

# DRAFT

## LOAN AGREEMENT

**THIS AGREEMENT** dated \_\_\_\_\_, 2017, by and between the Community Development Agency of Lexington, Nebraska (“Borrower”), and the Council for Economic Development, Inc., (the “Lender”).

**WHEREAS**, the Borrower is a lawfully created community development agency, authorized to borrow funds and engage in community development activities, as provided for by Community Development Law, pursuant to Neb. Rev. Stat. § 18-2101 et. seq. (“Act”); and

**WHEREAS**, the Borrower, pursuant to the aforementioned Act, desires to borrow funds from Lender for the purpose of the construction of three (3) speculative housing units in the Northwest Fifth Addition to the City of Lexington, Dawson County, Nebraska;

**WHEREAS**, based upon information furnished by Lender and Borrower, the Lender and Borrower are satisfied that this loan furthers the purposes specified in the Act and furthers the purposes of the charter of Lender;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

### **PART I: THE LOAN**

#### **1.01 The Loan and Rate.**

Subject to the terms and conditions of this Agreement and the approval of the Community Development Agency of Lexington, Nebraska, the Lender agrees to loan the sum of \$100,000.00, to be repaid as set forth below in Paragraph 1.03. Each payment to include interest at 0.0% per annum.

#### **1.02 Purpose of Loan.**

The purpose of the loan is to provide capital for Borrower to construct speculative housing units in the Northwest Fifth Addition to the City of Lexington, Dawson County, Nebraska. The Borrower agrees it will apply the funds received by it under this Agreement in the manner described above.

#### **1.03 Repayment of Loan**

The Loan shall be re-paid upon the sale of each individual speculative home, pro-rata, i.e. the amount of \$33,333.00 shall be due and payable upon the sale of the first speculative home, the amount of \$33,333.00 shall be due and payable upon the sale of the second speculative home, and the amount of \$33,333.00 upon the sale of the third speculative home. Said payment shall be due within thirty (30) days of closing on the sale of each individual speculative home.

Lender and Borrower acknowledge and agree Borrower has alternative financing for the construction of the three (3) speculative homes. This alternative financing shall have a first lien position on all three (3) homes and any and all funds advanced hereunder shall be payable after the Borrower pays its obligations pursuant to the terms and conditions of its alternative financing. In the event the Borrower is unable to pay any amount owed hereunder after the sale of a speculative home, then said amount shall be forgiven by Lender.

#### **1.04 Subordinate**

Lender agrees to execute any and all documents which may be required to subordinate this loan, as requested by Borrower.

### **PART II: REPRESENTATIONS AND WARRANTIES.**

The Borrower represents and covenants the following:

#### **2.01 Legally Binding Instruments.**

When this Agreement is executed by the Borrower and the Lender, this Agreement will constitute the legal, valid, and binding obligation of the Borrower and Lender in accordance with its terms.

#### **2.02 No Legal Suits.**

There are no legal actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any court or administrative agency, which, if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.

#### **2.03 No Legal Authorization Needed.**

No authorization, consent or approval, or any formal exemption of any Governmental body, regulatory authorities (federal, state or local) or mortgagee, creditor or third party, is or was necessary for the valid execution and delivery by the Borrower of this Agreement.

#### **2.04 Not In Default.**

The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

### **PART III: CONDITIONS OF LENDING.**

The obligation of the Lender to make the Loan will be subject to the fulfillment at the time of closing of each of the following conditions:

**3.01 Execution and Delivery of Loan Agreement.**

The Borrower will have executed and delivered to the Lender this Loan Agreement in a form satisfactory to the Lender.

**3.02 Approval of Others.**

The Borrower will have secured all necessary approvals or consents required with respect to this transaction by any mortgagor, creditor or other party having any financial interest in the Borrower.

**PART IV: AFFIRMATIVE COVENANTS OF THE BORROWER.**

The Borrower agrees to comply with the following covenants from this date until the Lender has been fully repaid with interest, unless the Lender or its Assigns will otherwise consent in writing.

**4.01 Payment of the Loan.**

The Borrower agrees to pay punctually the principal according to the terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of this Agreement.

**4.02 Payment of Other Indebtedness.**

The Borrower agrees to pay punctually the principal due now or at any time owing by the Borrower to the Lender.

**4.03 Maintain and Insure Property.**

The Borrower agrees at all times to maintain the property in good condition and repair. The Borrower also agrees to maintain during the term of the Loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form as are sufficient to Borrower and Lender.

