

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is effective as of \_\_\_\_\_ (the “**Closing Date**”), by and between COMMUNITY DEVELOPMENT AGENCY OF LEXINGTON, NEBRASKA (“**Seller**”) and ORTHMAN REAL ESTATE HOLDINGS, L.L.C., a Nebraska limited liability company (“**Purchaser**”).

### **RECITALS**

A. Seller owns the real estate located in the City of Lexington, State of Nebraska, commonly known as 620 East Frontier Street and legally described on **Exhibit A** attached hereto and made a part hereof (the “**Real Estate**”).

B. Purchaser wishes to purchase, and Seller wishes to sell, the Real Estate, together with all of Seller’s right, title and interest in all improvements, fixtures, easements, and rights-of-way appurtenant to the Property, now existing or to be constructed (the “**Improvements**” and collectively with the Real Estate, the “**Property**”).

C. In anticipation of the Closing Date, Seller recorded that certain Deed (the “**Deed**”) conveying the Property to Purchaser. A copy of the recorded Deed is attached hereto as **Exhibit B** and is made a part hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller agree as follows:

1. **Purchase Price**. The total purchase price for the Property is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the “**Purchase Price**”). On the Closing Date, Purchaser agrees to pay to Seller the Purchase Price.

2. **Title**. As of the Closing Date, title of Seller is free of encumbrances or defects, except the encumbrances and defects approved by Purchaser. Building or use restrictions, existing easements, the items listed as the standard form printed exceptions contained in a standard Nebraska form of commitment of title insurance, and building or zoning regulations or provisions shall not be deemed encumbrances or defects.

3. **Owner’s Title Policy**. On the Closing Date, Seller shall obtain at its sole cost and expense, a Nebraska Standard Form owner’s policy of title insurance (the “**Owner’s Title Policy**”) in the face amount of not less than the Purchase Price containing no exceptions except for the standard form printed exceptions contained in a standard coverage owner’s policy, and the exceptions specified in the preliminary title report that have been approved or deemed approved by Purchaser.

4. **Authority Documents**. Purchaser and Seller have delivered on or before the Closing Date to each other such documentary and other evidence as may be reasonably required by them evidencing the status and capacity of Purchaser and Seller and the authority of the person or persons who are executing the various documents on behalf of Purchaser or Seller in connection with this Agreement.

5. **Disclaimer and Release of Claims.** As a material part of the consideration for entering into this Agreement, Purchaser agrees that, except as set forth in the Deed, Seller makes no representations or warranties of any kind or type with respect to the Property, including without limitation, the construction of the Property, the manner, quality, state of repair, or lack of repair, of the Property, or the profitability, habitability, marketability, or the suitability of the Property for any particular purpose. Seller is not liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property furnished by any real estate broker, agent, employee or other person. Purchaser agrees that the Property is to be sold to and accepted by Purchaser as of the Closing Date in its present condition “AS IS,” “WITH ALL FAULTS, IF ANY, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED”.

BY CLOSING THE TRANSACTION AS CONTEMPLATED HEREIN, PURCHASER AGREES THAT (a) PURCHASER SHALL BE DEEMED TO HAVE ACCEPTED ALL RISKS ASSOCIATED WITH ADVERSE PHYSICAL CHARACTERISTICS AND EXISTING ENVIRONMENTAL CONDITIONS THAT MAY OR MAY NOT HAVE BEEN REVEALED BY PURCHASER’S INVESTIGATION OF THE PROPERTY AND (b) AS BETWEEN SELLER AND PURCHASER, PURCHASER SHALL BE DEEMED TO HAVE ACCEPTED ALL COSTS AND LIABILITIES ASSOCIATED IN ANY WAY WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY. FURTHER, IN CLOSING THE TRANSACTION CONTEMPLATED HEREIN, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER HAS HAD AN OPPORTUNITY TO INSPECT THE PROPERTY AND TO REVIEW RECORDS AND FILES OF SELLER RELATING TO THE PROPERTY. PURCHASER ACKNOWLEDGES THAT PURCHASER IS FULLY AWARE OF AND ACCEPTS ALL CONDITIONS RELATING TO THE PROPERTY.

6. **Seller’s Representations and Warranties.** The following representations and warranties are true and correct as of the Closing Date:

(a) **Authority of Seller.** Seller (i) is duly organized and validly existing and in good standing under the laws of the State of Nebraska, (ii) validly exists, is in good standing and is authorized to do business in the State of Nebraska, and (iii) owns and has the authority to convey the Property. This Agreement and all documents executed by Seller which are or have been delivered to Purchaser (including but not limited to the Deed) have been duly authorized, executed, and delivered by Seller and do not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property are subject.

