

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT is entered into between the **City of Lincoln, Nebraska**, a municipal corporation in the State of Nebraska, hereinafter collective referred to as “City,” and **Capital Cold LLC**, a Nebraska limited liability company, hereinafter “Redeveloper.”

RECITALS

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the West O Street Redevelopment Plan as amended (Redevelopment Plan) a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (City Clerk).

B. The Redevelopment Plan calls for the City to support commercial/industrial redevelopment efforts on Lots 1 through 3, Block 1, EDM Industrial Center, Lincoln, Lancaster County, Nebraska, identified in the Plan and hereinafter referred to as the “Project Site.” Pursuant to *Neb. Rev. Stat. § 18-2147, et seq.*, the Redevelopment Plan contains a provisions which provides that “any ad valorem tax levied upon real property in the Redevelopment Project for the benefit of any public body shall be divided, for a period not to exceed fifteen years after the effective date of such provision by the governing body as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project valuation shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and
- That portion of the ad valorem tax on real property in the Redevelopment Project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle of, the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority for financing or refinancing in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in

such Redevelopment Project shall be paid into the funds of the respective public bodies.

Said provisions are hereinafter referred to as the “Ad Valorem Tax Provision.”

C. Redeveloper has proposed to redevelop the Project Site by constructing a 22,000 square feet cold storage building and a 6,000 square feet for commercial use for dry storage building for commercial use (Redeveloper Improvements).

D. It is necessary to (1) acquire the public right-of-way, permanent easements and temporary construction easements needed for a new street immediately west of the Project Site; (2) construct said street and related improvements in order to provide adequate ingress and egress to the Redeveloper Improvements; and (3) construct sidewalk and streetscape improvements in SW 32nd Street abutting the Project Site, all of which are collectively referred to as “Public Improvements” which Public Improvements are deemed essential to redevelopment of the Project Site for uses in accordance with the Redevelopment Plan. The estimated cost to complete the Public Improvements is \$383,700.00.

E. *Neb. Rev. Stat.* §§ 18-2107 and 18-2150 (Reissue 1997) authorize the City to arrange or contract for the furnishing of the Public Improvements for or in connection with redevelopment of the Project Site. The City intends to issue tax increment financing indebtedness (“TIF Bond”) to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“TIF Tax Revenues”). It is estimated that the Project will generate \$265,400.00 of TIF funds available for construction of the Public Improvements.

F. The City is willing to support redevelopment of the Project Site in accordance with the Redevelopment Project by constructing the Public Improvements with bond proceeds from the

issuance of a TIF Bond provided Redeveloper agrees to advance any additional funds needed to construct the Public Improvements.

G. Redeveloper desires the Public Improvements to be constructed in association with construction of the Redeveloper Improvements and therefore agrees to advance additional funds needed for the Public Improvements prior to the City's award of a bid for said construction subject to repayment and/or reimbursement as provided in Paragraph 8 below.

H. As a further inducement for the City to enter into this Agreement, Redeveloper is willing to place use restrictions on the Project Site and agree not to contest any taxable valuation assessed for the Project Site which does not cumulatively exceed Two Million Five Hundred Thousand and 00/100ths Dollars (\$2,500,000.00).

I. The City and Redeveloper enter into this Agreement to implement the construction of the Redeveloper Improvements and Public Improvements in connection with redevelopment of the Project Site in accordance with the Redevelopment Plan.

NOW, THEREFORE, in consideration of the above recitals which are hereby made a part of this Agreement and of the mutual covenants contained herein, the parties do agree as follows:

1. Construction. Redeveloper, at its own cost and expense, shall design and construct the Redeveloper Improvements. City at its own cost and expense to the extent TIF Proceeds are available shall complete the Public Improvements, except that Redeveloper shall complete the sidewalk and streetscape improvements to SW 32nd Street.

2. Grant of Temporary Construction Easement to City. Redeveloper will grant or convey to the City without additional consideration any necessary temporary construction easement

on, over, or across the Project Site as may be required to construct the Public Improvements in a form acceptable to the City Attorney.

3. Representations. Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

4. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of the Redeveloper Improvements there shall be no sale or transfer of the Project Site or assignment of its rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld), other than mortgages, and involuntary transfers by reason of death, insolvency, or incompetence. The City shall be entitled to require, as conditions to any required approval, that:

a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Redeveloper; and

b. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Agreement; and

c. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the

City, its disapproval and reasons therefore shall be indicated to Redeveloper in writing.

5. Issuance of City Purchased TIF Bond. As soon as is reasonably practicable after the execution of this Agreement, the City shall issue a TIF Bond in the estimated amount of \$265,000.00 to be purchased by the City and receive TIF Proceeds to be deposited into a fund account (“Project Account”) for payment of the City’s cost of issuance and cost for the Public Improvements. TIF Proceeds shall be expended in the following priority:

First Priority - reimburse the City for cost of issuing the TIF Bond including, but not limited to, bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserved;

Second Priority - reimburse the Redeveloper for the cost of sidewalk and streetscape improvements to SW 32nd Street.

