

**RESOLUTION NO. 2016-14**

**A RESOLUTION APPROVING ASSIGNMENT OF A PURCHASE AGREEMENT TO THE CITY OF LEXINGTON FOR THE PURCHASE OF CERTAIN REAL ESTATE; AUTHORIZING THE PURCHASE OF SAID REAL ESTATE; AND AUTHORIZING THE GRANTING OF AN OPTION TO PURCHASE SAID REAL ESTATE TO STONYHILL VENTURES, LLC**

WHEREAS, the City Manager, Joe Peplitsch, on behalf of the City of Lexington, NE has entered into an Assignment and Assumption Agreement dated June 6, 2016, whereby Stonyhill Ventures, LLC assigns to the City of Lexington, NE its right and option to acquire the real estate described in Exhibit "A." Said right and option existing pursuant to a Purchase Agreement referenced therein; and

WHEREAS, the City of Lexington, NE desires to approve said assignment and authorize the City Manager, on behalf of the City of Lexington, to execute any and all closing documents necessary to the purchase of said real estate; and

WHEREAS, the City of Lexington, NE desires to grant an option to purchase the real estate described in Exhibit "A" to Stonyhill Ventures, LLC, in a form as set forth in Exhibit "B."

BE IT THEREFORE RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA, as follows:

That the Assignment and Assumption Agreement entered into by Joe Peplitsch is hereby approved by the City of Lexington, NE.

That the City Manager is hereby directed and authorized on behalf of the City of Lexington, NE to purchase the real estate described in Exhibit "A" and to execute any and all closing documents necessary for said purchase.

That the City Manager is hereby directed and authorized on behalf of the City of Lexington, NE to grant an option to purchase to Stonyhill Ventures, LLC, in a form as set forth in Exhibit "B."

Passed and approved June 14, 2016

CITY OF LEXINGTON, NEBRASKA



*John H. Fyfe*

\_\_\_\_\_  
Mayor

Attest:

*Pamela Baruth*

\_\_\_\_\_  
City Clerk

### Exhibit A

A tract of land located in the Northeast Quarter of Section 7, Township 9 North, Range 21 West of the 6th P.M., in Dawson County, Nebraska, being more particularly described as follows: Considering the East line of the Northeast Quarter of said Section 7 as bearing S 00°59'00" E and with all bearings contained herein relative thereto: Commencing at the Northeast Corner of said Section 7, said point also being the True Point of Beginning; thence Southerly along said East Line of said Northeast Quarter, S 00°59'00" E 234.00 feet to a point; thence leaving the said East Line and continuing Westerly S 89°01'00" W 184.00 feet to a point; thence Southerly S 00°59'00" E 198.00 feet to a point; thence Easterly N 89°01'00" E 184.00 feet to a point on the said East line of the Northeast Quarter; thence Southerly along said line S 00° 59'00" E 1681.31 feet to a point; thence leaving said East Line and continuing Westerly S 89°01'00" W 659.59 feet to a point on the North right-of-way line of the Dawson County Drainage Ditch No. 1; thence Northwesterly along said line N 67°16'19" W 718.80 feet to a point; thence leaving said right-of-way line and continuing Northerly along the East right-of-way line of a 22 foot drainage ditch N 00°09'08" E 1841.82 feet to a point on the North Line of the said Northeast Quarter of Section 7; thence continuing Easterly along said line N 89°47'09" E 1281.32 feet to a point, said point being the True Point of Beginning, containing 60.4044 acres, more or less; EXCEPT a tract of land conveyed to Harold W. Anderson and Neta Joyce Anderson by Corrective Quitclaim Deed recorded in Deed Book 148, Page 67; AND EXCEPT a tract of land described as CED Addition to the City of Lexington, Dawson County, Nebraska, as shown by Plat recorded August 1, 2007 at Inst. 2007-2729 in Plat Cabinet No. 2, Page 80; AND EXCEPT Lot 15, CED Second Addition to the City of Lexington, Dawson County, Nebraska, as shown by Plat recorded at Inst. 2010-1372 in Plat Cabinet No. 2, Page 86.