(b) **Use and Operation.** Seller knows of no facts nor has Seller failed to disclose to Purchaser any fact which would prevent Purchaser from using and operating the Property after the Closing Date in the manner in which the Property has been used, leased, and operated prior to the date of this Agreement.

(c) **Land Use Regulation.** There are no condemnation, environmental, zoning, or other land use regulation proceedings contemplated, threatened or instituted which could detrimentally affect the use or operation of the Property or the value of the

Property, nor has Seller received notice of any special assessment proceedings affecting the Property.

(d) **Litigation.** There is no litigation, pending or threatened, against Seller or any basis therefor that arises out of the ownership of the Property, or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property, or adversely affect the ability of Seller to perform its obligations under this Agreement.

(e) **Other Contracts to Convey.** Seller has not committed nor obligated itself in any manner whatsoever to sell the Property to any party other than Purchaser. Seller has not hypothecated or assigned any rents or income from the Property in any manner that will survive the Closing Date.

(f) **Environmental.** As of the Closing Date through the Closing Date:  
(i) none of Seller or any occupant of the Property or any operations thereon is in violation, or alleged violation, of any hazardous waste law or any judgment, decree or order related thereto which violation involves the Property and would have a material adverse effect on the environment or the business, assets or financial condition of Seller,  
(ii) no portion of the Property has been used by Seller for the handling, processing, storage or disposal of hazardous waste, and Seller has not installed any underground tanks or other underground storage receptacles for hazardous waste on any portion of the Property, and (iii) Seller has received no notice regarding the Property from any municipal, state, federal or other governmental authority of any violation of any federal, state, or local environmental statute, regulation, order, permit or ordinance pertaining directly or indirectly to the environment, all except to the extent set out in the following documents: Phase I Environmental Report dated \_\_\_\_\_.

(g) **No Condemnation Proceedings.** As of the Closing Date through the Closing Date, Seller has received no written notice from any governmental authority having jurisdiction over the Property that the Property is presently the subject of any condemnation, assessment or similar proceeding or charge, and to Seller's knowledge, no such condemnation, assessment, or similar proceeding or charge is currently threatened.

(h) **Property Tax Assessment.** As of the Closing Date through the Closing Date, there are no special assessments levied against the Property except as appear on the last available tax statement. Notwithstanding any other provision of this Agreement to the contrary, if Purchaser shall become liable after the Closing Date for payment of any property taxes assessed against the Property for any period of time prior to the Closing Date, Seller shall immediately pay to Purchaser on demand an amount equal to such tax assessment.

(i) **Agreements Affecting the Property.** As of the Closing Date through the Closing Date, there are no leases, easements, encumbrances, or other agreements affecting the Property except disclosed to Purchaser by Seller in writing and approved by Purchaser. All rights to purchase the Property held by other parties, if any, including

without limitation, any right of first refusal, have been waived in writing by such parties, and Seller has delivered a copy of each such waiver to Purchaser.

(j) **No Broker.** Seller has not dealt with any real estate brokers in connection with the negotiations leading to this Agreement or the Deed. To the fullest extent permitted by Nebraska law, Seller agrees to indemnify and hold Purchaser harmless from and against the claims of any and all brokers or other intermediaries claiming to have had any dealings, negotiations, or consultations with Seller in connection with this Agreement, the Deed or the sale of the Property.

7. **Purchaser's Representations and Warranties.** The following representations and warranties are true and correct as of the Closing Date:

(a) **Authority of Purchaser.** Purchaser is (i) a limited liability company duly organized and validly existing and in good standing under the laws of the State of Nebraska, (ii) is in good standing and is authorized to do business in the State of Nebraska, and (iii) has the authority to own the Property. This Agreement and all documents executed by Purchaser which are or have been delivered to Seller have been duly authorized, executed, and delivered by Purchaser and do not violate any provisions of any agreement or judicial order to which Purchaser is a party or to which Purchaser is subject.

(b) **Litigation.** There is no litigation, pending or threatened, against Purchaser which would adversely affect the ability of Purchaser to perform its obligations under this Agreement.

(c) **No Broker.** Purchaser has not dealt with any real estate brokers in connection with the negotiations leading to this Agreement or the Deed. To the fullest extent permitted by Nebraska law, Purchaser agrees to indemnify and hold Seller harmless from and against the claims of any and all brokers or other intermediaries claiming to have had any dealings, negotiations, or consultations with Purchaser in connection with this Agreement, the Deed or the sale of the Property.

