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S P A C E   A B O V E   R E S E R V E D   F O R   O F F I C I A L   U S E

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**Return document to:** City Clerk, 515 Clark Avenue, Ames IA 50010

**Document prepared by:** Victoria A. Feilmeyer, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010 – 515-239-5146

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### ***OPTION AGREEMENT FOR PURCHASE OF REAL ESTATE***

**THIS AGREEMENT**, made and entered into on this \_\_\_\_\_ day of December 2020, (the Effective Date”), by and between Prairie Fire Development Group, LLC, whose address for the purpose of this Agreement is 770 East 5<sup>th</sup> Street, Kansas City MO 64106, (the “Buyer”) and the City of Ames, Iowa, a Municipal Corporation, (the “City”) whose address for the purpose of this Agreement is 515 Clark Avenue, Ames, IA 50010.

**WHEREAS**, the City owns the real property legally known as “Lot 27, Baker Subdivision, Ames, Story County, Iowa” (the “Real Estate”).

**WHEREAS**, Buyer desires to obtain an option, in accordance with the terms herein, to purchase the Real Estate from the City, subject to the terms outlined below.

**WHEREAS**, the Parties have reached an agreement on the terms and provisions for the option to purchase and wish to herein reduce their agreement to writing for formal execution and acknowledgement.

**IT IS THEREFORE AGREED** as follows, to-wit:

1. **Optioned Property:** City hereby grants to Buyer the exclusive right of option to purchase the Real Estate legally described above.
2. **Option Payment:** City hereby acknowledges as consideration for this option, the receipt of the sum of ten dollars and no cents (\$10.00), plus the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.
3. **Option Term:** Buyer shall have the exclusive right to exercise the option for a period of nine (9) months following the 2021 Iowa Finance Authority low income housing tax credit (“LIHTC”) application due date as established by the 2020-2021 Nine Percent (9%) Qualified Action Plan. In the event Buyer fails to file said application by said

established due date, or in the event Buyer does not receive the LIHTC award, Buyer shall notify City within ten (10) business days after the due date or the date that the Iowa Finance Authority notifies the public of the LIHTC awards of such non-award, whichever date applies first, and this Agreement shall automatically terminate, the Option shall expire, and neither Party shall have any further rights and/or duties hereunder.

4. **Purchase Price:** The purchase price to be paid by Buyer shall be two thousand five hundred dollars and no cents (\$2,500.00) (the "Purchase Price").
5. **Closing:** Unless the Parties mutually agree to a deferred date, possession shall be delivered and closing shall occur within thirty (30) days after Buyer exercises said option, execution of the below noted Development Agreement, and delivery by the City of an abstract showing marketable title. For this Agreement, both Parties acknowledge that time is of the essence. At Closing, Buyer shall deliver to the Closing Agent the following:
  - a. An electronic wire transfer of good federal funds in the amount of the balance of the cash portion of the Purchase Price, plus all other applicable costs, expenses and fees.
  - b. The Settlement Statement prepared by the Closing Agent and executed by Buyer.
  - c. All other documents reasonably required by the Closing Agent to satisfy the remainder of its requirements described in the Commitment.
6. **Access to Real Estate:** City agrees that during the Option Term, Buyer and Buyer's employees, designated agents and contractors shall have the right upon 24 hours advanced notice to the City (or shorter time period if approved by City) to enter the Real Estate for purposes of conducting any inspections and/or tests as provided hereunder. Buyer, at its sole expense, may inspect and make soil and other tests at any reasonable time during the Option Term. Buyer agrees to repair any damage to the Property caused by Buyer's exercise of its rights under this section. Buyer shall indemnify and hold City harmless with respect to all costs and expenses (including, without limitation reasonable attorneys' fees) incurred by City due to Buyer's (i) entry onto the Real Estate, and (ii) failure to repair any damage to the Real Estate caused by Buyer's entry onto the Real Estate. This provision shall survive the Closing or termination of this Agreement.
7. **City's Representations and Warranties:** As a material inducement to the execution and delivery of this Agreement by Buyer and the performance by Buyer of its duties and obligations hereunder, City does hereby warrant and represent to Buyer of the Effective Date, and as of the date of Closing:
  - a. **Information:** Except as set forth herein, City has no knowledge of any information affecting the Real Estate that has or would have a material adverse impact on Buyer's ability to use, lease and operate the Real Estate for Buyer's

intended use, herein defined as for the purposes of constructing housing as applied for in the 2021 Iowa Finance Authority LIHTC application.

