

LEASE AND DEVELOPMENT AGREEMENT

THIS LEASE AND DEVELOPMENT AGREEMENT (hereinafter referred to as the "Agreement"), is made and entered into this _____ day of _____, 2007, by and between **LANCASTER COUNTY SCHOOL DISTRICT #0001 a/k/a LINCOLN PUBLIC SCHOOLS** ("LPS") and the **CITY OF LINCOLN**, Nebraska, a municipal corporation (the "City").

WITNESSETH:

WHEREAS, the needs and benefits to the community of Lincoln, Nebraska, and the parties to this Agreement would be improved by the construction and operation of certain agreed upon facilities on a joint and collaborative basis; and

WHEREAS, the parties desire to share space for a joint media center/library at the new Arnold Elementary School to be constructed by LPS; and

WHEREAS, the LPS standard school media center for the main room only is an average space of approximately 2800 sq. ft, hereinafter referred to as the "LPS Media Center"; and

WHEREAS, an approximate 2500 sq. ft. expansion of the LPS Media Center will serve as a City Library branch for the Arnold Heights area, hereinafter referred to as the "City Library Center" to create a joint media center/library center space; and

WHEREAS, LPS and the City desire to create a joint media center/library center space in which both parties will share some of the LPS Media Center and some of the City Library Center as shared space hereinafter referred to as "Shared Space"; and

WHEREAS, in addition to the City Library Center space and Shared Space, other area on the school site is necessary for the City Library Center to function as a city library at the new school such as mechanical, electrical, heating-ventilation-air-conditioning ("HVAC"), restrooms, parking and traffic ingress, egress and circulation areas, and walkways for ingress and egress, hereinafter referred to as collectively as the "Common Space"; and

WHEREAS, the purpose of this joint action is to provide for the construction, operations and maintenance of the City Library Center's physical facilities and to permit maximum use thereof so that both LPS and the City may fulfill their responsibilities to the public at a lesser cost than if each acted independently; and

WHEREAS, LPS is in the process of attempting to purchase real estate for the new Arnold Elementary School from the Airport Authority of the City of Lincoln, a body politic and corporation (the "Airport Authority") legally described and shown as Tract 1 on Exhibit "A" which is attached hereto and incorporated herein by this reference, sometimes herein after referred to as the "Real

Estate” or the “Property”; and

WHEREAS, this Agreement is contingent upon LPS purchasing Tract 1 and LPS proceeding with development of the Real Estate as a school site and other purposes; and

WHEREAS, the general intent of the parties is to co-locate an LPS Media Center and City Library Center on the Real Estate; and

WHEREAS, the site layout for the new Arnold Elementary School will include a building footprint for the school and other site improvements along with a specific building footprint layout for the LPS Media Center and a specific building footprint layout for the City Library Center on the Real Estate, along with Common Space inside and outside the building footprints for the parties’ joint use pursuant to and under this Agreement, with the exact building footprint, location and square footage within the overall building footprint of the City Library Center and Common Space to be used and paid for by the City to be agreed to and approved by the Joint Administrators, or otherwise determined according to the terms and conditions of this Agreement; and

WHEREAS, LPS and the City jointly desire to enter into this Agreement to establish a joint venture for the purpose of constructing, providing, maintaining, and operating, joint and collaborative facilities for their programs as described herein and to provide for the rights and privileges of the parties.

IN CONSIDERATION OF the terms and conditions hereinafter set forth, the parties agree as follows:

ARTICLE I.
DEFINITIONS

The following words and phrases used in this Agreement shall have the following meanings, unless the context or use indicates another or different meaning or intent:

1. **“Leased Land”** or **“Ground Lease”** shall mean the City Library Center ground lease to be provided to the City by LPS. Once the final overall site layout of the Property has been determined by LPS and the final building footprint of the City Library Center is agreed upon and approved by the Joint Administrators, the Joint Administrators shall obtain at their mutual expense a survey and produce a legal description for the leased land which shall include the building footprint of the City Library Center. Upon creation of said description, the Joint Administrators shall approve, date, and sign the same. The legal description shall be attached hereto and incorporated herein by this reference as Exhibit “B”. The ground lease shall commence on the date the legal description is signed, dated and attached hereto as Exhibit “B” and the terms and conditions of such ground lease shall be as provided herein.

