

Agenda Packet

COMMUNITY DEVELOPMENT AGENCY

Monday, October 02, 2017
5:15 p.m.

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Notice of Meeting
Community Development Agency

The Community Development Agency will meet on Monday, October 02, 2017 at 5:15 p.m. at the City Council Chambers, 309 N. 5th St., Norfolk, Nebraska.

The Agency reserves the right to adjourn into closed session as per Section 84-1410 of the Nebraska Revised Statutes.

An agenda for such meeting, kept continuously current, is available at the office of the City Administrator, City of Norfolk, 309 N 5th St, Norfolk, Nebraska, during normal business hours.

Elizabeth A. Deck
Norfolk City Clerk &
CDA Secretary

Publish (September 29, 2017)
1 P.O.P.

COMMUNITY DEVELOPMENT AGENCY

AGENDA

October 02, 2017

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 September 18, 2017 Agency meeting. | Motion |
| 6. Consideration of approval of Resolution No. 2017-12 approving the Amended and Restated Redevelopment Agreement with SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company f/k/a SCM 10X Norfolk 1120, LLC. | Resolution 2017-12 |

STAFF MEMORANDUM
COMMUNITY DEVELOPMENT AGENCY

October 02, 2017

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Action Items/Discussion Items

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| 4. Approve Agenda | Motion |
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See Enclosure 5.

- | | |
|---|---------------------------|
| 6. Consideration of approval of Resolution No. 2017-12 approving the Amended and Restated Redevelopment Agreement with SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company f/k/a SCM 10X Norfolk 1120, LLC. | Resolution 2017-12 |
|---|---------------------------|

The Redevelopment Agreement provides for using Tax Increment Financing (TIF) for building improvements to serve the redevelopment project area generally located at the northwest corner of 13th Street and Omaha Avenue. The original agreement filed with the Register of Deeds had an incorrect signature block for the Redeveloper. This amended and Restated Redevelopment Agreement amends the signature block for accurate filing purposes.

See Enclosure 6.

COMMUNITY DEVELOPMENT AGENCY

The Community Development Agency of the City of Norfolk, Nebraska, met in the City Council Chambers, 309 N 5th Street, Norfolk, Nebraska, on Monday, September 18, 2017, beginning at 5:15 p.m.

Chair Josh Moenning called the meeting to order.

Roll call found the following Agency members present: Dave Fauss, Corey Granquist, Gary L. Jackson, Jim Lange, Rob Merrill, Thad Murren, Josh Moenning and Dick Pfeil. Absent: Shane Clausen.

City staff members present were City Administrator Andy Colvin, City Attorney Clint Schukei, City Clerk Beth Deck and Finance Officer Randy Gates.

Notice of the meeting was given in advance by publication in the Norfolk Daily News, and the notice of the meeting was given to the Chair and all members of the Agency prior to the meeting.

The Chair presided and the Secretary recorded the proceedings.

The Chair informed the public about the location of the current copy of the Open Meetings Act posted in the meeting room and accessible to members of the public.

Agenda

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

Minutes

(September 5, 2017)

Fauss moved, seconded by Lange to approve the minutes of the September 5, 2017 Agency meeting as printed. Roll call: Ayes: Fauss, Granquist, Jackson, Lange, Merrill, Murren, Moenning and Pfeil. Nays: None. Absent: Clausen. Motion carried.

Ballantyne Buildings Redevelopment Plan

Merrill moved, seconded by Granquist to approve the Ballantyne Buildings Redevelopment Plan and forward to the Planning Commission for recommendation.

Finance Officer Randy Gates explained the Redevelopment Plan is for the buildings at 405, 407, 409 and 411 West Norfolk Avenue. The Plan is to rehabilitate the structures for mixed uses, including commercial, residential, retail and office. Gates said 405 and 407 West Norfolk Avenue contains three floors and 409 and 411 West Norfolk Avenue contains two floors. The first floor of each building would be converted to commercial office space with four commercial bays created for small business and/or retail space. The second and third floors of 405 and 407

West Norfolk Avenue would be revamped for commercial space. The second floor of 409 and 411 West Norfolk Avenue would be converted to two residential apartments. The properties were declared blighted and substandard by the Norfolk City Council on October 4, 2010 and the developers plan to use \$143,290 of tax increment financing for the project.

Roll call: Ayes: Fauss, Granquist, Jackson, Lange, Merrill, Murren, Moenning and Pfeil.
Nays: None. Absent: Clausen. Motion carried.

There being no further business, the Chair declared the meeting adjourned at 5:19 p.m.

