

Agenda Packet

COMMUNITY DEVELOPMENT AGENCY

Monday, July 3, 2023
5:15 p.m.

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Notice of Meeting
Community Development Agency

The Community Development Agency will meet on Monday, July 3, 2023 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.

Brianna Duerst
Norfolk City Clerk &
CDA Secretary

Publish (June 28, 2023)
1 P.O.P.

COMMUNITY DEVELOPMENT AGENCY

AGENDA

July 03, 2023

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 June 5, 2023 Agency meeting. | Motion |
| 6. Consideration of Resolution No. 2023-11 approving the Redevelopment Contract with Cornhusker Auto Center, Inc. for the Cornhusker Auto Redevelopment Project. | Resolution 2023-11 |

STAFF MEMORANDUM
COMMUNITY DEVELOPMENT AGENCY

July 03, 2023

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 June 5, 2023 Agency meeting. **Motion**

See Enclosure 5.
6. Consideration of Resolution No. 2023-11 approving the Redevelopment Contract with Cornhusker Auto Center, Inc. for the Cornhusker Auto Redevelopment Project. **Resolution 2023-11**

On June 20, the City Council approved the Redevelopment plan for the Cornhuskers Auto Redevelopment Project. Resolution No. 2023-11 approves the Redevelopment Contract with Cornhusker Auto Center, Inc. to implement this project.

The Redevelopment Project will consist primarily of renovation and rehabilitation of the former Office Max building for use as a Nissan dealership. The Redeveloper acquired the project site late last year and will use TIF for reimbursement of part of the acquisition cost. Total project costs, including renovation and rehabilitation, is expected to be over \$6 million. The Redeveloper is requesting TIF of \$417,468. The project is not economically feasible without TIF. Without TIF, the projected return on investment is approximately 8.2%. With TIF, the anticipated return on investment is approximately 10.4%. While the spread between the two projections is relatively narrow, the additional return (with TIF) allows Redeveloper to increase the size of the facility by 10%-15%, which, according to the Redeveloper, is a critical component of the Redevelopment Project's viability.

See Enclosure 6.

COMMUNITY DEVELOPMENT AGENCY

The Community Development Agency of the City of Norfolk, Nebraska, met in the Council Chambers, 309 N 5th Street, Norfolk, Nebraska, on Monday, June 5, 2023, beginning at 5:15 p.m.

Chairman Moenning called the meeting to order.

Roll call found the following Agency members present: Frank Arens, Shane Clausen, Kory Hildebrand, Andrew McCarthy, Thad Murren, Justin Snorton, Justin Webb, and Josh Moenning. Absent: Corey Granquist.

City staff members present were City Administrator Andy Colvin, City Attorney Danielle Myers-Noelle, Finance Officer Randy Gates, City Clerk Brianna Duerst, Public Works Director Steve Rames, Communications Manager Nick Stevenson, and City Planner Val Grimes.

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 Chairman and all members of the Agency prior to the meeting.

The Chairman presided and the Secretary recorded the proceedings.

The Chairman 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

Hildebrand moved, seconded by Arens, to approve the agenda as printed. Roll call: Ayes: Arens, Clausen, Hildebrand, McCarthy, Murren, Snorton, Webb and Moenning. Nays: None. Absent: Granquist. Motion carried.

Minutes

(May 1, 2023 CDA Minutes)

Arens moved, seconded by Snorton to approve the minutes of the May 1, 2023, Agency meeting as printed. Roll call: Ayes: Arens, Clausen, Hildebrand, McCarthy, Murren, Snorton, Webb and Moenning. Nays: None. Absent: Granquist. Motion carried.

Resolution No. 2023-9

(Phillip Avenue Apartments Redevelopment Contract)

Hildebrand moved, seconded by Murren to approve Resolution No. 2023-9 approving the Redevelopment Contract with Phillip Avenue Apartments, LLC, for the Phillip Avenue Apartments Redevelopment Project.

