

## LEXINGTON REVOLVING LOAN FUND

### **Loan Agreement No. 2016-01**

This Agreement is entered into as of July 15, 2016, between **Whilee, 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 Fifteen Thousand dollars (**\$115,000.00**) 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 \$12,802.55 commencing July 15, 2017, and the final installment due on or before July 15, 2026 (the “Loan”).
2. The Loan will be continuously secured by a Deed of Trust on Real Estate as described in the attached **Exhibit A** to the lender.
3. Lender shall advance the proceeds of the Loan to the Borrower in a single lump sum of \$115,000.00, 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 July 15, 2016 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. Default.

1. 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.

2. 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;

- 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, Whilee, 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}**



# EXHIBIT A

## DEED OF TRUST

THIS DEED OF TRUST is made on this \_\_\_ day of \_\_\_\_\_, 2016. The Trustor is Whilee, LLC, a Nebraska Limited Liability Company, a/k/a Borrower. The Trustee is BRIAN W. COPLEY, Attorney at Law, PO Box 1050, Lexington, NE 68850. The Beneficiary is the City of Lexington, Nebraska, a Municipal Corporation. The Beneficiary's address is PO Box 70, Lexington, Nebraska 68850.

Borrower irrevocably conveys to Trustee, in Trust, with the power of sale, the following:

**Lots 8 and 9, in Greater Lexington Addition to the City of Lexington, Dawson County, Nebraska, together with that portion of the vacated frontage road adjacent to and abutting Lots 8 and 9 on the West thereof.**

Together with all the rents and profits therefrom, less real estate taxes, and subject to easements and restrictions of record, if any.

Borrower owes Lender One Hundred Fifteen and no/100 Dollars (\$115,000.00), pursuant to a Loan Agreement and Promissory Note of even date payable according to the terms thereof.

This Security Instrument secures to Lender the debt evidenced by such Promissory Note, the payment of all other sums, with interest, advanced under the provisions hereafter to protect the security and the performance of Borrower's covenants and agreements.

Borrower covenants that Borrower is lawfully seised of such real estate and has the legal power and lawful authority to convey the same and warrants and will defend title to the real estate against the lawful claims of all persons.

### BORROWER AND LENDER AGREE AS FOLLOWS:

1. Borrower shall pay when due, the principal and interest as provided in said note.
2. All payments received by Lender shall be first applied to advances which may have been made by Lender and then to interest due and last to principal due.
3. Borrower shall pay all general real estate taxes and special assessments against the property before the same become delinquent.
4. If Lender determines that any part of the property is subject to a lien, which is or may attain priority over this security instrument, Lender may give Borrower a notice identifying the lien and Borrower shall satisfy the lien within ten (10) days.
5. If Borrower fails to perform the covenants and agreements herein contained, Lender may do and pay for whatever is necessary to protect the value of the property and Lender's rights in the property, including the paying of any sum secured by a lien which has priority over this security instrument, appearing in court, paying reasonable attorney fees and entering the property to make repairs. Any amount disbursed by Lender under this paragraph shall become an additional debt

of Borrower secured by this security instrument, to bear interest from the date of disbursement and said amount, together with the then unpaid principal amount, shall bear interest at the highest lawful rate until refunded by Borrower.

6. The proceeds of any condemnation award are hereby assigned and shall be paid to Lender and shall be applied to the sums secured by this security instrument, whether or not then due, with any excess paid to Borrower.

7. Any extensions or modifications of the loan granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

8. Any notice to Borrower provided for in this security instrument shall be given by delivering it or may mailing it by first class mail unless Nebraska Law requires use of another method, at the Borrower's last known address.

9. This security instrument and the note which it secures shall be governed by Nebraska law.

10. Lender shall give notice to Borrower following Borrower's breach of any covenant or agreement in this security agreement and the note which it secures. The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date not less than 30 days from the date the notice is given to Borrower by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sum secured by this security agreement and resale of the property. The notice shall further inform borrower of the right to reinstate, after acceleration, and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If default is not cured, on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security agreement without further demand and may invoke the power of sale and any other remedies permitted by Nebraska Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including but not limited to reasonable attorney fees and costs of title evidence.

11. If the power of sale is invoked, Trustee shall record a notice of default in each county in which any part of the property is located and shall mail copies of such notice in the manner prescribed by Nebraska law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Nebraska law. Trustee, without demand on Borrower, shall sell the property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the property at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser Trustee's Deed conveying the property. The recitals in the Trustee's Deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of sale in the following order: (a) to all expenses of the sale including, but not limited to, Trustee's fees as permitted by Nebraska law and reasonable attorney fees; (b) to all sums secured by this security agreement; and (c) any excess to the person or persons legally entitled to it.

12. Upon acceleration under Paragraph 10 or abandonment of the property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the property and to collect the rents of the property, including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney fees, and then to the sums secured by this security instrument.

13. Upon payment of all sums as herein provided, Lender shall direct Trustee to reconvey the property and shall surrender this security instrument and the note secured. Trustee shall reconvey the property without warranty and without charge to the persons legally entitled to it.

14. Lender, at its option, may from time to time remove Trustee and appoint a successor Trustee by an instrument recorded the county in which this security instrument is recorded. Without conveyance of the property, the successor Trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Nebraska law.

IN WITNESS WHEREOF, the Borrower, Whilee LLC, has signed this Deed of Trust, the day and year first above written.

Whilee, LLC, a Nebraska Limited Liability Company

By \_\_\_\_\_  
Jeff Whiting, Manager

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

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2016 by Jeff Whiting, Manager of Whilee, LLC, for and on behalf of Whilee, LLC, a Nebraska Limited Liability Company

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

# EXHIBIT B

## PROMISSORY NOTE

<b>Payee (lender):</b>	<b>City of Lexington PO Box 70 Lexington, NE 68850</b>
<b>Maker (borrower):</b>	<b>Whilee, LLC 1221 Avenue F Gothenburg, NE 69138</b>
<b>Place to Make Payments:</b>	<b>PO Box 70, Lexington, NE 68850</b>
<b>Principal Sum (face amount):</b>	<b>\$115,000.00</b>
<b>Due Date 1<sup>st</sup> Payment:</b>	<b>July 15, 2017</b>
<b>Amount of Each Equal Payment:</b>	<b>\$12,802.55</b>
<b>Due Date Last Payment:</b>	<b>July 15, 2026</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>Lots 8 and 9, in Greater Lexington Addition to the City of Lexington, Dawson County, Nebraska, together with that portion of the vacated frontage road adjacent to and abutting Lots 8 and 9 on the West thereof.</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 July 15, 2026.

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.

Should any installment not be paid when due, 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.

