

09R-49

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 09R-49 by accepting the attached Exhibits B (Promissory Note) and C (Deed of Trust) to Exhibit "4" (Real Estate Sales Agreement) which is attached to Attachment "A", the Matt Talbot Kitchen & Outreach Project Redevelopment Agreement.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: DaNay Kalkowski

Reason for Request: To incorporate two Exhibits to the Real Estate Sales Agreement which were not complete at the time of introduction.

**PROMISSORY NOTE AND DISCLOSURE STATEMENT
ZERO PERCENT (0%) INTEREST DIRECT LOAN**

Date: _____

BORROWER: **MATT TALBOT KITCHEN & OUTREACH, INC.**
1911 R Street, Lincoln, Nebraska 68503

LENDER: **CITY OF LINCOLN, NEBRASKA**
555 South 10th Street, Lincoln, Nebraska 68508

REPAYMENT SCHEDULE: For value received, the undersigned, herein called Borrower, promises to repay Lender, at Lender's office (Urban Development Department, 808 P Street, Suite 400, Lincoln, Nebraska 68508), the principal sum of **Two Hundred Seventy-Six Thousand and no/100ths Dollars (\$276,000.00)** without interest thereon in a single lump sum payment on _____, 2019. Notwithstanding the above, if the property is sold, or upon noncompliance with any of the following conditions, the full amount shall be due immediately.

This Note is made and delivered as evidence of a loan from Lender to Borrower in the amount of **Two Hundred Seventy-Six Thousand and no/100ths Dollars (\$276,000.00)** for the purpose of assisting Borrower in the acquisition of

Lot 1, B.A. Schmeichel Addition, Lincoln, Lancaster County, Nebraska,

and the improvements located thereon, hereinafter the "Property."

TERMS OF TRANSACTION:

1. Proceeds (to be received by Borrower)	\$276,000.00
2. Other Charges (None)	_____ \$0.00
3. Total Amount Financed (1 + 2)	<u>\$276,000.00</u>

BORROWER'S AGREEMENTS: Borrower further agrees as follows:

1. To execute the Deed of Trust securing this Promissory Note as described below.
2. During the continuance of this loan to keep the Property in good and substantial repair, and if Borrower neglects to do so, the Lender may, at its discretion, enter upon said premises from time to time in order to repair and keep in repair said Property. Borrower further agrees to repay on demand any such expense incurred by Lender and that until so repaid the expense shall be added to the principal sum borrowed.
3. To pay all taxes and assessments of every kind or nature upon the Property or any part thereof, the Deed of Trust and this Note before the same by law become delinquent.
4. To keep the Property insured against loss by fire, windstorm, or flood (Special Flood Hazard Areas) in the name of the Lender by rider or otherwise to the full insurable value thereof in a company licensed by the State of Nebraska. Borrower further agrees to make all payments required for the above purposes immediately after the same shall be due and when issued to deliver to the Lender the receipt of such payment.
5. That the whole of said principal sum remaining unpaid shall immediately become due and payable upon the occurrence of any one or more of the following events:
 - (a) at such time as any action or proceeding is commenced to foreclose upon any prior or subsequent mortgage, trust deed or lien secured by the Property;
 - (b) At such time as the property is sold or conveyed in any manner to another party/entity.

PREPAYMENT: Borrower may repay the whole or part of the outstanding amount (Amount Financed) at any time without penalty.

SECURITY INTEREST: This loan is to be secured by a Deed of Trust on the Property. Any violation of any terms of said Deed of Trust shall be deemed a default of the terms of this Note, subject to any curative rights entitling the Lender to declare the whole of said indebtedness remaining unpaid, immediately due and payable without further notice, time being the essence of this contract. No delay or omission on the part of the Lender in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

DEFAULT: If Borrower defaults in making the payment when due, Lender may without notice or demand, declare the balance of the principal hereof and accrued charges thereon immediately due and payable. Borrower hereby waives demand, presentment for payment, protest and notice of non-payment, and consents that the Lender shall have the right, without notice, to deal in any way at any time with Borrower hereto.

