

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into by and between the **CITY OF LINCOLN, NEBRASKA, a municipal corporation**, hereinafter called "CITY," and the **NEBCO, INC., a Nebraska corporation**, hereinafter called "NEBCO."

### RECITALS

I. Seller City of Lincoln currently owns property located at 901 N. 6<sup>th</sup> Street, Lincoln, Nebraska, legally described as a portion of West Haymarket Addition, Block 1, Lot 2, Lincoln, Lancaster County, Nebraska ("Property") and incorporated herein by this reference.

II. The Property was used for operation of the CITY's Public Works and Utilities Department-Street Maintenance Division operations including a fueling station.

III. On February 28, 2000, a Lease Agreement for the Lincoln Ballpark was approved by Ordinance No. 17627 by and between CITY, NEBCO, and the Board of Regents for the University of Nebraska-Lincoln ("University"). This Lease Agreement was entered into to develop and operate ballpark facilities adjacent to where the Property is located. Pursuant to paragraph VI of the Lease Agreement, on April 11, 2013, CITY informed NEBCO and University of its intent to declare the Property surplus and requesting from those parties a written refusal or indication of intent regarding the option to purchase the Property. NEBCO and the University both indicated in writing their intent not to exercise the option to purchase.

III. NEBCO has since approached CITY regarding the purchase of the Property. An appraisal has been completed for the Property. NEBCO desires to purchase and CITY desires to sell the Property for the amount of Six Hundred Fourteen Thousand Six Hundred Eighty-Six Dollars (\$614,686.00) according to the appraised property value of Five Dollars and Twenty Cents (\$5.20) per 118,209 square feet of the Property, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants provided for herein, the parties do agree as follows:

1. Agreement and Purchase Price. CITY, in consideration of payment by NEBCO of Six Hundred Fourteen Thousand Six Hundred Eighty-Six Dollars (\$614,686.00) and any other conditions and terms set forth herein, shall sell and convey by quitclaim deed the Property as described in Attachment "A" to NEBCO, subject to retention of permanent utility easements and the terms and conditions of this Agreement.

2. Necessary Approvals. This Agreement is contingent upon CITY obtaining all necessary approvals under state law, municipal ordinances, or any other laws applicable to real estate purchases, prior to 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 NEBCO. In the event CITY does not obtain all necessary approvals by the closing date, the parties may agree to an extension of the closing date or either party may terminate the Agreement.

3. Evidence of Title. Prior to closing, NEBCO shall 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 which shall be approved by NEBCO if they do not interfere with NEBCO's intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by NEBCO, and which do not interfere with NEBCO'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 time of closing and which CITY is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of NEBCO; (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 NEBCO. NEBCO 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. NEBCO 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 NEBCO 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 NEBCO, 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, NEBCO 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 NEBCO 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 NEBCO 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 NEBCO.

4. Closing. At the 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. Closing shall occur within thirty (30) days of approval by City Council. 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 NEBCO at closing, and the risk of loss or damage to the Property shall rest with CITY until the time of delivery of possession.

5. Taxes. Any real estate taxes or special assessments on the Property prior to the date of closing shall be paid by CITY at or prior to closing. Any real estate taxes or special assessments on the Property after the date of closing shall be paid by NEBCO. The taxes for the year of closing shall be prorated based upon the then most current property valuations and upon the most current tax rate as determined by law.

6. Environmental; Tests. City shall update at its cost the previously completed Phase I Environmental Site Assessment of the Property prior to closing. NEBCO 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. NEBCO 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 NEBCO or its representatives. NEBCO 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. NEBCO shall have until closing to conduct all Tests or terminate the Agreement. In the event NEBCO 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 NEBCO'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. NEBCO shall have until closing to conduct all Tests or terminate the Agreement.

7. As Is. NEBCO acknowledges that it has not been influenced to enter into this transaction, nor has NEBCO relied upon any warranties or representations not set forth or incorporated in this 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 to the extent otherwise provided in this Agreement, the Property shall be conveyed to NEBCO 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 NEBCO regarding the condition of the Property, including environmental conditions, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. NEBCO 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.

8. Zoning and Use. CITY shall initiate a change of zone with the Lincoln-Lancaster County Planning Department. The Property currently has a zoning classification of P-Public. Adjacent property has zoning classifications of P, I-2, and B-4. CITY is proposing a change of zone for the Property from P to H-3. NEBCO consents to and agrees with the change of zone and intends to use the Property for only those purposes provided by the proposed zoning as provided in Lincoln Municipal Code or attendant standards or regulations. The parties agree to cooperate on the change of zone, including any reasonable considerations NEBCO may provide to CITY for development. 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 city, state, and federal ordinance, statutes, or rules and regulations.

9. Construction of Agreement. This Agreement, which may be executed in multiple counterparts, is to take effect as a sealed instrument, sets forth the entire agreement between the parties, is binding upon and inures to the benefit of the parties hereto and their respective, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both CITY and NEBCO. 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. This Agreement shall be governed and construed by and under the laws of the State of Nebraska. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid. All terms, conditions, and warranties contained in this Agreement shall survive the execution and closing. No inference shall be drawn, either against or in favor of any party, based on the drafting of any portion hereof. The parties agree that time is of the essence in performing the obligations in this Agreement. This Agreement constitutes the entire understanding of the parties with respect to the Property and sale hereof and supersedes all prior representations, agreements, or understandings.

10. NEBCO reserves the right to assign this Agreement to a qualified intermediary to utilize a like-kind exchange under Sec. 1031 of the Internal Revenue Code. CITY agrees to cooperate with NEBCO to effectuate the exchange.

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