

NEW HOME CONSTRUCTION AGREEMENT

This New Home Construction Agreement (this “**Agreement**”) is made and entered into as of the date of the last signature below, by and between the Community Development Agency of Lexington, Nebraska, (“**Owner**”), and Brad Staullbaumer, (“**Contractor**”).

RECITALS

A. Owner owns that certain real estate (as defined in Neb. Rev. Stat. § 76-201), legally described as _____ (“Property or Premises”).

B. Owner desires to hire Contractor to construct a home on the above described real estate, upon the terms and conditions hereafter set forth

AGREEMENT

1. **Contract Documents.** The Contract Documents consists of this Agreement, Plans, Specifications, and Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications and Change Orders issued after the execution of this Agreement; these form the Contract and are incorporated herein by reference. The terms of this Agreement shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the Plans and the Specifications, the Specifications shall govern.

2. **Change Orders.** Without invalidating this contract, the Owner may request changes in the work and at the Contractor’s discretion the Contractor may perform the work. Changes or overages to the home should be in writing and agreed upon by the Owner and the Contractor. Overages, if any, will be due at the time of authorization of the change. If the change reduces the cost, the Owner will receive a credit.

3. **Construction Standards.** The home shall be built pursuant to this Agreement and according to the Plans and Specifications provided by the Owner and will comply with the building code that is in affect at the time this Agreement is signed. The Contractor will build the home to the quality one would reasonably expect for a careful, diligent workman.

4. **Contract Price.** The Owner agrees to pay the total Contract Price for all labor furnished and work performed by the Contractor in the amount of \$_____subject to additions and deletions by Change Order. Owner and Contractor agree the price of materials is excluded from the total Contract Price and Owner is solely responsible for the purchase and cost of materials. Owner shall be responsible for delivery of said materials.

5. **Payments.** The contract price will be paid as follows:

A. **Deposit:** Owner to provide 20% before any construction will begin. Deposit will be credited against cost of house.

B. **Subsequent Draws:** shall be made on a monthly basis for actual work accomplished and certified by Contractor and Owner; until completion of project.

6. **Acceptance, Final Payment, and Occupancy.** Upon Substantial Completion the Owner agrees to execute a certificate of substantial completion.

7. **Commencement.** The Contractor will commence work after execution of this agreement and after Owner satisfies the deposit set forth above. Substantially completion to be within approximately 180 days, which starts the day the concrete foundation is poured.

8. **Substantial Completion.** Substantial completion occurs when a certificate of occupancy is issued by the local building official.

9. **Delays.** In the event that there is a delay in work due to a government agency, weather conditions, labor shortages, material shortages, change orders, Owner delays, acts of war, acts of terrorism or acts of God, the date of completion shall be extended accordingly.

10. **Punch List.** Owners are to give a punch list to Contractor within Five (5) days after substantial completion, or upon notification by the Contractor. Contractor will have Ten (10) working days to complete this punch list. Any and all items not listed on the final punch list will be deemed accepted and thereafter are only subject to Paragraph 13. Warranty below.

11. **Occupancy.** Occupancy of the Home by the Owner shall be deemed to be unconditional acceptance of the home by Owner and shall release the Contractor from any further obligations pursuant to this agreement EXCEPT 1) completion of Punch List items which could not be completed within the time allowed, and, 2) warranty obligations set forth below.

12. **Warranty Obligations.** Contractor specifically grants to Owner a one (1) year warranty in regards to any defects in workmanship. However, except in regards to any other warranties made by suppliers of materials/appliances, any other warranties specifically tendered by any contractor, any other warranties included in a separate writing, or such other warranties provided by Nebraska law, including but not limited to any new construction warranties implied by law, or such other warranties expressly set forth in this Agreement, Contractor makes no other express warranties.

13. **No Liability for Work Constructed According to Plans.** In no event shall the Contractor be liable for destruction or deterioration of or defects in any work constructed, or under construction, by him if he constructed, or is constructing, the work according to plans or specifications furnished to him which he did not make or cause to be made and if the destruction, deterioration, or defect was due to any fault or insufficiency of the plans or specifications.

14. **Permits and Fees.** The Owner shall secure and pay for building permits, licenses and other similar approvals necessary for the proper execution and completion of the work. If necessary, the Contractor agrees to assist the Owner in obtaining any such permits and licenses by completing all necessary applications and forms.

15. **Insurance.** The Contractor shall keep in effect workman's compensation, commercial general liability coverage and builders risk. The Owner may elect to purchase and maintain his own liability insurance, including Builders risk, flood, fire and casualty insurance upon the residence, to the full insurable value.

16. **Indemnity Agreement.** Contractor hereby covenants and agrees that the Contractor will indemnify, protect and hold Owner harmless against any and all claims, demands, causes of actions and damage suits or costs whatsoever asserted by any firm person or corporation arising out of or occurring in connection with Contractor's construction of the home and shall reimburse Owner for all costs and expenses which may be incurred by the Owner in

connection with any such claims, demands, causes of action or suits. This indemnity agreement shall include all defense costs incurred by Owner, including court costs.

17. **Concealed Conditions.** The Contractor is not responsible for subsurface or latent physical conditions at the site or in an existing structure that differ from those (a) indicated or referred to in the contract documents or (b) ordinarily encountered and generally recognized as inherent in the work of the character provided for in this contract. After receiving notice of the conditions, the Owner shall investigate the condition within five (5) working days. If the parties agree that the condition will increase (a) the Contractor's cost of performance of any part of the work under this contract or (b) the time required for that work, the parties may sign a change order agreement incorporating the necessary revisions, or the Owner may terminate the contract. If the Owner terminates the contract, the Contractor will be entitled to recover from the Owner payment for all work performed, including normal overhead, and a reasonable profit.

18. **Advice of Counsel.** Contractor acknowledges that this Agreement has been prepared by Heldt, McKeone & Copley at the request of Owner. Contractor 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 waive the right to do so.

19. **Assignment.** This Agreement may not be transferred or assigned by either party without the written consent of the other party. Such consent shall not be unreasonably withheld and shall not release the assignor from performance hereunder.

20. **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.

21. **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.

22. **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.

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.

OWNER:

Community Development Agency of
Lexington, Nebraska

Date: _____

By _____
Seth McFarland, Chairman

CONTRACTOR:

Date: _____

Brad Staullbaumer

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing New Home Construction Agreement was acknowledged before me on _____, 2017, by Seth McFarland, for and on behalf of the Community Development Agency of Lexington, Nebraska.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing New Home Construction Agreement was acknowledged before me on _____, 2017, by Brad Staullbaumer.

Notary Public