- b. **Legal Compliance:** To the best of the City's knowledge, and except as disclosed in writing to Buyer prior to the expiration of the Option Term, there are no past or continuing violation, or alleged violation, of any legal requirement affecting the Real Estate; including, without limitation, any past or continuing violation or alleged violation of any local, state or federal environmental, building, zoning, subdivision, fire or other law, statute, ordinance, code, regulation rule or order (collectively, "Laws").
  - c. **Litigation:** To the best of the City's knowledge, there are no pending or threatened claims, actions, suits, litigation or governmental proceeding affecting the Real Estate or which could result in a potential lien against the Real Property.
  - d. **Other Agreements:** To the best of the City's knowledge, there are no agreements or understandings, oral or written, with any person, entity or governmental authority affecting the Real Estate which could give rise to claims affecting the Real Estate.
  - e. **Governmental Actions:** To best of the City's knowledge, there are no threatened or pending condemnation or eminent domain proceeding, special assessment, rezoning or moratorium affecting the Real Estate.
  - f. **Environmental Matters:** To the best of the City's knowledge, the Real Estate in not in violation of any environmental laws.
  - g. **Authority:** City has the full right, power and authority to sell, convey and transfer the Real Estate as provided in this Agreement. The execution and delivery of this Agreement is, and the execution and deliver of all documents required of City hereunder when delivered by City will be, duly authorized, validly and legally binding upon City and enforceable in accordance with their respective terms, and City shall provide such documentation to Buyer and to the Closing Agent sufficient to evidence such authority.
8. **Development Agreement & Updated Concept Plan:** This Agreement is contingent upon both Parties mutually agreeing to and executing a concurrent Development Agreement between the Parties. This Agreement is also contingent upon the Buyer submitting for approval an updated Concept Plan as identified in Section 5.01(a)(i) of the concurrent Development Agreement, which shall include, but not be limited to, development plans for the vacant lot, time lines for said development, and possible incentives offered by City for Completion of said Development.
9. **Abstract and Title:** Seller agrees to deliver forthwith to Buyer for Buyer's examination an abstract of title to the Real Property continued at Seller's expense to the date of this Agreement showing merchantable title in conformity with this Agreement, Iowa State Bar Association's Iowa Land Title Standards, and Iowa land title law. After Buyer's examination, the abstract shall be held by Seller. With delivery

of the deed, Seller shall deliver the abstract to Buyer. Seller agrees to pay for any additional abstracting which may be required by acts, omissions or change in the legal status of Seller occurring before delivery of deed.

10. **Real Property Taxes.** The City shall be responsible for all property taxes, if any, due on the property prior to the closing date. Buyer agrees to pay, before they become delinquent, all other real property taxes levied upon the Real Property.
11. **Assessments:** City shall pay all assessments which are liens as of the date of closing.
12. **Insurance:** City shall retain liability insurance on the premises until the date of closing when possession is transferred to buyer.
13. **Deed:** Upon payment of the purchase price, City shall execute and deliver to Buyer or its successor or assign a Deed conveying to Buyer the City's interest in the real property, in fee simple absolute, free and clear of all liens, and encumbrances, except those excepted only for recorded easements.
14. **Condition of the Property:** City shall maintain the Real Property in the condition substantially the same as it exists on the date of this Agreement until the date of Closing, except as provided by this Agreement and except for ordinary wear and tear.
15. **Failure to Exercise Option:** In the event Buyer fails or neglects to timely exercise the option or in any other manner fails to timely fulfill the terms of this Agreement, all sums paid to the City shall be forfeited to and become the property of City and neither party shall have any further rights or claims against the other.
16. **Assignment:** It is expressly agreed and understood that neither Party shall assign their interest and/or benefits of this Agreement without first obtaining prior written consent from the other Party. Either Party may choose to refuse consent of said assignment for any reason or for no reason at all.
17. **Successors and Assigns:** Should either party agree to allow an assignment of this Agreement, this Agreement shall become binding upon and insures to the benefit of successors and assigns.
18. **Entire Agreement:** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior oral or written agreements, statements, representations, and promises. No addition to or change in the terms of this Agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.
19. **Modification of Agreement:** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party.
20. **Interpretation:** This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this Agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this Agreement. This Agreement may be executed in any number

of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

21. **Governing Law:** This Agreement and rights and duties hereunder shall be construed in accordance with the laws of the state of Iowa. Venue for any dispute shall be in the appropriate state or federal court in the State of Iowa.
22. **Section Headings:** The titles to the Sections of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aide in the interpretation of the provisions of this Agreement.

[ S I G N A T U R E   P A G E S   T O   F O L L O W ]

**PRAIRIE FIRE DEVELOPMENT  
GROUP, LLC**

Dated \_\_\_\_\_, 2020.

By:

\_\_\_\_\_  
Kelley Hrabe, Manager

**STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS.:**

This instrument was acknowledged before me on December \_\_\_\_\_, 2020, by Kelley Hrabe, as Manager of Prairie Fire Development Group, LLC.

\_\_\_\_\_  
**NOTARY PUBLIC**

Passed and approved on \_\_\_\_\_, 2020, by Resolution No. 20 - \_\_\_\_\_ adopted by the City Council of the City of Ames, Iowa.

**CITY OF AMES, IOWA**

By:

\_\_\_\_\_  
**John A. Haila, Mayor**

Attest:

\_\_\_\_\_  
**Diane R. Voss, City Clerk**

**STATE OF IOWA, COUNTY OF STORY, SS.:**

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by John A. Haila and Diane R. Voss, as Mayor and City Clerk, respectively, of the City of Ames, Iowa.

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**NOTARY PUBLIC**