OBLIGATIONS OF PERSONS UNDER THIS NOTE: Any person who takes over these obligations is also obligated to keep all of the promises made in this Note.

NOTICE TO BORROWER: DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. BY ITS SIGNATURE, BORROWER ACKNOWLEDGES RECEIPT OF A FULLY EXECUTED COPY OF THIS NOTE.

BORROWER: Matt Talbot Kitchen & Outreach, Inc.

President

LENDER: City of Lincoln, Nebraska

Chris Beutler, Mayor of Lincoln
David Landis, Director of Urban Development
Department

DEED OF TRUST

This Deed of Trust made this ____ day of _____, 2009, by:

TRUSTOR: MATT TALBOT KITCHEN & OUTREACH, INC.
ADDRESS: 1911 R Street, Lincoln, Nebraska 68503
BENEFICIARY: CITY OF LINCOLN, NEBRASKA
ADDRESS: 555 South 10th Street, Lincoln, Nebraska 68508
TRUSTEE: ERNEST R. PEO, III
ADDRESS: 575 South 10th Street, Room 4201, Lincoln, Nebraska 68508

For valuable consideration, Trustor irrevocably grants, conveys, and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the following described real property located in Lancaster County, Nebraska:

Lot 1, B.A. Schmeichel Addition, Lincoln, Lancaster County, Nebraska,

together with the Carnegie Library building and all other buildings and improvements now or hereafter erected upon the property and all easements, licenses, rights of way now or hereafter accruing to the property (hereinafter collectively referred to as the "Property").

THIS DEED OF TRUST SECURES TO BENEFICIARY:

(a) Payment of the debt owed to Beneficiary evidenced by Trustor's promissory note ("Note") of this same date in the principal sum of **Two Hundred Seventy-Six Thousand and no/100ths Dollars (\$276,000.00)** without interest, which, if not paid earlier, is due and payable on April 30, 2019; and upon the terms provided in the Note and any and all renewals, modifications and extensions of the Note;

(b) The performance of: Trustor's covenants and agreements;

(c) The payment of all other sum or sums with interest advanced under the terms of this Deed of Trust.

TO PROTECT THE SECURITY GIVEN TO BENEFICIARY BY THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Indebtedness. Trustor shall promptly pay when due the principal on the indebtedness evidenced by the Note, and all other charges and fees provided in the Note or secured by this Deed of Trust.

2. Warranty of Title. Trustor covenants that it is lawfully seized and possessed of good and indefeasible title and estate to the property hereby conveyed and has the right to grant and convey the property; that the property is free and clear of all liens and encumbrances except for (i) the Deed of Trust in favor of St. Vincent DePaul Warehouse and Stores securing a promissory note in the amount of Eight Hundred Fifty Thousand and no/100 Dollars (\$850,000), and (ii) those shown of record.

3. Maintenance.

3.1 Trustor shall keep the Property in good condition and repair; shall not commit or suffer waste; shall not do or allow anything to be done which will increase the risk of fire or other casualty to the Property or diminish the value of the Property except reasonable wear and tear; and, shall not alter the design or structural character of any building or add any building within the Property without the written consent of the Beneficiary.

3.2 If the Property or any part thereof is damaged by fire or other cause including condemnation, Trustor shall give immediate written notice of the event to the Beneficiary. Trustor shall use any proceeds compensation received from insurance, condemnation award or otherwise to restore the Property or to reduce the debt owed to Beneficiary at the option of the Beneficiary. If part of the Property is damaged, the Trustor shall restore, repair, or alter the remaining Property in a manner satisfactory to the Beneficiary.

3.3 The Beneficiary or its representative is hereby authorized to make or cause to be made reasonable entries upon and inspections of the Property.

3.4 The Trustor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property or any part thereof. This shall apply to any construction upon the premises as well as the operation of any business upon the premises.

