**GILMORE & BELL, P.C.**
**DRAFT #1**
**MARCH 18, 2010**

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# TAX COMPLIANCE AGREEMENT

**Dated [Closing Date], 2010**

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**Between**

**THE CITY OF LINCOLN, NEBRASKA, NEBRASKA,**

**and**

**NEBRASKA SCHOOL ACTIVITIES ASSOCIATION,**

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**$[Principal Amount]**

**INDUSTRIAL DEVELOPMENT PROMISSORY REVENUE NOTE**
**SERIES 2010**
**(NEBRASKA SCHOOL ACTIVITIES ASSOCIATION PROJECT)**

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**TAX COMPLIANCE AGREEMENT**

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# TAX COMPLIANCE AGREEMENT

This **TAX COMPLIANCE AGREEMENT** (the "Tax Agreement"), entered into [Closing Date], 2010, between **THE CITY OF LINCOLN, NEBRASKA, NEBRASKA**, a city of the primary class and political subdivision duly organized and validly existing under the laws of the State of Nebraska (the **"City"**) and the **NEBRASKA SCHOOL ACTIVITIES ASSOCIATION**, a nonprofit corporation organized and existing under the laws of the State of Nebraska (the **"Corporation"**).

## RECITALS

**1.** This Tax Agreement is being executed and delivered in connection with the issuance by the City of its $[Principal Amount] principal amount Industrial Development Promissory Revenue Note (Nebraska School Activities Association Project), Series 2010 (the **"Note"**), under a Lease Agreement dated the date of this Tax Agreement (the **"Lease Agreement"**) among the City, the Corporation and Wells Fargo Securities, LLC (the **"Lender"**), for the purpose of refinancing the costs of acquiring, constructing, equipping and furnishing certain facilities to be leased by the City to the Corporation pursuant to the Lease Agreement certain purposes as described in this Tax Agreement and in the Lease Agreement.

**2.** The Internal Revenue Code of 1986, as amended (the **"Code"**), and the applicable regulations and rulings issued by the U.S. Treasury Department (the **"Regulations"**), impose certain limitations on the uses and investment of the Note proceeds and of certain other money relating to the Note and set forth the conditions under which interest on the Note will be excluded from gross income for federal income tax purposes.

**3.** The City and the Corporation are entering into this Tax Agreement in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the Note proceeds and of certain other related money, in order to establish and maintain the exclusion of interest on the Note from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Section 148(f) of the Code.

**NOW, THEREFORE,** in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the City and the Corporation represent, covenant and agree as follows:

## ARTICLE I

## DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in **Section 1.01** of the Lease Agreement, and certain other words and phrases have the meanings assigned in Section 148 of the Code and the Regulations. In addition, the following words and terms used in this Tax Agreement have the following meanings:

**"Bona Fide Debt Service Fund"** means a fund, which may include Note proceeds, that is (a) used primarily to achieve a proper matching of revenues with principal and interest payments on the Note within each Note Year, and (b) depleted at least once each Note Year, except for a reasonable carryover

amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Note Year, or (2) one-twelfth of the principal and interest payments on the Note for the immediately preceding Note Year.

**"Bond Counsel"** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the City and the Corporation.

**"City"** means The City of Lincoln, Nebraska and its successors and assigns, or any body, agency or instrumentality of the State of Nebraska succeeding to or charged with the powers, duties and functions of the City.

**"Corporation"** means Nebraska School Activities Association, a Nebraska nonprofit corporation, and its successors and assigns and any surviving, resulting or transferee corporation as provided in the Lease Agreement.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Costs of Issuance"** means, generally, any cost or expense incurred on account of and in connection with the borrowing including, (a) underwriters' spread (whether realized directly or derived through purchase of the Note at a discount below the price at which they are expected to be sold to the public); (b) counsel fees (including bond counsel, underwriter's counsel, City's counsel, company counsel in the case of borrowings such as those for exempt facilities, as well as any other specialized counsel fees incurred in connection with the borrowing); (c) financial advisor fees incurred in connection with the borrowing; (d) rating agency fees; (e) trustee fees incurred in connection with the borrowing; (f) paying agent and certifying and authenticating agent fees related to issuance of the Note; (g) accountant fees (e.g., accountant verifications in the case of advance refundings) related to issuance of the bonds; (h) printing costs (for the Note and of preliminary and final offering materials); (i) costs incurred in connection with the required public approval process (e.g., publication costs for public notices generally and costs of the public hearing or voter referendum); and (j) costs of engineering and feasibility studies necessary to the issuance of the Note (as opposed to such studies related to completion of the Financed Facility, but not to the financing). However, Costs of Issuance do not include fees and expenses directly related to the cost of credit enhancement for the Note to the extent such fees or expenses may be included as a qualified guaranty in the calculation of the yield on the Note.