2. **“City Library Center”** shall mean the agreed upon building footprint of the City Library

Center or the square footage area for same to be located on the Property as agreed to and approved by the Joint Administrators.

3. **“LPS School Facility”** or **“School Facility”** shall mean the overall building footprint of the new Arnold Elementary School or such other LPS Facility to be located on the Property. The **“LPS Media Center”** shall mean the building footprint of the LPS Media Center or the square footage area for same to be located on the Property.
4. **“Shared Space”** shall mean the space within the City Library Center and the LPS Media Center that is used by both the LPS Media Center and the City Library Center.
5. **“Common Space”** shall mean the space, both within and outside the building, including Shared Space in addition to the City Library Center on the Property to be used by the City as part of the City Library Center as agreed to and approved by the Joint Administrators.
6. **“Surrounding Property”** shall mean all areas, land, or improvements on the Property, except those areas, land, or improvements that are within the building footprint of the LPS School Facility, the building footprint of the City Library Center, and any agreed upon Common Space.
7. **“Joint Venture”** shall mean the joint and collaborative undertaking and the contract of the parties to construct, maintain, own and operate the facilities on the Property.

ARTICLE II.
GENERAL TERMS

The following are the terms and conditions of this Agreement:

1. **Purpose.** A joint venture is hereby established between the parties to provide community services to both the City and LPS. The Joint Venture shall not be a separate legal entity to conduct the cooperative undertaking by the parties. The City understands and agrees that in regard to the Property, LPS may enter into agreements, development projects, use leases or joint ventures with other public or private entities in regard to the LPS School Facility or the Surrounding Property.
2. **Duration or Ground Lease.** The ground lease to the City for the building footprint of the City Library Center shall be a ninety nine (99) year lease renewable for subsequent terms at the option of the City.
3. **Joint Administrators.** Joint Administrators shall administer the Joint Venture pursuant to the terms of this Agreement. The Joint Administrators shall consist of one person who shall be appointed by LPS and one person who shall be appointed by the City. LPS and the City may appoint a successor administrator from time to time. The Joint Administrators shall

have the duties, power and authority provided in this Agreement, or as may be delegated to the Joint Administrators by the governing bodies of the parties from time to time.

Unless otherwise provided herein, any action taken by the Joint Administrators shall be approved by both persons. The Joint Administrators shall have regular meetings as mutually agreed upon. The Joint Administrators shall keep a record of all business conducted and agreed upon, and of any and all transactions and proceedings occurring at the meetings or as a result of this Agreement.

The initial Joint Administrator for LPS is:

Dennis Van Horn, Associate Superintendent for Business Affairs

Insert Name

The initial Joint Administrator for the City is:

Carol Connor, Library Director

Insert Name

ARTICLE III. GROUND LEASE TO CITY

Unless otherwise mutually agreed or provided by this Agreement, the following are the general terms and conditions of the ground lease to the City for the Leased Land:

1. **Real Estate Ownership.** LPS owns or will own the Leased Land and shall continue to own the same subject to the terms and conditions of this Agreement.
2. **Agreement to Lease.** Once the legal description of the Leased Land is agreed upon by the Joint Administrators, signed by both parties, and is attached to this agreement, LPS agrees and hereby leases to the City and the City hereby leases from LPS, the Leased Land according to this Agreement.
3. **Initial Term and Assignment.** The initial term of the Ground Lease shall commence on the date the legal description is signed, dated and attached hereto as Exhibit "B" and shall be for a term of ninety-nine (99) years from and after that date unless the lease is sooner terminated, as provided by this Agreement. The City shall not sell or assign its leasehold interest in the Property or the Leased Land during the initial term or any renewal term without written consent of LPS, except as the Joint Administrators may agree for purposes of financing.
4. **Renewal Term.** At the end of the initial term of ninety-nine (99) years, the Ground Lease may be renewed for a subsequent ninety-nine (99) year term ("Renewal Term") at the option of the City until termination by mutual consent of the parties.