Agency Treasurer Randy Gates provided information to agency members. On May 15, 2023, the City Council approved the Redevelopment Plan for the Phillip Avenue Apartments

Redevelopment Project. Resolution No. 2023-9 approves the Redevelopment Contract with Phillip Apartments to implement this project. The Redevelopment Project will consist of demolishing the building and removal of the surfaces to build a 30-unit apartment complex on the property with green space. It is anticipated that this project will provide housing for Wayne State students participating in the Growing Together Initiative. Total project costs is expected to be over \$5 million, with tax increment financing providing \$445,000 of this cost.

Roll call: Ayes: Arens, Clausen, Hildebrand, McCarthy, Murren, Snorton, Webb and Moenning. Nays: None. Absent: Granquist. Resolution 2023-9 was adopted.

Resolution No. 2023-10

(Cornhuskers Auto Redevelopment Plan authorize to forward to City Council)

Arens moved, seconded by Snorton to approve Resolution No. 2023-10 recommending approval of the Redevelopment Plan for the Cornhusker Auto Redevelopment Project and authorization to forward to the City Council.

Agency Treasurer Randy Gates provided information to agency members. The Project site is approximately 5.5 acres, consisting of paved parking areas and an approximately 30,670 square foot box store building. The Redevelopment Project will consist primarily of renovation and rehabilitation of the building for use as a Nissan dealership. The Redeveloper acquired the project site late last year and will use TIF for reimbursement of part of the acquisition cost. Total project costs, including renovation and rehabilitation, is expected to be over \$6 million. The Redeveloper is requesting TIF of \$417,468. The project is not economically feasible without TIF. Without TIF, the projected return on investment is approximately 8.2%. With TIF, the anticipated return on investment is approximately 10.4%. While the spread between the two projections is relatively narrow, the additional return (with TIF) allows Redeveloper to increase the size of the facility by 10%-15%, which, according to the Redeveloper, is a critical component of the Redevelopment Project's viability.

Roll call: Ayes: Arens, Clausen, Hildebrand, McCarthy, Murren, Snorton, Webb and Moenning. Nays: None. Absent: Granquist. Motion carried.

There being no further business the Mayor adjourned the meeting at 5:20 p.m.

ATTEST:

Josh Moenning, Chairman

Brianna Duerst, Secretary

(S E A L)

City of Norfolk, 309 N 5th Street, Norfolk, NE 68701

RESOLUTION NO. 2023-11

BE IT RESOLVED, by the governing body of the Community Development Agency of the City of Norfolk, Nebraska, that the Redevelopment Contract with Cornhusker Auto Center, Inc., a Nebraska corporation, 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 special council.

PASSED AND APPROVED this 3rd day of July 2023.

Josh Moenning, Chairperson (Mayor)

(SEAL)

Brianna Duerst, Secretary (Clerk)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Josh Moenning, Chairperson of the Community Development Agency of the City of Norfolk, Nebraska.

Bethene A Hoff , Notary Public

REDEVELOPMENT CONTRACT
(The Cornhusker Auto Redevelopment Project)

This Redevelopment Contract for the Cornhusker Auto Redevelopment Project (“**Redevelopment Contract**”) is made and entered into as of _____, 2023, by and between the Community Development Agency of the City of Norfolk, Nebraska (the “**Agency**”) and Cornhusker Auto Center, Inc., a Nebraska corporation (“**Redeveloper**”). The Agency and/or Redeveloper may be referred to hereinafter individually as a “**Party**”, or collectively as the “**Parties**”.

WITNESSETH:

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

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

WHEREAS, Redeveloper, pursuant to the Plan, intends to undertake the renovation and rehabilitation of the former OfficeMax building for use as an automotive dealership, together with such public improvements associated therewith, within the Redevelopment Project Area, as depicted on the site plan attached hereto and incorporated herein as Exhibit “B”, all as more particularly described in the Plan (collectively, said improvements are referred to in this Redevelopment Contract as the “**Redevelopment Project**”); and

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

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

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

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

Section 1. Representations, Warranties and Covenants of Redeveloper.

