

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (“Agreement”) by and between Seller, City of Lincoln, a municipal corporation, and its successors and assigns (hereinafter “City”), and Buyer, the Board of Regents of the University of Nebraska, a public body corporate and governing body of University of Nebraska-Lincoln, and its successors and assigns (hereinafter “University”).

RECITALS

WHEREAS, City is the owner of real property located at West Haymarket Addition, Block 1, Lot 1 in Lincoln, Lancaster County, Nebraska (the “Property”); and

WHEREAS, University desires a suitable site to construct the John A. Breslow Ice Hockey Center (the “Breslow Center”); and

WHEREAS, the Breslow Center would be beneficial to the City of Lincoln and University by offering more opportunities for youth and adult hockey leagues and other events or activities the public could enjoy; and

WHEREAS, the Breslow Center would be beneficial to the University community by offering more opportunities for recreational and club activities; and

WHEREAS, the University desires to purchase from City and City desires to sell to University the Property in accordance with the terms and conditions set forth below; and

WHEREAS, the University and City have agreed to additional terms for the operation of the Breslow Center for the benefit of City and the public that are memorialized in an Operating Agreement agreed to contemporaneously herewith; and

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth herein, it is agreed by and between the parties as follows:

1. **Sale of City Property.** City, in consideration of payment by University of One Dollar (\$1.00) and any other conditions and terms set forth herein, shall sell and convey fee simple title by special warranty deed the Property to University, subject to retention of permanent utility easements and easements of record, permitted exceptions as described herein, and the terms and conditions of this Agreement and the Operations Agreement approved contemporaneously herewith and attached as Attachment “A.” The value of the Property is Eight Hundred Twenty Thousand Six Hundred Eighty-Four Dollars (\$820,684.00) per a certified appraisal, which does not include the value of additional parking that is not a part of this Agreement. City’s contribution to the Breslow Center is the transfer of the Property to University for nominal consideration in addition to the terms in the Operating Agreement. In the event the University fails to commence construction of the Breslow Center building by January 1, 2016,

City shall be entitled at its option to conveyance of the Property back to the City, including the return of any payment for the sale of the Property.

2. **Necessary Approvals.** This Agreement is contingent upon City obtaining all necessary approvals under applicable state law, municipal ordinances, or any other laws applicable to real estate purchases, prior to the Date of Closing, including, but not limited to, the Lincoln-Lancaster County Planning Commission and the Lincoln City Council approval of an ordinance declaring the Property surplus and authorizing sale under the terms provided herein to University. This Agreement is also conditioned upon the approval of the purchase by the Board of Regents of the University of Nebraska. If such approvals are not made by the Date of Closing, this Agreement shall be null and void and the parties shall have no further obligations hereunder. In the event the parties do not obtain all necessary approvals by the Date of Closing, the parties may agree to an extension of the Date of Closing or either party may terminate the Agreement.

3. **Title Examination.** Prior to the Date of Closing, University may, at its expense, obtain a title commitment (the "Title Commitment") and an ALTA Survey (if required) for an ALTA owner's title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the "Title Company") covering title to the Property and showing the condition of title to the Property. For purposes hereof, "Permitted Exceptions" shall mean (i) covenants, conditions and restrictions of record reasonably approved by University; (ii) taxes not yet due and payable; (iii) public utility easements of record, which shall be approved by University as long as they do not interfere with University's intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the Date of Closing and which City is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of University; (vi) easements and use restrictions to be granted under this Agreement; and (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by University. University agrees to review the Title Commitment and advise City whether the Title Commitment discloses exceptions to title other than Permitted Exceptions or discloses matters that render title to the Property unmarketable. University shall notify City of such title defects within five (5) days after receipt of the Title Commitment and City shall have ten (10) days after written notice of such defects from University to have the exceptions removed from the Title Commitment or to have the title insurer commit, in writing in a form and substance that is acceptable to University, to insure against loss or damage that may be occasioned by such exceptions or defects. In the event that City shall be unable to or unwilling to correct such title defects within the ten (10) day period, University shall have the option, by written notice delivered to City within ten (10) days after expiration of the cure period, to either terminate this Agreement or take title to the Property subject to such exceptions and defects. In the event University provides timely notice to terminate this Agreement, the Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event University elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions. The cost of the owner's title insurance policy and any ALTA Survey shall be paid by the University.