Josh Moenning, Chair

ATTEST:

Elizabeth A. Deck, Secretary

(S E A L)

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

This Amended and Restated Redevelopment Agreement (“Redevelopment Agreement”) is made and entered into as of the _____ day of September, 2017, by and between the Community Development Agency of the City of Norfolk, Norfolk, Nebraska (the “Agency”) and SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company f/k/a SCM 10X Norfolk 1120, LLC, (the “Redeveloper”). The Agency and/or the Redeveloper may be referred to hereinafter as the “Party” or collectively as the “Parties”. The Initial Redevelopment Agreement (as hereinafter defined) is hereby superseded by this Amended and Restated Redevelopment Agreement.

WITNESSETH:

WHEREAS, the Agency has adopted and approved a plan entitled “SCM 10X Norfolk 1120, LLC Redevelopment Plan” (the “Plan”) for the real estate described on Exhibit “A” hereto attached and by such reference incorporated herein (the “Land”), which is located in the City of Norfolk, and which has previously been declared blighted and substandard or otherwise eligible for redevelopment by the Mayor and Council of the City of Norfolk, Nebraska (said real estate is also sometimes herein referred to as the “Redevelopment Project Area”);

WHEREAS, the Agency has encouraged and induced the Redeveloper to engage in certain development activities, construct improvements and create new jobs in the Redevelopment Project Area and the Redeveloper is not willing to incur the substantial investment necessary for such redevelopment of the Redevelopment Project Area without the financial economic development incentives (“Incentives”) provided by the Agency to the Redeveloper in this Redevelopment Agreement;

WHEREAS, the Agency acknowledges and agrees that the Redeveloper has negotiated and entered into this Redevelopment Agreement in good faith and in full reliance upon the availability of the Incentives;

WHEREAS, the Redeveloper pursuant to the Plan is redeveloping the Land for construction of a 2,724 square foot building and a 10,050 square foot building. The new buildings will have first class retail, restaurant, office, and medical tenants. The Redeveloper will also be constructing extensive concrete parking and staging area surrounding the premises. (The construction is referred to in this Redevelopment Agreement as the “Redevelopment Project”);

WHEREAS, under the Plan the Agency has undertaken to support and encourage Redeveloper in its redevelopment activities and has determined that under the authority provided for in Sections 18-2101 to 18-2150, R.R.S. Neb. (Reissue 2012) as amended, (the “Act”) it is advisable and appropriate for the Agency to provide for and the Agency shall provide for certain costs of providing adequate ingress and egress to the property from 13th Street, obtaining legal rights through the adjacent property to the east to grant access to Omaha Avenue, constructing access ways, curb cuts, and sidewalks for the Redevelopment Project

Area, upgrading and construction of gas and sewer infrastructure to adequately service the Redevelopment Area and the surrounding area, preparing the site for development, filling and grading the site, and constructing public parking, curb cuts, entrances, sidewalks, and landscaping. The Redevelopment Project Area shall have two newly constructed buildings, consisting of 2,724 square feet and 10,050 square feet. The property within the Redevelopment Project Area, other than easements for public utilities, is to be privately owned by Redeveloper.

WHEREAS, the Agency proposes to authorize the issuance of its tax increment revenue bonds (the "Bonds"), to provide for costs of public improvements and to provide for other costs relating to the redevelopment of the Redevelopment Project Area as shall be more specifically described in a resolution or resolutions to be adopted by the governing body of the Agency (the "Resolution") and under the Resolution shall designate the Agency's Treasurer (being the City Treasurer of the City of Norfolk) to act as Paying Agent and Registrar (the "Agent") for the Bonds pursuant to the Resolution;

WHEREAS, Redeveloper seeks the assistance of the Agency for the costs of preparing the Redevelopment Project Area for redevelopment and developing the Public Improvements and therefore is willing to agree to the conditions herein set forth as an inducement to the Agency to issue the Bonds as provided in the Resolution;

WHEREAS, the Redeveloper and the Agency executed that certain Redevelopment Agreement on June 5, 2017 and recorded it in Book 2017, Page 3455 in the records of Madison County, Nebraska ("Initial Redevelopment Agreement");

WHEREAS, there was an error in Redeveloper's signature page to the Initial Redevelopment Agreement and Redeveloper and Agency have agreed to record this Amended and Restated Redevelopment Agreement to correct the error; and

WHEREAS, this Amended and Restated Redevelopment Agreement has the same terms as the Initial Redevelopment Agreement.

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 limited liability company duly organized and existing under the laws of the State of Nebraska, is not in violation of any provisions of its Articles of Organization, is authorized to enter into and perform its obligations under this Redevelopment Agreement and, to the best of the knowledge of the Redeveloper, is not in violation of the laws of the State of Nebraska.