5. **Rent and Additional Rent.** The City shall pay no rent to LPS for the Ground Lease on the Leased Land. The City shall pay LPS monthly operational costs expenses which it incurs as a result of this joint undertaking. The Joint Administrators shall analyze and determine such costs and expenses. Any other sums of money or charges to be paid by the City pursuant to the provisions of any other sections of this Agreement shall be designated as "Additional Rent".

6. **Use.** The leasehold interest in the Property shall be used by the City as provided by this Agreement, or as otherwise mutually agreed upon from time to time as follows:
 - (a) The leasehold interest in the Property granted and agreed to hereunder and use of the City Library Center by the City shall occur outside of LPS school hours, including intermittent evening and weekend school activities, as defined by LPS. It is understood and agreed that the Shared Space within the City Library Center space shall be used by LPS during school hours and the Shared Space within the LPS Media Center by the City along with other agreed upon Common Space at all other times. Subject to the above, the exact details and schedule of use by LPS and the City shall be as provided for in a supplemental agreement to be approved by the Joint Administrators.

 - (b) During the times the City Library Center along with other agreed upon Common Space is being used by the City, the City agrees it will not use the leasehold interest or do or permit to be done in, on, or about the Leased Land anything which is prohibited by or which will in any way conflict with any law, statute, ordinance or governmental rule or regulation. The City agrees to promptly comply with and carry out all legal or justifiable orders, requirements, or conditions now or hereafter imposed upon the City by ordinances, laws, and/or regulations of the State or municipality in which the Leased Land is located, insofar as they are occasioned by or required in the conduct of the business of the City and are legally enforceable against the City. The design and location of all City signage shall be approved in advance by LPS. The City shall be solely responsible for the installation, maintenance, repair and replacement of its signage, and shall pay all costs and expenses relating thereto. The City will not make or allow to be made any alteration, addition or improvement to or upon the Leased Land or any part thereof, or attach any fixtures or equipment to the Leased Land, without first obtaining LPS's written consent. The City will not do or permit to be done any act or thing upon the Leased Land which would (a) jeopardize or be in conflict with fire insurance policies covering the Leased Land, or (b) subject LPS to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being carried on upon the Leased Land. The City will not permit pollution or store, use or dispose of any hazardous, toxic, corrosive, explosive, reactive, or radioactive matter, substance, waste or material in, on or about the Leased Land. The City hereby agrees to indemnify and hold LPS harmless against any and all claims, actions, damages, liability, and expenses in connection with damage, injury or loss of life to person or damage to property arising out of the use, occupancy or operation of the City Library Center on the Property, including acts of pollution or terrorism.

7. **Care and Maintenance of the Leased Land and Facilities.** The City shall reimburse LPS for all costs necessary to repair and maintain in good order and condition all interior and exterior portions of the Leased Land including the City Library Center and its portion of any Common Space, including the routine preventive maintenance of the building and its service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment and all glass, including plate glass, exterior doors, automatic door operators of the facilities, and parking lot, sidewalk and grounds maintenance unless otherwise mutually agreed. LPS will provide all custodial services for the City Library Center and the City shall reimburse LPS for all costs of custodial services to clean the City Library Center and its percentage share of the costs for the Shared Space and Common Spaces on a Monday through Friday cleaning schedule.