Redeveloper hereby represents, covenants and warrants as follows:

- (a) Redeveloper is a Nebraska corporation duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its articles of incorporation or bylaws, is authorized to enter into and perform its obligations under this Redevelopment Contract and, to the best of the knowledge of Redeveloper, is not in violation of the laws of the State of Nebraska.
- (b) Throughout the term of this Redevelopment Contract, Redeveloper will reasonably endeavor to construct, operate and maintain the Redevelopment Project in accordance with the terms of this Redevelopment Contract and the Plan, or amendments thereof, and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations).
- (c) Throughout the term of this Redevelopment Contract and subject to the provisions of section 19 of this Redevelopment Contract, in the event of any casualty damage to the Redevelopment Project, Redeveloper or its assignee agrees to repair and reconstruct such damaged portion or portions of the Redevelopment Project so that such reconstructed real property has a taxable value at least equal to the value as most recently determined prior to the event or events of casualty loss. Redeveloper agrees to substantially effect such repair and reconstruction whether or not insurance proceeds are sufficient or available for such purposes.
- (d) Redeveloper or its assignee intends to complete the Redevelopment Project on or before December 31, 2024, at an estimated cost of \$6,115,000.
- (e) Redeveloper has not received, nor is it aware of, notices or communications from any local, state or federal official or body that the activities of Redeveloper respecting the Redevelopment Project Area or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation.
- (f) Redeveloper will use its best efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met for the Redevelopment Project to be lawfully constructed, occupied or operated.

- (g) The execution and delivery of this Redevelopment Contract, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Contract are not prevented or limited by and will not conflict with or result in a breach (i) of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which Redeveloper is now a party or by which it is bound; or (ii) of any past, pending or threatened litigation, court order, or administrative proceeding, by which Redeveloper is or might become bound.
- (h) To the best of the knowledge of Redeveloper, Redeveloper is not aware of any hazardous waste or other significant environmental pollution condition or hazard existing on or within the Redevelopment Project Area.
- (i) Redeveloper acknowledges and agrees that neither the Agency nor the City shall be obligated to pay any costs related to the Redevelopment Project other than costs to be paid from available grant monies derived from ad valorem incremental real estate taxes generated from the Redevelopment Project (“**TIF Revenues**”), if any, and Redeveloper hereby undertakes and agrees to pay any and all such costs. All costs (both public and private) of the Redevelopment Project shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Project Area or any of the improvements thereon. Redeveloper agrees to provide for the construction of both the Redevelopment Project public and private improvements located within the Redevelopment Project Area as described in the Plan or as described in this Redevelopment Contract, except to the extent that the Agency or the City shall agree otherwise by separate written agreement with Redeveloper.
- (j) Redeveloper agrees and covenants for itself, its successors and assigns that as long as the Bond 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 Redevelopment Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Redevelopment Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Redevelopment Project.
- (k) Redeveloper agrees that any contractor providing services related to the Redevelopment Project will utilize the federal immigration verification system, as defined in Section 4-114 of the Nebraska Revised Statutes, as amended or transferred, to determine the work eligibility status of new employees physically performing services on the Redevelopment Project.
- (l) Redeveloper owns or has contracted to purchase all real property within the Redevelopment Project Area, in fee simple and free from any liens,

encumbrances, or restrictions which would prevent the performance of this Redevelopment Contract by Redeveloper.

