

# **Agenda Packet**

## **COMMUNITY DEVELOPMENT AGENCY**

Monday, January 30, 2017  
5:15 p.m.

Created 1/30/2017 8:56 AM

Notice of Meeting  
Community Development Agency

The Community Development Agency will meet on Monday, January 30, 2017 at 5:15 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 (January 28, 2017)  
1 P.O.P.

# COMMUNITY DEVELOPMENT AGENCY

## AGENDA

January 30, 2017

### Call to Order

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

### Action Items/Discussion Items

- |   |               |
|---|---------------|
| 4. Approve Agenda   | <b>Motion</b> |
| 5. Approve the minutes of the January 3, 2017 Agency meeting.   | <b>Motion</b> |
| 6. Consideration of Resolution No. 2017-2 approving the Odd Fellow Housing Associates LP Redevelopment Agreement. | <b>Motion</b> |

STAFF MEMORANDUM  
COMMUNITY DEVELOPMENT AGENCY

January 30, 2017

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Action Items/Discussion Items

- |   |               |
|---|---------------|
| 4. Approve Agenda   | <b>Motion</b> |
| 5. Approve the minutes of the January 3, 2017 Agency meeting. | <b>Motion</b> |

See Enclosure 5.

- |   |               |
|---|---------------|
| 6. Consideration of Resolution No. 2017-2 approving the Odd Fellow Housing Associates LP Redevelopment Agreement. | <b>Motion</b> |
|---|---------------|

The Economic Development Director recommends approval of Resolution No. 2017-2 approving the Odd Fellow Housing Associates LP Redevelopment Agreement. The Redevelopment Agreement provides for using Tax Increment Financing (TIF) for building improvements to serve the redevelopment project area generally located at 1204 West Norfolk Avenue. The Redeveloper intends to rehabilitate the Skyline Apartments Building, which will include building improvements and life safety upgrades. The Redevelopment Agreement provides for a maximum of \$415,000 of taxable TIF bonds. The redeveloper will be responsible for placement of the bonds.

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 Tuesday, January 3, 2017, beginning at 5:15 p.m.

Chair Josh Moenning called the meeting to order.

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

City staff members present were City Attorney Clint Schukei, City Clerk Beth Deck, Public Works Director Dennis Smith, Finance Officer Randy Gates and Economic Development Director Andy Colvin.

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**

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

### **Minutes**

Granquist moved, seconded by Lange to approve the minutes of the December 5, 2016 Agency meeting as printed. Roll call: Ayes: Moenning, Clausen, Fauss, Granquist, Lange, Merrill, Murren, Jackson and Pfeil. Nays: None. Absent: None. Motion carried.

### **Resolution No. 2017-1 (Skyline Apartments Redevelopment Plan)**

Lange moved, seconded by Merrill to adopt Resolution No. 2017-1 approving a Redevelopment Plan of the City of Norfolk, Nebraska, approving a cost benefit analysis for such project and approving related actions.

Andy Colvin provided information to Agency members. The Redevelopment Plan is the next step in the process to provide a program of building revitalization to enhance the safety and functionality of housing for residents in the Skyline Apartments. An additional impact of the rehabilitation is to prevent further site deterioration and spread of blighted conditions in the

area.

Roll call on Resolution No. 2017-1: Ayes: Moenning, Clausen, Fauss, Granquist, Lange, Merrill, Murren, Jackson and Pfeil. Nays: None. Absent: None. Motion carried.

There being no further business, the Chair declared the meeting adjourned at 5:18 p.m.

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Josh Moenning, Chair

ATTEST:

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Elizabeth A. Deck, Secretary

( S E A L )

City of Norfolk, 309 N. 5<sup>th</sup> Street, Norfolk, NE 68701

RESOLUTION NO. 2017-2

BE IT RESOLVED, by the governing body of the Community Development Agency of the City of Norfolk, Nebraska, that the Redevelopment Agreement by and between the Agency and Odd Fellow Housing Associates LP, a Nebraska limited partnership, is hereby approved and the Chairperson and Secretary are hereby authorized to execute and deliver such agreement in substantially the form presented with such changes and modifications thereto as shall be deemed appropriate, based upon advice of the City Attorney or other special counsel.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Chairman (Mayor)

(SEAL)

\_\_\_\_\_  
Secretary (City Clerk)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Josh Moenning, Chairperson of the Community Development Agency of the City of Norfolk, Nebraska.