NOTE - The above legal description includes Lots 1-14, 16-20 and Outlot "A" in CED Second Addition to the City of Lexington, Dawson County, Nebraska.

## Exhibit B

### OPTION AGREEMENT

This Option Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Stonyhill Ventures, LLC, a Nebraska limited liability company, or its assigns (the "Stonyhill") and the City of Lexington, Nebraska, (the "City").

#### RECITALS

A. Pursuant to an Assignment and Assumption Agreement dated as of this same date ("Assignment Agreement"), Stonyhill assigned a Purchase Agreement dated April 14, 2016 to the City which gives the City the right and obligation to acquire certain real estate described as a tract of land west of Adams and south of Walnut and north of the drainage ditch with a legal description: Tax parcel 240008294 also known as 00001556 being Part of the E1/2 of the NE1/4 in Section 7, Township 9 North, Range 21 West, of the 6th p.m. in Dawson County, Nebraska (the "Property"). A copy of the Assignment Agreement is attached as Exhibit "A", attached and incorporated by this reference.

B. Stonyhill desires to construct and develop residential uses on the Property and desires to obtain the right and option to purchase the Property from the City pursuant to the terms of this Option Agreement.

NOWHEREFORE, in consideration of mutual promises, the receipt and sufficiency of which is hereby acknowledged, Stonyhill and the City agree as follows:

1. Grant of Option. In consideration of the assignment of the attached executed Option Agreement from Stonyhill to the City which is hereby acknowledged by the City and \$2,500 paid to the City (the "Option Payment"), the City hereby grants to Stonyhill or its assigns the option to purchase the Property or any portion thereof upon payment of ten thousand dollars per acre as set forth in the purchase agreement plus the actual cost of specials or infrastructure installed upon, benefitting and contiguous to the land purchased (hereinafter called "Purchase Price"). The option specifically permits Stonyhill the right and

option to purchase the Property in phases. The option payment of \$2,500 herein shall be a credit to the price of any property purchased hereunder.

2. Term of Option. This Option shall expire, if not previously exercised, at 5:00 p.m. on December 31, 2021.

3. Exercise of Option. Stonyhill may exercise this option at any one or more times within its Term by delivery to the City of written notice of such exercise together with a copy of a purchase agreement signed by Stonyhill in the form as Exhibit "B" attached but designating the land for which the Stonyhill is exercising the option, signed by Stonyhill. Such purchase agreement shall control the terms of the purchase except price and description.

4. Duty of Good Faith and to Cooperate. The City and Stonyhill shall each have the duty of good faith one to the other. Each shall cooperate with the other which shall include a duty of the City to Stonyhill to promptly respond to inquiries regarding the cost of improvements to the property.

5. Execution of Purchase Agreement and Closing of Purchase. In the event this Option shall be exercised as provided above, the City agrees to execute the purchase agreement within ten (10) days from the date of exercise and return a copy to Stonyhill. Closing shall be as set forth in the agreement or within sixty (60) days of the City signing the purchase agreement.

6. Warranties. Stonyhill's intended use of the property is multifamily housing and single family residential development. The City warrants that the property described herein is subject to a redevelopment plan for the City of Lexington and eligible for tax increment financing by separate agreement with the City which the City agrees to negotiate in good faith.

7. Access or testing. Stonyhill may have access to the premises for soil testing or other engineering studies provided Stonyhill shall restore the premises to its condition prior to such testing.

8. Recording. This option or a memorandum hereof shall be recorded.

9. Counterparts, E-Mail and Fax Transmission: This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument. The facsimile or e-mail transmission of a signed copy hereof or any counter offer to

the other party or their agent with confirmation of transmission shall constitute delivery. The parties agree to confirm delivery by mail or personal delivery of a signed copy to the other party or their agent. Stonyhill may assign this agreement.

Effective as of the date above written.

**“CITY”**

The City of Lexington, Nebraska

By: *John H. Fyfe*

**“STONYHILL”**

Stonyhill Ventures, LLC, a Nebraska limited liability company

By: \_\_\_\_\_  
Ward F. Hoppe, Manager

**EXHIBIT "A"**

**Assignment Agreement**

**EXHIBIT "B"**

**Form of Purchase Agreement**