8. **Replacement Costs.** If either party incurs additional costs related to the joint library facility the Joint Administrators shall determine and reimbursement costs which could include, but not be limited to, replacement of books, equipment and furnishings or other collection items.

9. **City's Insurance.** (a) At all times during the term of this Lease, the City will carry and maintain, at its sole cost and expense, the following insurance, in the amounts specified below or such other amounts as LPS may from time to time reasonably request to adjust the coverage's to be in accordance with LPS coverage standards for its properties, with insurance companies and on forms reasonably satisfactory to LPS:
 - (i) Bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$1,000,000.00; all such insurance, or self insurance, will be on a Commercial General Liability form;

 - (ii) Property insurance, or self insurance, covering all of the City's leasehold improvements to the Leased Space in an amount not less than the full replacement cost thereof; property insurance forms will provide special perils coverage. All policy proceeds will be used for the repair or replacement of the property damaged or destroyed; and

 - (iii) Workers' compensation insurance, or self insurance, satisfying the City's obligations and liabilities under the workers' compensation laws of the State of Nebraska, including employer's liability insurance in the limit of \$100,000/\$500,000/\$100,000.

 - (iv) To the extent the City contracts or subcontracts out any work or services on or for the Leased Land, or any facility or improvement on the Property, or performs any other work or service on the Property as may be mutually agreed, the City agrees that LPS shall be added to and named as an additional insured on that vendors or contractor's General Liability.

- (b) Forms of the Policies. Certificates of insurance evidencing the City's respective policies will be delivered to LPS within thirty (30) days of approval of the final plans and specifications, cost estimates, any cost sharing or allocations, and any proposed construction contract or contracts under this joint venture, and from time to time thereafter upon request of LPS. The City shall cause LPS to be named as an additional insured under the policies specified in Sections 8(a) (i) (ii) and (iv), and all such policies will provide that they may not be terminated nor may coverage be reduced except after thirty (30) days' prior written notice to LPS. All Commercial General Liability and property policies maintained will be written as primary policies, not contributing with and not supplemental to the coverage that LPS may carry.
- (c) Waiver of Subrogation. The City waives any and all rights to recover against LPS for any loss or damage arising from any cause covered by any insurance required to be carried pursuant to this Section or any other insurance actually carried by the City to the extent of the limits of such policy.

LPS Insurance. (a) At all times during the term of this Lease, LPS will carry and maintain, at its sole cost and expense, the following insurance, in the amounts specified below or such other amounts in accordance with LPS coverage standards for its properties:

- (i) Bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$1,000,000.00; all such insurance will be on a Commercial General Liability form;
- (ii) Property insurance covering all of LPS's improvements to the Leased Land; and
- (iii) Workers' compensation insurance satisfying LPS's obligations and liabilities under the workers' compensation laws of the State of Nebraska.
- (iv) To the extent LPS contracts or subcontracts out any for work or services on or for the Leased Land, or any facility or improvement on the Property, or performs any other work or service on the Property, LPS agrees that the City shall be added to and named as an additional insured on that vendors or contractor's General Liability and Auto Liability insurance.

(b) Forms of the Policies. Certificates of insurance evidencing LPS's respective policies will be delivered to the City within thirty (30) days of approval of the final plans and specifications, cost estimates, any cost sharing or allocations, and any proposed construction contract or contracts under this joint venture, and from time to time thereafter upon request of the City. LPS shall cause the City to be named as an additional insured under the policies specified in Sections 9(a) (i) (ii) and (iv). All Commercial General Liability and property policies maintained will be written as primary policies, not contributing with and not

supplemental to the coverage that the City may carry.

(c) **Waiver of Subrogation.** LPS waives any and all rights to recover against the City for any loss or damage arising from any cause covered by any insurance required to be carried pursuant to this Section or any other insurance actually carried by LPS to the extent of the limits of such policy.