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

**REDEVELOPMENT AGREEMENT**  
**ODD FELLOW HOUSING ASSOCIATES**

This Redevelopment Agreement (" Agreement ") is entered into the \_\_\_\_ day of January, 2017, by and between the Community Development Agency of the City of Norfolk, Norfolk, Nebraska (the " Agency" ) and Odd Fellow Housing Associates LP, a Nebraska limited partnership (the "Redeveloper").

**RECITALS**

A. The Agency has approved a plan entitled "City of Norfolk Redevelopment Plan for the Skyline Apartments " (the "Plan") for the real estate described on Exhibit "A" attached (the "Redeveloper Property"), located in the City of Norfolk, Nebraska (the " City") and which has previously been declared blighted and substandard or otherwise eligible for redevelopment by the Mayor and Council of the City of Norfolk, Nebraska. The Redeveloper Property is also sometimes referred to as the "Project Area". The Redevelopment Plan has been adopted in compliance with the Nebraska Community Development Law codified at *Neb. Rev. Stat.* §§ 18-2101 through 18-2154 (Reissue 2012) (the " Act").

B. The Agency has induced the Redeveloper to engage in certain redevelopment activities to rehabilitate certain multifamily improvements in the Project Area and the Redeveloper is not willing to incur the substantial investment necessary for redevelopment of the Project Area without the financial incentives ("Incentives") provided by the Agency to the Redeveloper in this Agreement.

C. The Redeveloper pursuant to the Plan is substantially redeveloping the Skyline Apartment Building located in the Project Area. The redevelopment of the 92 apartments and commons areas in the Project Area will include a number of necessary life safety improvements, including, but not limited to (1) a new fire alarm system; (2) relocation of the main electrical panel to meet current safety codes; (3) hardwired smoke detectors; (4) emergency lighting; (5) elevator rehabilitation; (6) window replacement as current windows are mounted in asbestos panels (current residents use the windows to climb out onto exterior ledges); (7) updates to meet ADA and UFAS code; (8) rehabilitation of all stair railings to bring up to code; (9) installation of fire sprinklers in all apartments and commons areas; and (10) asbestos removal. (collectively the "Redevelopment Project").



D. *Neb. Rev. Stat. § 18-2103(12)* (Reissue 2012) authorizes the Agency to carry out plans for redevelopment of blighted and substandard areas in connection with redevelopment of the Project Area and to pay for all or a portion of the same from TIF Bond Proceeds (as defined below)

E. *Neb. Rev. Stat. § 18-2107* (Reissue 2012) authorizes the Agency to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the Agency may deem necessary to prevent the recurrence of substandard and blighted areas.

F. In order to help remove blight and substandard conditions and improve conditions in an economically underutilized area, the Agency is willing to enter into this agreement and to make a grant or grants to the Redeveloper to be used to reimburse the Redeveloper for all or a portion of the eligible costs incurred by Redeveloper and identified in Exhibit " B" (the "Redeveloper Project Costs"). The Agency and Redeveloper agree that such assistance is deemed essential to the redevelopment of the Project Area.

G. The Plan contains a provision dividing any ad valorem tax levied upon real property in the Project Area, for the benefit of any public body, for a period not to exceed fifteen (15) years after the effective date of the provision as provided for in *Neb. Rev. Stat. § 18-2147 et seq.* (Reissue 2012).

H. *Neb. Rev. Stat. § 18-2107* (Reissue 2012) and § 18-2150 (Reissue 2012) authorize the Agency to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Project Area in accordance with the Plan. In order to make a grant or grants to the Redeveloper, the Agency intends to issue tax increment financing indebtedness instrument or instruments in taxable series (collectively "TIF Bond") to be repaid with the tax increment revenues generated hereunder.

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

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

In consideration of the above recitals which are made part of this Agreement and of the mutual covenants of this Agreement the parties agree:

## **ARTICLE I. ABILITY; REPRESENTATIONS AND WARRANTIES**

### **Section 101. Evidence of Redeveloper's Financial Ability**

A. Evidence of Redeveloper's Financial Ability. Redeveloper shall, more than thirty days (30) days prior to starting renovation and rehabilitation in the Project Area, state the amount and source of liquid assets on hand and the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper (or its affiliate) in connection with the Redevelopment Project. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance and the loan. To the extent allowed by law, the Agency and City agree to keep the information confidential.

B. Timely Submittal of Evidence. Timely submittal of financial information required in subsection A above in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the Agency and City to proceed with its obligations under this Agreement.