- (b) Throughout the term of this Redevelopment Agreement, Redeveloper will reasonably endeavor to construct, operate and maintain the Redevelopment Project in accordance with the terms of this Redevelopment Agreement and all applicable local, state and federal laws and regulations (including, without limitation, environmental, zoning, building code and public health laws and regulations). Throughout the term of this Redevelopment Agreement and subject to the provisions of Section 19 of this Redevelopment Agreement, in the event of any casualty damage to the Redevelopment Project, as and to the extent owned by Redeveloper, Redeveloper agrees to repair and reconstruct such damaged portion or portions of the Redevelopment Project to a functioning facility having value for purposes of real property taxation at least equal to the value as most recently determined prior to the event or events of casualty loss. Redeveloper agrees to substantially effect such repair and reconstruction whether or not insurance proceeds are sufficient or available for such purposes.
- (c) The Redevelopment Project shall be completed by the Redeveloper or others at an estimated cost of \$4,998,986.00.
- (d) Redeveloper has received no notice or communication from any local, state or federal official or body that the activities of Redeveloper respecting the Redevelopment Project Area or the construction of the Redevelopment Project thereon may be or will be in violation of any law or regulation.
- (e) Redeveloper will use its best efforts to obtain or to cause others to obtain, in a timely manner, all required permits, licenses and approvals and to meet, 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.
- (f) The execution and delivery of this Redevelopment Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Redevelopment Agreement 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.
- (g) To the best of the knowledge of the Redeveloper, the Redeveloper is not aware of any hazardous waste or other significant environmental pollution condition or hazard existing on or within the Redevelopment Project Area, except as described in the Plan or as set forth in the Phase I Environmental Site Assessment prepared by Coranco Great Plains, Inc. and dated April 7, 2017.
- (h) The Redeveloper acknowledges and agrees that neither the Agency nor the City

of Norfolk shall be obligated to pay any costs related to the Redevelopment Project other than costs to be paid from available grant monies, if any, and Redeveloper hereby undertakes and agrees to pay any and all such cost. All costs of the Redevelopment Project, other than those costs which are to be provided for by the Agency, shall be paid in full and there are and shall be no construction liens unpaid against the Redevelopment Project. Redeveloper agrees to provide for the construction of both the public and private improvements located on the property owned by the Redeveloper as described in the Plan or as described in this Redevelopment Agreement, except to the extent that the Agency or the City of Norfolk, Nebraska shall agree otherwise by separate written agreement with the Redeveloper.

- (i) Redeveloper agrees and covenants for itself, its successors and assigns that as long as any Bonds 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. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the 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 Project
- (j) Redeveloper agrees that any contractor providing services on the Project site will utilize the federal immigration verification system, as defined in Section 4-114, *Neb. Rev. Stat.* 2012, to determine the work eligibility status of new employees physically performing services on the Project.

Section 2. Incorporation of Plan; Agency to Issue Tax Increment Bonds. The Plan is hereby incorporated by reference. In order to provide for the payment of part or all of the costs of those public improvements described in the Plan as the "Public Improvements" (the "Public Improvements") and those public improvements described in the Plan as the "Other Public Improvements" (the "Other Public Improvements") to serve the Redevelopment Project Area, the Agency shall proceed to issue the Bonds, in the principal amount not to exceed \$450,000.00, under the Resolution with such terms and conditions as the Agency reasonably determines appropriate under the circumstances to be set forth in the Resolution. The proceeds of the Bonds shall upon receipt be deposited with the City Treasurer of the City of Norfolk, Nebraska, pursuant to the Resolution and shall be disbursed by said Treasurer to provide for all or a portion of the costs of the Public Improvements and the Other Public Improvements for the Redevelopment Project Area in accordance with the following:

- (a) Costs related to the issuance of the Bonds as incurred by the Agency or the City of Norfolk, including the fees and expenses of special bond counsel and the fees and expenses of the City Attorney, shall be paid or reimbursed as soon as practicable after the issuance of the Bonds;

- (b) Costs of the Public Improvements (as identified and allocated on Exhibit “B” hereto attached) to the extent incurred by the Agency or the City of Norfolk shall be paid or reimbursed from monies held by the City Treasurer upon directions provided to such Treasurer by the governing body of the Agency; as and to the extent that the Redeveloper determines that it is in the best interests of the Redeveloper to provide for the construction of any of the Public Improvements through the City by requesting the creation of one or more local improvement districts, the Redeveloper agrees that it will not protest the creation of any such district and agrees to pay its share of any such costs as they may be assessed or otherwise charged against the Land; the Agency and the Redeveloper acknowledge and agree that all or a portion of such costs as charged or assessed may, to the extent that funds are available from the proceeds of the Bonds, be paid out of the proceeds of the Bonds or reimbursed from such proceeds to the Redeveloper to the extent paid by the Redeveloper prior to the issuance of the Bonds;
- (c) Costs for the Public Improvements (as identified and allocated on Exhibit “B” hereto attached) to the extent paid by the Redeveloper shall be reimbursed (but only from available grant monies) to Redeveloper, as evidenced by paid invoices or paid architect's or engineer's certificates acceptable to the Agency, and approved on behalf of the Agency by the Mayor, the City Administrator or the City Clerk; each such reimbursement shall be and constitute a grant to the Redeveloper made under the terms on this Redevelopment Agreement and the Act; and
- (d) Costs of the Other Public Improvements (as identified and allocated on Exhibit “B” hereto attached), if incurred by the Agency, shall be paid in the same manner as applies for the Public Improvements and, if incurred by the Redeveloper, shall be reimbursed (but only from available grant monies) to Redeveloper, as evidenced by paid invoices or paid architect's or engineer's certificates acceptable to the Agency, and approved on behalf of the Agency by the Mayor, the City Administrator or the City Clerk and shall be paid only for those items of redevelopment cost included in the Other Public Improvements as identified on Exhibit “B” hereto attached; each such reimbursement shall be and constitute a grant to Redeveloper made under the terms of this Redevelopment Agreement and the Act.