4. **Closing.** At the Date of Closing, the parties will execute and deliver all deeds and other documents reasonably necessary to consummate the sale and purchase of the Property

pursuant to the terms of this Agreement and shall pay all monies called for hereunder. The Date of Closing shall occur within ten (10) days of approval of the sale by City Council; provided, however, the Date of Closing may be extended by the University for up to sixty (60) days in order for the University to complete its due diligence with respect to the Property. Each party shall bear all its own expenses in the negotiation, execution, and performance of this Agreement. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement. Possession of the Property shall be given to University at closing, and the risk of loss or damage to the Property shall rest with City until the time of delivery of possession.

5. **No Brokers.** The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee in connection with the purchase contemplated by this Agreement; and each party warrants to the other party that it shall indemnify and hold the other party harmless for all claims of any person for brokers' or agents' commissions or finder fees making claim through it in connection with the sale.

6. **Taxes.** Any real estate taxes or special assessments on the Property prior to the Date of Closing, if any, shall be paid by City at or prior to the Date of Closing. Any real estate taxes or special assessments on the Property after the Date of Closing, if any, shall be paid by University. Taxes for the year of closing, if any, shall be prorated to the Date of Closing and shall be prorated based upon the County's then most current property valuation and upon the most current tax rate as determined by the Lancaster County Board of Equalization. Title hereunder shall be delivered free and clear of all assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement.

7. **Environmental; Tests.** City has already completed a Phase I Environmental Site Assessment of the Property. University and its agents or representatives shall have the right to have access to the Property to perform any additional types of environmental studies, including without limitation, Phase I and Phase II environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively "Tests"). A copy of the Tests together with related documents, reports and test reports shall be delivered to the City. University and its agents or representatives shall be responsible for and hereby agree to indemnify and hold City harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by University or its representatives. University and its representatives shall take all reasonable efforts to maintain the security of the Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property. University shall have until the Date of Closing to conduct all Tests or terminate the Agreement. In the event University determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then University's sole remedy shall be the right to terminate this Agreement. City shall have no

obligation to correct any defects or environmental hazards or materials, liabilities or other matters.

8. **As Is.** University acknowledges that it has not been influenced to enter into this transaction, nor has University relied upon any warranties or representations not set forth or incorporated in this Agreement or the Operations Agreement, or otherwise previously made in writing. City makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the use, title, condition, code or law compliance, or occupation of the Property with respect to the physical or structural condition of the Property, the Property's compliance with the Americans with Disabilities Act, or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Property and hereby disclaims any implied warranty regarding the fitness for any particular purpose, quality or merchantability of the Property or any portion thereof except as otherwise provided herein. Except to the extent otherwise provided in this Agreement, the Property shall be conveyed to University on an "AS-IS, WHERE-IS" basis without any representations or warranties of any kind, express or implied. The parties agree that City shall not be required to make or remove any improvements to the Property or remove any pumps or underground storage tanks on the Property. From and after closing, City shall be released and indemnified from all responsibility and liability to University regarding the condition of the Property, including environmental conditions, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. University agrees that it will not seek to recover from City any costs that may be incurred for the clean-up or remediation in any manner of any toxic or hazardous materials, substances or wastes as may exist in, on, under or affecting the Property, or which may have first originated on the Property regardless of where now located, and specifically waives any right to recovery thereof. The foregoing terms of this paragraph shall survive closing.

9. **Zoning and Use.** The Property currently has a zoning classification of P-Public. University intends to use the Property for the Breslow Center and for only those purposes provided by the proposed zoning as provided in Lincoln Municipal Code or attendant standards or regulations. The development of the Property shall be subject to the Lincoln Municipal Code 27.52.035 and the Allowable Fill Restriction Agreement approved by the West Haymarket Joint Public Agency on May 16, 2013, filed with the Register of Deeds at Instrument No. 2013-028130. Any development shall also be generally subject to any applicable city, state, and federal ordinance, statutes, or rules and regulations.

10. **City Representations and Warranties.** The City represents and warrants to the University as of the effective date of this Agreement and on the Date of Closing that:

- a. **Litigation.** No judgment is issued or outstanding against the Property. No litigation, action, special assessment, charge, lien, suit, judgment, proceeding or investigation is pending or outstanding before any forum, court or governmental body, department or agency of any kind, or, to the knowledge of City, threatened, to which the City or the Property is a party which might reasonably result in any material adverse change in the prospects, development or condition of the Property. The City does not know of any basis for such claim, litigation, action, special assessment, charge, lien, suit, judgment, proceeding or investigation;

