

DEVELOPMENT AGREEMENT

This Development Agreement made and entered into this ___ day of _____, 2021, by and between the COMMUNITY DEVELOPMENT AGENCY OF LEXINGTON, NEBRASKA, hereinafter called “Agency,” the CITY OF LEXINGTON, NEBRASKA, hereinafter called “City,” and LACY CONSTRUCTION COMPANY, a Nebraska Corporation, hereinafter called “Developer.”

WITNESSETH:

WHEREAS, the Agency is a duly organized and existing Community Development Agency, a body politic and corporate under the laws of the State of Nebraska, with lawful power and authority to enter into this Development Agreement, acting by and through its Chair or Vice Chair and Members;

WHEREAS the Agency and City own the Project Site, legally described on **Appendix “A”**, which is located in the corporate limits of the City of Lexington, Nebraska, hereafter known as “Project Site” or “Project”;

WHEREAS, Agency, City, and the Developer desire to enter into this Development Agreement for acquisition and development of the Project Site to assist with development of workforce housing within Lexington, Nebraska, hereinafter the “Agreement” or “Development Agreement;”

WHEREAS, the City, by and through Ordinance No. 2392, conveyed to the Agency certain individual lots located on the Project Site subject to the Agency’s obligation to sell said lots individually and remit to the City the sum of Five Thousand Dollars (\$5,000.00) per lot;

WHEREAS, the City and Agency have determined the proposed development on the Project Site is consistent with the general plan for the development of the City of Lexington and necessary for creation of workforce housing;

WHEREAS, the City and Agency have determined the fair market value of the real estate and has taken into account and given consideration to the uses and purposes required by this Agreement, the restrictions upon, and the covenants, conditions, and obligations assumed by the Developer of such property;

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth, Agency, City, and Developer do hereby covenant, agree and bind themselves as follows:

ARTICLE I REPRESENTATIONS

Section 1.01 Representations by the Agency and City.

The Agency and City make the following representations and findings:

1. Agency is a duly organized and validly existing Community Development Agency;
2. The proposed land uses and building requirements in the Project are designed with the general purpose of accomplishing, in conformance with the general plan of development of the City, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage, and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of unsanitary or unsafe dwelling accommodations, or conditions of blight;
3. The Development Agreement is feasible and in conformity with the general plan for the development of the City as a whole;
4. The Agency and City deem it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal for development submitted by Developer as specified herein; and
5. The Agreement will achieve the goals of the general development plan of City by, among other things, increasing the tax base, providing much needed housing opportunity, and developing undeveloped vacant land within the community.

Section 1.02 Representations of the Developer.

The Developer makes the following representations:

1. The Developer is a corporation organized and existing in good standing under the laws of the State of Nebraska, having the power to enter into this Development Agreement, transact business in the state of Nebraska, and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Development Agreement.
2. The execution and delivery of the Development Agreement and the consummation of the transactions therein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the Developer is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Developer contrary to the terms of any instrument or agreement.

3. There is no litigation pending or to the best of its knowledge threatened against the Developer affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Project or the carrying into effect of this Development Agreement or, except as disclosed in writing to the Agency, as to any other matter materially affecting the ability of the Developer to perform its obligations hereunder.
4. The Developer will not develop the project in the development area or elsewhere without the benefit of the benefits under this Development Agreement. The costs and risks of the project are simply too great to be absorbed by the Developers without this assistance.

ARTICLE II OBLIGATIONS OF THE AGENCY

Section 2.01 Conveyance of Real Estate.

The Agency will convey up to 40 individual lots of real property from the following described real property:

Lots 9, 10, 11, and 13, Block 2, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 5, 6, 7, and 8, Block 3, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 4 and 5, Block 4, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 4, 5, 6, and 7, Block 5, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, 6, and 7, Block 6, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 1, Northwest Sixth Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, 6, and 7, Block 2, Northwest Sixth Addition to the City of Lexington, Dawson County, Nebraska; and

Lot 3, Administrative Replat of Lot 1, Block One, Northwest Fourth Addition to the City of Lexington, Dawson County, Nebraska; and

Lot 4, Block 3, Paulsen's First Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 5 and 6, Block 1, Parkview Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, and 6, Block One, O'Donnell Fourth Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, and 5, Block Two, O'Donnell Fourth Addition to the City of Lexington, Dawson County, Nebraska.

