

DEVELOPMENT AGREEMENT

This Development Agreement made and entered into this ___ day of _____, 2024, by and between the COMMUNITY DEVELOPMENT AGENCY OF LEXINGTON, NEBRASKA, hereinafter called “Agency,” the CITY OF LEXINGTON, NEBRASKA, hereinafter called “City,” and M SQUARED AG, LLC, a Nebraska Limited Liability Company, 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 City owns the real estate 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, Developer owns the real estate legally described on **Appendix “B”**, which is located in the corporate limits of the City of Lexington, Nebraska, hereinafter known as “Exchange Property;”

WHEREAS, the City and Agency have determined the Developer’s proposed development on the Project Site is consistent with the general plan for the development of the City of Lexington;

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 limited liability company 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 CDA will convey the Project Site consisting of the real estate legally described on Appendix "A", in exchange for the real estate legal described on Appendix "B" for the purpose of redeveloping the Project Site.

ARTICLE III OBLIGATIONS OF THE DEVELOPER

Section 3.01 Exchange of Real Estate; Construction of Project

The Developer hereby agrees to transfer the Exchange Property to the Agency in exchange for the Project Site. For the purposes of this exchange, the Agency and Developer agree the Project Site and Exchange Property have equal value.

The Developer shall acquire the Project Site subject to the condition that it construct improvements on the Project Site consisting of a commercial warehouse, seed retail facility, professional office space, with a minimum tax valuation of at least \$500,000.

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 Construction of Access Road.

The City shall convey to the Agency the Project Site consisting of the real estate legally described on Appendix “A” at no cost and subject to the condition that the Agency subsequently exchange the real estate with the Developer for the Exchange Property legally described on Appendix “B” for the purposes of redeveloping the Project Site.

The City shall construct a public street on the right-of-way south of Lot 2, Northeast Second Addition to the City of Lexington to provide access to Project Site. Said street shall be constructed in concert with the Developer’s redevelopment of the Project Site. The cost of constructing the public street shall be borne by the City.

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: _____
Seth McFarland, Chairperson

M SQUARED AG, LLC, a Nebraska
Limited Liability Company

By: _____
Michael McFarland, Managing Member

CITY OF LEXINGTON, NEBRASKA

By: _____
Joe Peplitsch, City Manager

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

On this _____ day of _____, 2024, the foregoing instrument was acknowledged before me by Seth McFarland, Chairman of the Community Development Agency of Lexington, Nebraska.

Notary Public

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

On this _____ day of _____, 2024, the foregoing instrument was acknowledged before me by Michael McFarland, Managing Member, for and on behalf of M Squared Ag, LLC, a Nebraska Limited Liability Company.

Notary Public

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

On this _____ day of _____, 2024, the foregoing instrument was acknowledged before me by Joe Peplitsch, City Manager of the City Lexington, Nebraska.

Notary Public

APPENDIX A

PROJECT SITE

Lot 2, Northeast Second Addition to the City of Lexington, Dawson County, Nebraska.

APPENDIX B

EXCHANGE PROPERTY

All of the Nebraska Rural Radio Addition to the City of Lexington, Dawson County, Nebraska.