### **102. Representations, Warranties and Covenants or Redeveloper.**

Redeveloper represents and warrants:

A. Redeveloper is a Nebraska limited partnership authorized and qualified to transact business in the State of Nebraska, is not in violation of any provisions of its partnership agreement, is authorized to enter into and perform its obligations under this Agreement and, to the best knowledge of the Redeveloper, is not in violation of the laws of the State of Nebraska.

B. Throughout the term of this Agreement, Redeveloper will reasonably endeavor to acquire, rehabilitate, operate and maintain the Redevelopment Project in accordance with the terms of this Agreement and all applicable local, state and federal laws and regulations.

C. The Redevelopment Project shall be completed by the Redeveloper or others at an estimated cost of Seven Million Dollars (\$7,000,000.00).

D. Redeveloper has received no notice or communication from any local, state or federal official or body that the activities of Redeveloper respecting the Redevelopment Project Area or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation (including without limitation environmental, zoning, building code and public health laws and regulations).

Throughout the term of this Agreement and subject to the provisions of Section 713 of this Agreement, in the event of any casualty damage to the Redevelopment Project, as and to the extent owned by Redeveloper, if Redeveloper fails to repair and reconstruct such damaged portion or portions of the Redevelopment Project to a functioning facility having value for purposes of real property taxation at least equal to the value as most recently determined prior to the event or events of casualty loss, (a) in the event the Redeveloper is the owner of the TIF Bond, any remaining TIF Tax Revenues (defined below) shall be forfeited and the TIF Bond shall be cancelled and forgiven or (b) if the TIF Bond is held by a party other than the Redeveloper, the Redeveloper will pay to such holder of the TIF Bond the necessary amount to retire the TIF Bond in full (including interest).

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 all requirements of all applicable local, state and federal laws and regulations which must be met for the Redevelopment Project to be lawfully constructed, occupied or operated.

F. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented, limited or in conflict with (i) 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) 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 the Redeveloper, the Redeveloper is not aware of any hazardous

waste or other significant environmental pollution condition or hazard existing on or within the Project Area, except as described in the Plan or as set forth in the Blight and Substandard Determination Study relating to the Project Area.

H. The 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, if any, and costs to be paid from the issuance of the Bonds. All costs of the Redevelopment Project, other than those costs which are to be provided for by the Agency shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Project. Redeveloper agrees to provide for the construction of improvements located in the Project Area described in the Plan or as described in this Agreement, except to the extent that the Agency or the City of Norfolk, Nebraska shall agree otherwise by separate written agreement with the Redeveloper.

I. Redeveloper has made an economic and financial analysis of the Redevelopment Project and has specifically represented to the City and Agency that:

(i) the Redevelopment Project would not be economically feasible without the use of tax-increment financing and Redeveloper would not undertake the Redevelopment Project without tax-increment financing; and

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

J. No construction liens have been recorded with respect to the Redeveloper Property under the terms of the Nebraska Construction Lien Act, Neb. Rev. Stat. §§ 52-125 through 52-159 (the "Construction Lien Act") and the Redeveloper is not aware of any claims which as of the date of this Agreement can be expected to give rise to a construction lien under the Construction Lien Act. The Redeveloper has entered into a contract to purchase the Redeveloper Property and agrees it will not execute or deliver any notice of commencement under Neb. Rev. Stat. § 52-145, if any, until after the memorandum of this Agreement has been recorded in accordance with Section 301 hereof.

K. The Redeveloper certifies that it (i) does not intend to file an application with the Department

of Revenue to receive tax incentives under the Nebraska Advantage Act for a project located or to be located within the redevelopment project area (ii) that the Redeveloper will not seek a refund of the City's local option sales tax revenue; and (iii) no application has been approved under the Nebraska Advantage Act related to the project.

## **ARTICLE II. TIF TAX AGREEMENT**

**201. Grant of Funds from TIF Bond Proceeds.** In order to support redevelopment of the Project Area, the Agency agrees, to the extent allowed by law and the terms of this Agreement, and then only to the extent funds are lawfully available from the issuance of the TIF Bond and receipt of proceeds from the sale ("TIF Bond Proceeds") to make a grant or grants to reimburse Redeveloper for all or a portion of those eligible costs and expenses incurred by Redeveloper to construct the Redevelopment Project, an estimate of which is provided in Exhibit "B". The TIF Bond shall be issued and funds granted on or about August 1, 2017 upon the Redeveloper's purchase of the site comprising the Redevelopment Project, in accordance with this Agreement.

