

REDEVELOPMENT CONTRACT

This Redevelopment Contract made and entered into this ___ day of _____, 2016, by and between the COMMUNITY DEVELOPMENT AGENCY OF LEXINGTON, NEBRASKA, hereinafter called “Agency”, and DUSTIN C. O’HANLON, 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, the City of Lexington, Nebraska, in furtherance of the purposes and pursuant to the provisions of Article VIII, Section 12 of the Nebraska Constitution and Neb. Rev. Stat. §18-2101 to 18-2152, as amended (collectively the “Act”), has adopted a Redevelopment Plan for a blighted and substandard area designated by the City, including the Redevelopment Area;

WHEREAS the Agency owns the Project Site, legally described on Exhibit “A”, which is located in Redevelopment Area #1;

WHEREAS, Agency and Developer desire to enter into this Redevelopment Contract for acquisition, development and rehabilitation of the Project Site to assist in the removal of blight and substandard conditions in the City of Lexington within the meaning of the Act;

WHEREAS, the Plan provides for the transfer of property to developers conditioned on improvements being constructed on the property in order to eliminate blight and prevent recurrence of blight and substandard conditions in the City;

WHEREAS, the Agency has determined the fair value of the real estate pursuant to §18-2118 of the Act and 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 Project Site and the covenants and agreements herein set forth, Agency and Developer do hereby covenant, agree and bind themselves as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.01 Terms Defined in this Redevelopment Contract.

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

"Act" means Section 12 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2154, Reissue Revised Statutes of Nebraska, 2012, as amended, and acts amendatory thereof and supplemental thereto.

"City" means the City of Lexington, Nebraska.

"Governing Body" means the City Council of the City.

"Project" means the improvements to the Project Site, as further described in Exhibit B attached hereto and incorporated herein by reference.

"Project Site" means the real property described on attached Exhibit A.

"Redevelopment Contract" means this Redevelopment Contract between the Agency and the Developer with respect to the Project.

"Redevelopment Plan" means the Lexington Community Redevelopment Area #1 Redevelopment Plan, duly adopted by the City and Agency.

Section 1.02 Construction and Interpretation.

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

1. This Redevelopment Contract shall be interpreted in accordance with and governed by the laws of the State of Nebraska, including the Act.
2. Wherever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word "may" shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.
3. The phrase "at any time" shall be construed as meaning "at any time or from time to time."
4. The word "including" shall be construed as meaning "Including, but not limited to."
5. The words "will" and "shall" shall each be construed as mandatory.
6. The words "herein," "hereof," "hereunder," "hereinafter" and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.
7. Forms of words in the singular, plural, masculine, feminine or neuter shall be construed

- to include the other forms as the context may require.
8. The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

ARTICLE II REPRESENTATIONS

Section 2.01 Representations by the Agency.

The Agency makes the following representations and findings:

1. Agency is a duly organized and validly existing Community Development Agency under the Act;
2. The proposed land uses and building requirements in the Project are designed with the general purpose of accomplishing, in conformance with the general plan of development of the City, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight;
3. The Redevelopment Contract is feasible and in conformity with the general plan for the development of the City as a whole and the plan is in conformity with the legislative declarations and determinations set forth in the Act;
4. The Agency has requested proposals for redevelopment of the Redevelopment Area pursuant to section 18-2119 of the Act, and deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Developer as specified herein; and
5. The Redevelopment Project will achieve the public purposes of the Act by, among other things, increasing the tax base, and lessening blight and substandard conditions in the Redevelopment Area.

Section 2.02 Representations of the Developer.

The Developer makes the following representations:

1. The Developer is a Domestic Corporation organized and existing in good standing under the laws of the State of Nebraska, having the power to enter into this Redevelopment Contract, transact business in the state of Nebraska, and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract.
2. The execution and delivery of the Redevelopment Contract and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the Developer is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Developer contrary to the terms of any instrument or agreement.
3. There is no litigation pending or to the best of its knowledge threatened against the Developer affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Redevelopment Contract or, except as disclosed in writing to the Agency, as to any other matter materially affecting the ability of the Developer to perform its obligations hereunder.

ARTICLE III OBLIGATIONS OF THE AGENCY

Section 3.01 Conveyance of Real Estate.

The Agency shall convey the Project Site to the Developer for a purchase price in the amount of \$25,000, which the Agency has found and determined and hereby finds and determines to be fair value in accordance with the Act. The Project Site shall be conveyed free and clear of all liens and encumbrances except easements, restrictions and dedications as required for public infrastructure improvements as contemplated in this Redevelopment Contract, and shall also be conveyed subject to the terms and conditions of this Redevelopment Contract. The Project Site shall be subject to reconveyance to the Agency upon certain events of default as provided in Article V of this Redevelopment Contract.

Section 3.02 Conditions of Conveyance of Real Estate.

Such conveyance shall be subject to the condition that the Developer shall commence construction on said real estate of an 11,000 square foot commercial building and associated improvements, as described in Exhibit B. Construction shall commence within nine (9) months of final approval of this Redevelopment Contract. Developer shall complete construction within twenty-four (24) months of the execution of this Redevelopment Contract.

