

## **LEXINGTON REVOLVING LOAN FUND**

### **Loan Agreement No. 2022-02**

This Agreement is entered into as of \_\_\_\_\_, 2022, between **IRISH LADS, LLC** a Nebraska Limited Liability Company ("Borrower"), and **City of Lexington, Nebraska** a Municipal Corporation ("Lender"), and sets forth the terms and understandings between the Borrower and Lender regarding a loan (the "Loan") the Lender is making to the Borrower pursuant to Section 313 of the Rural Electrification Act of 1936, as amended ("Act") and 7 CFR part 4280, Subpart A – Rural Economic Development Loan and Grant Programs ("Regulations").

WHEREAS the Lender has previously filed an application and supporting material with the United States of America ("Government") requesting federal funds for the purposes of making loans pursuant to the Act and Regulations set forth above;

WHEREAS the Lender received said federal funds and has made initial loans pursuant to the Act and Regulations and the Rural Development Plan and Scope of Work ("Rural Development Plan") adopted by the City of Lexington;

WHEREAS there exists funds in the Revolving Loan Fund (RLF) created pursuant to said Act, Regulations, and Rural Development Plan and said funds are available for subsequent loans pursuant to the Act, Regulations, and Rural Development Plan;

WHEREAS the Lender has received an application for such RLF funds for eligible purposes as set forth in the Act, Regulations, and Rural Development Plan;

WHEREAS the Borrower is an eligible applicant for said RLF Funds and Lender desires to loan said funds to Borrower pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, Lender and the Borrower agree as follows:

#### **A. Qualification for Loan**

##### **1. Borrower and Lender agree and acknowledge the following:**

- a. Borrower has submitted an application for RLF Funds and that said application, and corresponding business plan, is in proper form ("Application Materials").
- b. Borrower is an eligible applicant, has submitted an application in regards to an eligible project, and the purposes of said loan are not ineligible for RLF Funding pursuant to the Act, Regulations, and

Rural Development Plan. Said loan being for the purposes as set forth in the Application Materials (“Project”).

- c. Said RLF Funds are less than 50% of the funds necessary for the Project.

B. Loan Terms

1. Lender shall lend One Hundred Ten Thousand Dollars (**\$110,000.00**) to the Borrower to be used solely to promote rural economic development as more particularly described in the Application Materials. The term of the loan will be 10 years, with 10 equal annual payments of \$12,245.92 commencing April 1, 2023, and the final installment due on or before April 1, 2032 (the “Loan”).
2. The Loan will be guaranteed by Barry McFarland, in his individual capacity, said guaranty as described in the attached **Exhibit A**.
3. Lender shall advance the proceeds of the Loan to the Borrower in a single lump sum of \$110,000.00, subject to submission by Borrower to Lender of evidence that the project is proceeding and expenditure of funds in the amount of the requested advance.
4. The Borrower shall repay the Loan in accordance with the note (as hereinafter defined) to be executed by the Borrower and made payable to Lender. The Borrower shall begin to repay the Loan on the date set forth in the Note and shall continue paying without interruption until all indebtedness associated with the Loan has been repaid in full on or before the final maturity date of the Note.
5. The Loan will bear an interest rate of two percent (2%) and indebtedness not paid when due will be subject to late charges, costs, and other charges as provided in the Note.
6. If the Borrower fails to satisfy all conditions, requirements, and terms prerequisite to the advance of the proceeds of the Loan from the Lender as set forth in this agreement on or before April 1, 2022 or such later date as the Lender may approve in writing in furtherance of the purposes of the Act, Regulations, and Rural Development Plan, the Loan commitment shall be considered rescinded.
7. The Borrower will be responsible to reimburse Lender for its costs and expenses related to this transaction, and to obtain and pay for any and all appraisals, surveys, inspections, reports, title insurance, bank fees, etc related to the Project as may be required by Lender.

