibit “E”

Fountain Point Development, LLC, a
Nebraska limited liability company

By: _____
Name: _____
Title: Manager

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Manager of Fountain Point Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT "F"
Form of Investor Letter

_____, 201__

Community Development Agency of the City of Norfolk Nebraska
309 N 5th Street
Norfolk, NE 68701

Re: Tax Increment Revenue Bond (Fountain Point North
Redevelopment Project – Phase I) Series 201__A

Ladies and Gentlemen:

The undersigned is the initial registered owner of the above Bond issued by the Community Development Agency of the City of Norfolk, Nebraska (the "Agency"). The representations and statements made in this letter are made as an inducement to the Agency in connection with the issuance of the above Bond (the "Bond"). The undersigned acknowledges and represents that it has been advised that the Bond is not registered under the Securities Act of 1933, as amended, and that the Agency is not presently required to register under Section 12 of the Securities and Exchange Act of 1934. The undersigned therefore recognizes that if and when the undersigned may wish to resell the Bond as held by it there may not be any available current business and financial information about the Agency or the project being financed by the Bond. Further the undersigned realizes that no trading market presently exists or is expected to exist for the Bond. The undersigned understands that it may need to bear the risks of an investment in the Bond for an indefinite period of time, since any sale prior to maturity of the Bond may not be possible or may be at a price below that which the undersigned is paying for the Bond.

It is understood that the undersigned has undertaken to verify the accuracy and completeness and truth of any statements made or omitted to be made concerning any of the material facts relating to the Bond and the project being financed and transactions relating thereto, including information regarding the operations and financial condition of the redeveloper for said project (the "Redeveloper") and said project. The undersigned has conducted its own investigation and has had discussions with officials of the Agency and the Redeveloper.

In connection with the purchase of the Bond, the undersigned hereby acknowledges and represents that the undersigned is acquiring the Bond for its own account for investment and not with a view to the resale or distribution. The undersigned has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment represented by the purchase of the Bond, has financial resources sufficient to sustain the risks related to holding the Bond and is aware of the intended use of the proceeds and risks involved therein.

Exhibit "F"

THE UNDERSIGNED UNDERSTANDS THAT THE BOND IS A LIMITED OBLIGATION OF THE AGENCY AND IS NOT SECURED BY ANY OBLIGATION OR PLEDGE OF ANY MONIES RECEIVED OR TO BE RECEIVED FROM TAXATION, OTHER THAN TAX INCREMENT REVENUES AS DESCRIBED IN THE RESOLUTION AUTHORIZING THE BOND. THE UNDERSIGNED UNDERSTANDS THAT THE BOND IS NOT AN OBLIGATION OF THE CITY OF NORFOLK, EXCEPT AS TO ITS COMMUNITY DEVELOPMENT AGENCY OF WHICH IT IS A LIMITED OBLIGATION, THAT THE BOND IS NOT AN OBLIGATION OF THE STATE OF NEBRASKA OR ANY POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA OR TAXING AUTHORITY THEREOF, OTHER THAN OF SUCH AGENCY, AND THAT NO RIGHT EXISTS TO HAVE TAXES LEVIED BY THE CITY OF NORFOLK OR THE STATE OF NEBRASKA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF PRINCIPAL OF OR INTEREST ON SAID BOND, OTHER THAN SAID TAX INCREMENT REVENUES.

The undersigned acknowledges that it has made its own investigation and inquiry concerning the due corporate authorization and execution of all documents executed and delivered by Fountain Point Development, LLC, a Nebraska limited liability company, as the Redeveloper related to the Bond and has not relied upon the City or its counsel or special bond counsel concerning any such matters.

The undersigned acknowledges that the principal amount of the Bond has been established based upon estimated costs of development under the terms of an agreement between the Redeveloper and the Agency. Such estimates have been established in order to assure the initial registered owner of the Bond with the fullest anticipated potential benefits related to tax increment revenues and the principal amount and interest thereon as set may not prove payable from such revenues. The undersigned acknowledges that the Agency has not undertaken or contracted in any way that such redevelopment will be commenced or completed and that such undertaking is the sole responsibility of the Redeveloper.

The undersigned acknowledges further that the principal amount and interest rate on the Bond have also been established with respect to taxable valuations which are expected to be related to estimated costs and that the final assessment and taxable valuations determined by the appropriate assessing officials may be materially different from such projected assessment and that such principal amount and interest have also been established based upon estimated taxing rates to apply in the future and that such taxing rates could also be materially different from such estimated rates.

The undersigned acknowledges that it has been advised that interest on the Bond is not exempt from Nebraska state or federal income taxes, and that the City and Agency have not provided any assurances with respect to the tax consequences to the undersigned with respect to the transaction described herein. The undersigned further acknowledges that any future transfer of the Bond may only be made to a subsequent transferee registered owner who is able to execute

and does execute a letter similar in form and substance to this investment letter, a copy of which shall have been delivered to the Agency.

Very truly yours,

Fountain Point Development, LLC, a
Nebraska limited liability company

By: _____
Name: _____
Title: _____ Manager

4825-4082-4651, v. 4

Exhibit "F"

4