The lots shall be conveyed to the Developer at no cost but the conveyances are subject to the condition that the Developer shall construct residential homes on said lots and said residential homes shall have a minimum tax assessed value of \$225,000.00 per home and a value not to exceed \$275,000.00 per home, for the purposes of providing workforce housing to the City. The lots shall not be conveyed to the Developer until the Developer is ready to commence construction. Developer shall notify the Agency at least thirty (30) days in advance of any request for a lot(s) and the Agency shall convey the lot(s) to Developer within said thirty (30) days. The Developer shall complete construction of all forty (40) homes within 24 months of the execution of this agreement. At the conclusion of twenty-four (24) months any unimproved lots in possession of the Developer shall be reconveyed to the Agency.

The Developer acknowledges the real property legally described as Lot 3, Administrative Replat of Lot 1, Block One, Northwest Fourth Addition to the City of Lexington, Dawson County, Nebraska, will be subdivided prior to the conveyance of individual lots in said parcel to the Developer.

ARTICLE III OBLIGATIONS OF THE DEVELOPER

Section 3.01 Construction of Project

Developer shall acquire the real property and construct residential homes on the individual lots which make up the real property. Improvements of at least \$225,000.00 but not in excess of \$275,000.00 per lot will be constructed upon each individual lot of the real property within 24 months of this Agreement. Said value is based on an estimate of fair market value of the homes to be sold. Developer agrees and acknowledges that said value is a material element of this Agreement, however, the Agency and City agree the Developer has discretion to adjust the sale price of a home as necessary to meet inflationary conditions.

The Developer shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Project. Until construction of the Project has been completed, the Developer shall make reports in such detail and at such times as may be reasonably requested by the Agency (not to exceed one report per month) as to the actual progress of the Developer with respect to construction of the Project. Promptly after completion by the Developer of the Project, the Developer shall furnish to the Agency a certificate of completion. The certification by the Developer shall be a conclusive determination of satisfaction of the agreements and covenants in this Development Agreement with respect to the obligations of the Developer and its successors

and assigns to construct the Project. As used herein, the term "completion" shall mean substantial completion of the Project.

Section 3.02 No Discrimination.

The Developer, for itself and its successors and assigns, agrees that during the construction of the Project, the Developer will not knowingly 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, The Developer will use its best efforts to comply with all applicable federal, state and local laws related to the Project.

Section 3.03 No Assignment or Conveyance.

Developer shall not convey, assign or transfer the Project, the Project or any interest therein prior to the satisfaction of the agreements and covenants in this Development Agreement without consent of Agency, with the exception of the transfer of the residential homes constructed per the terms of this Agreement which said residential homes may be transferred to third parties without the consent of the Agency.

Section 3.04 Immigration Status.

The Developer agrees that any contractor for the Project shall be required to agree to use a federal immigration verification system (as defined in Nebraska Revised Statute §4-114 to determine the work eligibility status of new employees physically performing services on the Project and to comply with all applicable requirements of Nebraska Revised Statute §4-114.

Section 3.05 Progress Reports.

The Developer shall provide the City with progress reports during the development, upon the written request of the City, and allow the City reasonable access, upon request to Developer, to Project Site, as well as to relevant financial records pertaining to the development project.

ARTICLE IV
OBLIGATIONS OF THE CITY

Section 4.01 Waiver of Remittance.

The City shall waive remittance of the \$5,000.00 owed by the Agency on the conveyance of each individual lot on the Project Site for those lots which are conveyed to the Developer and used for development as contemplated by this Agreement.

The City will further transfer any real estate (as identified in Section 2.01 above) it currently owns to the Agency for the purposes of effectuating this Agreement in an efficient manner.

