

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “**Agreement**”) is made and entered into as of the date of the last signature below, by and between Jerry Michael Byrns (“**Seller**”), and the **City of Lexington**, a Municipal Corporation, (“**Buyer**”).

RECITALS

- A. Seller owns that certain real estate (as defined in Neb. Rev. Stat. § 76-201), legally described as set forth in the attached Exhibit A, hereinafter “Premises” or “Property.”
- B. Seller has agreed to sell the real estate to Buyer, together with all improvements located thereon, and Buyer has agreed to purchase the same from Seller, upon the terms and conditions hereafter set forth

AGREEMENT

1. **Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, free and clear of all liens and encumbrances, subject, however, to easements of record, apparent easements, public highways and all governmental rules and regulations.
2. **Price and Payment.** Buyer agrees to pay Seller the sum of Sixty-One Thousand Three Hundred Eighty Dollars and 00/100ths (\$61,380.00) for Seller’s interest in the Property (the “**Purchase Price**”) on the Closing Date. Buyer shall pay the Purchase Price as follows:
 - a. **Closing Payment.** On the Closing Date, Buyer shall pay to Seller the sum of Sixty-One Thousand Three Hundred Eighty Dollars and 00/100ths (\$61,380.00), upon delivery of the Deed, in a simultaneous transaction. Such payment shall be made in cash, by wire transfer of immediately available funds, by certified funds, or other “good funds” as defined in Neb. Rev. Stat. § 76-2,121.
3. **Personal Property included in Sale.** The following personal property is included in the sale and purchase referred to herein: None.
4. **Closing.** The Closing shall be held as soon as is reasonably practicable (the “**Closing Date**”), at a time and place mutually agreed upon by the parties.
5. **Taxes.** Seller shall pay the 2016 and all prior real estate taxes. The 2017 real estate taxes shall be prorated to Closing Date, based on 2016 actual real estate taxes.
6. **Deed.** Seller shall execute a Warranty Deed of conveyance to Buyer, free and clear of all encumbrances, subject, however, to easements of record, apparent easements and all governmental rules and regulations, and deliver the same to the Buyer on Closing Date upon payment of the purchase price.
7. **Possession.** Seller shall give Buyer quiet and peaceable possession of the real estate on Closing Date.
8. **Risk of Loss.** In the event the Property is materially damaged by fire, explosion or any other cause prior to Closing Date, (“material damage” to be damage in excess of 30% and not repairable in 30 days) Buyer shall have the right to rescind this Agreement.

9. **Title Insurance.** Buyer shall obtain a title insurance commitment on the Property issued Heldt, McKeone, & Copley and underwritten by Old Republic National Title Insurance Company. The title insurance commitment will show marketable title to the Property in Seller in accordance with the terms and conditions of this Agreement, and shall agree to insure title in Buyer and for the benefit of Buyer's lender, if any, in the amount of the Purchase Price following closing in conformity herewith. Title standards approved by the Nebraska State Bar Association as of the date of the title insurance commitment shall serve as a guide to marketability of title. Seller agrees to execute, upon request of the Title agent, a Nebraska Marketable Title Affidavit.

10. **Division of Expenses.** Seller and Buyer agree that the closing expenses in connection with the sale and purchase of the Property shall be divided as follows:

- a. Attorney Fees: Seller, payable to Heldt, McKeone, & Copley.
- b. Closing Fees: Seller, payable to Heldt, McKeone, & Copley.
- c. Documentary Stamp Tax: Seller.
- d. Deed: Seller.
- e. Owner's Title Insurance premium and Closing Protection Letter: Seller, payable to Heldt, McKeone, & Copley.

11. **Condition of Property.** Buyer acknowledges receipt of a Seller's Disclosure Statement. Buyer acknowledges that Buyer has examined and inspected the premises, and that Buyer is purchasing the same in an "as is" condition, subject to Buyer's own inspection and not by reason of any representation or warranty of Seller, express or implied, other than those specifically set forth in this Agreement.

12. **Lead Based Paint Disclosure.** Buyer acknowledges receipt of the pamphlet "Protect Your Family From Lead In Your Home" and the Seller's lead-based paint and lead-based paint hazards form according to the Residential Lead-Base Hazard Reduction Act of 1992. This applies only to properties built prior to 1978.