The Borrower further agrees, if at any time during the life of the Loan the Borrower's property is declared to be within a flood hazard area, to purchase Federal Flood Insurance, if available. Such insurance will be in an amount equal to the amount of the loan. If the property is not located in a flood hazard area at the time of the loan closing, the Borrower will provide satisfactory evidence thereof.

**4.04 Pay All Taxes.** The Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties are attached except that the Borrower will not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate proceedings.

**4.05 Null and Void Covenants.**

The Borrower agrees that in the event that any provision of this Loan Agreement or any other instrument executed at closing or the application to any person or circumstances will be declared null and void, invalid, or held for any reason to be unenforceable by a Court of competent jurisdiction, the remainder of such agreement will nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate.

**4.6 Expenses and Closing Costs.**

The Borrower agrees to pay all fees, expenses and charges with respect to the Loan, or its making or transfer to the Lender in any way connected including, but no limited to, the fees and out-of-pocket expenses of local counsel employed by the Borrower.

**4.7 Notice of Default.**

The Borrower agrees to give written notice to the Lender of any event, within fifteen (15) days of the event, which constitutes an Event of Default under this Loan Agreement as described in Article V or that would, with notice or lapse of time or both, constitute an Event of Default under this Loan Agreement.

**4.8 Indemnification.**

The Borrower agrees to indemnify and save the Lender or its Assigns harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of the Borrower.

**4.09 Compliance With Law.**

Evidence satisfactory to the Lender will be furnished certifying that all improvements and their use comply fully with all applicable zoning and building laws, ordinances and regulations, and all other applicable federal, state and municipal law requirements. The loan will be in all respects legal and will not violate any applicable law or other requirements of any governmental authority.

**4.10 Environmental Protection Laws.**

Receipt of evidence satisfactory to the Lender of compliance with all applicable environmental protection and land use and development laws, ordinances and regulations of all federal, state and local governmental authorities and agencies having jurisdiction.

**PART V: EVENTS OF DEFAULT.**

The entire unpaid principal will become and be immediately due and payable upon the written demand of Lender, except where noted, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (an “Event of Default”) occurs and be

continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rules or regulation of any administrative or governmental body, provided, however, that such sum will not be then payable if Borrower's payments have been waived, or the time for making the Borrower's payments have been extended by the Lender.

**5.01 Non-Payment of Loan.**

If the Borrower fails to make payment when due and if the default remains unremedied for thirty (30) days.

**5.02 Incorrect Representation or Warranty.**

Any representation or warranty contained in, or made in connection with the execution and delivery of, this Loan Agreement or Grant Application or in any provided information proves to be incorrect.

**5.04 Default in Covenants.**

The Borrower will default in the performance of any other term, covenant or agreement contained in this Loan Agreement, and such default continues unremedied for thirty (30) days after either: 1) it becomes known to an executive officer of the Borrower or 2) written notice has been given to the Borrower by the Lender.

**PART VI: MISCELLANEOUS.**

**6.01 Waiver of Notice**

No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Loan Agreement nor any consent to same will be effective unless it is in writing and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case will entitle the Borrower to any other or further notice or demand in similar or other circumstances.

**6.02 Amendments.**

The Borrower and the Lender or its Assigns, reserves all rights to amend any provisions of this Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, unless all such amendments be in writing and executed by the Lender or its Assigns, and the Borrower.

**6.03 Notices.**

All notices, consents, requests, demands and other communication will be in writing and will be deemed to have been duly given to a party if mailed to the Lender at its address set forth in the grant application, and to the Borrower at the address set forth in the grant application.

**6.04 Survival of Representations and Warranties.**

All agreements, representations, and warranties made by the Borrowers or any other document or certificate delivered to the Lender in connection with the transactions contemplated by this Loan Agreement will survive the delivery of this Agreement, and will continue in full force and effect so long as the principal is outstanding.

**6.05 Successors and Assigns.**

This Loan Agreement will be binding upon the Borrower, its Successors, and Assigns. The Borrower may not assign or transfer its rights without prior written consent of the Lender.

**6.06 Counterparts.**

This Loan Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**6.07 Governing Law.**

This Loan Agreement will be deemed a contract made under the laws of the State of Nebraska and for all purposes will be construed in accordance with the laws of this State.

**6.08 Article and Section Headings.**

Article and Section Headings used in this Agreement for convenience only and will not affect the construction of this Agreement.

IN WITNESS WHEREOF, the parties have each caused this Loan Agreement to be executed on \_\_\_\_\_, 2017.

Council for Economic Development, Inc.,      Community Development Agency of Lexington,  
Nebraska

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Chairman