

## **REAL ESTATE DEVELOPMENT AGREEMENT**

This Development Agreement made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between COMMUNITY DEVELOPMENT AGENCY OF LEXINGTON, NEBRASKA, hereinafter called "Agency", and CLAYTON NITSCH AND JUSTIN NITSCH, D/B/A C&J AUTO SALES and CLAYTON NITSCH, individually, hereinafter called "Developer."

### **WITNESSETH:**

WHEREAS, the Agency is a duly organized and existing Community Development Agency, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Development Agreement;

WHEREAS, Agency and Developer desire to enter into this Development Agreement for development and rehabilitation of land to assist in the removal of blight and substandard conditions in the City of Lexington within the meaning of the Nebraska Community Development Law (the "Act");

WHEREAS, the Agency, after approval by the City Council pursuant to §18-2116 of the Act, has adopted a Redevelopment Plan (the "Plan") for the real estate shown on Exhibit "A".

WHEREAS, the Plan provides for the construction of public infrastructure to assist developers when constructing improvements on properties within the area in order to eliminate blight and prevent recurrence of blight and substandard conditions in the City;

WHEREAS, the Agency has taken into account and given consideration to the uses and purposes required by the Plan, the restrictions upon, and the covenants, conditions, and obligations assumed by the Developer of such property and the objectives of the Plan for the prevention of the recurrence of substandard and blighted areas;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein set forth, Agency and Developer do hereby covenant, agree and bind themselves as follows:

### **RATIFICATION:**

The Parties acknowledge the foregoing recitations and adopt the same as material parts of this Agreement.

## **OBLIGATIONS OF AGENCY:**

### **Section 2.01 Vacation of Jeffery Road**

This Agreement is conditioned upon the City vacating a portion of Jeffery Road directly abutting Lot 3, Wightman Subdivision, City of Lexington, Dawson County Nebraska. Such portion being a 54' wide strip of land designated on the Wightman Subdivision plat as Jeffery Road and dedicated to the City of Lexington, Nebraska. Upon vacation of that portion of Jeffery Road abutting Lot 3, such portion shall revert to the owner of said Lot 3. The City shall retain a 45' public access easement on the east 45' of the vacated Jeffery Road. Developer, by executing this Agreement, accepts the vacation of Jeffery Road and the reversion of said portion of real estate to Lot 3, Wightman Subdivision, City of Lexington, Dawson County Nebraska and consents to the public access easement reserved therein.

### **Section 2.02 Paving, Public Access, and Storm Water Facilities**

The Agency shall provide for the cost to install up to 9,000 square feet of paving for public access within such 45' public access easement as described above, with associated storm sewer facilities. Such improvements shall be installed by Developer and meet Agency and City specifications.

Such assistance is subject to the condition that the Developer shall construct on Lot 3, Wightman Subdivision, City of Lexington, Dawson County, Nebraska, a 3,250 square foot commercial building, associated access drive, off-street parking facilities, and minimum landscaping as described in Exhibit "B". Construction shall commence within 45 days of final approval of this Development Agreement. Developer shall complete construction within 12 months of the execution of this agreement.

### **Section 2.03 Perform Obligations of Development Agreement**

The Agency will perform, or provide for the performance, in a timely manner, of all obligations set forth in the Development Plan required to be performed by the Agency or City, as provided in this agreement.

## **OBLIGATIONS OF DEVELOPER:**

### **Section 3.01 Construction of Project**

Developer will initially construct a 3,250 square foot commercial building, associated access drive, off-street parking facilities, and minimum landscaping as described in Exhibit "B". Such improvements, estimated in excess of \$300,000, will be constructed upon the property within 12 months. Such improvements are a material element of this Agreement. Completion of the initial project is estimated by November, 2016.

Additionally, Developer intends to construct Phase 2 and Phase 3 commercial building space beyond 2016, as indicated on Exhibit "B". Such improvements are estimated in excess \$500,000.

### **Section 3.02 Non-Discrimination**

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

### **Section 3.03 Immigration Status**

Developer agrees that any contractor providing services on the construction will utilize the federal immigration verification system, as defined in Section 4-114, *Neb. Rev. Stat.* (Supp. 2009), to determine the work eligibility status of new employees physically performing services on the Project.

#### **TERMINATION:**

Developer only shall have the right to terminate this Agreement, without liability, by giving notice to Agency on or before \_\_\_\_\_, 2016.

#### **APPROVAL:**

Developer agrees and understands that this Development Agreement is subject to approval of the governing bodies of Agency and the City of Lexington, and that in the event such approval is not obtained, that this Agreement is null and void.

#### **COUNTERPARTS:**

This Agreement may be signed in one or more counterparts which shall be as binding and effectual as the original.

#### **ASSIGNMENT:**

It is agreed that this contract shall not be assigned by the Developer without the written consent of the Agency. The parties further agree that Agency interest in this contract may be assigned to another agency of the City of Lexington.

**ENTIRETY:**

This Agreement constitutes the entire Agreement between the Parties, and any other Agreements between the parties, unless reduced to writing and executed by the parties shall be null and void.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement the date and year first above written.

COMMUNITY DEVELOPMENT AGENCY  
OF LEXINGTON, NEBRASKA

CLAYTON NITSCH AND JUSTIN  
NITSCH, D/B/A C&J AUTO SALES

By:\_\_\_\_\_

By:\_\_\_\_\_

By:\_\_\_\_\_

CLAYTON NITSCH, individually

\_\_\_\_\_

STATE OF NEBRASKA, )  
 ) ss.  
COUNTY OF DAWSON. )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, the foregoing instrument was acknowledged before me by \_\_\_\_\_, Chairman of the Community Development Agency of Lexington, Nebraska.

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

STATE OF NEBRASKA, )  
 ) ss.  
COUNTY OF DAWSON. )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, the foregoing instrument was acknowledged before me by JUSTIN NITSCH.

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

STATE OF NEBRASKA, )  
 ) ss.  
COUNTY OF DAWSON. )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, the foregoing instrument was acknowledged before me by CLAYTON NITSCH.

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

## EXHIBIT A

### PROJECT DESCRIPTION AND PLAN FOR C&J AUTO PROJECT

#### OVERVIEW:

The Developer intends to develop and rehabilitate the real estate described to-wit:

Lot 3, Wightman Subdivision, City of Lexington, Dawson County, Nebraska.

Exhibit B to the Development Agreement illustrates the site plan for the project.

The Developer will not develop the project in the development area or elsewhere without the benefit of the benefits under the development agreement. The costs and risks of the project are simply too great to be absorbed by the Developers without this assistance.