- (m) Any general contractor chosen by Redeveloper or Redeveloper itself shall obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and a penal bond as required by the Act and Section 9 of this Redevelopment Contract, if applicable. The Agency, the City and Redeveloper shall be named as additional insureds on such policies. Any contractor chosen by Redeveloper or Redeveloper itself, as an owner, shall be required to purchase and maintain property insurance upon the Redevelopment Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include "All Risk" insurance for physical loss or damage. The contractor or Redeveloper, as the case may be, with respect to any specific contract, shall also carry insurance on all stored materials. Upon request of the Agency or City, the contractor or Redeveloper, as the case may be, shall furnish the Agency and the City with a certificate of insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Agency and the City prior written notice in the event of cancellation of or material change in any of the policies.
- (n) At all times during the term of this Redevelopment Contract, Redeveloper shall maintain policies insuring the improvements located within the Redevelopment Project Area in an amount equal to one-hundred percent (100%) of their full insurable value.
- (o) With respect to the Redevelopment Project, Redeveloper has not pursued or received, and will not pursue or receive, tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act, or a refund of the City's local option sales tax revenue.
- (p) Redeveloper represents and warrants that the Redevelopment Project would not be financially feasible without the use of TIF, and therefore would not occur but for the grant of TIF provided hereunder.

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

This Redevelopment Contract hereby incorporates the Plan by this reference. In order to provide for payment of some of the eligible improvements for the Redevelopment Project set forth in the Plan and this Redevelopment Contract, as described in Exhibit "C", attached hereto and incorporated herein (the "**Eligible Costs**"), the Agency shall proceed to issue its Bond on a form provided by the Agency and set forth in the Bond Resolution, in the principal amount of \$417,468, at an interest rate of 6.00% per annum. In consideration of Redeveloper undertaking the Redevelopment Project, the Agency shall issue the Bond to Redeveloper no earlier than thirty (30) days following the Agency's adoption of the Bond Resolution. At closing of the Bond, the

loan to be accomplished by this Section and the obligation of the Agency to use the TIF Revenues for redevelopment purposes under this Redevelopment Contract may be accomplished by offset so that the Redeveloper retains the TIF Revenues and no bankable currency is exchanged at closing of the Bond, except as otherwise provided herein.

The "effective date" (as defined in the Act) for the division of ad valorem real property taxes as provided under the Act shall be set forth in the Bond Resolution. The "redevelopment project valuation" (as defined in the Act) shall be the assessed value attributable to the Redevelopment Project Area on January 1 of the year prior to the effective date.

The Bond shall constitute a limited obligation of the Agency payable exclusively from the TIF Revenues generated from the Redevelopment Project pursuant to section 18-2147 of the Act and collected for a period not to exceed fifteen (15) tax years from the effective date. Prior to receipt of any TIF Revenues, the Agency shall create a special fund established solely to make payments on the Bond. Upon receipt of the TIF Revenues, the Agency shall first deposit the TIF Revenues into the special fund, and thereafter disburse said TIF Revenues to the holder of the Bond (but only from available TIF Revenues), at the times provided in the Bond to provide for reimbursement of all or a portion of the Eligible Costs, to the extent paid by Redeveloper, as evidenced by paid invoices or other evidence acceptable to the Agency ("**Eligible Costs Certifications**"). The principal amount paid on the Bond shall not exceed the aggregate amount of Eligible Costs Certifications received by the Agency. Each such reimbursement hereunder shall be and constitute a grant to Redeveloper made under the terms of this Redevelopment Contract and the Act. Redeveloper may, at its option, submit one or more partial Eligible Costs Certifications prior to expenditure of all Eligible Costs providing certification of receipt of billings for work in progress. All Eligible Costs Certifications shall be subject to review and approval by the Agency prior to the funding of such Eligible Costs. If Redeveloper fails to submit Eligible Cost Certifications in an amount equal to or greater than the principal amount on the Bond upon completion of the Redevelopment Project, the principal and interest amounts on the Bond shall be reduced to the amount of Eligible Costs Certifications received/approved by the Agency; and Redeveloper shall cooperate with respect to all actions reasonably necessary, in the Agency's discretion, to accomplish the same.

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

Section 3. Covenants With Respect to Taxation of Redevelopment Project Area.