### **202. TIF**

A. **TIF Tax Revenues.** In accordance with Section 18-2147 of the Act, the Agency hereby provides that any ad valorem tax on any real property in the Project Area for the benefit of any public body be divided for a period of fifteen years after the effective date of this provision as set forth in this section ("TIF Tax Revenues"). The effective date of this provision shall be set by the resolution of the Agency authorizing the issuance of the TIF Bond (the "Bond Resolution"). The ad valorem taxes shall be divided as follows:

(i) That portion of the ad valorem tax on the real property in the Project Area which is produced by levy at the rate fixed each year by or for each public body upon the "redevelopment project valuation" (as defined in the Act, hereinafter the "Redevelopment Project Valuation") shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies.

(ii) That portion of the ad valorem tax on the real property in the Project Area

in excess of such Redevelopment Project Valuation, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Agency to pay the principal of, the interest on, and any premium due in connection with the TIF Bond, whether funded, refunded, assumed, or otherwise. When such TIF Bond, including interest and premium due, have been paid, the Agency shall so notify the County Assessor and County Treasurer and thereafter all ad valorem taxes upon real property in such Project Area shall be paid into the funds of the respective public bodies.

(iii) Upon request of the Redeveloper, the Agency shall give notice of division of taxes to the County Assessor as provided in Section 18-2147 of the Act.

B. **Issuance of TIF Indebtedness; Closing.** At the Closing (as defined below), the Agency shall issue a TIF Bond in an aggregate principal amount not to exceed the sum of \$415,000 and bearing interest from and after the date of issue at a rate or rates to be determined in the Bond Resolution, but not to exceed Five Percent (5%). Subject to the conditions set forth in Section 202.C below, the Agency shall issue the TIF Bond as and when determined appropriate by the Agency and at a time mutually agreed upon by the Redeveloper, but in no event earlier than thirty (30) days following the Agency's approval of the Bond Resolution (the "Closing"). The Closing shall be expressly subject to the conditions set forth in Section 202.C below.

The Agency shall have no obligation to find a lender or investor to acquire the TIF Bond, but rather shall issue the Bond to or to the order of Redeveloper upon payment of the principal amount thereof. The Redeveloper agrees to either purchase the TIF Bond at a price equal to the principal amount thereof or to find a purchaser for such Bond upon terms and conditions acceptable to the Agency. Neither the Agency nor the City shall have any obligation to provide for the sale of the TIF Bond. It is the sole responsibility of the Redeveloper to effect the sale of the TIF Bond by purchasing the bond, or arranging for the purchase, in accordance with the terms of this Agreement and otherwise in accordance with applicable law. Any such sale or placement of the TIF 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. Any such purchaser, 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 satisfactory to the Agency.

Subject to the foregoing, it is anticipated that the TIF Bond shall be purchased by the Redeveloper or

the Redeveloper's lender ("TIF Bond Purchaser ") and the Agency shall receive TIF Proceeds from the TIF Bond Purchaser to be deposited into an Agency account for payment of the Agency's TIF Bond cost of issuance and reimbursement. The grant made to the Redeveloper shall be made solely from the proceeds received from the TIF Bond Purchaser from the receipt of proceeds of the TIF Bond as issued for the Redeveloper Project Costs, provided that, as of such time, the Redeveloper has furnished evidence of the Redeveloper Project Costs satisfactory to the Agency. The total dollar amount of the TIF Bond shall be determined prior to its issuance based on the estimated amount of the tax increment to be generated on the Redeveloper Property as part of the Redevelopment Project, based upon the estimated taxable valuation of such property, which is expected to have an estimated taxable valuation of \$3,335,000. Notwithstanding the foregoing, the amount of the grant shall not exceed the amount of Redeveloper Project Costs certified pursuant to Section 202.C below, less any such costs that may have previously been reimbursed by the City and/or Agency.

Redeveloper acknowledges that interest on the TIF Bond may be includable in gross income for federal income tax purposes and subject to Nebraska state income taxation.