- b. Hazardous Materials. To the knowledge of City and during the time in which City owned the Property, neither City nor any third party has used, generated, manufactured, produced, stored, or disposed of on, under or about the Property or transported to or from the Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively, "Hazardous Materials"). To the knowledge of City, there is no proceeding or inquiry by any governmental authority with respect to the presence of Hazardous Materials on the Property or the migration thereof from or to other property. For the purpose of this Agreement, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq; and in the regulations adopted and publications promulgated pursuant to said laws;
- c. Authorization. All necessary action to duly approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will have been taken by the City, and this Agreement will constitute a valid and binding agreement of the City, enforceable in accordance with its terms.
- d. Prompt Notice. If, during the period between as of the effective date of this Agreement and the Date of Closing, the City learns of, or has reason to believe that any of the representations and warranties contained in this Agreement may cease to be true, the City shall give prompt notice to the University (which notice shall include copies of any instrument, correspondence or document upon which the City's notice is based); and
- e. Additional University Right. In the event any warranty or representation in this section is false, then the University shall have the right, in addition to the University's other rights and remedies hereunder, and upon written notice to the City delivered prior to the Date of Closing, to declare this Agreement null and void and the parties shall have no further obligations hereunder.

11. University Representations and Warranties. The University represents and warrants to the City as of the effective date of this Agreement and on the Date of Closing that:

- a. Authorization. All necessary action to duly approve the execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby will have been taken by the University, and this Agreement will constitute a valid and binding agreement of the University, enforceable in accordance with its terms.

12. **Conditions Precedent.** The obligation of each party to consummate the transaction contemplated hereby are subject to the fulfillment prior to and at the Date of Closing of each of the following conditions:

- a. **Representations and Warranties.** The representations and warranties of the other party contained in this Agreement shall be true and correct in all material respects at and as of the Date of Closing as though such representations and warranties were made at and as of such time; and
- b. **Performance.** The other party shall have in all material respects performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and at the Date of Closing.

13. **Default.** Time is agreed to be of the essence. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default if such failure continues for fourteen (14) days after the non-complying party receives written notice specifying the nature thereof; provided, however, in the event such failure cannot, in the exercise of reasonable diligence, reasonably be cured within such fourteen (14) day period, such failure shall not be considered a default, provided the non-complying party commences the cure within the fourteen (14) day period and continues to exercise reasonable diligence to complete the cure. If any default under this Agreement shall occur and the defaulting party fails to cure the same within the expected curative time period herein provided, the other party may seek any remedy at law or in equity without notice or demand, including specific performance. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

14. **Indemnification by the City.** Upon the terms and subject to the conditions set forth herein, and to the extent allowed by law, the City agrees to indemnify and hold the University harmless against, and will reimburse the University upon demand for, any payment, loss, cost or expense made or incurred by or asserted against the University with respect to any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of the City contained in this Agreement.

15. **Indemnification by the University.** Upon the terms and subject to the conditions set forth herein, and to the extent allowed by law, the University agrees to indemnify and hold the City harmless against, and will reimburse the City upon demand for, any payment, loss, cost or expense made or incurred by or asserted against the City with respect to any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of the University contained in this Agreement.

16. **Assignment.** In the case of the assignment of this Agreement by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be

furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

17. **Severability.** If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

18. **Further Assurances.** Each party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged or delivered, any and all such further conveyances, confirmation, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

19. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

20. **Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

21. **Non-Merger.** All representations and warranties made herein are intended to survive closing and shall not be merged in the deed. This Agreement shall not be cancelled at closing.

22. **Entire Agreement.** This Agreement and the Operations Agreement contain the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered except in writing and consented to by all parties.

23. **Notice and Demands.** Notice, demand or other communication to the City or the University required or appropriate under this Agreement shall be in writing, sent by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) registered or certified United States mail, postage prepaid, or (d) prepaid fax if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

If to the City: Mayor
555 South 10th Street
Lincoln, NE 68508
Fax: (402) 441-7120

With a copy to: City Attorney
555 South 10th Street
Lincoln, NE 68508
Fax: (402) 441-8812

If to the University: The University of Nebraska-Lincoln
Office of Business and Finance
307 Canfield Administration
Lincoln, NE 68588-0425
Fax: (402) 472-7963

With a copy to: University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

24. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

25. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

26. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

27. **Delegation of Authority.** The Mayor (or his designee) is authorized on behalf of the City and the University President (or his designee) is authorized on behalf of the University to take all necessary or reasonable actions to implement and close the transaction and agreements contained herein and to make any reasonable amendments hereto.

IN WITNESS WHEREOF, University and City have caused this Agreement to be executed as of the dates below indicated.