Redeveloper agrees with respect to the Redevelopment Project as follows:

- (a) Until the termination of this Redevelopment Contract (as described in Section 18 hereof), the Redevelopment Project shall be operated for the use substantially similar to that contemplated in the Plan and this Redevelopment Contract, and no sale or conveyance of the Redevelopment Project Area (inclusive of the improvements thereon), or a portion thereof, shall be made to any person or entity

for ownership or use which would cause the real property within the Redevelopment Project Area to be eligible for exemption from ad valorem taxes under Section 77-202 of the Nebraska Revised Statutes, as now existing or hereafter amended, or any successor provision thereto, and that it will not make application for any structure, or any portion thereof, to be taxed separately from the underlying land of any lot.

- (b) Redeveloper intends to create a taxable real property valuation of not less than \$5,000,000 within the Redevelopment Project Area (the “**Minimum Valuation**”) no later than January 1, 2025. From and after the issuance of the Bond and so long as the Bond remains outstanding and unpaid, Redeveloper, together with its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, shall not protest any taxable valuation assessed for the Redevelopment Project Area, as determined by the appropriate assessing and taxing officials of Madison County, Nebraska, for purposes of local ad valorem real estate taxes, to an amount below the Minimum Valuation.
- (c) If, during the period of this Redevelopment Contract, the Redevelopment Project Area is assessed at less than the Minimum Valuation: (1) if Redeveloper has monetized the Bond by pledging it to its lender, Redeveloper shall solely be responsible for all payments due to such lender; and (2) in the event of a shortfall of TIF Revenues available as debt service on the Bond, Redeveloper agrees to defer receipt of any such shortfall. If Redeveloper defers the receipt of any such shortfall amounts as required hereunder, Redeveloper shall be entitled to receive reimbursement of any such shortfall payment to the extent TIF Revenues later become available during the fifteen (15) year period prescribed by the Act in an amount in excess of the amount necessary to meet the current debt service payments. Redeveloper shall and hereby does unconditionally forgive any such shortfall amounts remaining unpaid on the Bond at the end of the fifteen (15) year period for the division of ad valorem real estate taxes prescribed by the Act.
- (d) Redeveloper, its successors and assigns, including subsequent purchasers of land within the Redevelopment Project Area, further agree as follows:
 - (i) to pay all local ad valorem real estate taxes for the Redevelopment Project Area as levied and assessed before the same become delinquent; and
 - (ii) not to seek any administrative review or judicial review of the applicability or validity of any tax statute relating to taxation of the Redevelopment Project Area or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings; and
 - (iii) not to seek any tax deferral or tax abatement with respect to local ad valorem taxes, either as presently or prospectively authorized under any law of the State of Nebraska or federal law with respect to the Redevelopment Project Area; and

- (iv) to pay or cause to be paid, when due and before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all water and sewer rates and charges, occupancy tax, special assessments and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, which are assessed, levied, confirmed, imposed or become payable with respect to the Redevelopment Project Area or Redevelopment Project; provided, however, that any special assessments levied for water, sewer or paving improvements shall be permitted to be paid as the same fall delinquent and may bear interest from the date of levy or other appropriate date set by the levying body; and
- (v) to retain copies of all supporting documents (as defined under section 18-2119(4) of the Act) actually generated and received by Redeveloper in relation to the Redevelopment Project or Plan until the expiration of three years following the end of the last fiscal year in which ad valorem taxes are divided in relation to the Redevelopment Project. This Section 3(d)(v) shall survive the expiration or termination of this Redevelopment Contract.

Section 4. Release and Indemnification.

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

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

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

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

Section 6. Default and Remedies upon Default.