C. Conditions. The obligation of Lender under this Agreement to consummate this transaction is subject to the following conditions:

1. Review and approval of all Loan documents by the Loan Review Committee (LRC) and the City Council;
2. Receipt by Lender of certified resolutions of Borrower's entity that approves the Loan and this transaction and authorizes a member of the Borrower to execute all documents and to request in writing the advance of the Loan;
3. Receipt by Lender of the security instrument/collateral referenced in Section B hereof; and
4. Receipt of evidence satisfactory to the Lender that the Borrower has obtained or received binding commitments for supplemental financing of at least fifty percent (50%) of the Project that is needed, in addition to the Loan proceeds, to ensure completion of the Project.

D. Affirmative Covenants. Borrower agrees as follows:

1. Borrower shall execute and deliver its promissory note (the "Note") to the Lender in the form attached hereto as **Exhibit B** and incorporated herein by this reference in order to evidence its obligation to repay the Loan by the terms of this Agreement and the Note. The Borrower shall pay all indebtedness evidenced by the Note in the manner and at the times described herein and therein.
2. Borrower shall promptly use the proceeds of the Loan only in the manner and exclusively for the purposes set forth in the Application Materials as previously approved by Lender, and as set forth in the Act, Regulations, and Rural Development Plan (as they may be amended from time to time). No changes may be made in the foregoing without the prior written approval of the Lender.
3. Borrower shall permit Lender to monitor performance to ensure that objectives proposed in the Application Materials are being achieved. Such monitoring includes but is not limited to taking the following action: Collecting annual income statements and balance sheets, including the submission of financial reports to the Lender as audited by a certified public accountant; periodic/annual site visits to meet with the Borrower, verify collateral, and collect information; periodic management information reports submitted by the Borrower, said reports will be required on a semi-annual basis beginning six (6) months after the advancement of funds for a period of three (3) years or until completion of the project and if requested said reports will include but not be limited to information on the number of jobs created or retained, a comparison of accomplishments, a description of any problems, delays or adverse conditions. The Lender reserves the right to request reports on a more frequent basis. The Lender shall also make telephone contact and perform additional site visits as necessary. At a minimum, at least semi-annually a representative of Lender will initiate a phone call to Borrower to review performance and issues. An annual review and report will also be prepared by the LRC. The Borrower shall permit Lender and its agents to inspect and copy its

records about the Project during regular business hours, and shall permit Representatives of the Lender to inspect the Project itself during regular business hours, for the purposes of the monitoring set out in this paragraph. Such monitoring provisions are supplemented by any and all monitoring procedures set forth in the Rural Development Plan. By execution of this Agreement the Borrower acknowledges receipt of said Rural Development Plan and agrees to the monitoring provisions set forth therein.

4. Borrower shall immediately notify the Lender in writing of the closure of operations of the Borrower, the transfer of operations by the Borrower from the original project site described in the Application Materials, or the institution of bankruptcy proceedings involving the Borrower.

5. Borrower shall comply with applicable Federal, State, and local laws and regulations, including but not limited to, the non-discrimination provisions of Title VI of the Civil Rights Act of 1964, as well as any and all other rules or regulations applicable to activities contemplated by the Application Materials or this Agreement.

6. If the Project is in an area subject to flooding, flood insurance must be provided by the Borrower to the extent available and required by law, covering all buildings, machinery, equipment, fixtures and furnishings contained in the buildings.

#### E. Representations and Warranties

Borrower represents and warrants that on and as of the date first set forth above:

1. Borrower has been duly incorporated and validly existing as a limited liability company in good standing under the laws of the State of Nebraska with the corporate power and authority to perform its obligations under this Agreement.

2. This Agreement, and corresponding exhibits, has been duly authorized, executed and delivered by the Borrower and such documents constitute the legal and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to: (i) applicable bankruptcy, reorganization, insolvency, moratorium and other laws of general application relating to or affecting creditors' rights generally, and: (ii) the application of general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law.