ATTEST: **CITY OF LINCOLN, NEBRASKA**

City Clerk

Chris Beutler, Mayor

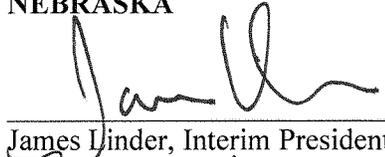
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014 by Chris Beutler, the Mayor of the City of Lincoln, on behalf of the City.

(S E A L)

Notary Public

BOARD OF REGENTS OF UNIVERSITY OF NEBRASKA



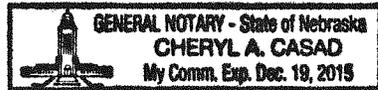
James Linder, Interim President

Attest: 
Carmen K. Maurer, Corporation Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged by me this 3rd day of June, 2014 by James Linder, Interim President, and Carmen K. Maurer, Corporation Secretary, of the Board of Regents of the University of Nebraska on behalf of the University.

(S E A L)





Notary Public

ATTACHMENT "A"
OPERATIONS AGREEMENT

[See attached]

OPERATIONS AGREEMENT

This Operations Agreement (“Agreement”) is made by and between City of Lincoln, a municipal corporation, and its successors and assigns (hereinafter “City”), and the Board of Regents of the University of Nebraska, a public body corporate and governing body of University of Nebraska-Lincoln, and its successors and assigns (hereinafter “University”).

WHEREAS, City is the owner of real property located at West Haymarket Addition, Block 1, Lot 1 in Lincoln, Lancaster County, Nebraska (the “Property”); and

WHEREAS, University desires a suitable site to construct an ice center; and

WHEREAS, such a facility would be beneficial to the City of Lincoln by offering more opportunities for youth and adult hockey leagues and other events or activities the public could enjoy; and

WHEREAS, such a facility would be beneficial to the University community by offering more opportunities for recreational, instructional, and club activities; and

WHEREAS, University and City have negotiated Real Estate Purchase Agreement for sale of the Property to University (the “Purchase Agreement”), which is subject to the terms and conditions set forth herein; and

WHEREAS, after purchase of the Property, University intends to construct and operate the John A. Breslow Ice Hockey Center, together with other related facilities (“Breslow Center”); and

WHEREAS, under the terms of the sale, University and City have agreed to additional considerations for the operation of the Breslow Center, which terms and conditions set forth below; and

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth herein, it is agreed by and between the parties as follows:

1. **Use.** City and University acknowledge and agree that University intends to construct a building (“Building”) and other improvements on, under, and over the Property for operating an indoor and/or outdoor ice center(s) previously described as the Breslow Center. University agrees that it is familiar with the zoning of the Property and that its use of the Property will comply therewith.

2. **Construction of Improvements.**

A. **Improvements as Partial Consideration.** University shall design, construct, operate, and maintain the Breslow Center.

B. Construction Work. The University will follow current University policies, procedures and design guidelines with respect to its internal review and approval of the plans and specifications for the Building. During the final design phase (when drawings are between 60% and 90% complete), the University will present design drawings to the Mayor, and the Mayor will have the ability to provide input on the exterior design; provided, however, all design decisions shall be made by the University. The intermediate design drawings to date are attached to this Agreement and incorporated herein by this reference. The cost of the Breslow Center project shall be approximately Eleven Million Dollars (\$11,000,000.00), which shall include an approximately Fifty-Three Thousand (53,000) square foot Building, with one sheet of ice. If project costs are less than Eleven Million Dollars (\$11,000,000.00), project cost savings up to Eleven Million Dollars shall be utilized toward project alternatives in consultation with the City. University shall provide City with written confirmation of sufficient financing or funding for construction work prior to commencement. University shall be solely responsible for the construction of the Building and any other improvements to the Property and all other costs and expenses associated therewith, subject to the contributions of City as set forth herein and in the Purchase Agreement. The construction work shall be performed in accordance with all applicable legal requirements. Any contractor performing the work shall be adequately bonded and insured. The construction work shall also be performed in a good and workmanlike manner and in accordance with good construction practices. After completion of the construction of the Breslow Center, University shall have the right to construct additional improvements to the Property and to make all alterations or additions thereto and to remove, remodel, demolish, and rebuild the same, subject to the conditions herein. The cost of all improvements or additions shall be paid by University.

C. Sales Tax. University shall be solely responsible for any sales tax, if any, during the construction of the Building and any improvements to the Property, subject to whatever exemptions that may apply.

