

## REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between **C Street, LLC**, a Nebraska limited liability company ("Buyer"), and the **City of Lincoln, Nebraska**, a municipal corporation ("Seller").

NOW THEREFORE, in consideration of the mutual recitals and covenants of the parties herein, it is mutually agreed as follows:

1. **Property.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the real estate (as defined in Neb. Rev. Stat. § 76-201) located at the Southwest corner of Superior Street and Lewis Avenue and legally described as:

Lots 1, 2, 3, 4, and 14, (except the North 10 feet of Lots 1 and 14), Block 1, North Park Subdivision, Lincoln, Lancaster County, Nebraska, free and clear of all liens, leases, and encumbrances, but with reservations and exceptions as follows:

- A. Title shall be taken subject to any restrictive covenants, easements, mineral rights, reservations or conditions of record; and
- B. Title shall be taken subject to a restriction/control of access prohibiting access to Superior Street and Lewis Avenue as described in Instrument No. 90-30099; and
- C. It is understood and agreed that there may also be additional easement requirements that will be retained by *Seller* or that *Buyer* may be required to execute and convey to *Seller* on the date of close which includes but not limited to water, sewer, storm water and electrical utilities.
- D. Title shall be taken subject to the City's reservation of street right-of-way purposes ("Superior Street ROW") sufficient to provide 60 feet of right-of-way south of the centerline on Superior Street.

2. **Price and Payment.** Buyer agrees to pay Seller a price of **SIXTY-TWO THOUSAND FOUR HUNDRED TWENTY AND NO/100 DOLLARS, (\$62,420.00)**, (the "Purchase Price"), as follows:

- A. **Earnest Deposit.** Within three (3) days of execution of the Agreement by Seller, Buyer shall pay the sum of **FIVE THOUSAND AND NO/100 DOLLARS, (\$5,000.00)**, (the "Earnest Deposit"), to be held by the City or a Title Company (defined below) in accordance with the terms of this Agreement.
- B. **Closing Payment.** The balance of the Purchase Price, which is the sum of **FIFTY-SEVEN THOUSAND FOUR HUNDRED TWENTY AND NO/100 DOLLARS, (\$57,420.00)**, shall be due on the Closing Date.

3. **Title.** At the closing, Seller will execute and deliver to Buyer a general warranty deed (the "Deed") conveying the Property in fee simple free and clear of all liens, encumbrances, encroachments, and special assessments levied or assessed, or special assessment districts that have been created and ordered constructed, as of the date of this Agreement.

4. **Closing Costs.** Seller shall be obligated to prepare the Deed and to pay Nebraska Documentary Stamp tax relating to this transfer, if any. Buyer shall be obligated to prepare the Real Estate Transfer Statement and the costs, if any, of filing the Deed. Each party shall pay its own attorney fees. Buyer and Seller agree to retain Charter Title as the escrow closing agent ("Title Company") to close this transaction and shall execute the Title Company's agreement upon reasonable request. Buyer and Seller agree to equally share the cost for such escrow closing service.

5. **Title Insurance.** Within fifteen (15) business days from the date this Agreement is approved by the City of Lincoln, Buyer shall obtain a title insurance commitment for the Property, issued by the Title Company. The title insurance commitment will show marketable title to the Property in Seller and in accordance with the terms and conditions of this Agreement. Buyer and Seller shall each pay one-half (½) the expense of the title insurance policy insuring Buyer for its ownership of the Property for the amount of the Purchase Price. Buyer also agrees to provide Seller a written legal opinion showing defects, if any, in the title to said real estate no later than ten (10) days prior to the date of closing and completion of this sale, hereinafter provided. If such defects in the title can be corrected prior to closing, Seller shall correct said defects at its expense. If such defects in title cannot be corrected prior to closing, this Agreement shall, at the option of the Buyer, become null and void and both parties will be released from their covenants and obligations hereunder and Earnest Deposit will be returned to Buyer.

6. **Due Diligence.** Buyer shall have the right for sixty (60) days after the full execution of this Agreement ("Due Diligence Period"), at Buyer's own expense, to make a physical inspection of the Property, conduct non-invasive tests as Buyer may desire (including a Phase I environmental site assessment), and obtain any and all third party consents necessary for Buyer's proposed use of the Property. Buyer agrees to indemnify, defend and hold Seller harmless of and from any claim for damages or injuries arising from Buyer's inspection of the Property, and notwithstanding anything to the contrary in this Agreement, the obligations of Buyer under this paragraph shall survive Closing or any termination of this Agreement. Buyer shall, at Buyer's expense, restore the Property following any such physical inspection to the condition that existed prior to such inspection. Seller agrees that in the event Buyer determines, in its sole and absolute discretion, that the Property is not suitable for Buyer, Buyer shall notify Seller, in writing, prior to the expiration of the Due Diligence Period, that Buyer is terminating this Agreement. Upon Seller's receipt of such notification this Agreement shall become null and void and the Earnest Deposit shall be returned to Buyer.