**"Financed Facility"** means any of the property financed or refinanced with the proceeds of the Note and the Original Obligation as described on **Exhibit E**.

**"Gross Proceeds"** means (a) sale proceeds (any amounts actually or constructively received by the City from the sale of the Note, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) investment proceeds (any amounts received from investing sale proceeds, other investment proceeds or transferred proceeds), (c) any amounts held in a sinking fund for the Note, (d) any amounts held in a pledged fund or reserve fund for the Note, (e) any other replacement proceeds and (f) any transferred proceeds.

**"Guaranteed Investment Contract"** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on 2 or more future dates (*e.g.*, a forward supply contract).

**"Investment"** means any security, obligation, annuity contract or other investment-type property which is purchased directly with, or otherwise allocated to, Gross Proceeds. Such term does not include obligations the interest on which is excluded from federal gross income, except for "specified private activity bonds" as such term is defined in Section 57(a)(5)(C) of the Code.

**"IRS"** means the United States Internal Revenue Service.

**"Issue Date"** means [Closing Date], 2010.

**"Lease Agreement"** means the Lease Agreement dated the date of this Tax Agreement, between the City and the Corporation as from time to time amended by amendments to the Lease Agreement in accordance with the provisions of the Lease Agreement.

**"Management Agreement"** means any management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facility (as defined in Section 1.141-3(b) of the Regulations, such as a contract to manage all of the Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing, or similar services) are not treated as Management Agreements.

**"Measurement Period"** means, with respect to each item of property financed as part of the Financed Facility, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Note or (2) the end of the expected economic useful life of the property. For each item of property financed as part of the Financed Facility with proceeds of the Original Obligation, "measurement period" means the period beginning on the later of (a) the issue date of the Original Obligation or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Note or (2) the end of the expected economic useful life of the property.

**"Minor Portion"** means the lesser of $100,000 or 5% of the sale proceeds of the Note.

**"Net Proceeds"** means the sale proceeds of the Note (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

**"Non-Qualified Use"** means use of Note proceeds or the Financed Facility (a) in a trade or business carried on by any Non-Qualified User, (b) in any activity of a Tax-Exempt Organization which constitutes an "unrelated trade or business," determined by applying Section 513(a) of the Code, or (c) to pay Costs of Issuance. The rules set out in Section 1.141-3 of the Regulations as modified by Section 1.145-2 of the Regulations determines whether Note proceeds or the Financed Facility is "used" in a trade or business.

**"Non-Qualified User"** means any person or entity other than a Qualified User.

**"Note"** or **"Note"** means any bond or bonds of the series of Industrial Development Promissory Revenue Note (Nebraska School Activities Association), Series 2010.

**"Note Year"** means each 1-year period (or shorter period for the first Note Year) ending [Closing Date], or another 1-year period selected by the Corporation.

**"Opinion of Bond Counsel"** means a written opinion of Bond Counsel to the effect that the proposed action or proposed failure to act will not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

**"Original Obligation"** means the City's $3,500,000 Industrial Development Revenue Bond (Nebraska School Activities Association Project), Series 2007 issued on July 17, 2007, which was the first issue of Qualified 501(c)(3) Bonds that financed or refinanced a portion of the Financed Facility.

"**Purchaser**" means U.S. Bank National Association, initial purchaser of the Note.

**"Qualified Use Agreement"** means an agreement or arrangement that does not constitute an unrelated trade or business use by the Corporation and which is described in one of the following paragraphs:

(a) A lease or other short-term use by members of the general public who occupy the Financed Facility on a short-term basis as patients or residents in the ordinary course of the Corporation's tax-exempt purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days pursuant to an arrangement whereby (1) the use of the Financed Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 100 days pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Facility was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 50 days pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Facility was not constructed for a principal purpose of providing the property for use by that person.

**"Qualified User"** means a Tax-Exempt Organization or a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

**"Rebate Analyst"** means the person or entity undertaking the duties of the Rebate Analyst set forth herein or any successor Rebate Analyst selected pursuant to this Tax Agreement.

**"Refunded Bond"** means $3,336,631.80 outstanding principal amount of the City's Industrial Development Revenue Bond, Series 2007 (Nebraska School Activities Association Project).

**"Regulations"** means all regulations issued by the U.S. Treasury Department to implement the provisions of Section 103 and 141 to 150, inclusive, of the Code and applicable to the Note.