C. **Conditions to Issuance of TIF Bond.** The TIF Bond will not be issued until Redeveloper has:

- (i) acquired fee title to the Project Area;
- (ii) provided the Agency with the proper evidence that the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the private improvements for their intended use or the Redevelopment and Agency otherwise agree that substantial completion of the Redevelopment Project has occurred as contemplated in the Plan and this Agreement;
- (iii) provided the Agency with a certification of Redeveloper Project Costs, prepared by an engineer or certified public accountant acceptable to the Agency, which shall contain detail and documentation showing the obligation for payment of Redevelopment Project Costs specified on the attached Exhibit B in an amount at least equal to the grant to be made to Redeveloper as provided herein;
- (iv) provided assurance to the Agency and the City that it has paid or will pay for all costs of the Redevelopment Project, including (a) a guarantee of the payment for all amounts due to each person, as defined in Neb. Rev. Stat. § 49-801, that performed labor or furnished materials, equipment or supplies used in connection with the Redevelopment Project; and (b) evidence that all such persons have been paid and given lien waivers in exchange for payment; and
- (v) Redeveloper has certified or otherwise demonstrated that it is in compliance with the terms of this Agreement.

**203. Use of TIF Bond Proceeds.** TIF Bond Proceeds shall be used for and expended in the following priority:

FIRST PRIORITY: Reimburse the City for the cost of issuing the TIF Bond, including but not limited to bond counsel fees.

SECOND PRIORITY: Payment of grant or grants to reimburse Redeveloper for its Redeveloper Project Cost. The Agency and City shall not have any obligation to make a grant or grants to reimburse the Redeveloper for the Redeveloper Project Costs in excess of the available TIF Bond Proceeds as described above. Redeveloper shall use its own funds to fund any Redeveloper Project Costs and other related costs that exceed the TIF Bond Proceeds that are lawfully available and granted to the Redeveloper hereunder. The funds granted to Redeveloper are restricted and earmarked solely for the reimbursement of eligible Redeveloper Project Costs as described herein and the Redeveloper does not have discretionary judgment over the applications of said grant funds.

**204. Valuation of the Redeveloper Property.** The Agency intends to use the Bond Resolution to generate tax increment financing funds which shall be used to finance the issuance of the TIF Bond and to make the grant or grants to Redeveloper in accordance with this Agreement. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Act which will be attributable to the redevelopment contemplated under this Agreement. The TIF Tax Revenues which are to be used to pay debt service on the TIF Bond will be derived from the increased valuation from redeveloping the Redeveloper Property as provided in this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Redeveloper Property thereon which do not exceed \$3,335,000 commencing tax year 2019 and continuing for a period of not to exceed fifteen (15) years after the effective date of this Agreement or so long as any portion of the TIF Bond with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter.



**205. Debt Service for TIF Indebtedness.** The Agency shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of the TIF Bond with interest as provided in the TIF Bond Resolution at a rate not to exceed five percent (5%) per annum. Any debt service on the TIF Bond (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City or the Agency; and the Agency shall be liable for the payment thereof only out of said portion of taxes as described in this Agreement. The TIF Bond shall not constitute an obligation of the State of Nebraska or of the City or Agency (except for such receipts as have been pledged pursuant to Section 18-2150 of the Act) and, neither the State or Nebraska nor the City or Agency shall be liable for the payment thereof from any fund or source including but not limited to tax monies belonging to either thereof (except for such receipts as have been pledged pursuant to Section 18-2150 of the Act and except for any additional security or payment source as may be provided for in the Bond Resolution). Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Redeveloper Property not needed or required to retire the TIF Bond shall be expended by the City or returned to the applicable taxing authorities as provided in the Act. Any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper and TIF Bond Purchaser without recourse of any kind against the City or the Agency.

**206. Tax Increment Deficiency on TIF Bond.**

A. **Redeveloper Purchased TIF Bond.** The Redeveloper agrees and acknowledges that the Agency's obligations to pay principal and interest on the TIF Bond shall be limited to the annual TIF Tax Revenues received by the Agency. If the Redeveloper purchases the TIF Bond, any shortfall in the annual TIF Tax Revenues for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper without recourse of any kind against the City or the Agency. In the event the TIF Bond is not retired in full at the end of the Tax Increment Period, any remaining balance due on the TIF Bond shall be forgiven.

B. Lender Purchased TIF Bond. As noted above, any such lender shall sign an investor letter which shall also include an acknowledgement that the Agency's obligations to pay principal and interest on the TIF Bond shall be limited to the annual TIF Tax Revenues received by the Agency. If Redeveloper's lender purchases the TIF Bond, any shortfall in the annual TIF Tax Revenues for any reason whatsoever, specifically including a decline in taxable valuation of the Redeveloper Property, shall be borne entirely by the Redeveloper and/or other TIF Bond Purchaser without recourse of any kind against the City or the Agency.

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

**208. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the Effective Date, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "Tax Increment Period"), convey the Project Area or any part thereof to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries or otherwise cause the nonpayment of such real estate taxes.