Unless otherwise determined by the governing body of the Agency, the proceeds of the Bonds shall be applied to the costs described above in the order of priority set forth above. Unless otherwise determined appropriate by the Agency, the Bonds shall be issued on the basis of interest which is includable in income for both federal and Nebraska State income taxes. The effective date for the division of real estate taxes under the terms of the Plan is hereby agreed to be set and is hereby set as January 1, 2018.

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 Agreement (as described in Section 18 hereof), the Redevelopment Project may be operated for any use permitted under Nebraska law and applicable zoning and building regulations of the City of Norfolk and no sale or conveyance of such property shall be made to any person or entity for ownership or use which would cause the Redevelopment Project to be property eligible for exemption from ad valorem taxes under Section 77-202 R.R.S. Neb. 2009, 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) From and after the issuance of the Bonds and so long as the Bonds remain outstanding and unpaid, Redeveloper agrees that it shall not contest any taxable valuation assessed for the Redevelopment Project as determined from time to time by the appropriate assessing and taxing officials of Madison County, Nebraska, for purposes of local ad valorem real estate taxes which does not exceed a value to be agreed upon in writing between the Redeveloper and the Agency prior to the issuance of the Bonds but not less than \$2,750,000 (of which, \$1,800,000 is the value of the portion of the Redevelopment Project identified as Lot 1 and \$950,000 is allotted to the portion of the Redevelopment Project identified as Lot 2, both as further described on Exhibit A).
- (c) Redeveloper further agrees as follows:
 - (i) to pay all local ad valorem real estate taxes as levied and assessed before the same become delinquent;
 - (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 or to raise such inapplicability or invalidity as a defense in any administrative or judicial proceedings;
 - (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,
 - (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; 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 pay those local ad valorem real estate taxes levied and assessed to become due on or before December 31, 2032, at the earliest time in said year that such taxes have been determined and in any event on or before December 31, 2032;
- (d) In no event shall amounts payable by the Redeveloper under the terms of this Redevelopment Agreement for real estate taxes related to the amounts of taxes attributable to increases in valuation in excess of the “redevelopment project valuation” (as provided for under the terms of Section 18-2103(21) and 18-2147, R.R.S. Neb. 2012, as amended) be available or be applied or be required to be paid for purposes of paying principal or interest on any debt obligation of the City of Norfolk or the Agency other than the Bonds, until the Bonds have been paid in full.

Section 4. Release and Indemnification. Redeveloper hereby releases from and covenants and agrees that the Agency and its 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 in the Redevelopment Project.

Section 5. Covenants to Run with the Land; Easement; Recording of Redevelopment Agreement. Redeveloper and Agency agree and acknowledge that this Redevelopment Agreement 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. The Redeveloper hereby acknowledges and agrees that by the terms of this Agreement it is binding and obligating any and all of its interest in the Land, now or hereafter acquired, and hereby covenants and warrants for the benefit of the Agency and the registered owners of the Bonds that the Redeveloper shall defend such interest in the Land against the claims and interests of any and all persons. Redeveloper and the Agency agree and acknowledge that a copy of this Redevelopment Agreement shall be recorded at the expense of the Redeveloper against all real estate located in the Redevelopment Project Area and shall remain of record until the Bonds have been paid in full. As and to the extent that this Redevelopment Agreement does not have priority by order of recording over each and every mortgage or other instrument securing indebtedness of the 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 Agreement. Redeveloper agrees to provide the Agency with a title report or other evidence as to the status of title to the Land after the recording of this Redevelopment Agreement and before the issuance of any of the Bonds. After the Bonds have been paid in full, Redeveloper or any successor or assign of the Redeveloper shall have the right to request in writing and the Agency shall, upon such request,

execute and deliver an appropriate instrument evidencing the termination of this Redevelopment Agreement and of the covenants and undeliakings 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 Agreement.