**"Research Agreement"** means any agreement or other contractual arrangement with a Non-Qualified User (including the United States or its agencies) pursuant to which the Corporation will perform services at or otherwise use the Financed Facility, if such agreement or contract can reasonably be expected to involve (a) the advancement of scientific knowledge (including the social sciences), (b) the development or testing of a commercial product, or (c) the creation of patentable intellectual property.

**"Tax Agreement"** means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

**"Tax-Exempt Organization"** means a nonprofit organization, organized under the laws of the United States of America or any state, that is described in Section 501(c)(3) of the Code and is exempt from federal income taxes under Section 501(a) of the Code.

**"Transcript"** means the Transcript of Proceedings relating to the authorization and issuance of the Note.

**"Yield"** means yield on the Note, computed under Section 1.148-4 of the Regulations, and yield on an Investment, computed under Section 1.148-5 of the Regulations.

## ARTICLE II

## GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the City.** The City represents and covenants to the Corporation as follows:

(a) ***Organization and City***. The City (1) is a city of primary class and political subdivision duly organized and validly existing under the laws of the State of Nebraska, (2) has lawful power and authority to issue the Note for the purposes set forth in the Lease Agreement, to enter into, execute and deliver the Lease Agreement and this Tax Agreement and to carry out its obligations under this Tax Agreement and the Lease Agreement, and (3), by all necessary action has duly authorized the person executing this document to execute and deliver this Tax Agreement.

(b) ***Tax-Exempt Status of Note–General Covenant***. The City (to the extent within its power or direction) will not use any money on deposit in any fund or account maintained in connection with the Note, whether or not such money was derived from the proceeds of the sale of the Note or from any other source, in a manner that would cause the Note to be an "arbitrage bond," within the meaning of Section 148 of the Code, and will not (to the extent within its power or direction) otherwise use or permit the use of any Note proceeds or any other funds of the City, directly or indirectly, in any manner, or take or permit to be taken any other action or actions, that would cause interest on the Note to be included in gross income for federal income tax purposes.

(c) ***Public Hearing and Approval***. In connection with the issuance of the Note, the Council held a public hearing as required under Section 147(f) of the Code regarding the proposed issuance of the Note, at 3:00 p.m. on April 5, 2010, at a regular meeting and at the regular meeting place of the Council in Lincoln, Nebraska, after published notice of the hearing advised the public that a public hearing would be held on such date to discuss the proposed issuance of the Note and that interested parties would have an opportunity to express their views at that hearing. The hearing was open to the public, and those present were invited to express their views relating to the issuance of the Note and the proposed use of the Note proceeds. After the public hearing the Mayor approved the issuance of the Note as required by Section 147(f) of the Code. The Certificate of Approval is attached to this Tax Agreement as **Exhibit A**, together with an affidavit of publication of the notice of the hearing.

(d) ***IRS Form 8038***. Attached to this Tax Agreement as **Exhibit C** is a copy of IRS Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues) prepared by Bond Counsel based on information provided by the Corporation and the City that is to be filed with the IRS in connection with the issuance of the Note as required by Section 149(e) of the Code. The City does not know of any inaccuracies in the Form 8038 included as **Exhibit C**. The City will execute IRS Form 8038 in the form prepared by Bond Counsel for filing with the IRS on or before August 15, 2010. The City will execute any other IRS Forms (such as IRS Form 8038T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate) in the future, based on the instructions of Bond Counsel or the Rebate Analyst.

(e) ***Registered Bonds***. The Lease Agreement requires that the Note will be issued and held in registered form within the meaning of Section 149(a) of the Code.

(f) ***City Reliance on Other Parties***. The expectations, representations and covenants of the City concerning uses of Note proceeds and certain other money described in this Tax Agreement and other matters are based in whole or in part upon covenants, representations and certifications of the Corporation and other parties set forth in this Tax Agreement or exhibits to this Tax Agreement. Although the City has made no independent investigation of the representations of other parties, including the Corporation, the City is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or exhibits to this Tax Agreement.

(g) ***Bank Qualified Tax-Exempt Obligation***. The City designates the Note as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code, and with respect to said designation certifies as follows:

(1) The reasonably anticipated amount of tax-exempt obligations (other than governmental bonds and private activity bonds which are not "qualified 501(c)(3) bonds") which will be issued by or on behalf of the City (and all subordinate entities of the City) with respect to the Corporation during the calendar year that the Note is issued is not reasonably expected to exceed $30,000,000; and

(2) The City (including all subordinate entities of the City) will not issue an aggregate principal amount of tax-exempt obligations (other than governmental bonds and private activity bonds which are not "qualified 501(c)(3) bonds") with respect to the Corporation during the calendar year that the Note is issued (including the Note) in excess of $30,000,000, without first obtaining an Opinion of Bond Counsel that the designation of the Note as a "qualified tax-exempt obligation" will not be adversely affected.

