

## REAL ESTATE SALES AGREEMENT

This Real Estate Sales Agreement ("Agreement") is made and entered into by and between the **CITY OF LINCOLN, NEBRASKA, a municipal corporation**, hereinafter called "Seller", and the **UNIVERSITY OF NEBRASKA FOUNDATION, a nonprofit corporation**, hereinafter called "Buyer".

### RECITALS

WHEREAS Seller owns approximately 90,000 square feet located at North 14<sup>th</sup> and Manatt Streets located on Block 17, Lots 1 through 12, Lincoln Heights Addition, and certain areas of adjoining vacated right-of-way of 13<sup>th</sup> Street and Hartley Street all in Lincoln, Lancaster County, Nebraska ("Property"). A legal description is attached hereto as Attachment "A" and incorporated herein by this reference.

WHEREAS Buyer approached Seller on behalf of a soon-to-be-formed 501(c)(3) nonprofit corporation ("Nonprofit") that intends to build an early education Educare facility that will operate on the Property adjacent to Belmont Elementary School and benefit the surrounding neighborhood and community.

WHEREAS Seller is desirous of having an Educare facility to benefit the Belmont neighborhood and the residents of the City of Lincoln.

WHEREAS Buyer desires to purchase and Seller is willing to sell the Property at a discounted price of Two Hundred Thousand Dollars (\$200,000) in recognition of the community benefits afforded by construction and operation of the Educare facility. The value of Property is established at \$3.25 per square foot for approximately 90,000 square feet, for a total amount of Two Hundred Ninety-Two Thousand Five Hundred Dollars (\$292,500). This total value is reduced by Ten Thousand Six Hundred Dollars (\$10,600) for the value of two storm sewer easements to be retained on the Property, which results in a total value of the Property of Two Hundred Eighty-One Thousand Nine Hundred Dollars (\$281,900).

NOW, THEREFORE, in consideration of the above recitals which are made part of this Agreement and mutual covenants provided for herein, the parties do agree as follows:

1. Seller, in consideration of the value of the Property in the amount of Two Hundred Eighty-One Thousand Nine Hundred Dollars (\$281,900) ("Purchase Price") and the Buyer's promise to perform the conditions set forth herein, hereby agrees to sell and convey by Quitclaim Deed, subject to retention of permanent utility easements and storm sewer easements for two storm sewers (described below) located on an "as is with all fault" basis, including the environmental condition of the Property.

2. Seller presently owns, operates, and maintains one (1) 24 inch diameter and one

(1) 18 inch diameter storm sewer through the Property, the general location of which are shown on Attachment "B." Seller shall retain a 30 foot permanent storm sewer easement centered 15 feet on either side of the location of the existing storm sewers through the Property, with such easements intended for the operation, maintenance and repair of such storm sewers. As part of the construction contemplated for the Educare facility, it is proposed that the existing storm sewers will be reconstructed and relocated by Buyer. Seller understands and is in general agreement with Buyer regarding moving the location of the storm sewers through the Property upon proper application and compliance with the City of Lincoln's standards. The currently proposed relocation of the storm sewers is shown on Attachment "C". Upon completion of the storm sewer relocation, the Seller agrees to and shall terminate, release, abandon and vacate its storm sewer easement as reflected in Attachment "B" and Buyer shall grant to Seller a new storm sewer easement as reflected in Attachment "C" or at such other location as Seller and Buyer or its successors in interest mutually agree. Such new storm sewer easement shall be in substantially the same form as the terminated easement, which shall be a 30 foot permanent storm sewer easement centered 15 feet on either side of the location of the storm sewers through the Property, with such easements intended for the operation, maintenance and repair of such storm sewers.

3. Seller shall deliver to Buyer a title insurance policy insuring marketability to the Property being purchased hereunder. Said title insurance policy shall show marketable title to said Property in Seller's name, free and clear of all liens and encumbrances, except the storm sewer easements to be reserved pursuant to this Agreement and other easements and restrictions of record. In the event that title to the Property is found not to be marketable by reason of defects which cannot be reasonably and economically cured, this Agreement shall be null and void and all payments made hereunder by the Buyer shall be refunded at once. However, if defects are found which may be reasonably and economically cured, Seller shall have a reasonable time after receipt of written notice of such defects from the Buyer to cure said defects. The cost of the title insurance policy shall be paid one-half by Seller and one-half by Buyer.