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 Agreement:
 - (i) failure by Redeveloper or Agency to observe timely or perform timely any covenant, condition, obligation or agreement on its part to be observed or performed under this Redevelopment Agreement;
 - (ii) any representation or warranty made herein by Redeveloper or Agency proves untrue in any respect reasonably deemed to be material by the Agency or Redeveloper;
 - (iii) an event of default or material breach by or attributable to Redeveloper or Agency 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) the Redeveloper makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt or petitions for an order for relief, petitions or applies to any tribunal for the appointment of any receiver or any trustee or a debtor in possession of the Redeveloper or any part of its property or commences any proceeding related to the Redeveloper under any reorganization, arrangement, readjustment of debt, dissolution or liquidation act, code, law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Redeveloper any such proceedings and the Redeveloper by any act indicates its consent or approval of or acquiescence in any such proceeding or the appointment of any receiver or any trustee or debtor in possession for the Redeveloper or any part of its property or suffers any such receivership or trusteeship.
- (b) Whenever any 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 (1) may suspend its performance under this Redevelopment Agreement, including an order to the City Treasurer or any other appropriate officer to suspend contracting for public improvements or disbursement of monies for costs of public improvements or other improvements until receiving assurances from Redeveloper or Agency, deemed adequate by the Agency, that Redeveloper or Agency has cured the default and will continue performance under this Redevelopment Agreement

and (2) may take such action at law or in equity as the Agency or Redeveloper reasonably deem appropriate, including specific performance or injunction to enforce or compel performance of the provisions of this Redevelopment Agreement.

- (c) If at any time during the term of this Redevelopment Agreement an Event of Default shall occur and remain continuing and uncured for a period of more than sixty (60) days after notice from the Agency to the Redeveloper of such Event of Default, the aggregate amount of all grants paid to Redeveloper for improvements other than the Public Improvements, in accordance with Section 2(d) hereof, shall stand forfeited and Redeveloper shall be required to repay the same to the Agency upon demand.
- (d) Redeveloper acknowledges and agrees that the Agency or any registered owner of any Bond outstanding under the Resolution shall each be entitled to specific performance and injunction or other equitable relief for any breach or threatened breach of any of the provisions of this Redevelopment Agreement, notwithstanding the availability of an adequate remedy at law and Redeveloper hereby waives the right to raise such defense in any proceeding equity.
- (e) No remedy herein conferred upon or reserved to the Agency or the registered owner of any of the Bonds is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Redevelopment Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- (f) If any provision of this Redevelopment Agreement should be breached by any Party or beneficiary and hereafter waived by any other Party or beneficiary, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.
- (g) Anything in this Section 6 to the contrary notwithstanding, none of the events described in subsection 6(a)(iv) above shall constitute an Event of Default after the Redevelopment Project has been completed and the proceeds of the Bonds have been disbursed in full.

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 the 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 R.R.S. Neb. (Reissue 2012) as amended and for the limited governmental purposes of

promoting and encouraging redevelopment of a blighted and substandard area. The Redeveloper acknowledges that the Redeveloper or its successors and assigns are and shall remain in control of the Redevelopment Project for all purposes provided that the Redeveloper acknowledges and agrees that the City of Norfolk is and shall be the owner of and shall be in control of all public street, sewer and water improvements constituting a part of or serving the Redevelopment Project.

Section 8. Manner of Sale of Bonds. The Redeveloper agrees either to purchase the Bonds for the principal amount thereof or to find a purchaser for the Bonds upon terms and conditions acceptable to the Agency. Neither the Agency nor the City of Norfolk under the terms of this agreement undertakes any responsibility with respects to the sale or placement of the Bonds. Any such sale or placement of the Bonds shall be by means of a private placement to a financial institution or other institutional buyer capable of evaluating the risks of investment in the Bonds or to the Redeveloper. Any such purchaser, including the Redeveloper, shall provide to the Agency an investment letter setting forth the understanding as to purchase for investment and not for any further distribution, in substantially the same form as Exhibit C.

Section 9. Indemnity. The Redeveloper hereby agrees to indemnify and save the Agency harmless for any payment or liability to which the Agency may become subject for carrying out of any contract entered into by the Redeveloper with respect to the Redevelopment Project. The Redeveloper agrees to provide to the Agency evidence that there is in effect a bond for the payment costs as required under Section 18-2151, R.R.S. Neb. (Reissue 2012) as amended.

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" with the mutual written consent of both Parties.