**209. Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the Redeveloper Property prior to the time such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of the Redeveloper shall cease upon expiration of the Tax Increment Period, but the Agency in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Redeveloper does not waive its right to protest or contest the valuation of such Redeveloper Property for tax purposes except as specifically provided in this Agreement.

**210. Agency Costs.** The Redeveloper shall reimburse the Agency and City for reasonable legal fees and costs incurred by the City or the Agency in connection with the issuance of the TIF Bond; provided that such fees and costs shall not exceed \$10,000. Such fees shall be payable in two equal installments following the execution of agreement between the Agency and Redeveloper and the issuance of the Bond, respectively.

### **ARTICLE III. COVENANTS TO RUN WITH THE LAND**

**301. Covenants to Run with the Land; Easement; Recording of Redevelopment Agreement.**

This Redevelopment Agreement shall constitute covenants running with the land binding upon Redeveloper and the Agency and their successors in interest and upon each successive owner of the Redevelopment Project Area or any portion thereof. The Redeveloper agrees that by the terms of this Agreement it is binding and obligating any and all of its interest in the Redeveloper Property, now or hereafter acquired, and covenants and warrants for the benefit of the Agency and the registered owners of the TIF Bond that the Redeveloper shall defend its interest in the Redeveloper Property against the claims and interests of any and all persons. Redeveloper and the Agency agree and acknowledge that a memorandum of this Agreement shall be recorded at the expense of the Agency against the Redeveloper Property in the office of the Madison County Register of Deeds and shall remain of record until the TIF Bond has been paid in full or until the passage of 15 years from the Effective Date described in Section 715. To the extent that this Agreement does not have priority by order of recording over each and every mortgage or other instrument securing indebtedness of the Redeveloper, Redeveloper agrees to obtain a written agreement in recordable form from each mortgagee or other encumbrancer having priority, which acknowledges and agrees to the terms of this Agreement. Redeveloper agrees to provide the Agency with a title report or other evidence as to the status of title to the Redeveloper Property after the recording of the memorandum of this Agreement and before the issuance of the TIF Bond. After the TIF Bond has been paid in full or expiration of the fifteen (15) years after the Effective Date of this Agreement, whichever is earlier, Redeveloper or any successor in interest of the 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 Agreement. 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 Project Area from any or all of the specific provisions of this Agreement.

#### **ARTICLE IV. INSURANCE**

**401. Construction Period.** During the construction period, Redeveloper shall keep the Redeveloper Property, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value, but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Redeveloper agrees to use its good faith efforts to recommence construction to its prior condition within nine (9) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

**402. Tax Increment Period.** During the tax increment period, Redeveloper shall include by restrictive covenant an enforceable obligation on the Redeveloper or other owner to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to the Redeveloper or other owner or tenant's obligation to use good faith efforts to commence restoration of the private improvements to its prior condition within nine (9) months from the date of the damage or destruction, diligently pursuing the same to completion.

#### **ARTICLE V. DEFAULT AND REMEDIES UPON DEFAULT**

**501. 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. **Events of Default.** The following shall constitute "Events of Default" under the terms of this Agreement:

(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 Agreement;

(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 under any other statutory or contractual obligation 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 of the Redevelopment Project; or

(iv) the 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 the Redeveloper or any part of its property or commences any proceeding related to the 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 the Redeveloper any such proceedings and the 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 the Redeveloper or any part of its property or suffers any such receivership or trusteeship.

B. Remedies. If 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 (i) may suspend its performance under this Agreement, including an order to the City Treasurer or any other appropriate officer to suspend contracting for public improvements or disbursement of monies for costs of public improvements or other improvements until receiving assurances from Redeveloper or Agency, deemed adequate by the Agency, that Redeveloper or Agency has cured the default and will continue performance under this Redevelopment Agreement and (ii) may 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 Agreement.

C. Specific Performance. Redeveloper acknowledges and agrees that the Agency or any registered owner of any Bond outstanding under the Resolution shall each be entitled to specific performance and injunction or other equitable relief for any breach or threatened breach of any of the

provisions of this Agreement, notwithstanding the availability of an adequate remedy at law and Redeveloper hereby waives the right to raise such defense in any proceeding equity.

D. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or the registered owner of any of the Bonds 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 Agreement 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. Non-Waiver. If any provision of this Agreement should be breached by any Party or beneficiary and hereafter waived by any other Party or beneficiary, 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.