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

- (a) The following shall constitute "Events of Default" under the terms of this Redevelopment Contract:
 - (i) failure by Redeveloper or Agency to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Contract;

- (ii) any representation or warranty made herein by Redeveloper or Agency proves untrue in any respect reasonably deemed to be material by the other Party;
 - (iii) an event of default or material breach by or attributable to Redeveloper or Agency relating to the Redevelopment Project or any portion thereof, including, without limitation, breach of the terms of any agreement or other instrument relating to the financing or construction thereof; or
 - (iv) Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of Redeveloper or any part of its property or commences any proceeding related to Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against Redeveloper any such proceedings and Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for Redeveloper or any part of its property or suffers any such receivership or trusteeship.
- (b) Whenever an Event of Default occurs, in addition to all other remedies available to the Agency or Redeveloper at law or in equity, the Agency or Redeveloper may: (1) suspend its performance under this Redevelopment Contract until receiving adequate assurances from Redeveloper or Agency that Redeveloper or Agency has cured the default and will continue performance under this Redevelopment Contract; and/or (2) take such action at law or in equity as the Agency or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Contract; provided that the remedy of specific performance against Redeveloper shall not include or be construed to include the covenant to build or construct the Redevelopment Project.
- (c) In addition to the remedies under Section 6(b), the Agency shall have the following additional remedies upon an Event of Default by Redeveloper:
- (i) If at any time during the term of this Redevelopment Contract an Event of Default by Redeveloper shall occur and remain continuing, the City or Agency shall have the right, but not the obligation, to cure such breach on behalf of Redeveloper with respect to the construction of the improvements characterized as Eligible Costs. If the City or Agency elects to cure a breach of Redeveloper, Redeveloper shall reimburse the City or Agency for the documented and reasonable costs of curing Redeveloper's breach within 30 days of demand from City or Agency

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

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

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

Section 7. Status of Agency and City.

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

Section 8. Manner of Sale of Bond; Payment of Agency's Legal Fees.

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

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

Section 9. Indemnification and Penal Bond

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

Section 10. Additional Parties Added as Redeveloper.

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

Section 11. Redevelopment Contract Binding Upon Successors and Assigns.

This Redevelopment Contract is made for the benefit of Redeveloper, the Agency and the registered owners from time to time of the Bond as third party beneficiaries. This Redevelopment Contract shall be binding upon the Agency and Redeveloper, and any successors or assigns thereof. Redeveloper may assign its interests under this Redevelopment Contract, in whole or in part, and/or convey the Redevelopment Project Area, or a portion thereof, to an unrelated third party, upon the prior written approval of the Agency, not to be unreasonably withheld. The Agency and Redeveloper acknowledge and agree that, in the event Redeveloper assigns its rights and obligations under this Redevelopment Contract, in whole or in part, to any assignee, Redeveloper and the assignee shall both be bound by the terms of the Plan and this Redevelopment Contract (as and to the extent of any such assignment with respect to the assignee). No assignment by Redeveloper to the assignee shall be effective until a written instrument binding the assignee under the terms of the Plan and this Redevelopment Contract (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the assignee and recorded in the real estate records of Madison County, Nebraska, with respect to the Redevelopment Project Area.

Section 12. Titles of Sections.

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

Section 13. Notices.

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

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

Cornhusker Auto Center, Inc.
c/o Al Rajae
700 E Norfolk Ave
Norfolk, NE 68701
sales@cornhuskerauto.com

with a copy to:

Cline Williams Wright Johnson & Oldfather, L.L.P.
c/o Andrew Willis
233 S 13th Street; Suite 1900
Lincoln, NE
awillis@clinewilliams.com

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

Norfolk City Clerk
309 N 5th St
Norfolk, NE 68701

With a copy to:

Norfolk City Attorney
202 N 7th St
Norfolk, NE 68701

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 13 or at any such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this section.

Section 14. Severability.

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

Section 15. Counterparts.

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

Section 16. Law Governing.

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

Section 17. Time of the Essence.

Time shall be of the essence of this Redevelopment Contract.

Section 18. Termination.

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

Section 19. Force Majeure Event.

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

Section 20. Effect of Redevelopment Contract.