10. **Rules and Regulations.** The City and its employees will comply with, all reasonable rules and regulations applicable to the Property as adopted by LPS from time to time. The Joint Administrators shall meet from time to time to discuss, revise or modify such rules and regulations in the interests of both parties. The City will be provided advance written notice and an opportunity for input on any such rules and regulations the City is obligated to follow during the term of the lease.
11. **Construction (Mechanics') Liens.** Each party will pay or cause to be paid all costs and charges for work done by it or caused to be done by it; in, on, or to the Property and Leased Land, and for all materials furnished for or in connection with such work. Each party will indemnify the other against and hold the other, and the Property, free, clear and harmless of, from and against all construction or mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work performed by or on behalf of it. Nothing contained in this Lease will be deemed to constitute the consent or agreement of LPS to subject LPS's interest in the Premises to liability under any mechanics', construction or other lien law.
12. **Re-Delivery of Possession.** Upon the expiration or termination of the ground lease, the City shall promptly quit and surrender the Property and Leased Land to LPS in accordance with the terms of this Agreement. The City may remove from the Property and Leased Land any trade fixture, equipment and movable furniture placed in Property and Leased Land by the City, whether or not such trade fixtures or equipment are fastened to the Property and Leased Land. The City shall not remove any trade fixture or equipment without LPS's prior written consent if removal will result in impairing the structural strength of a building or facility on Property and Leased Land. Anything left in or on the Property and Leased Land after the expiration or termination of the ground lease will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by LPS without notice to the City or any other person and without obligation to account for or to them.
13. **Damage or Destruction.** If a building or facility on Property and Leased Land are damaged by fire or other casualty, the Joint Administrators shall develop a plan to repair the damage or terminate the joint venture of the parties. Such plan shall include dates, timelines, schedules, and responsibilities for the repair along with cost allocations or sharing obligations, or otherwise meet the requirements for termination as provided in Article XI.

14. **Conversion to Another Public Use.** In the event the City desires to cease operation of the City Library Center and use the space for another public use deemed as appropriate contiguous with a public school, the Joint Administrators shall develop a plan for the conversion of the space and allocation of the assets as previously described. All cost associated with the conversion will be born by the City of Lincoln. Both governing bodies must approve the conversion of use and the plan for conversion of the space.

ARTICLE IV.
DESIGN

1. LPS has employed an architect/engineer (the DLR Group) to develop the necessary plans and specifications for construction of the LPS School Facility, LPS Media Center, Common Space, and improvements on the Surrounding Property. The City approves the architect/engineer hired by LPS and also agrees to fund its share of the costs to develop the necessary plans and specifications for construction of the City Library Center and Common Space. Unless otherwise mutually agreed, each party shall pay its share of the architect/engineer fees and expenses in the planning process as allocated to it by the architect/engineer to develop the necessary plans and specifications in order to proceed to the construction phase of the project whether the joint venture proceeds to construction phase or not. In order to proceed to the construction phase of the joint venture, all final plans and specifications, cost estimates, any cost sharing or allocations, and any proposed construction contract or contracts for the City Library Center under this joint venture shall first be approved by the Joint Administrators or governing bodies of the City and LPS as required. In the event such final plans and specifications as provided for herein are not approved and agreed upon by the governing bodies of the parties, this Agreement and the joint venture shall terminate. On thirty (30) days written notice, either party may implement this termination provision by notifying the other party that agreement on final plans and specifications for the City Library Center cannot be reached and that this Agreement and the joint venture are therefore terminated. In the event of termination hereunder, each party shall pay its own costs and expenses incurred on the joint venture to the date of termination.
2. Upon approval of the final plans and specifications, cost estimates, any cost sharing or allocations, and any proposed construction contract or contracts for the City Library Center under this joint venture, LPS shall take all necessary steps to obtain bids and enter into a construction contract or contracts to construct the same as provided by law, unless otherwise mutually agreed.
3. The contract or contracts for construction of the City Library Center shall be between the contractor or contractors selected and LPS. It is understood and agreed that the contract or contracts for construction of the City Library Center may be included in the overall contract or contracts for the LPS School Facility or in a separate contract or contracts for the City Library Center portion only. It is further understood and agreed that LPS may proceed with

the overall LPS School Facility project, bidding and construction as it deems appropriate and necessary.