Section 11. Redevelopment Agreement Binding Upon Successors and Assigns. This Redevelopment Agreement is made for the benefit of the Redeveloper, the Agency and the registered owners from time to time of the Bonds as third party beneficiaries. This Redevelopment Agreement shall be binding upon the Agency and Redeveloper, and any successors or assigns of any such Party. The Redeveloper may assign its interest in the Redevelopment Project, in whole or in part, without the prior approval of the Agency if the Redeveloper provides the Agency written notice of the assignment within 30 days of such assignment. The Agency and Redeveloper acknowledge and agree that, in the event the Redeveloper assigns its rights and obligations under this Redevelopment Agreement, in whole or in part, to any assignee, the Redeveloper and the Assignee shall both be bound by the terms of the Plan and this Redevelopment Agreement (as and to the extent of any such assignment with respect to the Assignee). No assignment by the Redeveloper to the Assignee shall be effective until a written instrument binding the Assignee under the terms of the Plan and this Redevelopment Agreement (as and to the extent of such assignment), duly acknowledged and in recordable form, has been executed and delivered by the Assignee and recorded in the real estate records of Madison County with respect to the Land.

Section 12. Titles of Sections. Any titles of the several Sections of this Redevelopment Agreement 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: SCM 10X Norfolk 1130, LLC
Attention: Darren Hicks
1303 S. 72nd Street, Suite 209
Omaha, NE

68124 with a

copy to:

Dvorak Law Group, LLC
Attention: Kendra Ringenberg
13625 California Street, Suite
110
Omaha, NE 68154

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

to: Community Development Agency
Offices of the City of
Norfolk Attention: City
Treasurer
309 N. 5th Street
Norfolk, Nebraska
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 Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any

particular case, for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative and unenforceable in any other case or circumstance, or of rendering any other provision or provisions 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 Agreement shall not affect the remaining portions of this Redevelopment Agreement or any part thereof.

Section 15. Counterparts. This Redevelopment Agreement 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 Agreement 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 Agreement.

Section 18. Termination. This Redevelopment Agreement shall commence as of the date first above written and shall terminate fifteen years after the effective date set forth in Section 2 of this Redevelopment Agreement.

Section 19. Force Majeure Event. Neither the Redeveloper nor the Agency shall be considered in breach of, or in default in its obligations with respect to any of the obligations under this Redevelopment Agreement in the event that an enforced delay in the performance of

such obligations due to unforeseeable causes beyond its control and without its fault or negligence, caused by a Force Majeure Event, which is defined herein as any failure or delay in performance by a Party that is proximately caused by acts of God, or wars or insurrections; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Redeveloper or the Agency, as the case may be, shall be extended for the period of the enforced delay as determined by the mutual agreement of the Redeveloper and the Agency; provided, that the Redeveloper or the Agency, as the case may be, shall, within twenty (20) days after the beginning of any such enforced delay, have notified the Redeveloper or the Agency (as applicable) in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay.

Section 20. Effect of Redevelopment Agreement. This Redevelopment Agreement (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 Agreement shall be of any force and effect.

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

COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF NORFOLK, NEBRASKA

By: _____
Josh Moenning, Chairperson

ATTEST:

Elizabeth A. Deck, Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, Chairperson, and _____, Secretary, of the governing body of the Community Development Agency of the City of Norfolk, Nebraska on behalf of such agency.

Bethene A. Hoff, Notary

SCM 10X NORFOLK 1130, LLC,
a Nebraska limited liability company

By: SCM 10X Fund, LLC, a Delaware limited
liability company, as the Sole Class A
Member

By: SCM 10X Managers, LLC, a
Nebraska limited liability company,
as Manager of the Sole Member

By : _____
Kirk Hanson, Manager

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this ____ day of _____, 2017, before me, a Notary Public in and for said
county and state, personally appeared _____, who executed the foregoing
Agreement, and acknowledged before me that he was duly authorized and did execute the same
as Manager of SCM 10X Managers, LLC, the Manager of SCM 10X Fund, LLC, the Sole Class
A Member of SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company, on behalf of
the company.

GIVEN under my hand and Notarial Seal, this ____ day of _____, 2017.

Notary Public

Exhibit "A"

Lot 1, O.L. Scheer Second Addition, Norfolk, Madison County, Nebraska

and

Lot 2, O.L. Scheer Second Addition, Norfolk, Madison County, Nebraska

Exhibit “B”

Costs of Public Improvements

**Norfolk Lots 1 & 2 O.L. Scheer Second Addition
Cost Estimate**

5/12/2017

Cost Estimate

REGA
ENGINEERING
GROUP, INC.

Norfolk Crossings Site Costs						
Demolition						
No.	Description	Unit		TOTAL QUANTITY	UNIT PRICE	TOTAL PRICE
1	Concrete Removal	SF		34,837.0	\$ 1.00	\$ 34,837.00
2	Building Removal	SF		13,680	\$ 2.50	\$ 34,200.00
3	Remove Telephone Pedestal	EA		1	\$ 200.00	\$ 200.00
4	Remove AC Unit	EA		2	\$ 300.00	\$ 600.00
5	Remove Gas Line	LF		180	\$ 1.50	\$ 270.00
6	Remove Gas Meter	EA		2	\$ 250.00	\$ 500.00
7	Abandon Telephone Line	LF		150	\$ 0.75	\$ 112.50
8	Abandon Water Service Line	LF		170	\$ 0.95	\$ 161.50
9	Remove Area Inlet	EA		1.0	\$ 500.00	\$ 500.00
10	Remove 15" RCP	LF		35.0	\$ 20.00	\$ 700.00
11	Remove Electronic Sign	EA		1.0	\$ 1,500.00	\$ 1,500.00
Total						\$73,581.00