## ARTICLE VI. SECURITY

### 601. Bonds.

A. Penal Bond. Pursuant to *Neb. Rev. Stat. §§ 18-2151* (Reissue 2012), Redeveloper shall furnish or cause to be furnished to the City a penal bond with good and sufficient surety in the amount of the payment costs. With respect to private improvements, the Agency finds that a penal bond executed by the Redeveloper or the Redeveloper and any other affiliate of Redeveloper providing evidence of Redeveloper's financial ability as provided in Section 101 hereof shall constitute good and sufficient surety.

B. Payment Bond. Pursuant to *Neb. Rev. Stat. § 52-118*, Redeveloper shall submit proof to the City that Redeveloper's general contractor or applicable subcontractor has furnished Redeveloper with a payment bond or bonds with a corporate surety company in a sum not less than

the contract price for public improvements to the water main, sewer main, and storm sewer system which are located in the public right-of-way, *if any*, (hereinafter collectively referred to as the "Right of Way Improvements.") Such bonds shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to each person, as defined in *Neb. Rev. Stat. §49-801* (Reissue 2012), that performed labor or furnished materials, equipment or supplies used in the prosecution of the Right of Way Improvements.

C. Indemnification. Redeveloper agrees to indemnify and hold both the Agency and the City harmless to the extent of any payments in connection with carrying out construction of the private improvements the Agency and/or City may be required to make for failure of Redeveloper or its contractor to make payments of all amounts lawfully due to each person, as defined in *Neb. Rev. Stat. § 49-801*, that performed labor or furnished materials, equipment or supplies used in prosecution of such improvements.

## ARTICLE VII. MISCELLANEOUS

**701. Release and Indemnification.** The Agency and its governing body, officers, agents (including independent contractors), consultants, legal counsel, servants, and employees are, for purposes of this Section, the "Indemnified Parties." Redeveloper releases, and agrees to hold the Indemnified Parties harmless from liability for any loss or damage to property, or personal injury to or death of any person resulting from any work or other legal activity on the Redeveloper Property, or from any defect in the Redevelopment Project.

**702. 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 the Redeveloper for any purpose whatsoever and the undertakings and agreements on the part of the Agency are undertaken solely pursuant to the provisions of the Act and for the limited governmental purposes of promoting and encouraging redevelopment of a blighted and substandard area. The Redeveloper or its successors and assigns are and shall remain in control of the Redevelopment Project for all purposes, except that the City

of Norfolk 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.

**703. Indemnity.** The Redeveloper hereby agrees to indemnify and save the Agency harmless for any payment or liability to which the Agency may become subject for carrying out of any contract entered into by the Redeveloper with respect to the Redevelopment Project. The Redeveloper agrees to provide to the Agency evidence that there is in effect a bond for the payment costs as required under *Neb. Rev. Stat. § 18-2151 (2012)*.

**704. Additional Parties Added as Redeveloper.** Additional parties or entities may be admitted to and included within the meaning of the term "Redeveloper" by amending this Agreement in writing.

**705. Agreement Binding Upon Successors and Assigns.** This Agreement is made for the benefit of the Redeveloper, the Agency and the registered owners from time to time of the TIF Bond as third party beneficiaries. This Agreement shall be binding upon the Agency and Redeveloper, and their respective successors in interest. With the prior written consent of the Agency, the Redeveloper may assign its interest in the Redevelopment Project, in whole or in part, provided that the assignee (the "Assignee") agrees by written instrument duly acknowledged and in recordable form, to be bound by the terms of the Plan and this Redevelopment Agreement. Such consent shall not be unreasonably withheld by the Agency. If Redeveloper assigns its rights and obligations under this Redevelopment Agreement, in whole or in part, to any assignee, the Redeveloper and the Assignee shall both be bound by the terms of the Plan and this Redevelopment Agreement (as and to the extent of any such assignment with respect to the Assignee). No assignment by the Redeveloper to the Assignee shall be effective until a written instrument binding the Assignee under the terms of the Plan and this Redevelopment Agreement (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 Madison County with respect to the Redeveloper Property.

**706. Titles of Sections.** Any titles of the several Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions.

**707. Notices.** Except as otherwise specified, all notices shall be in writing and shall be given



by United States mail or by other telecommunication device capable of creating a written record of the notice and its receipt. Notices hereunder shall be a d d r e s s e d :

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

[Wishrock  
Attn: Asset Management  
131 South Higgins Ave. Suite P1  
Missoula, MT 59802]

- (b) in the case of Agency, if mailed to or delivered personally to: The Community Development Agency at Offices of the City of Norfolk, 309 North 5th Street, Norfolk, Nebraska 68701, Attention City Treasurer.