4. Buyer agrees to close said purchase on or before November 14, 2011 ("Closing"). Time is expressly declared to be of the essence in this Agreement. The date of closing may be changed to such other date as the parties may in writing agree to hereafter. Each party shall fully perform all his obligations hereunder at such time as to insure closing within the period herein specified, or any extension thereof.

5. The Purchase Price shall be paid as follows: Buyer shall make an initial payment of Two Hundred Thousand Dollars (\$200,000) ("Initial Payment") to Seller at Closing as set forth herein. The remainder of the Purchase Price in the amount of \$81,900 ("Deferred Payment") shall be evidenced by a promissory note in substantially the same form as the promissory note attached hereto as Attachment "D" ("Promissory Note"). The Promissory Note shall be secured by a deed of trust in substantially the same form as the deed of trust attached hereto as Attachment "E" ("Deed of Trust"). The Deferred Payment shall be deferred until such time as the Property is sold or transferred to a third party other than Buyer or the Nonprofit. Buyer intends to transfer ownership of the Property to the Nonprofit within one (1) year following the date of Closing.

6. In the event that the Property is to be conveyed to another party other than Buyer or the Nonprofit, by either Buyer or Nonprofit, Seller shall receive the Deferred Payment of Eighty-One Thousand Nine Hundred Dollars (\$81,900.00) before such conveyance or transfer is effective. Buyer covenants, agrees, and shall condition and include in writing in any agreement and deed transferring ownership to the Nonprofit language regarding the obligation to make the Deferred Payment consistent with this Agreement. Buyer agrees to sign the Promissory Note and Deed of Trust to secure the obligation of the Deferred Payment. If the Property is transferred to Lincoln Public Schools, the Deferred Payment to Seller may be addressed through the Asset Bank Account.

7. Either party may assign its interest in this Agreement, in whole or in part, only with the written consent of the other party, provided that written notice of the Assignment is given to all parties stating the nature of the Assignment and stating the obligations of this Agreement assumed by the Assignee. Unless all parties consent in writing to such assignment, the Assignor shall not by virtue thereof be released from any liability under the terms and conditions of this Agreement. Any assignment shall necessarily include the Deferred Payment as well as assignment of the Promissory Note and Deed of Trust.

8. This Agreement shall run with the Property and shall inure to and bind the Seller, Buyer, and their successors in interest.

IN WITNESS WHEREOF, Buyer and Seller have caused these presents to be executed as of the dates below indicated.

Executed by Buyer this \_\_\_ day of \_\_\_\_\_, 2011.

UNIVERSITY OF NEBRASKA FOUNDATION,  
A Nebraska nonprofit corporation, Buyer

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Executed by Seller this \_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

CITY OF LINCOLN, NEBRASKA,  
A municipal corporation, Seller

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

By: \_\_\_\_\_  
Chris Beutler, Mayor

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ of University of Nebraska Foundation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by Chris Beutler, Mayor of the City of Lincoln, Nebraska on behalf of the City.

\_\_\_\_\_  
Notary Public

**ATTACHMENT "A"**  
**(page 1 of 2)**

Lots 2 through 11, and the west 28 feet of Lots 1 and 12, Block 17, Lincoln Heights Addition; except that rectangular shaped part of Lots 1 and 2, Block 17, Lincoln Heights Addition described as follows: Beginning at the northeast corner of Lot 1, Block 17, Lincoln Heights Addition, thence west a distance of 50 feet along the north line of Lot 1 and Lot 2 to a point on the north line of Lot 2, 5 feet east of the east line of Lot 2, thence south a distance of 40 feet, thence east a distance of 50 feet, thence north a distance of 40 feet to the northeast corner of said Lot 1, Block 17;

The vacated east/west alley in Block 17, Lincoln Heights Addition, from the east right-of-way line of vacated 13th Street, east a distance of 253 feet, adjacent to Lots 2 through 6 and Lots 7 through 11 and the west 28 feet of Lots 1 and 12;