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

(Signatures on following pages)

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

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF NORFOLK, NEBRASKA

By: _____
Chairperson (Mayor)

ATTEST:

Secretary (City Clerk)

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Josh Moenning, Chairperson (Mayor), and Brianna Duerst, Secretary (City Clerk), of the Community Development Agency of the City of Norfolk, Nebraska, on behalf of such agency.

Notary Public

CORNHUSKER AUTO CENTER, INC.,
a Nebraska corporation

By: _____
Al Rajae, President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Al Rajae, the President of Cornhusker Auto Center, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

Exhibit "A"
Redevelopment Project Area

Legal Description:

Lot 3, Block 1, Replat of Shopko Acres, being a part of the City of Norfolk, Madison County, Nebraska.

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

Redevelopment Project Area Depiction:



* Redevelopment Project Area outlined in red

Exhibit "B"
Redevelopment Project Plan

(See Attached)

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

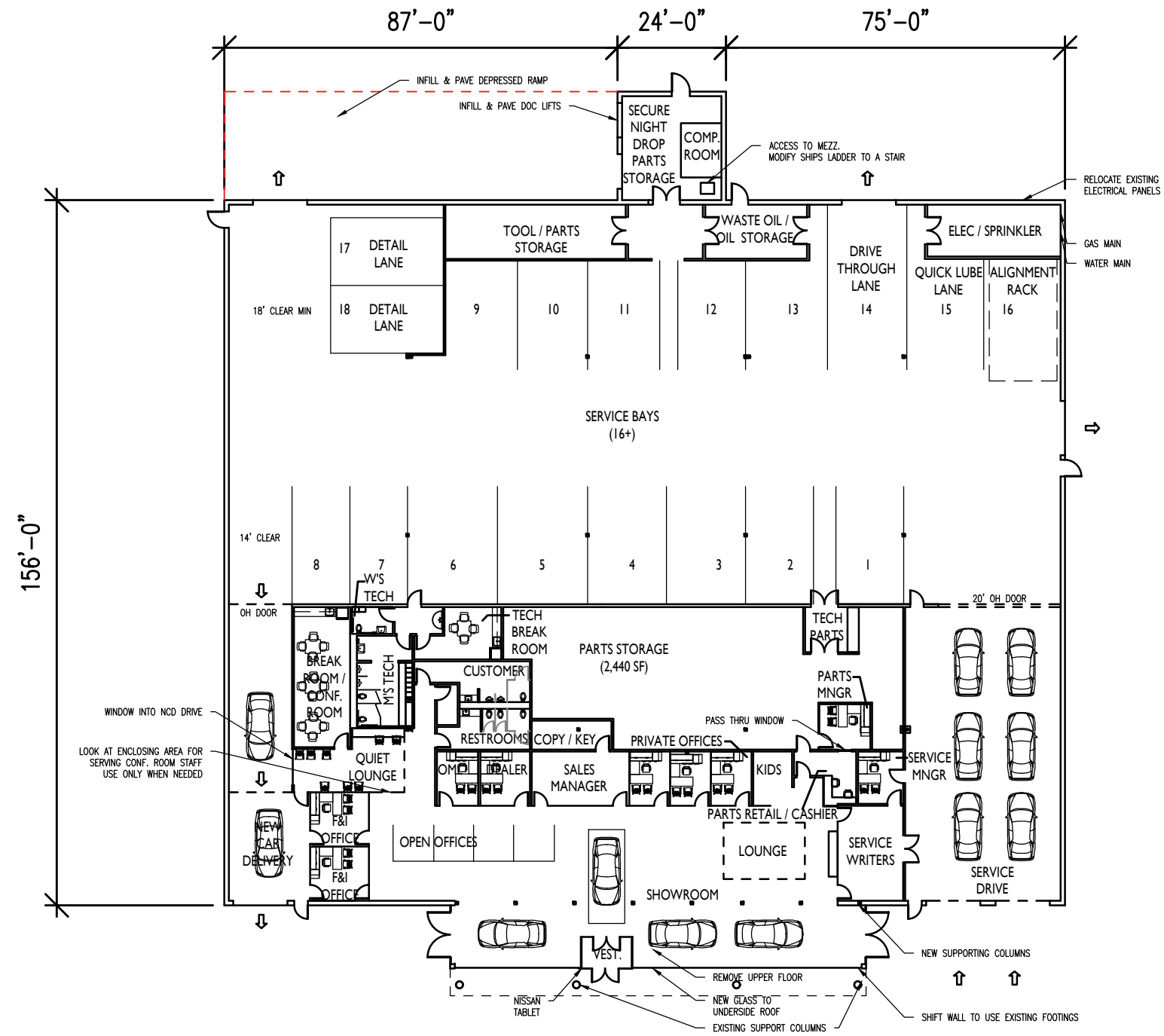


Exhibit "B"

CORNHUSKER NISSAN

NORFOLK, NEBRASKA

02/21/2023

7/3/2023 SCHEMATIC DIAGRAM



Trust. Excellence. Value.

1025 S. 36th. Street, Omaha, NE 68105
www.emsick.com | 402.644.0007

Exhibit "C"
Projected TIF Sources and Uses

Projected TIF Sources:

Assumptions:

Base Tax Amount of Project Site	\$2,804,879
Post-Redevelopment Valuation	\$5,000,000
Tax Levy (2022)	1.960172%
TIF Revenues/Year	\$42,598
Total Potential TIF Revenues	\$638,970
Bond Principal:	\$417,468
Bond Interest Rate:	6.00%

Eligible Costs/Projected TIF Uses

Land Acquisition	\$2,100,000
Rehabilitation Costs	\$4,000,000
City's Legal Fees	\$15,000
TOTAL	\$6,115,000

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

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

Exhibit "D"
Memorandum of Redevelopment Contract

(See Attached)

Exhibit "D"

Once recorded, return to:
Norfolk City Clerk
309 N 5th St
Norfolk, NE 68701

MEMORANDUM OF REDEVELOPMENT CONTRACT