(h) ***Single Issue; No Other Issues***. The Note constitutes a single "issue" under Section 1.150-1(c) of the Regulations. No other obligations of the City (1) are being sold within 15 days of the sale of the Note, (2) are being sold under the same plan of financing as the Note, and (3) are expected to be paid from substantially the same source of funds as the Note.

**Section 2.2. Representations and Covenants of the Corporation.** The Corporation represents and covenants to the City as follows:

(a) ***Organization and City***. The Corporation (1) is a private nonprofit corporation duly organized and validly existing under the laws of the State of Nebraska not operated for private or corporate profit, (2) has lawful power and authority to enter into, execute and deliver this Tax Agreement and to carry out its obligations under this Tax Agreement and (3) by all necessary corporate action, has been duly authorized to execute and deliver this Tax Agreement, acting by and through its duly authorized officers.

(b) ***Tax-Exempt Status of the Corporation***. The Corporation (1) has been determined to be and is a Tax-Exempt Organization, and (2) has not declared and has not been determined to have any "unrelated business taxable income" (as defined in Section 512 of the Code) which could have a material adverse effect on its status as a Tax-Exempt Organization or which, if such income were subject to federal income taxation, could have a material adverse effect on the condition, financial or otherwise, of the Corporation. The Corporation received a letter from the IRS to the effect that it is a Tax-Exempt Organization, a copy of which is attached to this Tax Agreement as **Exhibit D**. Such letter has not been withdrawn, and no audit or investigation by the IRS of the tax-exempt status of the Corporation is presently being conducted. There has been no change or threatened change in the status of the Corporation as a Tax-Exempt Organization as of the date of this Tax Agreement. At all times during the Measurement Period, the Corporation has and will maintain its status as a Tax-Exempt Organization and will take no action or permit any action to be taken that could result in the alteration or loss of its status as a Tax-Exempt Organization.

(c) ***Tax-Exempt Status of Note–General Covenant***. In order to maintain the exclusion of the interest on the Note from gross income for federal income tax purposes, the Corporation (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code, (2) will not use or invest, or permit the use or investment of, any Note proceeds, other money held under the Lease Agreement, or other funds of the Corporation, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would violate applicable provisions of the Code.

(d) ***Qualified 501(c)(3) Bonds***.

(1) Ownership. During the Measurement Period the property comprising the Financed Facility has been and will be owned for federal income tax purposes by a Qualified User.

(2) Non-Qualified Use Limitation. During the Measurement Period the amount of Note proceeds used in a Non-Qualified Use will not exceed 5% of the Net Proceeds of the Note. The Corporation understands that, for purposes of this paragraph, use of the Financed Facility is treated as the use of Note proceeds. As of the Issue Date, except for any Costs of Issuance financed with the Net Proceeds of the Note, the Corporation does not expect that any proceeds of

the Note or any portion of the Financed Facility have been or will be used in a Non-Qualified Use during the Measurement Period.

(3) Management Agreements. As of the Issue Date the Corporation has not entered into any Management Agreements for any portion of the Financed Facility with Non-Qualified Users during the Measurement Period. During the Measurement Period the Corporation will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining an Opinion of Bond Counsel.

(4) Leases. Except as described in **Schedule 2.2(d)(4)**, as of the Issue Date the Lessee has not entered into any leases of any portion of the Financed Facility other than Qualified Use Agreements. During the Measurement Period the Lessee will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first obtaining an Opinion of Bond Counsel.

(e) ***$150 Million Limitation; Qualified Hospital Bonds; Limit on Non-Hospital Bonds***.

(1) At least 95% of the Net Proceeds of the Original Obligation were used to finance, refinance or reimburse capital expenditures incurred after August 5, 1997.

(2) The name and tax identification number of each "beneficiary" of the Financed Facility" is listed as an attachment to IRS Form 8038 **(**part of **Exhibit C** to this Tax Agreement**)**. A Qualified User is considered to be a "beneficiary" of the Financed Facility if it owns or leases any portion of the Financed Facility, has contractual rights to use the Financed Facility similar to an owner or a tenant.

(f) ***Limit on Maturity of Bonds***. A list of the assets of the Financed Facility and a computation of their "average reasonably expected economic life" is attached to this Tax Agreement as **Exhibit E**. Based on this computation, the "average maturity" of the Note as computed by Bond Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Facility. For the purpose of Section 147(b) of the Code, the "average reasonably expected economic life" of the portion of the Financed Facility financed with proceeds of the Original Obligation was determined as follows: the average economic life of that portion of the Financed Facility as of the issue date of the Original Obligation was first multiplied by 120%, then reduced by the number of years elapsed from the issue date of the Original Obligation to the Issue Date.