Section 3.03 Paving and Utilities.

The Agency shall provide a maximum of \$22,500 to pay the costs to install driveway access along the lot frontage and extensions of electrical, sanitary sewer, and water utilities necessary for the project.

ARTICLE IV
OBLIGATIONS OF THE DEVELOPER

Section 4.01 Construction of Project

Developer will acquire land and construct an 11,000.00 square foot commercial building and associated improvements, as described in Exhibit B. Improvements in excess of \$480,000.00 will be constructed upon the property within 24 months of taking possession, and that such improvements are a material element of this Agreement.

The Developer shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, the Developer shall make reports in such detail and at such times as may be reasonably requested by the Agency (not to exceed one report per month) as to the actual progress of the Developer with respect to construction of the Project. Promptly after completion by the Developer of the Project, the Developer shall furnish to the Agency a certificate of completion. The certification by the Developer shall be a conclusive determination of satisfaction of the agreements and covenants in this Redevelopment Contract with respect to the obligations of the Developer and its successors and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

Section 4.02 No Discrimination.

The Developer, for itself and its successors and assigns, agrees that during the construction of the Project, the Developer will not knowingly 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, The Developer will use its best efforts to comply with all applicable federal, state and local laws related to the Project.

Section 4.03 No Assignment or Conveyance.

Developer shall not convey, assign or transfer the Project, the Project or any interest therein prior to the satisfaction of the agreements and covenants in this Redevelopment Contract without consent of Agency.

Section 4.04 Immigration Status.

The Developer agrees that any contractor for the Project shall be required to agree to use a federal immigration verification system (as defined in Nebraska Revised Statute §4-114 to

determine the work eligibility status of new employees physically performing services on the Project and to comply with all applicable requirements of Nebraska Revised Statute §4-114.

Section 4.05 Progress Reports.

The Developer shall provide the City with progress reports during the redevelopment, upon the written request of the City, and allow the City reasonable access, upon request to Developer, to Project Site, as well as to relevant financial records pertaining to the redevelopment project.

Section 4.06 Payment of Real Estate Taxes

The Developer shall be responsible for payment of real estate taxes from the date of closing forward.

ARTICLE V
DEFAULT, REMEDIES; INDEMNIFICATION

Section 5.01 General Remedies of Agency and Developer.

Subject to the further provisions of this Article V, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by either party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract.

Section 5.02 Enforced Delay Beyond Party's Control.

For the purposes of this Redevelopment Contract, neither party, as the case may be, nor any successor shall be in breach of or in default in its performance of obligations within its control, when and without its fault, a default in such obligation occurs caused by acts of God, or Government, acts of terrorism, or in the event of enforced delay in the project due to unforeseeable causes beyond the control of the parties or either of them, including fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Agency or of Developer with respect to construction of the Project, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof and requested an extension for the period of the enforced delay.

Section 5.03 Limitation of Liability; Indemnification.

Notwithstanding anything in this Article V or this Redevelopment Contract to the contrary neither Agency, City, nor their officers, directors, employees, agents, attorneys or their governing bodies shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The Developer releases the Agency and the City from, agrees that the Agency and City shall not be liable for, and agrees to indemnify and hold the Agency and City harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to Project. The Developer will indemnify and hold each of the Agency and City and their directors, officers, agents, employees, and members of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorney's fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the Project during the term of this Redevelopment Contract or arising out of any action or inaction of Developer, whether or not related to the Project, or resulting from or in any way connected with specified events, including the management of the Project, or in any way related to the enforcement of this Redevelopment contract or any other cause pertaining to the Project.

ARTICLE VI
MISCELLANEOUS

Section 6.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded with the Dawson County Register of Deeds with respect to the Project Site.

Section 6.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 6.03 Binding Effect; Amendment.

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

Section 6.04 Approval.

Developer agrees and understands that this Redevelopment Contract 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.

EXHIBIT A

PROJECT SITE

LEGAL DESCRIPTION:

The West 308.35 feet of the North 320 feet of Lot 23, and the South 135 feet of the North 320 feet of the East 32.4 feet of the West 340.75 feet of Lot 23, in Tract "C" of the Subdivision of "B" and "C" of the Subdivision of the East Half of Section Six (6), Township Nine (9) North, Range Twenty-one (21) West of the 6th P.M. in the City of Lexington, Dawson County, Nebraska.

EXHIBIT B

O'HANLON PROJECT

OVERVIEW:

Developer will acquire land and construct an 11,000 square foot commercial building and associated improvements. Construction shall commence within nine (9) months. Improvements in excess of \$480,000.00 will be constructed upon the property within twenty-four (24) months of taking possession and construction shall be completed in such time.

The Agency shall provide for the installation of driveway access along the lot frontage, without charge or special assessment to the Developer or the property.

In addition, the Agency shall provide extensions of electrical and sanitary sewer utilities to the project without charge or special assessment.