4. The governing bodies of the parties shall approve the award of the contract or contracts for the City Library Center and all construction and contract documents including, without limitation, the final plans and specifications for the City Library Center.
5. The construction plans for the City Library Center shall include all the utility services and facilities required for its operation on the Property.
6. The contract or contracts for construction shall include a schedule for the completion of the various facilities and improvements on the Property and a date for final completion and acceptance by the Joint Administrators of the parties.
7. LPS shall oversee construction of the City Library Center including, without limitation, the site preparation and actual construction. The Joint Administrator for the City or another person designated by the City shall attend all construction meetings and also oversee construction of the City's portion of the project, and shall have authority to make decisions for the City as needed to facilitate the construction process as to change orders and any other unanticipated construction events and contingencies.
8. All costs, expenses, or fees for local, state or federal permits, gas, light, power, water, sewer or other utility access or hookup costs and fees including the amount payable under the architect's contract for the design and construction of the facilities shall be shared by the City and LPS as allocated by the architect/engineer and agreed upon, and approved by the Joint Administrators.
9. All construction under this Agreement must be in accordance with all federal, state and local building codes, laws, regulations, and all educational laws and regulations applicable to the facilities, and the facilities shall comply with the requirements of the Americans with Disabilities Act.
10. The parties shall be entitled to access to the Property and the Leased Land and to the areas under construction for inspection. It is anticipated that the Joint Administrators or their designees shall assist, direct and oversee the construction process.
11. All construction contracts shall include in the terms and conditions of the construction contract a provision for payment and performance bonds as required by law and certificates of insurance as set forth and required by the construction contract.
12. Payments to the contractor or contractors shall be made upon certificate of the architect/engineer as to the percentage of completion of the work and as to the architect's cost allocations for the party or parties responsible for payment and certificates by the

contractor that all contractors and materialmen have been paid for work and materials paid for pursuant to prior progress payment requests. Payments for the City's share of all construction costs and expenses shall be made directly to the contractor or contractors on a pay-as-you-go basis within thirty (30) days of billing or as otherwise provided by the construction contract or contracts.

ARTICLE V.
CONSTRUCTION FUNDS

1. Prior to the award of a construction contract or contracts for the City Library Center, the City shall establish and approve a construction budget in the amount of its allocable share of the facility and improvements on the Property, and for any other costs necessary to complete the City Library Center on the Property and not included within the construction budget.
2. In the event plans and specifications for the City Library Center are approved and agreed upon by the governing bodies of the parties as provided herein, by signing this agreement the City is authorizing LPS to sign the construction contract or contracts for the City Library Center, and agrees that it shall budget for, appropriate and pay upon request funds sufficient to cover the construction costs and expenses in the amount of the construction contract or contracts for the City's portion of the construction costs and expenses. LPS shall contract to provide street, sewer, water, and utilities for the benefit of the facilities and improvements on the Property. The costs of construction including any engineering costs shall be allocated to each party by the architect/engineer.

ARTICLE VI.
JOINT VENTURE OWNERSHIP INTEREST OF PARTIES

1. LPS shall be and remain the owner of the Property.
2. The City shall be responsible for, maintain, and control the Leased Land subject to mutual agreements of the parties.
3. The parties may purchase personal property individually which shall remain their own property. The parties may jointly purchase and own any personal property purchased for use of the Joint Venture and their ownership interest shall be the ratio of the amount paid by each party to the whole price of the personal property purchased.
4. The share to be paid by a party is determined as herein provided or otherwise agreed upon and may or may not be related to actual usage.
5. The ratio and pro rata sharing of the cost of personal property acquired by the Joint Venture

shall be approved and agreed upon by the Joint Administrators.