3. The execution or the delivery by the Borrower of this Agreement; the consummation of the transactions contemplated herein or therein; and the fulfillment by the Borrower of the terms hereof or thereof, do not conflict with or violate, result in a breach of or constitute a default under any term or provision of the certificate or operating agreement of the Borrower or any law or regulation or any order now applicable to the Borrower of any court, regulatory body having

jurisdiction over the Borrower, or the terms of any indenture, deed of trust, mortgage, note, note agreement or instrument to which the Borrower or any of its properties is bound. The Borrower has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.

4. No approval, authorization, consent, order, registration, filing, qualification, license or permit of or with any state or Federal court or governmental agency or body having jurisdiction over the Borrower is required by the Borrower for the consummation by the Borrower of the transactions contemplated by this Agreement.

5. There is no pending or threatened action, suit or proceeding before any court or governmental agency, authority or body or any arbitrator concerning the Borrower, which, if adversely determined, would have a material adverse effect on the Borrower's ability to perform its obligations under this Agreement.

6. All information, reports and other papers and data furnished to the Lender by the Borrower concerning the application of the Loan were, at the time the same were so furnished, complete and correct in all material respects to the extent necessary to the Lender and no document furnished or other written statement made to the Lender in connection with the Loan contains any untrue statement of a fact material to the financial condition of the Borrower or the Project or omits to state such a material fact necessary in order to make the statements contained therein not misleading.

#### F. Collection Procedures; Default

1. Borrower acknowledges that past due notices will be sent out the 10<sup>th</sup> and 20<sup>th</sup> day after a payment is due. If no payment is made within 30 days from the date the payment was due, the RLF will inquire with Borrower and arrange corrective action. Borrower acknowledges a one time corrective action or workout is permitted. As part of the workout, loan terms may be modified by deferral, reamortization, and/or balloon payments. However, such terms cannot be modified to exceed a 10 year period from the date of the original loan closing. If there is no corrective action and the account is 60 days delinquent, then a written 30 day notice to cure shall be sent to Borrower. If the Borrower does not pay the past due amount within 30 days, the file will be forwarded to legal counsel for the Lender for collection.

2. Upon the occurrence of an event of default as defined in this Agreement, the holder of the Note may declare all or any portion of the indebtedness arising under this Agreement, including indebtedness evidenced by the Note, to be immediately due and payable and may proceed to enforce its rights under this Agreement, the Note, and the Deed of Trust.

3. As use in this Agreement, the term “event of default” shall mean the occurrence of any of the following:

- a. Any installment is not paid within 60 days of the date which it is required to be made, whether by acceleration or otherwise and not brought current within the 30 day notice to cure period referenced above;
- b. Failure, inability or unwillingness of the Borrower to carry out or comply with, or cause to be carried out or complied with, the specific undertakings described in the Application Materials as approved by the Lender;
- c. Any representation or warranty made by the Borrower herein, in the Application Materials, or a report furnished by or on behalf of the Borrower about any of the foregoing shall prove to be false, incomplete or incorrect in any material respect;
- d. Commencement of a case in bankruptcy by or against the Borrower;
- e. Application for appointment of a receiver for, making a general assignment for the benefits or creditors by, or insolvency of the Borrower, or;
- f. Violation of the Regulations in any material respect, by officers, directors, employees or agents of the Borrower, and such violation shall continue for a period of 30 days without being rectified to the satisfaction of the Lender after written notice specifying such default and requiring the same to be rectified has been given by the Lender to the Borrower.

G. Miscellaneous

- 1. Every right or remedy herein conferred upon or reserved to the holder of the Note shall be cumulative and shall be in addition to every other right and remedy now or hereafter existing at law or in equity, or by statute or regulation.
- 2. The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Agreement shall not affect the remaining portions hereof.
- 3. This Agreement may be amended only in a written instrument executed by both Borrower and Lender.
- 4. Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the

undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and permitted assigns.

6. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may be executed by facsimile signature which shall be valid for all purposes.