This Memorandum of Redevelopment Contract ("Memorandum") is made this ___ day of _____, 20____, by and between the Community Development Agency of the City of Norfolk, Nebraska ("Agency") and Cornhusker Auto Center, Inc., a Nebraska corporation ("Redeveloper").

1. **Redevelopment Contract.** Agency and Redeveloper have entered into that certain Redevelopment Contract, dated as of _____, 2023 (the "Redevelopment Contract"), describing the public and private improvements being made by the Redeveloper on the real property legally described as:

Lot 3, Block 1, Replat of Shopko Acres, being a part of the City of Norfolk, Madison County, Nebraska

(the "Redevelopment Project Area").

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

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

for construction of certain TIF-eligible improvements described in the Redevelopment Contract via debt service payments on a TIF Bond issued by the Agency.

3. **Minimum Valuation.** The Redevelopment Contract establishes a minimum taxable real property valuation of \$5,000,000 for the Redevelopment Project Area (the “Minimum Valuation”). The Redevelopment Contract further provides that Redeveloper, and its successors and assigns, shall not: (a) protest the real property valuation of the Redevelopment Project Area to a sum less than the Minimum Valuation; or (b) convey the Redevelopment Project Area, or portion thereof, or any structures or units 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. All capitalized terms in this Memorandum that are not otherwise defined herein shall have the same meaning as set forth in the Redevelopment Contract. A full and correct copy of the Redevelopment Contract may be inspected at the Agency offices in Norfolk, Nebraska.

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

(Signatures on following page)

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF NORFOLK, NEBRASKA

By: _____
Chairperson (Mayor)

ATTEST:

Secretary (City Clerk)

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Josh Moenning, Chairperson (Mayor), and Brianna Duerst, Secretary (City Clerk), of the Community Development Agency of the City of Norfolk, Nebraska, on behalf of such agency.

(S E A L)

Notary Public