4. Insurance.

4.1 Trustor shall keep the Property insured against: (1) loss by perils covered by standard fire policy with standard extended coverage endorsement, in an amount equal to 100% of the full replacement value of the security without deduction for depreciation; (2) liability insurance for the benefit of the Beneficiary and Trustee to protect the Beneficiary and Trustee from any and all claims of personal injury or property damage arising from or out of the premises; and (3) other insurance normal and customary for owners and operators of similar property. Further, Beneficiary may require any other reasonable insurance to protect the Property. All insurance shall be paid for by the Trustor, shall be in form and by company approved by the Beneficiary, shall insure the Beneficiary, Trustee and Trustor as their interests appear, and shall provide that the insurance company shall notify the Beneficiary in writing at least 30 days before any cancellation or termination becomes effective as to the Beneficiary.

4.2 Trustor shall provide the Beneficiary proof of the insurance required by this Agreement at least 15 days before advancement of funds under the Note. Trustor shall provide proof of renewal policies at least 15 days before expiration of any policy. If the Trustor fails to provide insurance, the Beneficiary may declare the loan and Deed of Trust in default. Beneficiary may purchase such insurance as necessary to protect the Property. The cost of the insurance so purchased with interest shall be deemed an advancement to protect the Property.

5. Taxes, Assessments, and Charges.

5.1 Trustor shall pay all taxes, assessments, liens, and other charges including utility charges which may affect the Property as they are due and before they are delinquent. Upon request, Trustor shall show Beneficiary proof of payment. Trustor shall pay all taxes and assessments which may be levied upon Beneficiary's interest herein or upon this Deed of Trust without regard to any law in effect or that may be enacted imposing payment of the whole or any part thereof upon the Beneficiary.

5.2 Trustor, at the option of Beneficiary, shall pay monthly to Beneficiary an amount equal to 1/12th of the estimated yearly real estate taxes for the premises. Such amount shall be held in escrow by Beneficiary and may be used by the Beneficiary for the payment of such real estate taxes. Election by the Beneficiary to require a payment to escrow for taxes shall not relieve the Trustor of liability under paragraph 5.1 above.

5.3 If Trustor fails to make the payments required herein, the Beneficiary may declare the loan and Deed of Trust in default. The Beneficiary may pay such amounts necessary to protect the Property. The amount of such payment with interest shall be deemed an advancement to protect the Property.

6. Condemnation. Condemnation under this Deed of Trust shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor and shall be entitled at its option to commence, appear and prosecute in its own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds (the "Proceeds") awarded to Trustor are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

7. Protection of Property. Beneficiary in its sole discretion may make any payment, expend or advance any funds it deems necessary to protect the Property. Such payment, expenditures or advancements with interest shall become secured hereby.

8. Default, Remedies, Acceleration, Sale.

8.1 If the Trustor does not: (1) make payment according to the terms of the notes or any extensions, modifications, or renewals thereof; (2) perform any of the covenants of the Deed of Trust; or (3) if the Beneficiary has to expend sums to protect the Property, then Trustor has breached this agreement, is in default and the Beneficiary may declare default and may declare all sums secured hereby immediately due and payable and such sums immediately become due and payable without presentment, demand, protest, or notice of any kind except as may be provided in the Deed of Trust or Note and may invoke the power of sale and/or any other remedies permitted by applicable law including the right to foreclose this Deed of Trust in the manner provided by law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing such remedies including, but not limited to, reasonable attorney's fees.

A. If the power of sale is invoked, the Trustee shall proceed to sell the Property complying with the Nebraska Trust Deeds Act in regard to notice, time, and manner of sale. The Trustee may sell the Property in one or more parcels and in such order as the Trustee may designate, at public auction to the highest bidder, purchase price payable in cash or as otherwise suitable to the Trustee at the time of sale. The Trustee may postpone the sale from time to time. The Trustee shall execute and deliver to the purchaser a Trustee's deed conveying the Property sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, except Trustor, including without limitation, Beneficiary or Trustee, may purchase at the sale.

B. When Trustee sells pursuant to the powers herein, Trustee shall apply the proceeds of the sale to the payment of the costs and expenses of exercising the power of sale and of the sale, including, without limitation, the payment of the Trustee's fees incurred. After the payment of Trustee's fees, if the sale is by a Trustee, or the proper court and other costs of foreclosure and sale pursuant to judicial foreclosure, the proceeds of sale shall be applied in the order stated below to the payment of:

- (1)** Attorney's fees and costs of collection;
- (2)** Cost of any evidence of title procured in connection with such sale and any revenue or tax required to be paid;
- (3)** All obligations secured by this Deed of Trust;

(4) The remainder, if any, to the person legally entitled thereto.

