

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the “**MOU**”) is made and entered into this ___ day of July, 2012, between the City of Lexington, Nebraska (the “**City**”), the Community Development Agency of the City of Lexington, Nebraska (the “**Agency**”), and Orthman Investments, LLC, a Nebraska limited liability company (the “**Company**”).

WHEREAS, the Company has indicated an interest in developing certain real property in the City legally described on Exhibit A (the “**Property**”) and constructing a 115,000 square foot headquarters and manufacturing building thereon (the “**Project**”); and

WHEREAS, the City and the Agency find it in the public interest to consider any future request for tax increment financing (TIF) to promote the development of business activity in the City.

NOW, THEREFORE, the parties hereby set forth their understanding in regard to improvements that the Company will make prior to any request for TIF but which shall be eligible for inclusion in the TIF bond issue:

1. *Definitions.* Capitalized terms used in this MOU shall have the meanings assigned herein.

2. *Company’s Obligations.* Upon execution of this MOU, the Company may proceed with the following actions:

a. *Development of Project.* The Company agrees to use its best efforts to commence construction on the Project no later than October 1, 2012.

b. *Indemnification.* The Company agrees to indemnify and hold the Agency and the City, their employees, agents, independent contractors and consultants harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, resulting from, arising out of, or in any way connected with this MOU.

3. *City’s and Agency’s Obligations.* The Agency shall consider, after appropriate proceedings as required by law, authorizing tax increment financing for the Project to pay costs eligible for reimbursement as redevelopment project costs as defined by Neb. Rev. Stat. 18-2103(12), including costs of site acquisition, site preparation, utility installation and parking facilities. Such grant shall be payable only from Agency funds generated by the Property pursuant to Neb. Rev. Stat. 18-2147(1)(b). The Agency and the City in entering into this MOU are in no manner binding themselves to utilize TIF for the project. The Agency and/or the City, without any liability to the Company, may ultimately decline to utilize TIF for the project, and if either or both do so, the Company shall have no claim against the Agency or the City. The Company knowingly and intelligently accepts its own risk of commencing project development prior to the Agency’s utilization of TIF.

4. *Economic Feasibility.* The Company hereby declares to the City and the Agency that development of the Project is not economically feasible and the Project will not occur in the proposed community redevelopment area without the use of tax-increment financing. Neb. Rev. Stat. 18-2116(1) requires the City to make findings as follows if a TIF application requests the use of funds as described in Section 3 above: (i) the Project would not be economically feasible without the use of tax-increment financing, (ii) the Project would not occur in the City without the use of tax-increment financing. Due to the proposed construction schedule of the Project and the impact of weather concerns on such schedule, the Company desires to begin site acquisition and construction on the Project immediately. The purpose of this MOU is to make clear the parties intention to consider as eligible for TIF funding if, and only if, the Agency approves TIF for the project even if site acquisition and preparation commences prior to the approval of TIF by the Agency or the City. The parties hereto agree that if site acquisition and preparation occurs prior to the approval of TIF, if approved at all, such costs will remain eligible for TIF.

5. *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The parties may execute this MOU and all other agreements, certificates, instruments and other documents contemplated by this MOU and exchange the counterparts of such documents by means of facsimile transmission. The parties agree that the receipt of such executed counterpart shall be binding on such parties and shall be construed as originals.

6. *Governing Law.* This MOU shall be governed by the laws of the State of Nebraska.

**COMMUNITY DEVELOPMENT AGENCY
OF THE CITY OF LEXINGTON, NEBRASKA**

By: _____
Chair

CITY OF LEXINGTON, NEBRASKA

By: _____
Mayor

ORTHMAN INVESTMENTS, LLC

By: _____
Manager

Exhibit A

DRAFT