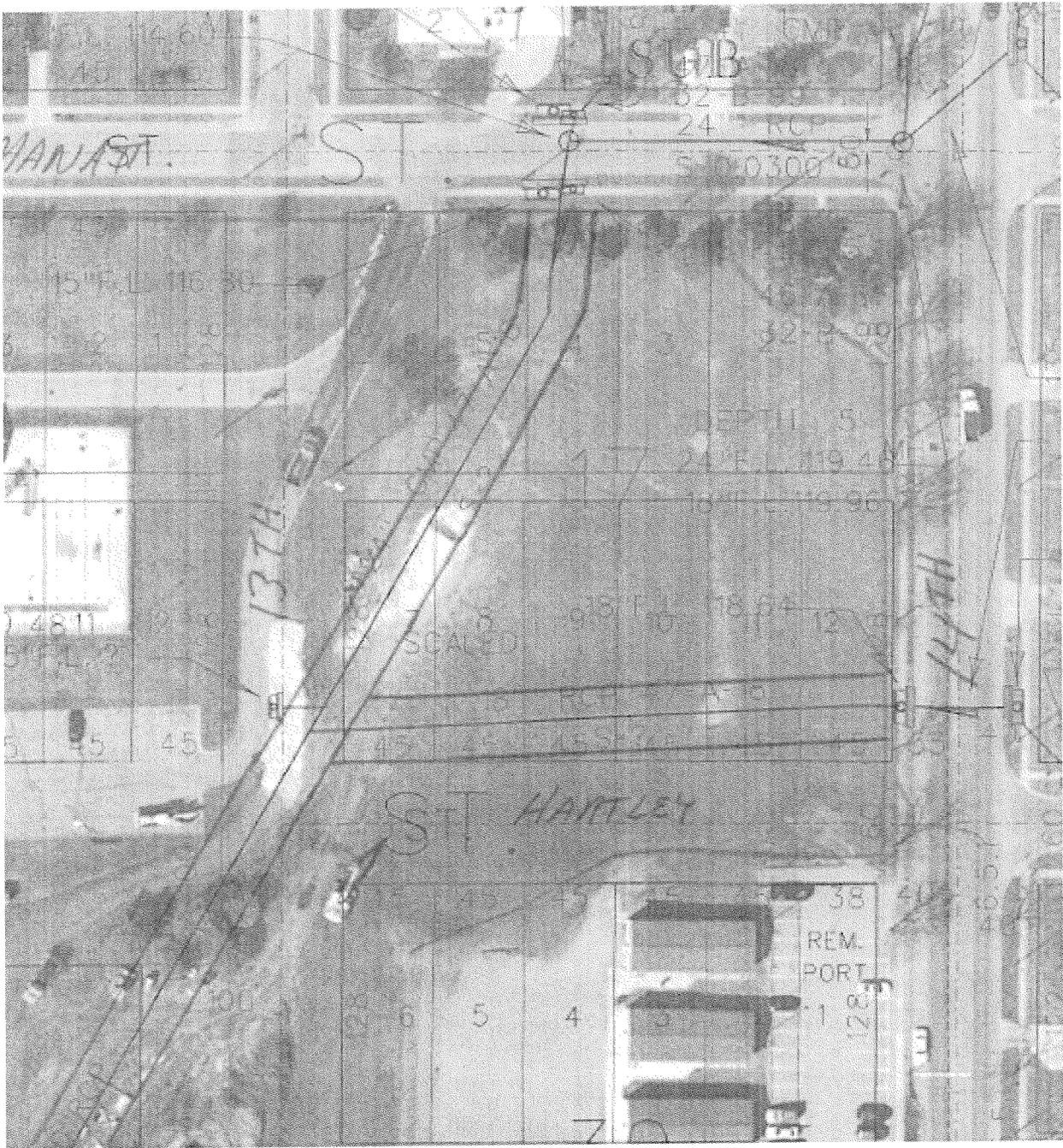
The north half of vacated Hartley Street from the east right-of-way line of vacated 13th Street east a distance of 253 feet, adjacent to Lots 7 through 11 and the west 28 feet of Lot 12, all in Block 17, Lincoln Heights Addition; and

The east 30 feet of vacated 13th Street from the south right-of-way line of Manatt Street south a distance of 458 feet to the north right-of-way line of the east/west alley in Block 30, Lincoln Heights Addition, adjacent to Lots 6 and 7, Block 17 and Lot 6, Block 30, Lincoln Heights Addition;

