

INFRASTRUCTURE IMPROVEMENT AGREEMENT

THIS INFRASTRUCTURE IMPROVEMENT AGREEMENT (this “*Agreement*”) is made and entered into this ____ day of _____, 2019 (the “Effective Date”), by and between the CITY OF LEXINGTON, NEBRASKA, a municipal corporation duly organized and existing under the Constitution and laws of the State of Nebraska (“*City*”), and PRAIRIE FIRE DEVELOPMENT GROUP, LLC, a Kansas limited liability company (“*Developer*”).

RECITALS:

WHEREAS, the Developer is cooperating with the City on a 2020 Round 1, 9% application with the Nebraska Investment Finance Authority (“*NIFA*”) on an application for Low-Income Housing Tax Credits (the “*NIFA Application*”) in connection with the development of approximately 9.497 acres of land generally located in Dawson County, Lexington, NE 68850 and more specifically referenced as Parcel ID Numbers 240138619, 240148924, and 240007883, legally described in **Exhibit A** (“*Property*”) which will be developed as a fifty (50) unit affordable housing development consisting of twenty-five (25) duplexes and a common clubhouse known as “Rolling Meadows” (the “*Project*”); and

WHEREAS, the development of the Project is conditioned upon the Developer receiving an award of Low-Income Housing Tax Credits (“*Tax Credits*”) in an amount sufficient to develop the Project in the sole discretion of the Developer, pursuant to notification by NIFA of an award of Tax Credits (“*Award Notification*”).

WHEREAS, the Developer has entered into that certain Real Estate Contract dated July 18, 2019 with St. Ann’s Church to purchase the Property and has agreed to purchase the Property upon the earlier of thirty (30) days after notification of an award of Low-Income Housing Tax Credits (“*Tax Credits*”) from NIFA or such earlier date as may be agreed to (the “*Closing*”).

WHEREAS, in order for the Property to be so developed, certain public infrastructure improvements to serve the Property and surrounding area must be completed, constructed, and/or installed, including 1) the transfer and rough grading of fill dirt as necessary for infrastructure completion (“*Fill Dirt Transfer*”); 2) the completion of certain water, sanitary and storm sewer, and electrical improvements (the “*Utility Improvements*”); and 3) the construction or improvement of roads, gutters, and curbs serving the Property (“*Street Improvements*”, and referred to collectively with “Fill Dirt Transfer” and “Utility Improvements”, as the “*Public Improvements*”); and

WHEREAS, all improvements relating to the Utility Improvements are intended to be connected to existing infrastructure maintained by the City; and

WHEREAS, the City shall have no obligation to provide Public Improvements or other public infrastructure to benefit the Property and surrounding areas except as provided herein; and

WHEREAS, the City shall be responsible for all costs necessary to complete the Public Improvements and provide certain materials thereto and Developer shall be responsible for any further work necessary for the Property to be developed as intended by the Project subject to the schematic predevelopment plans (the “*Plans*”) as shown in **Exhibit B** and included in the NIFA Application and all necessary City approvals and where the Plans shall be subject to finalization after review of the Developer, design professionals, survey and engineering professionals, and the City resulting in the “*Final Plans and Specifications*”; and

WHEREAS, the City shall be responsible for the costs of completion of the Utility Improvements and Street Improvements (the “*Infrastructure Funds*”); and

WHEREAS, the costs necessary to complete the Fill Dirt Transfer and certain materials thereto, together with the Infrastructure Funds, shall be referred to hereinafter as the “*City Funds*”; and

WHEREAS, Developer and the City desire to set forth terms regarding the beneficial and orderly completion, design, construction, and construction observation of the Public Improvements and other public infrastructure.

COVENANTS AND AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the City and Developer hereby agree to this Agreement as follows:

1. Incorporation of Recitals and Exhibits. The Recitals set forth above and the exhibits attached hereto are incorporated into and made a part of this Agreement as if fully set forth herein.