7. This Agreement may not be transferred or assigned by either party without the written consent of the other party

IN WITNESS WHEREOF, IRISH LADS, LLC, as Borrower, has caused this Agreement to be signed in its name and Lender has caused this Agreement to be duly executed in its behalf, all as of the day and year first written above.

**{Signature and Notary Page to Follow}**

**Borrower**

Irish Lads, L.L.C., a Nebraska Limited Liability Company

By \_\_\_\_\_  
Barry McFarland, Managing Member

**City of Lexington, Nebraska  
Lender**

by: \_\_\_\_\_  
Joe Pepplictsch, City Manager

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022 by Barry McFarland, as Managing Member of Irish Lads, LLC for and on behalf of Irish Lads, LLC, a Nebraska Limited Liability Company

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

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022 by Joe Pepplictsch, City Manager of the City of Lexington, for and on behalf of the City of Lexington, Nebraska a Municipal Corporation,

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



# **EXHIBIT A**

## **GUARANTY**

In consideration of financial accommodations given to Irish Lads, L.L.C., a Nebraska Limited Liability Company, herein called "Borrower", by the City of Lexington herein called "Lender", the undersigned irrevocably and unconditionally guarantees to the Lender, payment when due, whether by acceleration or otherwise, of any and all liabilities of the Borrower to the Lender, together with all interest thereon, all attorney fees, costs and expenses of collection incurred by the Lender in enforcing any of such liabilities; and all attorney fees, costs and expenses incurred by the Lender in foreclosing, preserving, protecting, retaking, holding and selling of any collateral as a result of the enforcement or foreclosure of any security interest or mortgage given by Borrower to Lender.

The term "liabilities of the Borrower" shall mean and include all debts, liabilities or obligations, direct or contingent, joint, several or independent, of the Borrower created or incurred for any purpose whatsoever, or hereafter existing, due or to become due to, or held or to be held by the Lender for its own account or as agent for another or others, whether created or incurred directly or acquired by assignment or otherwise, by virtue of the Promissory Note dated April 1, 2022 between Borrower and Lender.

The Undersigned waives notice of acceptance of this guaranty and notice of any of the liabilities of the Borrower to the Lender to which it may apply and waive presentment, demand of payment, protest, notice of dishonor or nonpayment, notice of alleged default, or notice of right to cure any default with respect to any of the liabilities of the Borrower to the Lender, suit or taking other action by the Lender against, and any other notice to any party liable thereon (including the Undersigned).

No invalidity, irregularity or unenforceability of all or any part of the liabilities of the Borrower to the Lender hereby guaranteed or of any security therefore shall affect, impair or be a defense to this guaranty, and this guaranty is a primary obligation of the Undersigned.

This guaranty is a continuing one and all of the liabilities of the Borrower to the Lender to which it applies or may apply under the terms hereof shall be conclusively presume to have been created in reliance hereon. This guaranty shall continue for the duration of the Note referenced above. No termination of the guaranty provided herein shall affect in any manner rights arising under this guaranty with respect to liabilities of the Borrower to the Lender which shall have been created, contracted, assumed or incurred prior to termination of the guaranty.

If claim is ever made upon the Lender for repayment or recovery of any amount or amounts received by the Lender in payment or on account of any of the liabilities of the Borrower to the Lender and the Lender repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over

the Lender or any of its property, or (b) any settlement or compromise of any such claim effected by the Lender with any such claimant (including the Borrower), then and in such event the Undersigned agrees that any such judgment, decree, order, settlement or compromise shall be binding upon the Undersigned, notwithstanding any revocation hereof or the cancellation of any notice or other instrument evidencing any of the liabilities of the Borrower to the Lender, and the Undersigned shall be and remain liable to the Lender hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Lender.

No delay on the part of the Lender in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. No waiver of any of its rights hereunder, and no modification or amendment of this guaranty, shall be deemed to be made by the Lender unless the same be in writing, duly signed on behalf of the Lender, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Lender or the obligations of the Undersigned to the Lender in any other respect at any other time.