D. Preparation of Site. Prior to construction, City shall cooperate with University, its successors, agents, contractors, and assigns in its efforts to have the Property platted as a buildable lot and zoned as appropriate. University shall prepare a pad ready site for the Building as designed for one sheet of ice that will be graded and filled one foot above the 500 year flood plain. City shall reimburse University of Nebraska Foundation and/or the University for any costs for preparation of the Property, which amount shall not exceed Two Hundred Thousand Dollars and no/100 Dollars (\$200,000.00). Reimbursement shall be made after submission of invoices or construction bids documenting the work done or to be done. Any additional pad site preparation for expansion of the Building or improvements on the Property for a second sheet of ice shall be at University's expense, including demolition of the concrete parking area, fill in of additional area according to the applicable laws and regulations, and any additional work to meet all applicable environmental regulations, if any. University will take care to adhere to all regulatory requirements regarding management of soils and dewatering to Salt Creek during construction.

3. Operation of Ice Skating Facilities on Property.

A. Public Use. The Property shall be used primarily by University for the construction, development, and operation of the Breslow Center and secondarily for any other lawful purpose allowed by then current zoning. City acknowledges that the operation of the Breslow Center is in the public interest of the City and the health, safety, morals and welfare of its residents and in accordance with the public purposes and provisions of applicable laws. At

least for the first fifteen (15) years of operation of the Breslow Center, certain hours of operation shall be open to the public for open ice skating by the public (“Open Skating”) and additional hours for use by municipal or community sporting leagues or groups outside the University and not open to the general public (“Community Rental”) which may include use for ice hockey, figure skating, and other activities. The term “Rentable Hour” as used in this Agreement shall be defined as a full sixty (60) minute time period of usable time on the ice. The term “Available Hours” as used in this Agreement shall be defined as the number of hours the Breslow Center is open, less the time for setup and breakdown, ice cuts and other day to day ice maintenance activities as the Breslow Center manager deems necessary, in the manager’s sole discretion. The Breslow Center may be closed for (1) regular maintenance to the ice for up to two weeks per year, (2) for such other times as the parties agree to in writing, (3) and for repairs and/or replacements as necessary. During the first fifteen (15) years of operation, the parties agree to meet at a minimum on an annual basis to discuss operational concerns and the allocation of skating hours and fees, including any concerns raised by members of the public on use. On or before the end of the fourth year of operation of the Breslow Center, the parties agree to meet to evaluate if a second sheet of ice is feasible based on demand.

B. Open Skating. During the first fifteen (15) years the Breslow Center is open, University shall offer Open Skating at a minimum amount of sixteen (16) Rentable Hours of the Available Hours each month year-round; provided, however, the parties may agree to a lesser number of Rentable Hours based on demand.

C. Community Rental. During the first fifteen (15) years the Breslow Center is open, University shall offer Community Rental for a minimum of fifty percent (50%) of the In Season Prime Time Available Hours. Prime Time Available Hours as used in this Agreement shall be defined as the Available Hours between 4:00 p.m. to 9:30 p.m. Monday through Thursday and between 7:00 a.m. to 9:00 p.m. Saturday through Sunday for the period from September 1 through April 30 each year. Additional Community Rental time may be provided as demand allows. However, the parties may agree to a lesser number of Rentable Hours based on demand.

D. Standards for Operation. University shall be responsible for all operations of the Breslow Center year-round. University shall employ a person or persons, or a professional ice rink management company, duly qualified and experienced to operate the Breslow Center. University shall, at its own expense, furnish all materials, supplies and assistance required in the operation of the Breslow Center, including any maintenance, repairs and utilities as outlined in this Agreement. University shall pay as the same shall become due and prior to delinquency each and every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, by reason of its interest in and operation of the Breslow Center. City shall have no obligation for ongoing operation and maintenance of the Breslow Center, subject to City’s contribution to operating deficits as set forth in paragraph 3(D) hereof. University may provide alcohol sales at the Breslow Center through University’s approved concessionaire. It is understood and agreed that the Breslow Center shall be operated in accordance with operational standards established by the industry.

E. Intangible Rights. Without exception, University shall obtain and pay for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to the University’s operation of the Breslow Center, including any required performance licenses. To the extent allowed by law, University shall defend, indemnify, protect and hold harmless City, its officers, employees, and agents against

any and all claims for infringement of any patent, copyright, trademark, or other intangible related to operation or use.