Paving						
1	6" Concrete Pavement	SF		21,540	\$ 5.50	\$ 118,470.00
2	7" Concrete Pavement	SF		29,791	\$ 6.00	\$ 178,746.00
3	4" Concrete Sidewalk	SF		2,987	\$ 4.50	\$ 13,441.50
4	Handicap Ramp	EA		2	\$ 200.00	\$ 400.00
5	Bollards	EA		11	\$ 750.00	\$ 8,250.00
6	6" Gutter and Curb	LF		2,340	\$ 15.00	\$ 35,100.00
7	4" Paint Stripping	LF		2,403	\$ 3.00	\$ 7,209.00
8	Handicap Marking	EA		2	\$ 250.00	\$ 500.00
9	Misc Striping	EA		1	\$ 2,500.00	\$ 2,500.00
Total						\$364,616.50

Construction						
1	Rock Construction Entrance	LS		2	\$ 2,500.00	\$ 5,000.00
2	Silt Fence	LF		1,455	\$ 4.50	\$ 6,547.50
3	Construction Fencing	LF		1,795	\$ 10.00	\$ 17,950.00
Total						\$29,497.50

EXHIBIT "B"

Utilities						
1	Remove Sanitary Sewer	LF		157	\$ 3.25	\$ 510.25
2	Sanitary Manhole Relocation	EA		2	\$ 4,200.00	\$ 8,400.00
3	8" Sanitary Sewer Main Relocation	LF		178	\$ 30.00	\$ 5,340.00
4	8" HDPE	LF		150	\$ 20.00	\$ 3,000.00
5	10" HDPE	LF		102	\$ 26.00	\$ 2,652.00
6	12" HDPE	LF		285	\$ 32.00	\$ 9,120.00
7	15"HDPE	LF		179	\$ 38.00	\$ 6,802.00
8	18" HDPE	LF		35	\$ 44.00	\$ 1,540.00
9	Storm Manhole	EA		1	\$ 4,000.00	\$ 4,000.00
10	Area Inlet	EA		7	\$ 3,500.00	\$ 24,500.00
11	4" PVC Sanitary Sewer	LF		116	\$ 20.00	\$ 2,320.00
12	6" PVC Sanitary Line	LF		92	\$ 24.00	\$ 2,208.00
13	Cleanouts	EA		5	\$ 500.00	\$ 2,500.00
14	Electrical Conduit	LF		167	\$ 15.00	\$ 2,505.00
15	Electrical Transformer	EA		1		
16	Electrical Meter	EA		1		
17	Lightpole	EA		3	\$ 3,000.00	\$ 9,000.00
18	Gas Line	LF		336	\$ 50.00	\$ 16,800.00
19	2" Water Line	LF		239	\$ 20.00	\$ 4,780.00
20	6" Water Line	LF		190	\$ 30.00	\$ 5,700.00
21	Post lindicator Valve	EA		1	\$ 3,500.00	\$ 3,500.00
Total					\$115,177.25	

Grading						
1	Earthwork (fill)	CY		620	\$ 18.00	\$ 11,160.00
2	EarthWork (cut)	CY		1,155	\$ 12.00	\$ 13,860.00
3	Recompaction	CY		2,781	\$ 4.50	\$ 12,514.50
4	Landscaping	LS		1	\$ 40,000.00	\$ 40,000.00
Total					\$77,534.50	

Other						
1	Mobilization	LS		1	\$ 20,000.00	\$ 20,000.00
2	8% Contingency	LS		1	\$ 51,692.52	\$ 51,692.52
3	Misc. Fees	LS		1	\$ 5,000.00	\$ 5,000.00
4	Engineering Fees	LS		1	\$ 51,800.00	\$ 51,800.00
Total					\$128,492.52	

EXHIBIT "B"

Exhibit "C" Form of Investor Letter

June __, 2017

Community Development Agency of the City of Norfolk
Nebraska 309 N 5th Street
Norfolk, NE 68701

Re: Tax Increment Revenue Bond (SCM 10X Norfolk 1120,
LLC Redevelopment Plan), Series 2017

Ladies and Gentlemen:

The undersigned is the initial registered owner of the above Bond issued by the Community Development Agency of the City of Norfolk, Nebraska (the "Agency"). The representations and statements made in this letter are made as an inducement to the Agency in connection with the issuance of the above Bond (the "Bond"). The undersigned acknowledges and represents that it has been advised that the Bond is not registered under the Securities Act of 1933, as amended, and that the Agency is not presently required to register under Section 12 of the Securities and Exchange Act of 1934. The undersigned therefore recognizes that if and when the undersigned may wish to resell the Bond as held by it there may not be any available current business and financial information about the Agency or the project being financed by the Bond. Further the undersigned realizes that no trading market presently exists or is expected to exist for the Bond. The undersigned understands that it may need to bear the risks of an investment in the Bond for an indefinite period of time, since any sale prior to maturity of the Bond may not be possible or may be at a price below that which the undersigned is paying for the Bond.