ARTICLE V
DEFAULT, REMEDIES; INDEMNIFICATION

Section 5.01 General Remedies of Agency and Developer.

Subject to the further provisions of this Article V, in the event of any failure to perform or breach of this Development Agreement or any of its terms or conditions, by either party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Development Agreement shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Development Agreement.

Section 5.02 Enforced Delay Beyond Party's Control.

For the purposes of this Development Agreement, neither party, as the case may be, nor any successor shall be in breach of or in default in its performance of obligations within its control, when and without its fault, a default in such obligation occurs caused by acts of God, or Government, acts of terrorism, or in the event of enforced delay in the project due to unforeseeable causes beyond the control of the parties or either of them, including fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; 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 Agency or of Developer with respect to construction of the Project, as the case may be, shall be extended for the period of the enforced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof and requested an extension for the period of the enforced delay.

Section 5.03 Limitation of Liability; Indemnification.

Notwithstanding anything in this Article V or this Development Agreement to the contrary neither Agency, City, nor their officers, directors, employees, agents, attorneys or their governing bodies shall have any pecuniary obligation or monetary liability under this Development Agreement. The Developer releases the Agency and the City from, agrees that the Agency and City shall not be liable for, and agrees to indemnify and hold the Agency and City harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to Project. The Developer will indemnify and hold each of the Agency and City and their directors, officers, agents, employees, and members of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, including litigation expenses, attorney's fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about the

Project during the term of this Development Agreement and arising out of any actively wrongful, negligent, or mistaken action or inaction of Developer. This Section 5.03 is only for the benefit of Agency and City and may not be relied upon by any third-party not a party to this Development Agreement.

ARTICLE VI MISCELLANEOUS

Section 6.01 Notice Recording.

This Development Agreement or a notice memorandum of this Development Agreement shall be recorded with the Dawson County Register of Deeds with respect to the Project Site.

Section 6.02 Governing Law.

This Development Agreement shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

Section 6.03 Binding Effect; Amendment.

This Development Agreement shall be binding on the parties hereto and their respective successors and assigns. This Development Agreement shall run with the Project Site, The Development Agreement shall not be amended except by a writing signed by the party to be bound.

Section 6.04 Approval.

Developer agrees and understands that this Development Agreement is subject to approval of the governing bodies of Agency and the City of Lexington, and that in the event such approval is not obtained, that this Agreement is null and void.

Section 6.05 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

Section 6.06 Severability.

The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections contained in this Development Agreement shall not affect the validity or enforceability of the remaining portions of this Development Agreement, or any part thereof.

IN WITNESS WHEREOF, the Agency, the City, and the Developer have signed this Development Agreement as of the date and year first above written.

COMMUNITY DEVELOPMENT
AGENCY OF LEXINGTON, NEBRASKA

By: _____
Chairperson

STATE OF NEBRASKA,)
) ss.
COUNTY OF DAWSON.)

On this _____ day of _____, 2021, the foregoing instrument was acknowledged before me by Kory Cetak, Chairman of the Community Development Agency of Lexington, Nebraska.

Notary Public

LACY CONSTRUCTION COMPANY, a
Nebraska Corporation

By: _____
Gerald A. Huismann, President

STATE OF NEBRASKA,)
) ss.
COUNTY OF DAWSON.)

On this _____ day of _____, 2021, the foregoing instrument was acknowledged before me by Gerald A. Huismann, President of LACY CONSTRUCTION COMPANY, a Nebraska Corporation, for and on behalf of the Corporation.

Notary Public

APPENDIX A

PROJECT SITE

OVERVIEW:

Lots 9, 10, 11, and 13, Block 2, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 5, 6, 7, and 8, Block 3, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 4 and 5, Block 4, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 4, 5, 6, and 7, Block 5, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, 6, and 7, Block 6, Northwest Third Addition to the City of Lexington, Dawson County, Nebraska; and

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 1, Northwest Sixth Addition to the City of Lexington, Dawson County, Nebraska; and

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