F. Initial Operating Deficit. City shall contribute up to one-half (1/2) of the operating deficit for the first five (5) years of operation of the Breslow Center after it is open up to Forty Thousand and no/100 Dollars (\$40,000.00) per fiscal year only after review of the Breslow Center's operating statements documenting such deficit. City's obligation for each year shall in no event exceed Forty Thousand and no/100 Dollars (\$40,000.00) per fiscal year. No amount of the yearly payment toward the deficit may be carried over to subsequent years. City and University shall confer and approve what line items shall be included in the operating budget and statements per fiscal year prior to the opening of the Breslow Center. The Breslow Center shall be treated as a separate business unit by University and all revenues accrued and expenses incurred thereof shall be maintained accordingly by University or the manager of the Breslow Center. City shall at all reasonable times, and upon ten (10) business days' prior written notice, be permitted to inspect the financial records of University or its agents as they pertain to the operation of the Breslow Center, as also provided herein. At the end of the first five (5) years of operation of the Breslow Center, City is no longer obligated to share any deficit in operations and University shall have the exclusive right to make all operational decisions with respect to the Breslow Center, including setting the fees for use of the Breslow Center, except as otherwise expressly provided herein.

G. Ongoing Operating Deficit. Notwithstanding any other provision of this Agreement, if during the first five (5) years of operation of the Breslow Center the operating deficit exceeds Eighty Thousand and No/100 Dollars (\$80,000.00) in any fiscal year, University and the City shall meet to consult on the need to make immediate adjustments in hours and/or fees for Open Skating and/or Community Rental.

At any time after the first five (5) years of operation of the Breslow Center an operating deficit exists, the University reserves the right, at its sole discretion, to adjust the hours and fees associated with Open Skating and/or Community Rental in order to avoid such deficit. Any adjustment in Open Skating and/or Community Rental hours or fees made by the University under this subsection shall be reasonably related to eliminating or reducing the operating deficit.

In exercising its authority under this subsection, the University shall consult with the City to explore other ways to control the deficit without limiting public or community access to the Breslow Center.

If adjustments in hours or fees of Open Skating and/or Community Rental cannot entirely eliminate the deficit, the cost to the University of covering the deficit shall be deemed payment to the Breslow Center for additional ice time for University use.

Despite the occurrence of this deficit, and any subsequent adjustments to the hours of operations or fees, the Breslow Center shall continue to provide hours to the community for Open Skating and Community Rental for the first fifteen (15) years of operation and may only be closed for regular maintenance to the ice for up to two weeks per year, for repairs and/or replacements as necessary, and for such other times as the parties agree to in writing.

4. Fees. Initial fees for public use of the Breslow Center, including Open Skating, Community Rental, and cost of skate rental, shall be prepared by University and submitted to the Mayor for review and written approval thirty (30) days prior to the opening of the Breslow Center to the public, which shall not be unreasonably withheld. The Mayor shall approve or deny the proposed fees thirty (30) days after receipt of the proposed initial fees or forfeit any right of approval for said fees, which approval should not be unreasonably withheld. Any subsequent fee

increases for the first five (5) years of operation shall be established and approved in the same manner, with the understanding that fees may be increased to cover reasonable expenses. A schedule of all fees shall be kept posted at all times in a conspicuous place in the Building. During the first five (5) years of operation, the parties agree to meet at a minimum on an annual basis to discuss operational concerns and the allocation of skating hours and fees. The parties agree that the Breslow Center shall provide Open Skating and Community Rental to the public at competitive rates consistent with those charged at similar facilities in the region.

5. **City Events.**

A. **City Events Defined.** City will have use of the Breslow Center without paying a rent charge for up to three (3) City Events per calendar year. City shall coordinate and negotiate with University for use of the Breslow Center for additional City Events with reasonable compensation each year as necessary, which use shall not be unreasonably withheld. City Events are defined as any events at the Breslow Center that are co-sponsored or operated by the City and shall not exceed five (5) hours in length at one time.

B. **Scheduling of City Events.** Because of long-term nature of event scheduling, the scheduling of City Events are subject to the previously scheduled events by University or its operator and will be scheduled on open dates on a first-come first-served basis. Such use shall be restricted to dates the Breslow Center is not scheduled or being prepared for another event at the time of the reservation of the City Event.

C. **Costs and Expenses.** For any use of the Breslow Center for a City Event, City shall pay to University the direct costs and expenses incurred or paid by or on behalf of University to provide services beyond those provided for typical University use as requested by City in advance of such City Events, such as janitorial, police, traffic control, fire prevention, directional signage, and other similar services. Such costs and expenses to be paid by City shall not exceed the lowest rates customarily charged for other Breslow Center users for similar events. City, at its own cost and expense, shall employ all other support staff needed by City in order to hold a City Event. To the extent concessions are desired for a City Event, the City shall use University's concessionaire and shall not operate or permit others to operate concessions during City Events at the Breslow Center. For any City Event, City will be liable and responsible for the cleanup and repairs to the Breslow Center. City will pay to University the direct cost without any profit for the University to provide clean up to the extent requested in advance. In the event City does not request in advance University to provide clean up and City fails to clean up the Breslow Center after a City Event, then University will clean up the Breslow Center and charge City for the cleanup expense, and City will reimburse University within thirty (30) days of being billed. In the event the Breslow Center is damaged or is need of repair because of a City Event, then University will make the repair and charge the City for the reasonable and actual repair expense and City will reimburse University within thirty (30) days of being billed.