2. Design, Construction, and Construction Observation of the Public Improvements.

A. Design Responsibilities. The City shall arrange for the engineering design of the Public Improvements.

B. Construction Responsibilities. The City shall contract pursuant to City Ordinance with appropriate engineering and construction firms for the construction of the Public Improvements, all in a timely manner based upon the agreed-upon Final Plans and Specifications. The Public Improvements shall be constructed in accordance with the Code of Ordinance of the City of Lexington, Nebraska and other applicable state and federal law. The City shall engage professional civil engineering services within thirty (30) days of notice from the Developer of the receipt of the Award Notification and the Public Improvements shall be completed within six (6) months of the closing of the Project’s construction loan (the “*Development Schedule*”). The City understands that time is of the essence with respect to completion of the Public Improvements and shall use its best efforts, to cause the Public Improvements to be completed pursuant to the terms of this Agreement, subject to Force Majeure where the City shall not be held liable or responsible to the Developer nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, acts of God or acts, or omissions or delays in acting by any governmental authority..

C. The Plans. The City and Developer acknowledge and agree that the Plans are preliminary at the time of this Agreement and are subject to design modification as necessary to support the Project. The Plans are also subject to all such review and approval by the Developer, design and engineering professionals, and the City as necessary before they are considered Final Plans and Specifications. The City and Developer shall reasonably cooperate with each other in all manners to ensure that the Final Plans and Specifications appropriately account for all necessary Public Improvements that will serve to meet the general needs and requirements of the Project.

D. Amendments and Modifications to the Final Plans and Specifications. Except as provided below, the Final Plans and Specifications shall not be amended or modified without the prior written consent of City and Developer, which consent shall not be unreasonably withheld or delayed, and must be in full compliance with all applicable laws and regulations. The Parties shall have the right to modify the scope and physical parameters of the Final Plans and Specifications during construction of the Public Improvements (“*Permitted Modification*”) if, and only to the extent that, the Permitted Modifications are in compliance with or required by applicable laws and requirements.

E. Infrastructure Project.

- a. **Utility Improvements.** The City hereby agrees to construct and complete the following projects, collectively comprising the Utility Improvements.
 - i. **Water.** The City shall be responsible for the improvements specifically or generally described in Exhibit B, attached hereto and incorporated herein, subject to any changes, modifications, or adjustments included in the Final Plans and Specifications. The Developer shall be responsible pursuant to applicable tariffs for the cost of all additional main extensions and service lines to provide water and fire flow to the Property.
 - ii. **Electric.** The City shall be responsible for the improvements specifically described in Exhibit B, attached hereto and incorporated herein, subject to any changes, modifications, or adjustments included in the Final Plans and Specifications. . The Developer shall be responsible for the cost of all additional line extensions, service connections and related equipment, and any additional duct and conduit capacity requested by Developer.
 - iii. **Sanitary and Storm Sewer.** The City shall be responsible for the sanitary and storm sewer line improvements specifically described in Exhibit B, attached hereto and incorporated herein, subject to any changes, modifications, or adjustments included in the Final Plans and Specifications. . The Developer shall be responsible for the cost of all additional sewer extensions to the Property.
- b. **Street Improvements.** The Parties shall work together to finalize the Final Plans and Specifications for the Street Improvements pursuant to the Development Schedule, and designed, constructed, developed and completed by the City as depicted in Exhibit B, attached hereto and incorporated herein, subject to any changes, modifications, or adjustments included in the Final Plans and Specifications. .

3. Cost of Construction.

A. Total Estimated Cost of Construction. The City shall be responsible for the cost of the construction of the Utility Improvements, Street Improvements and the Fill Dirt Transfer and supply of the materials related thereto. Notwithstanding the foregoing, the City and Developer agree that Developer shall be responsible for the construction of the pad on the Property to “pad ready” specifications, “pad ready” means ready for the construction of the Project the Developer desires to construct. Any such determination of whether the Property is “pad ready” shall be made by Developer in its sole discretion.