(g) ***Prohibited Facilities***. No portion of the Note proceeds will be used to provide any airplane, skybox, or other private luxury box, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, as such terms are used in Section 147(e) of the Code.

(h) ***Limit on Costs of Issuance***. Not more than 2% of the sale proceeds of the Note will be used to pay Costs of Issuance.

(i) ***Registered Bonds***. All of the Note will be issued and held in registered form within the meaning of Section 149(a) of the Code.

(j) ***Bonds Not Federally Guaranteed***. The Corporation will not take any action or permit any action to be taken which would cause the Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

(k) ***Reports to IRS; Form 8038***. The Corporation will instruct and assist the City in filing all appropriate returns, reports and attachments to income tax returns required by the Code, including without limitation the Information Return for Private Activity Bond Issues (Form 8038). The information contained in Parts II through VI of IRS Form 8038 attached as **Exhibit C** was provided to the City and Bond Counsel by the Corporation, and such information is true, complete and correct as of the Issue Date.

(l) ***Hedge Bonds***. The Corporation expects that (1) at least 85% of the net sale proceeds (the sale proceeds of the Note less any sale proceeds invested in a reserve fund) will be used to carry out the governmental purpose of the Note within 3 years after the Issue Date, and (2) not more than 50% of the proceeds of the Note will be invested in investments having a substantially guaranteed yield for 4 years or more. At least 85% of the net sale proceeds of the Original Obligation (the sale proceeds of the Original Obligation less any sale proceeds invested in a reserve fund) were used to carry out the governmental purpose of the Original Obligation within 3 years after the issue date of such obligations, and not more than 50% of the proceeds of the Original Obligation were invested in investments having a substantially guaranteed yield for 4 years or more.

(m) ***Arbitrage Certifications***. The facts, estimates and expectations recited in **Article III** of this Tax Agreement are true and accurate as of the Issue Date; and the Corporation believes that the estimates and expectations recited in such Article are reasonable as of the Issue Date. The City, the Bond Trustee, Gilmore & Bell, P.C., Bond Counsel, and the Underwriter may rely on such statements and expectations. The Corporation does not expect that the Note proceeds will be used in a manner that would cause the Note to be an "arbitrage bond" within the meaning of Code § 148; and to the best of the Corporation's knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.

(n) ***Interest Rate Swap***. As of the Issue Date the Corporation has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Note. The Corporation will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.

(o) ***Guaranteed Investment Contract***. As of the Issue Date the Corporation does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Note. The Corporation will be responsible for complying with **Section 4.3(d)** if a Guaranteed Investment Contract is used for the investment of Gross Proceeds at a later date.

(p) ***Compliance with Future Tax Requirements; Remedial Action***. The Corporation understands that the Code and the Regulations may impose new or different restrictions and requirements on the Corporation in the future. The Corporation will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Note from gross income for federal income tax purposes or will take remedial action in accordance with Sections 1.141-12 and 1.145-2 of the Regulations (which action will be accompanied by an Opinion of Bond Counsel) as necessary to cause interest on the Note to remain excludable from gross income for federal income tax purposes.

**Section 2.3. Survival of Representations and Covenants.** All representations, covenants and certifications of the City, the Corporation and the Bond Trustee contained in this Tax Agreement or in

any certificate or other instrument delivered by the City, the Corporation or the Bond Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Note, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Note.

## ARTICLE III

## ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.1. General.** The purpose of this Article III is to certify, under Section 1.148-2(b) of the Regulations, the City's expectations as to the sources, uses and investment of Note proceeds and other money, in order to support the City's conclusion that the Note are not arbitrage bonds. The person executing this Tax Agreement on behalf of the City is an officer of the City responsible for issuing the Note.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations set forth in this Article III are based upon the City's understanding of the documents and certificates that comprise the Transcript and the representations, covenants and certifications of the parties thereto. To the City's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the City set forth in this Tax Agreement are reasonable. The City has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Purposes of the Financing.** The Note is being issued for the purpose of providing funds to (a) refund the Refunded Bond and (b) pay certain costs of issuing the Note. The purpose of the refunding of the Refunded Bond is to (1) achieve interest cost savings for the Corporation through early redemption of the Refunded Bond and (2) provide an orderly plan of financing for the Corporation.