D. **Responsibilities of Parties.** City shall hold University harmless from and defend University from and against any and all claims arising out of City Events, except for the negligence or intentional misconduct of University in carrying out its City Event management and cleanup and repair responsibilities described herein. University may establish lawful and reasonable rules and regulations for events held or occurring at the Breslow Center. Upon adoption of such rules and regulations, and any amendments thereto, University shall provide City a copy and City shall observe faithfully the rules and regulations and such other and further

lawful and reasonable rules and regulations as University may from time to time adopt for all City Events.

6. **Insurance.**

A. **Property Insurance.** University shall obtain and maintain Commercial Property Insurance that covers the Breslow Center, including the Building's fixtures and equipment. The University will provide, or require its contractor to provide, builder's risk insurance during construction. The University may self-insure.

B. **Liability Insurance.** As of the date of the execution of this Agreement, the University is self-insured pursuant to the University of Nebraska Self-Insurance Program (the "Program"). Subject to the terms, conditions, exclusions and limits of the Statement of Self-Insurance Coverage contained in the Program, the Program shall pay on behalf of the University during any of its fiscal years all sums for which University shall become legally obligated to pay as damages for liability occurrences, up to the limits of \$1,000,000 per liability occurrence and \$3,000,000 in the aggregate of liability occurrences in any fiscal year.

C. Upon the written request of City, University shall provide City with a copy of the University of Nebraska Self-Insurance Trust Fund Program Statement ("Statement") evidencing self-insurance coverage. A copy of this Statement shall be provided to the City upon written request therefor. City shall be treated as an additional insured as if University possessed General Liability Insurance.

7. **Expenses.**

A. **Maintenance and Repair.** University shall pay all expenses of every kind and nature whatsoever attributable to the Breslow Center and Property including, but not limited to the following: all repairs to and maintenance of the Breslow Center, the Building and all improvements and systems placed on the Property by University.

B. **Utilities.** University shall pay all utility charges, including gas, electricity, telephone, garbage removal, cable and other services supplied to the Property which are separately metered or billed, including any connection charges associated therewith.

8. **No Joint Venture.** Except as otherwise provided herein, University has sole and exclusive charge and control of the manner and means of operating the Breslow Center. Nothing in this Agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties. The parties agree that each of them is acting on its own behalf and not as an employee, joint venturer or partner of the other. Each party is interested only in the results obtained from this Agreement and each party shall be in exclusive charge and control of its own performance according to its own means and methods. Neither party shall be deemed an agent or representative of the other and neither party has permission or authority to bind or commit the other party to any agreements or other obligations.

9. **Condition of the Property.** By purchasing the Property, University accepts the Property in its then current "as is" condition. City is not responsible to make any improvements to the Property unless agreed to in writing by the parties. University shall, at all times, keep the Breslow Center in good repair and shall also keep the same in a clean, sanitary and safe condition and in compliance with all applicable building, fire, life safety, accessibility codes and regulations and all applicable health, safety and police regulations in force. University shall be

responsible for all landscaping, snow removal, irrigation, mowing, and other upkeep of the grounds of the entire Property.

10. **Requirements of Law.** University shall, at its expense, observe and comply with all applicable present and future laws, ordinances, requirements, orders, directions, codes, rules and regulations of all governmental authorities having jurisdiction over the Property, including, but not limited to zoning, parking, the federal Occupational Safety and Health Act, the Americans with Disabilities Act, City and federal flood regulations, or other applicable federal, state and local requirements pertaining to University's use of the Property and Breslow Center, whether the same are in force at the commencement of this Agreement or may in the future be passed, enacted or directed. University shall also procure each and every permit, license, certificate or other authorization required in connection with the lawful and proper construction and use of the Property, the Building, and any improvements or appurtenance or any part thereof, as now or hereafter constituted. To the extent allowed by law, the University shall defend, indemnify, protect and hold harmless City and all the officers, employees and agents of City against any and all claims, demands, losses, actions or causes of action of whatsoever kind, arising or resulting from the University's failure to comply with and fulfill the requirements of the Americans with Disabilities Act.