8.2 Sums Advanced to Protect Property. Beneficiary may advance such sums Beneficiary, in its sole discretion, deems reasonable to protect the Property. Sums advanced to protect the Property whether specifically enumerated as such herein or reasonably construed to be so advanced shall become the obligation of the Trustor. The payment of such sums together with the interest thereon shall be secured by this Deed of Trust. The interest rate for sums advanced to protect the security shall be the lesser of 16% per annum or the highest rate allowed by law from the date such sums were paid by Beneficiary.

8.3 Interest Rate Upon Default. After acceleration, upon default, or after maturity, all sums due the Beneficiary and secured by this Deed of Trust, including interest not paid when due, shall bear interest at the rate of 16% per annum or the highest rate allowed by law, whichever is lesser.

9. Assignment of Rents. Trustor hereby assigns all rents, issues, and profits of the Property to the Beneficiary but the Beneficiary consents to allow the Trustor to collect and retain the rents, issues, and profits as long as the Trustor is not in default of this Deed of Trust. Upon default, Beneficiary or its agent may collect rents, issues, and profits, including those past due and unpaid and apply the proceeds less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby. Beneficiary may do anything reasonable and necessary to give effect to this Assignment of Rents upon the default of the Trustor. Unless the Trustor and Beneficiary agree otherwise in writing, any application of rents, issues, or profits to any indebtedness secured hereby shall not extend or postpone the due date of the payment as provided in the Note. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not waive or cure any default or notice of default hereunder or invalidate any act done pursuant to such notice. Trustor also hereby assigns to the Beneficiary, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the property, to secure the payment of any rent or damages, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Beneficiary. Delivery of written notice of the Beneficiary's exercise of the rights granted herein to any tenant occupying the premises shall be sufficient to require the tenant to pay rent to the Beneficiary until further notice. Beneficiary shall be accountable only for the rents, revenues and profits collected and not the rental value of the Property. No construction of this paragraph shall alter the occupier liability which shall be the responsibility of Trustor, and Beneficiary shall have none of the same unless actually in possession of the Property. This assignment is intended to be a present assignment and not contingent upon the default of Trustor.

10. Remedies Not Exclusive. The remedies provided in this Agreement shall not be exclusive. Upon the default of the Trustor, the Beneficiary may seek relief by any legal or equitable means. The Beneficiary may seek to enforce the agreements here made in such order and manner as Beneficiary sees fit. No remedy is intended to be exclusive but each shall be cumulative. Every power or remedy provided under the Deed of Trust to the Trustee or Beneficiary or to which either of them may otherwise be entitled by law may be exercised concurrently or independently as often as deemed necessary by the Trustee or Beneficiary or either of them and either of them may pursue inconsistent remedies. The Beneficiary or Trustee may proceed to pursue a deficiency judgment against the Trustor to the extent such action is permitted by law.

11. Transfer of the Property; Assumption. If all or any part of the Property or interest therein is sold, transferred or otherwise conveyed by Trustor without Beneficiary's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust; (b) a transfer by devise, descent or by operation of law upon the death of Trustor; or (c) the grant of any leasehold interest of three years or less not containing an option to purchase, such action is a breach of this agreement, and Beneficiary may, at Beneficiary's option declare all sums secured by this Deed of Trust to be immediately due and payable, or cause the Trustee to file a notice of default. Beneficiary shall have

waived such option to accelerate if, prior to the sale, transfer or conveyance, Beneficiary and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to the Beneficiary and that the interest payable on the sum secured by this Deed of Trust shall be at such rate as Beneficiary shall request, but no transfer or conveyance shall release Trustor from liability on the obligation secured hereby.