13. **Representations of Seller.** Seller hereby makes the following warranties and representations, which shall survive closing:

- a. Seller is not a party to any contract, written or oral, which will give rise to a lien (including but not limited to, construction lien, mechanic's lien, storage and repair lien, threshing, and agister's lien) or other encumbrance on the Property or improvements;
- b. Seller has no knowledge of any fence disputes, boundary disputes, water disputes, or drainage disputes, existing, actual or threatened, special assessments, taxes, or condemnation proceedings concerning the Property;
- c. Seller has no knowledge of any hazardous or toxic material, substance, pollutant, contaminant, waste, asbestos, or petroleum product that has been released into

the environment, discharged, placed or disposed of at, near, or on the Property. Seller has no knowledge that the Property has not been used at any time by any person as a landfill or waste disposal site. Seller is unaware of any claims, litigation, administrative proceedings, pending or threatened, or judgments or orders that have been entered relating to any hazardous substance, hazardous waste, discharge, emission or other form of pollution relating in any way to the Property. Seller is unaware of any hazardous substance or hazardous waste, as defined by the Resource Conservation Recovery Act, as amended, 42 U.S.C. §§6901 et seq., or the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. §§6901 et seq., that has generated, manufactured, refined, transported, treated, stored, handled or disposed of on, at or near the Property.

- d. Seller has no knowledge of any unlawful discharge of wastewater or sewer or otherwise any issues whatsoever related to the septic or wastewater treatment system located on the Property. Seller is unaware of any claims, litigation, administrative proceedings, pending or threatened, or judgments or orders that have been entered relating to relating in any way to the septic or wastewater treatment system on the Property.
- e. Seller has full legal authority to enter into this Agreement, and the consent or acquiescence of no other Party is required to bind Seller to the terms of this Agreement;

14. **Representations of Buyer.** Buyer hereby makes the following warranties and representations, which shall survive closing:

- a. Except as expressly set forth in this Agreement Buyer has not entered into this Agreement based on any representations of the Seller;
- b. Buyer has full legal authority to enter into this Agreement, and the consent or acquiescence of no other party is required to bind Buyer to the terms of this Agreement, except as set forth in Paragraph 14.

15. **Default.** In the event either Party should default under the terms and conditions to be performed by that Party pursuant to this Agreement, the other Party shall have such rights and remedies as are allowed by law, including specific performance. The election or forfeiture of any one remedy shall not bar the election or cause the forfeiture of any other remedy.

16. **Contingencies.** The duties of the Parties to this Agreement shall be expressly contingent upon the occurrence of the following events.

- a. Approval of the purchase by the Lexington City Council;
- b. The purchase and closing on an alternative property by the Seller.

17. **Advice of Counsel.** Seller acknowledges that this Agreement has been prepared by Heldt, McKeone, & Copley, at the request of Buyer. Seller further acknowledges that they have been encouraged to obtain legal representation of their choice for this transaction, and have either obtained such legal representation prior to execution of this Agreement, or waives the right to do so.

18. **Tax Identifying Numbers.** Seller and Buyer agree to provide Heldt, McKeone, & Copley with any tax identifying numbers needed to prepare an IRS 1099-S tax form prior to Closing.

19. **Severability.** Except to the extent the same would operate to deprive either party of the economic benefit of its bargain hereunder, if any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

20. **Further Assurances.** 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.

21. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

22. **Entire Agreement.** This Agreement contains the entire agreement of the parties relating to this matter. It supersedes any prior agreements or understandings among them and shall not be modified or altered or amended in any manner except in writing and signed by both parties.

23. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

24. **Successors and Assigns.** 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.

25. **Counterparts.** 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.

26. **Waiver.** One or more waivers of any covenants, conditions, rules or regulations by Buyer or Seller shall not be construed as a waiver of a further breach of the same or different kind at any other time.

{Signature and Notary Pages Follow}

SELLER:

Date: _____

JerryMichael Byrns

BUYER:

CITY OF LEXINGTON

Date: _____

By _____
Joe Peplitsch, City Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DAWSON)

The foregoing Real Estate Purchase Agreement was acknowledged before me on _____, 2017, by Jerry Michael Byrns.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DAWSON)

The foregoing Real Estate Purchase Agreement was acknowledged before me on _____, 2017, by Joe Peplitsch, City Manager, for and on behalf of the City of Lexington, a Municipal Corporation.

Notary Public

Exhibit A

Tract A: A tract of land in the Northeast Quarter of the Northeast Quarter of Section 7, in Township 9 North, Range 21 West of the 6th P.M., Dawson County, Nebraska, more particularly described as follows: Beginning at a point which is 234.0 feet South of the Northeast corner of said Section 7; thence West a distance of 184.0 feet; thence South and parallel to the East line of the Northeast Quarter a distance of 198.0 feet; thence East at 90° to the last described course a distance of 184.0 feet; thence North and on the East line of the Northeast Quarter a distance of 198.0 feet to the place of beginning and containing 0.836 acres, more or less;

Tract B: Real Estate Investors Subdivision of a part of the Northeast Quarter of the Northeast Quarter of Section 7, in Township 9 North, Range 21 West of the 6th P.M., Dawson County, Nebraska