11. **Indemnification.** To the greatest extent permitted by law, each party shall release, indemnify, save, hold harmless and defend the other party from and against any and all claims, liabilities, damages, losses and expenses, fines, penalties, costs, liens, suits, demands, and expenses, including but not limited to attorney's fees, arising out of or resulting from this Agreement or to any person or property in or about the Property that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of the indemnifying party, its employees, agents, contractors, subcontractors, or other duly authorized representatives or designees, or anyone for whose acts any of them may be liable. City shall not be liable to University, its agent, employees, representatives, customers, or invitees for any personal injury, death or damage including consequential damages to property caused by theft, burglary, water, gas, electricity, fire, paint fumes or for any other cause occurring on or about the Property, unless caused in whole or in part by the intentional or negligent act or omission of City. All property kept, stored, or maintained on the Property shall be so kept, stored, or maintained at the sole risk of the University. The parties do not waive their governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law. This paragraph survives any termination of this Agreement. Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

12. **Default, Waiver.** In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default if such failure continues for fourteen (14) days after the non-complying party receives written notice specifying the nature thereof; provided, however, in the event such failure cannot, in the exercise of reasonable diligence, reasonably be cured within such fourteen (14) day period, such failure shall not be considered a default, provided the non-complying party commences the cure within the fourteen (14) day period and continues to exercise reasonable diligence to complete the cure. If any

default under this Agreement shall occur and the defaulting party fails to cure the same within the expected curative time period herein provided, the other party may seek any remedy at law or in equity without notice or demand, including specific performance. No delay or omission of any party in exercising any remedies or power accruing upon any event of default custom or practice of the parties which varies from the terms of this Agreement shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein. No right or remedy given in this Agreement to City or University is intended to be exclusive of any other right or remedy hereof provided by law. Each right and each remedy shall be cumulative and in addition to every other right or remedy given in this Agreement or now or hereafter existing at law or in equity or by statute.

13. **Sign Criteria.** University shall submit to City for its review and comment all of University's permanent signage proposed to be erected, placed, or maintained by University on the exterior of the Building. The parties acknowledge and agree that University will install permanent signage of a Nebraska "N" on the outside of the Breslow Center. The City may propose signage of the City's logo for written approval by University.

14. **Fair Employment and Treatment.** University and anyone acting by virtue of this Agreement shall not discriminate against any employee (or applicant for employment) with respect to hire, tenure, compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended, nor shall University or anyone else, in conducting the business covered by this Agreement, discriminate against any patrons of said business or against anyone else, because of such person's race, color, religion, sex, national origin, ancestry, disability or creed.

15. **Assignment.** In the case of the assignment of this Agreement by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

16. **Severability.** If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

17. **Further Assurances.** Each party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged or delivered, any and all such further conveyances, confirmation, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all

documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

18. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

19. **Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

20. **Entire Agreement.** This Agreement and the Purchase Agreement contain the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered except in writing and consented to by all parties.

21. **Notice and Demands.** Notice, demand or other communication to the City or the University required or appropriate under this Agreement shall be in writing, sent by (a) personal delivery, (b) expedited delivery service with proof of delivery, (c) registered or certified United States mail, postage prepaid, or (d) prepaid fax if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

If to the City: Mayor
555 South 10th Street
Lincoln, NE 68508
Fax: (402) 441-7120

With a copy to: City Attorney
555 South 10th Street
Lincoln, NE 68508
Fax: (402) 441-8812

If to the University: The University of Nebraska-Lincoln
Office of Business and Finance
307 Canfield Administration
Lincoln, NE 68588-0425
Fax: (402) 472-7963

With a copy to: University General Counsel
3835 Holdrege Street, Suite 201
Lincoln, NE 68583-0745
Fax: (402) 472-2038

22. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

23. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

24. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

25. **Employment Status.** City and University agree that all individuals involved in the design, construction and operation of the Breslow Center must be verified using the federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. §§ 4-108 to 4-114 as amended.

26. **Delegation of Authority.** The Mayor (or his designee) is authorized on behalf of the City and the University President (or his designee) is authorized on behalf of the University to take all necessary or reasonable actions to implement and close the transaction and agreements contained herein and to make any reasonable amendments hereto.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2014 by Chris Beutler, the Mayor of the City of Lincoln, on behalf of the City.

(S E A L)

Notary Public

BOARD OF REGENTS OF UNIVERSITY OF NEBRASKA

James Linder, Interim President

Attest: _____
Carmen K. Maurer, Corporation Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged by me this ___ day of _____, 2014 by James Linder, Interim President, and Carmen K. Maurer, Corporation Secretary, of the Board of Regents of the University of Nebraska on behalf of the University.

(S E A L)

Notary Public