8. **Possession.** Purchaser shall be entitled to possession on the Closing Date.

9. **Taxes.** Taxes and assessments for the current year, water and other utilities and rentals shall be prorated as of the Closing Date.

10. **Closing Costs.**

(a) **Seller's Costs.** Seller has paid or shall pay any sales tax payable on the cost of recording the releases of all existing liens, and all prepayment charges and other fees assessed in connection with existing loans secured by the Property.

(b) **Purchaser's Costs.** On the Closing Date, Purchaser shall receive the Owner's Title Policy in accordance with Section 3 hereof. Seller shall pay all recording costs.

11. **Failure to Pay Purchase Price.** If Purchaser fails to pay the Purchase Price within 36 hours of the Closing Date, Seller's sole and exclusive remedy shall be to terminate this Agreement. Upon termination of this Agreement, Purchaser shall, within 72 hours thereof, be required to record a deed, in form and substance satisfactory to Seller, to convey the Property back to Seller.

12. **Oral Agreements and Representations.** There are no oral or other agreements, including but, not limited, to any representations or warranties that modify or affect this Agreement. Seller shall not be bound by, nor liable for, any warranties or other representations made by any other person, partnership, corporation, or other entity unless such representations are set forth in a written instrument duly executed by Seller. Purchaser acknowledges to Seller that in entering into this Agreement, Purchaser is not relying on any warranties except, those expressly set forth herein.

13. **Assignment.** Purchaser's rights under this Agreement are not assignable and Purchaser covenants not to assign its rights hereunder without the prior written consent of Seller.

14. **Authority.** Purchaser and Seller each warrant and represent that they have the authority to enter into this Agreement.

15. **Nonmerger.** The terms and provisions of this Agreement shall not merge in, but shall survive, the closing of the transaction contemplated hereunder and the Deed to be delivered pursuant hereto.

16. **Notices.** All notices required or permitted to be given hereunder shall be in writing, shall be sent via U.S. first class mail, postage prepaid, and shall be deemed given 48 hours after mailed, or by alternative private overnight delivery services and shall be deemed given one business day after prepaid receipted delivery to such service, to the respective parties as follows:

If to Seller:                      Community Development Agency of Lexington, Nebraska  
Attention: Joe Pepplichtsch  
406 East 7<sup>th</sup> Street  
Lexington, NE 68850

With a copy to:                  Bacon & Vinton, L.L.C.  
Attention: Michael Bacon  
416 10<sup>th</sup> Street, P.O. Box 208  
Gothenburg, NE 69138

If to Purchaser:                  Orthman Real Estate Holdings, L.L.C.  
Attention: John McCoy  
75765 Road 435, P.O. Box B  
Lexington, NE 68850

With a copy to:           Seibel & Falkner LLP  
                                  Attention: Daniel D. Seibel  
                                  2060 North Humboldt Boulevard , Suite 225  
                                  Milwaukee, WI 53212

17.     **Attorneys' Fees.** Notwithstanding anything to the contrary in this Agreement, in the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement, the prevailing party (as determined by the presiding judge in the court of such proceeding) shall be entitled to payment or reimbursement, as applicable, of its costs (including without limitation, reasonable attorneys', accountants', experts', and consultants' fees and expenses, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

18.     **Indemnification.**

(a)     To the fullest extent permissible under Nebraska law, Purchaser shall indemnify and hold Seller and Seller's affiliates harmless (using counsel reasonably satisfactory to Seller) from any liability, loss, claim, cost, damage or expense (including, but not limited to, attorneys' fees and costs) that Seller and Seller's affiliates may sustain or incur by reason of or in connection with the Property and (i) arising from acts, occurrences or matters of whatever kind or nature that take place after payment of the Purchase Price, (ii) resulting from or in any way connected with the environmental condition of the Property existing after payment of the Purchase Price, and (iii) resulting from or in any way connected with the physical, financial, compliance, or other conditions of the Property existing after payment of the Purchase Price.

(b)     To the extent permissible under Nebraska law, Seller shall indemnify and hold Purchaser and Purchaser's affiliates harmless (using counsel reasonably satisfactory to Purchaser) from any liability, loss, claim, cost, damage or expense (including, but not limited to, attorneys' fees and costs) that Purchaser and Purchaser's affiliates may sustain or incur by reason of or in connection with the Property and (i) arising from acts, occurrences or matters of whatever kind or nature that take place prior to payment of the Purchase Price, (ii) resulting from or in any way connected with the environmental condition of the Property existing prior to payment of the Purchase Price, and (iii) resulting from or in any way connected with the physical, financial, compliance, or other conditions of the Property existing prior to payment of the Purchase Price.