It is understood that the undersigned has undertaken to verify the accuracy and completeness and truth of any statements made or omitted to be made concerning any of the material facts relating to the Bond and the project being financed and transactions relating thereto, including information regarding the operations and financial condition of the redeveloper for said project (the "Redeveloper") and said project. The undersigned has conducted its own investigation and has had discussions with officials of the Agency and the Redeveloper.

In connection with the purchase of the Bond, the undersigned hereby acknowledges and represents that the undersigned is acquiring the Bond for its own account for investment and not with a view to the resale or distribution. The undersigned has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment represented by the purchase of the Bond, has financial resources sufficient to sustain the risks related to holding the Bond and is aware of the intended use of the proceeds and risks involved therein.

THE UNDERSIGNED UNDERSTANDS THAT THE BOND IS A LIMITED OBLIGATION OF THE AGENCY AND IS NOT SECURED BY ANY OBLIGATION OR PLEDGE OF ANY MONIES RECEIVED OR TO BE RECEIVED FROM TAXATION, OTHER THAN TAX INCREMENT REVENUES AS DESCRIBED IN THE RESOLUTION AUTHORIZING THE BOND. THE UNDERSIGNED UNDERSTANDS THAT THE BOND IS NOT AN OBLIGATION OF THE CITY OF NORFOLK, EXCEPT AS TO ITS COMMUNITY DEVELOPMENT AGENCY OF WHICH IT IS A LIMITED OBLIGATION, THAT THE BOND IS NOT AN OBLIGATION OF THE STATE OF NEBRASKA OR ANY POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA OR TAXING AUTHORITY THEREOF, OTHER THAN OF SUCH AGENCY, AND THAT NO RIGHT EXISTS TO HAVE TAXES LEVIED BY THE CITY OF NORFOLK OR THE STATE OF NEBRASKA OR ANY POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF PRINCIPAL OF OR INTEREST ON SAID BOND, OTHER THAN SAID TAX INCREMENT REVENUES.

The undersigned acknowledges that it has made its own investigation and inquiry concerning the due corporate authorization and execution of all documents executed and delivered by SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company, as the Redeveloper related to the Bond and has not relied upon the City or its counsel or special bond counsel concerning any such matters.

The undersigned acknowledges that the principal amount of the Bond has been established based upon estimated costs of development under the terms of an agreement between the Redeveloper and the Agency. Such estimates have been established in order to assure the initial registered owner of the Bond with the fullest anticipated potential benefits related to tax increment revenues and the principal amount and interest thereon as set may not prove payable from such revenues. The undersigned acknowledges that the Agency has not undertaken or contracted in any way that such redevelopment will be commenced or completed and that such undertaking is the sole responsibility of the Redeveloper.

The undersigned acknowledges further that the principal amount and interest rate on the

Bond have also been established with respect to taxable valuations which are expected to be related to estimated costs and that the final assessment and taxable valuations determined by the appropriate assessing officials may be materially different from such projected assessment and that such principal amount and interest have also been established based upon estimated taxing rates to apply in the future and that such taxing rates could also be materially different from such estimated rates.

The undersigned acknowledges that it has been advised that interest on the Bond is not exempt from Nebraska state or federal income taxes, and that the City and Agency have not provided any assurances with respect to the tax consequences to the undersigned with respect to the transaction described herein. The undersigned further acknowledges that any future transfer of the Bond may only be made to a subsequent transferee registered owner who is able to execute and does execute a letter similar in form and substance to this investment letter, a copy of which shall have been delivered to the Agency.

Very truly yours,

SCM 10X Norfolk 1130, LLC

By:_____ Title:_____

DOCS/1889853.3

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

RESOLUTION NO. 2017-12

BE IT RESOLVED, by the governing body of the Community Development Agency of the City of Norfolk, Nebraska, that the Amended and Restated Redevelopment Agreement by and between with SCM 10X Norfolk 1130, LLC, a Nebraska limited liability company f/k/a SCM 10X Norfolk 1120, LLC, 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 modification thereto as shall be deemed appropriate, based upon advice of the City Attorney or other special counsel.

PASSED AND APPROVED this _____ day of _____, 2017.

Josh Moenning, Mayor

(SEAL)

Elizabeth A. Deck, Clerk

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

Bethene A. Hoff, Notary Public