12. Forbearance by Beneficiary and Waiver. Any forbearance by Beneficiary to Trustee, Trustor or anyone, in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy hereunder. Likewise, the waiver by Beneficiary to Trustee of any default of Trustor under this Deed of Trust shall not be deemed to be a waiver or any other or similar defaults subsequently occurring. No waiver shall be construed against the Beneficiary unless such waiver shall be express and in writing signed by the Beneficiary.

13. Beneficiary's Powers. Without affecting or releasing the liability of the Trustor or any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may from time to time and without notice at the request of one or more Trustors (a) release any person so liable; (b) extend or renew the maturity or alter any of the terms of such obligations; (c) grant other indulgences; (d) release or convey or cause to be released or reconveyed at any time at the Beneficiary's option any portion or all of the Property; (e) take or release any other or additional security for any obligation herein mentioned; (f) make compositions or other arrangements with debtors in relation thereto. Beneficiary may, in its sole discretion (i) inspect the Property at any reasonable time; (ii) require such additional security as may be reasonable; and (iii) substitute the Trustee herein with any person, entity, or corporation qualified so to act. The attorneys of the Beneficiary or one of them may now or subsequently be designated the Trustee herein and may perform for the Beneficiary duties as counsel and Trustee. All Trustors shall be jointly and severally obligated and bound by the actions of the Beneficiary or any Trustor as herein stated.

14. Attorney's Fees, Costs, and Expenses. Trustor agrees to pay all fees, costs, and expenses including attorney's fee expended by the Beneficiary or the Trustee to collect any sums due hereunder or enforce this agreement. Such sums shall be deemed an advancement to protect the Property when paid by the Beneficiary. However, this section does not apply to the Trustee fee referred to in paragraph 8.1.B.

15. Reconveyance by Trustee. Upon written request of the Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the notes to the Trustee for cancellation and retention and upon payment by the Trustor of the Trustee's fees, the Trustee shall reconvey to the Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice. The Grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

16. Notices.

16.1 Notice as required by the Nebraska Trust Deeds Act shall be given. Except as provided herein and wherever permissible by law Trustors waive notice. Notice may be sent to the parties at their address as listed in this agreement or as otherwise changed. All notices required herein shall be in writing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, a notice of such change. Any notice hereunder shall be deemed to have been given when placed within the U.S. Mails, postage prepaid, addressed to the address of the party as listed herein or as properly changed.

16.2 Trustor, Beneficiary, and Trustee request that a copy of any notice provided hereunder, provided according to applicable law or provided by the terms of any other security agreement covering the security herein, be mailed to them at the address provided above.

17. Miscellaneous.

17.1 This Deed of Trust shall be governed by the laws of the State of Nebraska.

17.2 This Deed of Trust and all terms, conditions and obligations herein, apply to and inure to the benefit of and binds all parties hereto, their heirs, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as a beneficiary herein.

17.3 All covenants and agreements of the Trustor shall be joint and several.

17.4 In the event any one or more provision of this Deed of Trust shall be held invalid, illegal, or unenforceable, such provision, at the option of the Beneficiary, shall not affect any other provision of this Deed of Trust but the Deed of Trust shall be meant and construed as if such provision had never been a part thereof. If any portion of the old debt becomes unsecured for any reason, then at the option of the Beneficiary, any and all payments made hereunder may be declared to first apply to the portions of the debt that have become or are nonsecured.

17.5 Any payments by the Trustor on the indebtedness secured by this Deed of Trust shall be paid directly by Trustor to Beneficiary and the Trustee shall have no duty to account as to such payments. The Trustee's only duty of accounting will be as to proceeds received by the Trustee from any sale of the Property under the exercise of the power of sale. The Trustee shall have no duty by reason of being Trustee to record this Deed of Trust or to insure its validity or execution. Trustee shall be under no obligation to pay taxes, insurance premiums, or other sums incidental to the preservation of the property secured. Trustee shall not be liable and shall be held harmless and indemnified by the parties for all acts or omissions except for acts of gross negligence or bad faith.

18. Acceptance by the Trustee. The Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date and year first above written.

**BORROWER: MATT TALBOT KITCHEN & OUTREACH,
INC., a Nebraska nonprofit corporation**

By: _____
President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, President of Matt Talbot Kitchen & Outreach, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.

(S E A L)

Notary Public