4. Indemnification. Developer shall indemnify and save the City and its governing body members, directors, officers, employees and agents harmless from and against all loss, liability, damage or expense arising as a result of any breach, default or failure to perform by Developer under this Agreement (collectively referred to as “Claim”), so long as such Claim is not caused, in whole or in part, by the City or the City’s agents, employees or contractors. Developer shall also indemnify and save the City and its governing body members, directors, officers, employees and agents harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred by them in any action or proceeding brought by reason of any such Claim. If any action or proceeding is brought against the City or its governing board members, directors, officers, employees or agents by reason of any such Claim, Developer, upon notice from the City, covenants to defend such action or proceeding on demand of the City or its governing body members, directors, officers, employees or agents. Nothing in this section shall constitute a waiver of governmental or officers immunity of the City or its officers or employees.

5. Further Assurances. The parties agree to execute such other further documents and agree to otherwise cooperate as may be necessary to effectuate the purposes of this Agreement or that may be required by law.

6. Notice. Any and all notices permitted or required to be given under this Agreement shall be in writing and shall be given by either personal delivery which shall be effective upon delivery, by telecopy, facsimile, e-mail or other form of telecommunication which shall be effective upon confirmed transmittal, by express mail delivery that guarantees next day delivery (which shall be effective the day after delivery to such express mail company), or by U.S. registered or certified mail which shall be effective two (2) days after mailing, at the following addresses:

If to Developer:

Prairie Fire Development Group, LLC
770 E. 5th Street
Kansas City, Missouri 64106
Attention: Kelley Hrabe
Tel: (816) ____ - ____
E-mail: khrabe@prairiefiredg.com

If to City:

City of Lexington, Nebraska
406 E. 7th Street,
P.O. Box 70
Lexington, NE 68850
Attention: Office of the City Attorney
Tel: (308) 324-2341

With a copy to:

Spencer Fane LLP
2144 E. Republic Rd., Suite B300
Kansas City, Missouri 65804
Attn: S. Shawn Whitney
Tel: (573) 888-1000
Fax: (573) 634-8140
E-mail: swhitney@spencerfane.com

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America, by not less than ten (10) days’ prior written notice to the other party.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, superseding all prior oral or written agreements or understandings with respect thereto and may not be changed, modified, discharged or terminated orally or in any manner other

than by an agreement in writing signed by all of the parties hereto. No waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

8. Successors. The obligations under this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Developer may assign this Agreement without the approval of the City to any of its affiliates, as successors or assigns, solely for the purposes of any organizational requirements of the Project structure, in the sole discretion of the Developer, so long as the assignee or successor agrees to abide by all terms and conditions of this Agreement.

9. Contingencies. This Agreement shall at all times remain contingent upon the following:

- a.** An award of LIHTC from NIFA in an amount sufficient to complete the Project, in the Developer's sole and absolute discretion, as the Project is described in the Plans submitted in the NIFA Application, subject to any and all amendments and modifications to the Plans by the Developer.
- b.** The approval of the City via ordinance or other such governmental action as is required by the City to authorize the construction of the Public Improvements.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute on and the same instrument.

[Remainder of Page Intentionally Left Blank – Signature Page to Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed in multiple counterparts (each of which is to be deemed an original for all purposes) by the parties hereto on the respective date appearing below each party's signature to be effective on the Effective Date herein specified.

THE CITY OF LEXINGTON, NEBRASKA, a Nebraska municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

PRAIRIE FIRE DEVELOPMENT GROUP, LLC,
a Kansas limited liability company

By: _____

Kelley Hrabe, Manager

Date: _____

EXHIBIT A
PROPERTY

[Insert Legal Description]

EXHIBIT B

THE PLANS (Schematic Predevelopment Plans)

[See attached pages]

EXHIBIT C
STREET IMPROVEMENTS

[See attached pages]