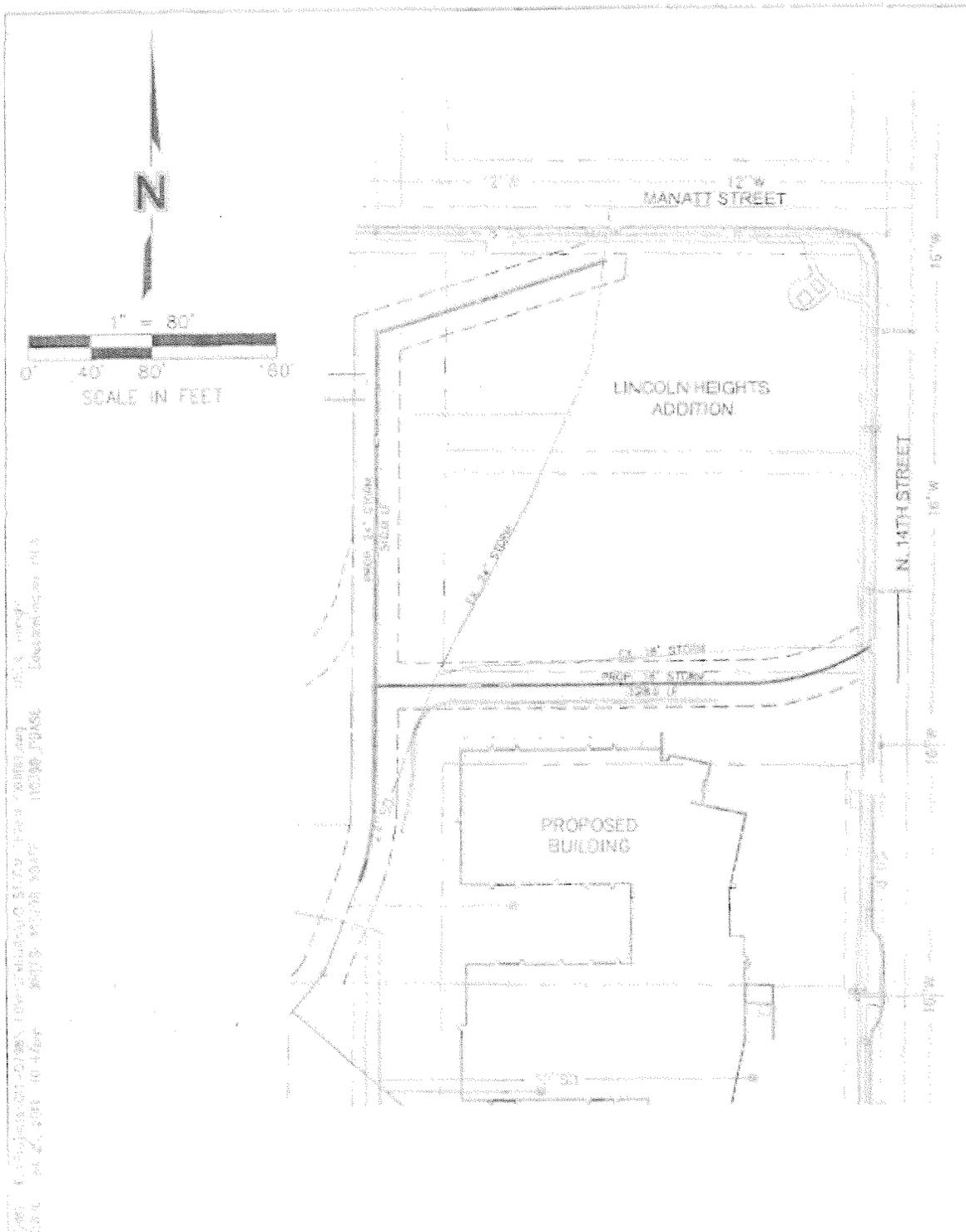
All in the City of Lincoln, Lancaster County, Nebraska.