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 as either party may, from time to time, designate in writing and forward to the other as provided in this Section.

**708. Severability.** If any provision of this Agreement 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 inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, sections or paragraphs of this Agreement shall not affect the remaining portions of this Agreement.

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

**710. Law Governing.** This Agreement shall be governed and construed in accordance with the laws of Nebraska.

**711. Time of the Essence.** Time shall be of the essence of this Agreement.

**712. Termination.** This Agreement shall commence as of the date first above written and shall terminate fifteen (15) years after the effective date set forth in the Bond Resolution.

**713. Force Majeure Event.** Neither the Redeveloper nor the Agency shall be considered in breach or default under this Agreement in the event of delay in the performance due to unforeseeable causes beyond its control and without its fault or negligence, caused by a Force Majeure Event. Force Majeure Event is defined as any failure or delay in performance that is proximately caused by acts of God, or wars or insurrections; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Redeveloper or the Agency, as the case may be, shall be extended for the period of the delay as determined by the mutual agreement of the Redeveloper and the Agency; provided, that the Redeveloper or the Agency, as the case may be, shall, within twenty (20) days after the beginning of any such enforced delay, have notified the Redeveloper or the Agency (as applicable) in writing of the cause, and requested an extension for the period of the enforced delay.

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

**715. Effective Date of Ad Valorem Tax Provision.** The Effective Date of the ad valorem tax provision for the Redevelopment Project shall be established by the Bond Resolution, but is expected to be January 1, 2020, ("Effective Date"); with the taxable base for purposes of this Agreement anticipated to be the valuation as of January 1, 2019. The Agency will deliver written notice to the County Assessor on or before August 1st of the year in which the Effective Date occurs to

divide the property taxes in the Project Area and use the last certified valuation to divide the taxes for the remaining portion of the fifteen (15) year period as described in Section 18-2147 of the Act.

**716. Relocation of Existing Tenants.** The Redeveloper shall provide in facility relocation assistance to tenants residing in the Redevelopment Project during the rehabilitation of the apartment building, and hold the City and Agency harmless for such costs.

**717. Conditions Precedent for Enforcement of Provisions.** The terms and conditions of this Redevelopment Agreement shall be null and void and no longer enforceable in the event that the Redeveloper fails to obtain title to the Redevelopment Area by January 1, 2018, and provide the information required in Section 101 A of this agreement.

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

SIGNATURE PAGE TO FOLLOW

By: \_\_\_\_\_  
President of Norfolk Housing Development Corporation

Joshua Moenning, Chairman

\_\_\_\_\_, Secretary

Subscribed and sworn to before me by \_\_\_\_\_, President of Norfolk Housing Development Corporation, as managing member of Tarpon Realty, LLC, General Partner of Odd Fellow Housing Associates, LP, a Nebraska limited partnership, on behalf of the limited partnership on the \_\_\_\_ day of January, 2017.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2017, by Joshua Moenning and \_\_\_\_\_, Chairman and Secretary, respectively, of the Community Development Agency of the City of Norfolk, Nebraska, on behalf of the Agency.

Notary Public

## Exhibit "A"

### Legal Description of the Redeveloper Property

The West 59.05 feet of the South 248 feet of Lot 2; the South 248 feet of Lot 3, and the East 46.2 feet of the South 184 feet of Lot 4, all in Block 6 of Haase's Suburban Lots to Norfolk, Madison County, Nebraska. Lots 4, 5, 6 and 7 of Davenport's Subdivision of Lots 1 and part of Lot 2 in Block 6 of Haase's Suburban Lots to Norfolk, Madison County, Nebraska, less a tract of the Southeast corner thereof 165 feet East and West and 184 feet North and South. ("Community Redevelopment Area")

Exhibit "B"  
Sources and Uses of TIF Funds

TIF Eligible Improvements (Life Safety Improvements)

Fire Alarm	\$45,000
Fire Sprinkler	\$130,000
Electrical equipment relocation	\$45,000
Hard wired smoke detectors	\$15,000
Emergency lighting	\$5,000
Elevator rehabilitation	\$400,000
New windows	\$1,000,000
Abatement of hazardous materials	<u>\$250,000</u>

Total	\$1,890,000
Apartment building rehabilitation	<u>\$5,264,568</u>

Total TIF Eligible Improvements                      \$7,154,568

TIF Grant not to exceed \$415,000. Category totals will be adjusted to actual expenses certified to Agency.