Third Priority - reimburse the City for the cost of the right-of-way acquisition, permanent easements and temporary construction easements for the proposed street to the west of the Project Site.

Fourth Priority - reimburse the City for the City’s cost of constructing the proposed street and related improvements west of the Project Site.

Fifth Priority - reimburse the Redeveloper for the advancement of additional funds needed to construct the proposed street and related improvements west of the Project Site.

6. Redeveloper Advancement of Funds. Redeveloper agrees to advance to City, prior to the award of a construction contract for the Public Improvements, all bid costs in excess of the TIF Bond proceeds (“TIF Proceeds”) in the Project Account available to reimburse the City for the cost of the Public Improvements. The funds to be advanced to the City are estimated to be

\$118,300.00. However, notwithstanding the above, the Redeveloper agrees to be responsible for the actual cost of construction in excess of the available TIF Proceeds in the Project Account.

7. Construction of Public Improvements. City and/or Redeveloper, utilizing available TIF Proceeds from the Project Account and Redeveloper's advancement of additional funds, shall design and construct the Public Improvements. Redeveloper understands and agrees that Redeveloper will be solely responsible for the cost to construct the Public Improvements regardless of any expectation for reimbursement pursuant to Paragraph 8 below and in this regard shall defend and hold the City harmless from and against any claims related to the same or arising out of the administration of the Tax Increment Provision, specifically including any shortfall in anticipated receipts from the Tax Increment Provision for any reason whatsoever including, but not limited to, a decline in taxable valuation of the Project Site.

8. Debt Service for Public Improvements. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Proceeds, reimburse Redeveloper for Redeveloper's construction of the sidewalk and streetscape improvements to SW 32nd Street and advancement of additional funds for the Public Improvements with interest at the rate of four percent (4%) per annum. Only costs incurred after the effective date of this Agreement shall be eligible for payment. The City shall not be liable nor be required to reimburse Redeveloper for any costs incurred by Redeveloper in the event this Agreement is not approved for any reason, including for reasons alleged to be the fault of the City. Any excess TIF Proceeds resulting from the Tax Increment Provision on the Project Site not needed or required to pay for the TIF Bond and/or reimburse Redeveloper for advancement of additional funds shall be expended by the City or returned to the applicable taxing authorities as provided in the Community Development Law. Any

shortfall in anticipated TIF Proceeds from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the Redeveloper without recourse of any kind against the City.

9. Duty to Maintain. Redeveloper shall, following construction, operate the Redeveloper Improvements and any Future Improvements in a safe and sanitary manner and shall take all action necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of all buildings including the routine preventive maintenance of the building and its service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, painting and striping parking areas, repair and replacement of paving as necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes.

10. Use Restrictions. During the Tax Increment Period and in consideration of this agreement, Redeveloper agrees to prohibit the following uses on the Project Site as use restrictions contemplated under the Community Development Law:

- a. Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such

business that has an unreasonable pattern of unlawful disturbances or liquor law violations;

b. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

c. Any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service.

d. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or fuel store.

e. Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games,

or off-site pari-mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law.

f. Any business involving a residential use, sale or display of weapons, self service laundromat, industrial manufacturing, off-site outdoor advertising on the premises, cell tower, radio telecommunication or other communication tower, illegal activities, or sale of any illegal goods or products.

11. Representations and Warranties of Redeveloper. Redeveloper represents and warrants to City as follows:

a. Organization; Power; Good Standing. Redeveloper is a Nebraska limited liability company duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

b. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

c. Effect of Agreement. The execution, delivery and performance of this Agreement by Redeveloper has been duly authorized by all necessary action by Redeveloper and except as provided in this Agreement will not require the consent,

waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Redeveloper is a party.

12. Valuation of Property Within the Project Area. The TIF Proceeds which are to be used to pay the debt service on the TIF Bond and/or to reimburse Redeveloper for the advancement of additional funds for the Public Improvements will be derived from the increased valuation from redeveloping the Project Site as provided in this Agreement. So long as any debt service on the TIF Bond and/or any reimbursement for the Public Improvements remains outstanding and unpaid, Redeveloper agrees not to contest any taxable valuation assessed for that portion of the Project Site which does not cumulatively exceed \$2,500,000.00 commencing tax year 2007 and continuing for a period of not to exceed fifteen (15) years after the effective date hereof or so long as any debt service on the TIF Bond and/or any reimbursement for the Public Improvements remains outstanding and unpaid.

13. Tax Increment Deficiency on City Purchased Small TIF Bond. Any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond, the Redeveloper agrees to pay the same upon written request of the City and shall pay the same for each year that there exists a deficiency during the Tax Increment Period. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by Redeveloper if and when Tax

Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deficiency payments.

14. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date of the Ad Valorem Tax Provision, or so long as the debt service on the TIF Indebtedness and/or any reimbursement for the Public Improvements remains outstanding whichever period of time is shorter (Tax Increment Period), convey the Project Site or any part thereof to any entity which would result in the Project Site, Redeveloper Improvements, or any other building built upon the Project Site being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions.

15. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Project Site prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the Tax Increment Period, but the City in no way waives Redeveloper's statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the Project Site or improvements for tax purposes that are in excess of \$2,500,000.

16. Financing Creating Encumbrances Restricted.

a. Prior to completion of the Redeveloper Improvements, neither Redeveloper nor any successors in interest to the Project Site shall engage in any financing or any other transaction creating any Mortgage upon the Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any portion of the Project Site, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair,

replace and insure the Redeveloper Improvements and other future commercial improvements in accordance with the Redevelopment Plan. Redeveloper or any successor in interest shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to the Project Site, and shall promptly notify the City of any Mortgage that has been created on or attached to the Project Site whether by voluntary act of Redeveloper or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any portion of the Project Site and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Redeveloper's lender to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of the Redeveloper Improvements, any loan proceeds secured by any interest in the Project Site shall be used solely for the payment of costs and expenses related to construction of the Redeveloper Improvements and advancement of funds for the Public Improvements.

b. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time when any casualty damage to the Redeveloper Improvements has occurred and has not been fully restored, any party who obtains title to any portion of the Project Site from or through Redeveloper or the holder of any Mortgage or any other purchase at foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said

party and to complete construction or restoration within twenty-four (24) months from the date of such acquisition.

c. Notice of Default. Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each Holder of any Mortgage at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

d. Option to Cure. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of the Redeveloper Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage; provided, that if the breach or default is with respect to construction of Redeveloper Improvements, nothing contained in this section or any other section of this Agreement shall be deemed to permit or authorize.

e. Rights Applicable to Other Forms of Encumbrance (Deed of Trust). The rights and obligations of this Agreement relating to Mortgages on any portion of the Project Site shall apply to any other type of encumbrance on any of the Project Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

17. Damage or Destruction of the Redeveloper Improvements. During the construction period, Redeveloper agrees to keep the construction area for the Redeveloper Improvements, 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 restore the Redeveloper Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, and shall diligently pursue the same to completion. During the tax increment period, Redeveloper shall include by restrictive covenant an enforceable obligation on the owner or tenant in possession of the Redeveloper Improvements 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 owner or tenant's obligation to restore the Redeveloper Improvements to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

18. Condemnation. If during the Tax Increment Period, all or any portion of Project Site is condemned by a condemning authority other than the City, and the condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the Redeveloper shall be entitled to claim against the Condemnor an interest in the property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

19. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Redeveloper, the party in default shall, upon

written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. In the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

20. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

21. Delay in Performance For Causes Beyond Control of Party. The parties or their successors or assigns shall not be in default of their obligations for delay in performance due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, acts of the federal or state government or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this section is that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of improvements shall be extended for the period of delay. However, in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall within twenty (20) days after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

22. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of any one or more remedies shall

not preclude the exercise by it of any other remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only in writing and only to the extent specified in writing.

23. Conflicts of Interest and City Representatives Not Individually Liable. No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Redeveloper or any successors in interest due to any default or breach by the City under the terms of this Agreement.

24. Approvals. For purposes of this Agreement and the approvals and disapprovals required, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or their representative or successor as constituting the approval or disapproval required by any one or more of them. City shall be entitled to rely on the written approval of Richard L. Urbanovsky, or his successor, as constituting the approval or disapproval of Redeveloper.

25. Notices and Demands. A notice under this Agreement by either party to the other shall be deemed delivered on the date it is postmarked, sent postage prepaid, to Redeveloper at P. O. Box 82907, Lincoln, Nebraska 68501; and to the City at Mayor's Office, 555 South 10th Street, Lincoln, NE 68508 with a copy to City Attorney's Office, 575 South 10th Street, Lincoln, NE 68508, or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this section.

26. Access to Project Area. During construction of the Redeveloper Improvements and Public Improvements, Redeveloper shall permit the representatives of the City to enter all areas of the Project Site and at any and all reasonable times, as the City may deem necessary for the purposes

of inspection of work being performed in connection with the construction of the Redeveloper Improvements and Public Improvements.

27. Provisions Run With the Land. This Agreement shall run with Project Site and shall inure to and bind the parties and their successors in interest.

28. Headings. Headings of the sections of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

29. Severance and Governing Law. Invalidation of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect . This Agreement shall be construed and governed by the laws of Nebraska.

30. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the tax increment indebtedness, whichever first occurs.

Executed by **City** this ____ day of _____, 2008.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

Executed by **Redeveloper** this ____ day of _____, 2008.

CAPITAL COLD, LLC,
a Nebraska limited liability company

Witness: _____

By: _____
_____, Managing Member

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, Managing Member of Capital Cold LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public