**ATTACHMENT B**



# ATTACHMENT C



PROJECT NO: 011-0768	LINCOLN HEIGHTS ADDITION STORM SEWER EXECUTIVE ORDER REQUEST	 <small>1171 Lincoln Blvd. Suite 111 P.O. Box 6100 Lincoln, NE 68501-4002 TEL: 402-474-5211 FAX: 402-474-5165</small>	EXHIBIT  1
DRAWN BY: EGB			
DATE: 07/25/11			

**ATTACHMENT D**

**PROMISSORY NOTE AND DISCLOSURE STATEMENT**

**Date:** \_\_\_\_\_

**BORROWER:** University of Nebraska Foundation  
1010 Lincoln Mall, Suite 300  
Lincoln, NE 68508

**LENDER:** City of Lincoln, Nebraska  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

**REPAYMENT SCHEDULE:** For value received, the undersigned, herein called Borrower, promises to repay Lender, at Lender's office (Finance Department, 555 S. 10<sup>th</sup> St. Suite 103, Lincoln, Nebraska 68508), the principal sum of **Eighty-One Thousand Nine Hundred and No/100ths Dollars (\$81,900.00)** without interest thereon in a single lump sum payment if the property is sold, transferred, or conveyed to any third party, other than to the nonprofit corporation contemplated by the Real Estate Sales Agreement executed contemporaneously herewith. Upon sale, conveyance, or transfer, the full amount shall be shall be due immediately.

This Note is made and delivered as evidence of a loan from Lender to Borrower in the amount of **Eighty-One Thousand Nine Hundred and No/100ths Dollars (\$81,900.00)** for the purpose of assisting Borrower in the acquisition of:

Block 17, Lots 1 through 12, Lincoln Heights Addition, and certain areas of adjoining vacated right-of-way of 13<sup>th</sup> Street and Hartley Street all in Lincoln, Lancaster County, Nebraska. A legal description is attached hereto as Attachment "A" and incorporated herein by this reference

hereinafter known as the "Property."

**TERMS OF TRANSACTION:**

1. Proceeds (to be received by Borrower)	\$81,900.00
2. Other Charges (None)	<u>          \$0.00</u>
3. Total Amount Financed (1 + 2)	<u>          \$81,900.00</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 condition.
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 Promissory Note before the same by law become delinquent.

4. 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 other than the nonprofit corporation contemplated by the Real Estate Sales Agreement.

**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.**

**UNIVERSITY OF NEBRASKA FOUNDATION,  
Borrower**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF LINCOLN, NEBRASKA, Lender**

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

**ATTACHMENT E**

**DEED OF TRUST**

This Deed of Trust made this \_\_\_\_ **day of** \_\_\_\_\_, **2011**, by:

**TRUSTOR:** University of Nebraska Foundation

**ADDRESS:** 1010 Lincoln Mall, Suite 300, Lincoln, NE 68508

**BENEFICIARY:** **CITY OF LINCOLN, NEBRASKA**

**ADDRESS:** 555 South 10th Street, Lincoln, Nebraska 68508

**TRUSTEE:** **JOCELYN W. GOLDEN**

**ADDRESS:** 555 South 10th Street, Suite 300, 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:

Block 17, Lots 1 through 12, Lincoln Heights Addition, and certain areas of adjoining vacated right-of-way of 13<sup>th</sup> Street and Hartley Street all in Lincoln, Lancaster County, Nebraska. A legal description is attached hereto as Attachment "A" and incorporated herein by this reference

Hereinafter known 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 **Eighty-One Thousand Nine Hundred and No/100ths Dollars (\$81,900.00)** without interest; 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 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.

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. Taxes, Assessments, and Charges.

b1 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 therefore upon the Beneficiary.

4.2 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.

4.3 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.

5. 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.

6. 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.

7. Default, Remedies, Acceleration, Sale.

7.1 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.

**7.2 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.

**7.3 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.

**8. 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.

9. 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.

10. 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; (c) a transfer to the nonprofit corporation; or (d) 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.

11. 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.

12. 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.

**13. 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 7.1.B.

**14. 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."

**15. Notices.**

**15.1** 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.

**15.2** 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.

**16. Miscellaneous.**

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

**16.2** 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.

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

**16.4** 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.

16.5 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.

17. 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.

Executed this \_\_\_ day of \_\_\_\_\_, 2011.

UNIVERSITY OF NEBRASKA FOUNDATION,  
Nebraska nonprofit corporation, Borrower, Trustor

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

Title: \_\_\_\_\_

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ of University of Nebraska Foundation.

\_\_\_\_\_  
Notary Public