The Undersigned waives all rights of subrogation to any collateral and remedies of the Lender against the Borrower, and other persons, until all of the liabilities of the Borrower to the Lender guaranteed hereunder shall have been fully paid and discharged.

This Guaranty and the rights and obligations of the Lender and of the Undersigned hereunder shall be governed and construed in accordance with the laws of the State of Nebraska, and this Guaranty is binding upon the Undersigned, their administrators, successors or assigns, and shall inure to the benefit of the Lender, its successors or assigns.

Dated: April \_\_, 2022

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BARRY MCFARLAND

# EXHIBIT B

## PROMISSORY NOTE

<b>Payee (lender):</b>	<b>City of Lexington PO Box 70 Lexington, NE 68850</b>
<b>Maker (borrower):</b>	<b>Irish Lads, LLC 2700 N Adams Lexington, NE 68850</b>
<b>Place to Make Payments:</b>	<b>PO Box 70, Lexington, NE 68850</b>
<b>Principal Sum (face amount):</b>	<b>\$110,000.00</b>
<b>Due Date 1<sup>st</sup> Payment:</b>	<b>April 1, 2023</b>
<b>Amount of Each Equal Payment:</b>	<b>\$12,245.92</b>
<b>Due Date Last Payment:</b>	<b>April 1, 2032</b>
<b>Frequency of Payments:</b>	<b>Annually</b>
<b>Interest Rate:</b>	<b>2.00% FIXED</b>
<b>Number of Payments:</b>	<b>10</b>
<b>Default Interest Rate:</b>	<b>8.00%</b>
<b>Pre-Payment Restrictions:</b>	<b>NONE</b>
<b>Collateral:</b>	<b>A certain tract of real estate in Dawson County, Nebraska</b>

FOR VALUE RECEIVED, the Maker, promises to pay to the order of Payee as the holder hereof may direct, the Principal Sum with interest on the principal balance from time to time remaining unpaid at the Interest Rate per annum from the date of this Promissory Note payable in equal amortization installments as set forth above and in the Amortization Schedule attached hereto for ten (10) years. The date of maturity shall be on April 1, 2032.

The principal and interest are to be paid in equal installments as provided herein, with each installment to be applied first to accrued interest, and the balance to reduce principal.

Maker acknowledges that past due notices will be sent out the 10<sup>th</sup> and 20<sup>th</sup> day after a payment is due. If no payment is made within 30 days from the date the payment was due, the holder will inquire with Maker and arrange corrective action. Maker acknowledges a one time corrective action or workout is permitted. As part of the workout, loan terms may be modified by deferral, reamortization, and/or balloon payments. However, such terms cannot be modified to exceed a 10 year period from the date of the original loan closing. If there is no corrective action and the account is 60 days delinquent, then a written 30 day notice to cure shall be sent to Maker. If the Borrower does not pay the past due amount within 30 days, the file will be forwarded to legal counsel for the holder may, without notice, declare the entire unpaid principal balance and accrued interest immediately due and payable, whereupon all amounts due hereunder shall bear interest at the Default interest rate per annum from the due date of the installment on which makers have defaulted. On such acceleration, holder shall be entitled to exercise all rights available to holder.

Failure of holder to exercise any option contained herein on any one default shall not waive the right of holder to exercise any such option on any subsequent default.

Maker shall have the right to pre-pay any amounts of principal and interest at any time prior to the date of maturity.

Maker waives presentment, protest, notice of protest, diligence in bringing suit hereon, and notice of extension of time for payment.

**DATED: April \_\_\_\_, 2022.**

Irish Lads, L.L.C., a Nebraska Limited Liability Company

By \_\_\_\_\_  
Barry McFarland, Managing Member

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022 by Barry McFarland, as Managing Member of Irish Lads, LLC for and on behalf of Irish Lads, LLC, a Nebraska Limited Liability Company

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