**Section 3.4. Funds and Accounts.** No funds or accounts have been established under the Lease Agreement.

**Section 3.5. Amount and Use of Note Proceeds and Other Money.**

(a) ***Amount of Note Proceeds***. The total proceeds to be received by the City from the sale of the Note will be as follows:

| | |
|---|---|
| Principal Amount | $[Principal Amount].00 |
| Less Underwriting Discount | 0.00 |
| Accrued Interest | 0.00 |
| Total Proceeds Received by City | $[Principal Amount].00 |

(b) ***Use of Note Proceeds and Other Money***. All of the Note proceeds will be transferred to the registrar and paying agent for the Refunded Bond, to be used to pay the principal of on the Refunded Bond.

**Section 3.6. Multipurpose Issue.** Pursuant to Section 1.148-9(h) of the Regulations separate purposes of the Note having the same initial temporary period for unrestricted investment will be treated as a single purpose for purposes of applying the arbitrage rules.

**Section 3.7. No Advance Refunding.** No proceeds of the Note will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

**Section 3.8. Current Refunding.**

(a) ***Proceeds Used For Current Refunding***. Proceeds of the Note will be used to pay principal of the Refunded Bond. All such proceeds shall be spent not later than 90 days after the Issue Date.

(b) ***Transferred Proceeds***. There are no unspent proceeds (sale proceeds, investment proceeds or transferred proceeds) of the Refunded Bond. Therefore there are no transferred proceeds of the Note.

**Section 3.9. Project Completion.** The Financed Facility has previously been completed.

**Section 3.10. Lease Agreement/Sinking Funds.** The City is using the proceeds to refinance the costs of acquiring, construction, equipping and furnishing facilities to be leased to the Corporation under the Lease Agreement. The Corporation is required under the Lease Agreement to make periodic payments to the Purchaser in amounts sufficient to pay the principal of and interest on the Note. Neither the City nor the Corporation has established or expects to establish any sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Note.

**Section 3.11. Reserve, Replacement and Pledged Funds.**

(a) ***Debt Service Reserve Fund***. No reserve or replacement fund has been established for the Note.

(b) ***No Other Replacement or Pledged Funds***. None of the Note proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facility or refund the Refunded Bond, and that have been or will be used to acquire higher yielding investments. There are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Note if the City or the Corporation encounters financial difficulty.

**Section 3.12. Purpose Investment Yield.** The Yield on the Loan equals the Yield on the Note.

**Section 3.13. Offering Prices and Yield on Note.**

(a) ***Offering Price***. In the Purchaser's Investment Letter, the Purchaser has certified that it is acquiring the Note for investment and not with a view to or for resale in connection with distribution of the Note, and that it intends to hold the Note for its own account and for an indefinite period of time, and

does not intend at this time to dispose of all or any portion of the Note and understands transfer is restricted. The aggregate initial offering price of the Note is $[Principal Amount], plus accrued interest.

(b) ***Bond Yield***. Based on the Offering Price, the Yield on the Note is _____%, as computed by Bond Counsel as shown on **Exhibit B.** The City and the Corporation will apply Section 1.148-4(b)(3)(i) of the Regulations as amended by the Proposed Regulations (relating to the treatment of certain bonds subject to optional early redemption – so-called "yield-to-call bonds") to the Note. Neither the City nor the Corporation has entered into an interest rate swap agreement with respect to any portion of the proceeds of the Note.

**Section 3.14. Miscellaneous Arbitrage Matters.**

(a) ***No Abusive Arbitrage Device***. The Note is not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the City or the Corporation to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) ***No Over-Issuance***. The sale proceeds of the Note, together with expected investment earnings thereon and other money contributed by the Corporation, do not exceed the cost of the governmental purpose of the Note as described above.

**Section 3.15. Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the City does not expect that the Note proceeds will be used in a manner that would cause any Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Regulations.

## ARTICLE IV

## ARBITRAGE INVESTMENT AND REBATE INSTRUCTIONS

**Section 4.1. Rebate Covenants.** The Corporation will (a) engage the Rebate Analyst to compute arbitrage rebate on the Note in accordance with the Regulations and (b) pay to the United States all such arbitrage rebate in accordance with this Tax Agreement and the Regulations. The Corporation will make payments as necessary to comply with the rebate requirements of Section 148(f) of the Code and the Regulations.

**Section 4.2. Temporary Periods/Yield Restriction.** Except as described below, Gross Proceeds must not be invested at a yield greater than the yield on the Note:

(a) ***Proceeds Allocable to Current Refunding***. Note proceeds allocable to a current refunding of the Refunded Bond (see **Section 3.8**) may be invested at an unrestricted rate for up to 90 days following the Issue Date.