7. **Closing Date.** Buyer and Seller agree to close and complete this sale in accordance herewith on or before thirty (30) days from the expiration of the Due Diligence Period. An extension of this date may be agreed to upon mutual written consent of both Buyer and Seller.

8. **Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date free and clear of any other leases or agreements. No tenants of Seller or

other third parties shall have any right to possess the Property or any part thereof as of the Closing Date.

9. **Risk of Loss.** Risk of loss or damage to the Property shall rest with Seller until the Closing Date.

10. **Taxes.** Seller is responsible for real estate taxes, if any, on the Property for all years prior to the year in which closing occurs. Real estate taxes for the calendar year in which the closing occurs shall be prorated to the date of closing at the 2015 tax and assessment rates and purchase price.

11. **Approval.** Buyer shall in no manner be bound by the terms and conditions of this Agreement until the sale has been properly executed as provided by the Charter of the City of Lincoln, Nebraska. Sale of the property must be approved by City Council as per Article II, Section 2 of the City Charter.

12. **Default and Remedies.** Time is agreed to be of the essence. In the event that Buyer fails to close on this transaction after all the conditions have been satisfied, Seller, as its sole and exclusive remedy, shall be entitled to a release of all the Earnest Deposit. The parties agree that such sum fairly represents the damage that would be occasioned by Seller in the event of a Buyer default.

13. **Lien Affidavit.** Seller shall execute on the Closing Date an affidavit on the Title Company's form which will remove all standard exceptions to Buyer's title insurance policy (excepting the standard survey exception which is only removable if Buyer obtains a survey), as may be required by the Title Company.

14. **Further Assurances.** Each undersigned 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, confirmations, 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 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.

15. **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.

16. **Assignment.** Neither Buyer, nor Seller, shall assign this Agreement without prior written consent of the non-assigning party. Buyer reserves the right to assign this Agreement to an affiliate prior to closing.

17. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and it is expressly agreed that any prior oral or written agreements between the parties hereto are superseded by this Agreement and are no longer of any effect whatsoever. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

18. **Notice and Demands.** Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally. For such purposes, addresses for notice purposes are:

A. Buyer: Marcus Tooze  
3000 Westbrook Circle  
Lincoln, NE 68522

with a copy to: DaNay Kalkowski  
Seacrest & Kalkowski, PC, LLO  
1100 Lincoln Mall, Suite 300  
Lincoln, NE 68508

2. Seller: City of Lincoln  
Attn: Mayor  
555 South 10<sup>th</sup> Street, Suite 301  
Lincoln, NE 68508

with a copy to: City Attorney's Office  
Attn: Rick Peo, Assistant City Attorney  
555 South 10<sup>th</sup> Street, Suite 300  
Lincoln, NE 68508

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

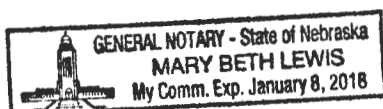
**"BUYER"**

**C Street, LLC**, a Nebraska limited liability company

By:   
Marcus Tooze, Manager

STATE OF NEBRASKA )  
 )ss  
COUNTY OF LANCASTER )

This 29 day of January, 2016, before me, a notary public in and for said county and state, personally appeared Marcus Tooze, Manager of **C Street, LLC**, a Nebraska limited liability company, and acknowledged the execution thereof to be his voluntary act and deed on behalf of the limited liability company.



  
Notary Public

**"SELLER"**

CITY OF LINCOLN, NEBRASKA, a  
municipal corporation

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

STATE OF NEBRASKA        )  
                                      ) ss  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **Chris Beutler**, Mayor, respectively, of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

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

**RECEIPT OF EARNEST DEPOSIT**

Charter Title, acting as the escrow agent of the Earnest Deposit, pursuant to the foregoing Real Estate Purchase Agreement, hereby acknowledges receipt of the sum of Five Thousand and No/100 Dollars, (\$5,000.00), and agrees to hold such Earnest Deposit pursuant to the terms of and conditions of the Real Estate Purchase Agreement.

**"TITLE COMPANY"**

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