19.     **Contracts.** As of the Closing Date: (i) Seller has terminated any and all non-assumable contracts related to the Property in the name of Seller, including, without limitation, any and all utility contracts, water and sewer, maintenance, management and any other contracts relating to the Property that are non-assumable, or (ii) at Purchaser's election, Seller has either terminated or assigned to Purchaser each of the assumable contracts, including, without limitation, any and all utility contracts, water and sewer, maintenance, management and any other contracts relating to the Property that are assumable.

20.     **Purchaser's 1031 Exchange.** Purchaser hereunder may desire to exchange other property of like kind and qualifying use within the meaning of Section 1031 of the Internal

Revenue Code of 1986, as amended and the Regulations promulgated thereunder, fee title in the Premises which is the subject of this Contract. Purchaser expressly reserves the right to assign its rights, but not its obligations, hereunder to a Qualifying Intermediary as provided in IRS Reg. 1.1031(k)-1(g)(4) on or before the Closing date. Seller shall cooperate in effectuating such a transaction provided, however, that said transaction not subject Seller to additional costs or legal liability and does not extend any time periods set forth herein.

21. **Seller's 1031 Exchange.** Seller hereunder may desire to exchange, for other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended and the Regulations promulgated thereunder, fee title in the Premises which is the subject of this Contract. Subject to this Section (a) Seller expressly reserves the right to assign its rights, but not its obligations, hereunder to a Qualified Intermediary as provided in IRS Reg. 1.1031(k)-1(g)(4) on or before the Closing date. Purchaser shall cooperate in effectuating such a transaction provided, however, that said transaction not subject Purchaser to additional costs or legal liability and does not extend any time periods set forth herein and does not impair or restrict any of Seller's obligations or Purchaser's rights under this Contract.

22. **Miscellaneous.**

(a) **Governing Law.** THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEBRASKA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.

(b) **Integration.** This Agreement constitutes the complete expression of the parties with respect to the transaction contemplated hereby, supersedes all prior agreements, representations and negotiations, express or implied, and may not be amended or modified except in writing executed by both parties. Without limiting the generality of the preceding sentence, Seller shall not be bound by, nor liable for, any warranties or other representations made by any other person, partnership, corporation or other entity unless such representations are set forth in a written instrument duly executed by Seller. Purchaser acknowledges to Seller that in entering into this Agreement, Purchaser is not relying on any warranties except those expressly set forth herein.

(c) **Independent Counsel.** Each party acknowledges that it has had the opportunity to have this Agreement, and the transaction contemplated hereby, reviewed by independent legal counsel of such party's choice, and each party acknowledges that it is entering this Agreement as its free and voluntary act.

(d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(e) **Confidentiality**. Seller and Purchaser hereby covenant and agree that, at all times after the Closing Date, unless consented to in writing by the other party, no press release or other public disclosure concerning this transaction or any of the records shall be made, and each party agrees to use reasonable efforts to prevent public disclosure of this transaction, other than (i) to directors and officers of Seller, Purchaser, Lender, and employees, agents, affiliates, members, and managers of the foregoing, all of which shall be instructed to comply with the non-disclosure provisions hereof, (ii) in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction; (iii) prospective lenders, investors, or assigns of Purchaser, (iv) to independent contractors involved in Purchaser's due diligence inquiries, (v) to governmental authorities of whom Purchaser must make inquiry as part of its due diligence, and (vi) in any filings with governmental authorities required by reason of the transactions provided for herein.

**[Signatures begin on following page]**



IN WITNESS WHEREOF, each party has caused this Purchase and Sale Agreement to be executed by its duly authorized officer to be effective as of the Closing Date.

**PURCHASER:**

ORTHMAN REAL ESTATE HOLDINGS, L.L.C.

By: \_\_\_\_\_  
John McCoy, Manager

**SELLER:**

COMMUNITY DEVELOPMENT AGENCY OF  
LEXINGTON, NEBRASKA

By: \_\_\_\_\_  
Gail Hall, Chair

**EXHIBIT A**

**Legal Description**

Lot 11, Replat of Southeast Second Addition, A Replat of Lot 1, Southeast Frist Addition to the City of Lexington, and Lots 2, 3, and 4, Kirkpatrick's Third Addition to the City of Lexington, Dawson County, Nebraska.

**EXHIBIT B**

**Deed**