(b) ***Minor Portion***. In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without yield restriction.

**Section 4.3. Fair Market Value.**

(a) ***General***. No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Section 1.148-5 of the Regulations.

(b) ***Established Securities Market***. Except for Investments purchased for a yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Section 1273 of the Code), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Section 1.148-5 of the Regulations.

(c) ***Certificates of Deposit***. The purchase price of a certificate of deposit (a **"CD"**) is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD City to be currently available on reasonably comparable CDs offered to the public.

(d) ***Guaranteed Investment Contracts***. Neither the City nor the Corporation will enter into a Guaranteed Investment Contract without first obtaining an Opinion of Bond Counsel.

(e) ***Other Investments***. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least 3 bids on the Investment must be received from persons with no financial interest in the Note (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

**Section 4.4. Exemption of Certain Gross Proceeds from the Rebate Requirement.**

(a) ***General***. A portion of the Gross Proceeds of the Note may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Note and will not otherwise affect the application of the investment limitations described in **Section 4.2**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.4** applies even if a portion of the Gross Proceeds of the Note is exempt from the rebate requirement. To the extent all or a portion of the Note is exempt from rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.4**.

(b) ***Applicable Spending Exceptions***. The 6-month optional rebate spending exceptions (Section 148(f)(2)(B) of the Code and Section 1.148-7(c) of the Regulations) can apply to the Note.

(c) ***Special Elections Made with Respect to Spending Exception Elections***. No special elections are being made in connection with the application of the spending exceptions.

(d) ***Documenting Application of Spending Exception***. At any time prior to the first Computation Date, the Corporation may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the Corporation must continue to comply with **Section 4.4** hereof.

(e) ***General Requirements for Spending Exception***. The following general requirements apply in determining whether a spending exception is met.

(1) Using Adjusted Gross Proceeds to pay principal of any Note is not taken into account as an expenditure for purposes of meeting any of the spending tests.

(2) The 6-month spending exception generally is met if all Adjusted Gross Proceeds of the Note are spent within 6 months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial 6-month period, so long as this amount is spent within 1 year of the Issue Date.

**Section 4.5. Filing Requirements.** The City (if requested in writing by the Corporation) and the Corporation will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel addressed and delivered to such parties.

## ARTICLE V

## MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will be effective concurrently with the issuance and delivery of the Note and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Note have been fully paid and the Note is cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States and the provisions of **Section 5.8** relating to record keeping shall continue in force for the period described therein for records to be retained.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of the owner of the Note, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended and the Lease Agreement, such amendment will not cause any Note to be an arbitrage bond under Section 148 of the Code or otherwise cause interest on any Note to be included in gross income for federal income tax purposes. No such amendment will become effective until the City and the Corporation receive an Opinion of Bond Counsel, addressed to the City and the Corporation, that such amendment will not adversely affect the exclusion of the interest on the Note from gross income for federal income tax purposes.

**Section 5.3. Opinion of Bond Counsel.** The City and the Corporation may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel to the effect that the

proposed deviation will not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes. The City (to the extent within its power or direction) and the Corporation further agree to comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Note or the exclusion from gross income of interest on the Note.

**Section 5.4. Reliance.** In delivering this Tax Agreement the City is making only those certifications, representations and agreements as are specifically attributed to it in this Tax Agreement. The balance of the certifications, representations and agreements contained in this Tax Agreement, except those made by the Purchaser in its Investment Letter, are those of the Corporation, and the City is relying on the Corporation with respect to them. The City is not aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of the Corporation or the Purchaser, and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable.

**Section 5.5. Severability.** If any provision in this Tax Agreement or in the Note is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the City and the Corporation and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owner of the Note. Nothing in this Tax Agreement or the Note, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owner of the Note, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement. The certifications and representations made in this Tax Agreement and the expectations presented in this Tax Agreement are intended, and may be relied upon, as a certification of an officer of the City given in good faith described in Section 1.148-2(b)(2) of the Regulations. The Corporation understands that its certifications in this Tax Agreement and in its Closing Certificate will be relied upon by the City in the issuance of the Note and execution of this Tax Agreement. The City and the Corporation understand that such certification will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Note and the exclusion from federal gross income of the interest on the Note.

**Section 5.7. Default, Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement is an event of default under this Tax Agreement. This Tax Agreement is defined as a **"Lease Document**" in the Lease Agreement, and remedies for an event of default under this Tax Agreement may be pursued pursuant to the terms of the Lease Agreement or any other document which references this Tax Agreement and gives remedies for an event of default thereunder.

**Section 5.8. Record Keeping Responsibilities.** The City and the Corporation recognize (a) that investors purchase the Note with the expectation that interest on the Note is excluded from gross income for federal income tax purposes, (b) that the tax-exempt status of interest on the Note depends on the accuracy of the representations and the satisfaction of the covenants contained herein by the Corporation, many of which relate to matters that will occur after the date the Note is issued, and (c) that as part of its ongoing tax-exempt bond audit program the IRS requires that records be created and maintained with respect to the following matters:

(1) Documentation evidencing expenditure of Note proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.

(2) Documentation evidencing use of bond financed property by public and private persons (i.e., copies of Management Agreements or research agreements).

(3) Documentation evidencing all sources of payment or security for the Note.

(4) Documentation pertaining to any investment of Note proceeds (including the purchase and sale of securities, SLGs subscriptions, actual investment income received from the investment of proceeds, guaranteed investment contracts, and (if required) rebate calculations).

(5) Documentation necessary for the Corporation to complete and substantiate any information required to be included on IRS Form 990; schedule K as amended and in effect from time-to-time.

The Corporation has procedures in place or will establish procedures to create and retain these records or to cause these records to be created and retained. Unless otherwise specifically instructed in a written Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Corporation shall retain and maintain these records until 3 years following the final maturity of (A) the Note or (B) any obligation issued to refund the Note. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

**Section 5.9. Tax Audits.** The City and the Corporation acknowledge that the IRS has a routine tax audit program in place and that the cost of professional representation and compliance with requests for records and other information that are a part of such an audit can be substantial, even if no violation of tax laws are found. This City and the Corporation also recognize that under current administrative procedures the IRS must direct audit inquiries to the City, even though the Corporation has the primary responsibility for maintaining the exclusion of interest on the Note from gross income for federal income tax purposes. Upon receipt of notice of the commencement of any audit of the Note, the Corporation or the City will notify the other promptly. Throughout the term of the audit and any subsequent proceedings, the City and the Corporation will provide copies to one another of any correspondence received from or transmitted to the IRS by the other. The City may hire its own legal counsel to represent its interests in connection with the audit or in any further proceeding that results from the audit. At the request of the City, the Corporation will hire legal counsel to represent it in the audit. The Corporation, upon written request of the City, will assume responsibility for responding to information and document requests made by the auditor, that are within the knowledge or possession of the Corporation. Promptly on demand by the City in writing, the Corporation will pay costs incurred by the City in connection with the audit or any legal or administrative proceeding resulting from the audit (including the City's reasonable attorney's fees and expenses). Neither the City nor the Corporation shall have the right to represent or otherwise bind the other party in connection with any settlement related to the tax-exempt status of the Note. Nothing contained in this section is intended to limit the rights of the City to recovery under the Lease Agreement or any other agreement or certificate executed in connection with the issuance of the Note.

**Section 5.10. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.11. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the State of Nebraska.

**Section 5.12. Electronic Transactions.** The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

***[The remainder of this page is intentionally blank.]***

**IN WITNESS WHEREOF,** the parties to this Tax Agreement have caused this Tax Compliance Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Note.

**THE CITY OF LINCOLN, NEBRASKA, NEBRASKA**

By: _____
Chair

**NEBRASKA SCHOOL ACTIVITIES ASSOCIATION**

By: _____
President

**EXHIBIT A**
**TO TAX COMPLIANCE AGREEMENT**

**Evidence of Approval of Highest Elected Official, together with**

**Affidavit of Publication of Notice of Public Hearing**

# EXHIBIT B

## DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD

**EXHIBIT C**

**IRS FORM 8038**

**ATTACHMENT A TO FORM 8038:**

**$[Principal Amount]**

**Industrial Development Promissory Revenue Note**
**(Nebraska School Activities Association Project)**
**Series 2010**

**PART II: Type of Issue**

*Line 18: Non-Hospital Bond*

| Organization Benefiting from 501(c)(3) Non-Hospital Bonds | Employer Identification Number | Amount of These Bonds Benefiting This Organization |
|---|---|---|
| Nebraska School Activities Association | 47-0376602 | $ |
| Nebraska Sports Hall of Fame | 47-0769849 | |
| Nebraska Coaches Association | 23-7130954 | |

**EXHIBIT D**

**501(c)(3) DETERMINATION LETTER**

**EXHIBIT E**

**DESCRIPTION OF FINANCED FACILITY AND COMPUTATION OF AVERAGE ECONOMIC LIFE OF FINANCED FACILITY**

The Financed Facility consists of a clinically integrated health center facility between 53rd and 54th and Pine Lake Road, Lincoln, Nebraska, placed in service in 2006, with a reasonably expected economic life of 40 years.