6. The cost of purchase of personal property and expenses related thereto may be altered or changed from time to time in the event additional purchases require additional expenditures.
7. Personal property including furniture, equipment, or miscellaneous apparatus to be used exclusively or predominately by the City or LPS shall be purchased by and shall be the sole property of that party.
8. A schedule of any jointly owned personal property and the joint interest of of each party therein, shall be kept by the Joint Administrators. The Joint Administrators shall also keep a separate written schedule of the individually owned personal property by the parties.
9. The ownership share with respect to personal property shall be used by the parties in the event of the termination or ending of this Agreement or in any other event which results in a sale or other disposition of the property, facilities or improvements.

ARTICLE VII. OPERATIONS

1. The Joint Administrators shall provide for the general management and operation of the joint venture and maintenance of the City Library Center and agreed upon Common Space on the Property.
2. Subject to the agreements on use as otherwise provided herein, the Joint Administrators shall develop a plan for the operation of the LPS Media Center, City Library Center, Shared Space and Common Space including the allocation and establishment of periods when the facilities shall be available for the sole use of either or both of the parties. The City acknowledges and agrees that LPS is a public school district and that its operations, maintenance, and use of the facilities and improvements on the Property shall at all times comply with all local, state, and federal laws, rules and regulations applicable to public school districts, and the mission of LPS.
3. The usage plan developed by the Joint Administrators shall specifically provide a detailed schedule of use for City Library Center by LPS or by the City.
4. The usage plan may be amended or changed from time to time by the Joint Administrators with the approval of the governing bodies of the parties.
5. The Joint Administrators shall determine from time to time the proper utilization and additional use payments by the City for use of other spaces within the LPS School Facility.

LPS Media Center, and Surrounding Property including additional parking facilities and other areas on the Property.

6. The Joint Administrators shall, after the governing bodies of the parties have agreed to and approved the final plans and specifications and annually thereafter on or before July 1 of each year, adopt a budget for the maintenance, repair, insurance, services, utilities, grounds upkeep, snow removal, and all other expenses required for the operation of the joint venture.
7. The budget shall be used for determining the amount to be paid by the parties to the joint venture for the operation of the project under this Agreement. The proposed budget prepared by the Joint Administrators shall be submitted to the governing bodies by the parties for their approval and agreement to make payment of each party's share.
8. In the event the proposed budget is rejected by the governing body of either of the parties, the budget last submitted by the Joint Administrators and approved by the parties shall control until such time as the Joint Administrators receive approval of the budget by the parties.

ARTICLE VIII.
OPERATIONS FUNDS

1. Prior to the completion of the construction of the joint venture facilities and improvements, the parties shall agree on the necessity for and establishment of any necessary or on-going Operations Account or Accounts for the joint venture and which party shall be responsible for such Account or Accounts. Unless otherwise mutually agreed, LPS and the City shall deposit in such established Fund or Funds, funds sufficient to cover the costs and expenditures as set forth in the operations budgets upon the request of the Joint Administrators.
2. The agreed upon party shall keep and maintain the records pertaining to the Operations Account or Accounts and shall provide an accounting to the other party or the Joint Administrators upon request.
3. Monies in the Operations Account or Accounts may be invested from time to time in accordance with the then-current investment policies of LPS.
4. Any monies remaining in the Operations Account or Accounts upon termination of this Agreement shall be refunded to the party which has paid the money into the Account or Accounts.
5. Upon termination of this Agreement, the Joint Administrators shall be responsible for

developing a termination and liquidation plan for disposition of any joint venture property or facilities, for terminating the ground lease, and implementing the termination of this Agreement.

ARTICLE IX.
INDEMNITY AND INSURANCE

1. Except as otherwise provided in this Agreement, the City agrees to indemnify and hold LPS harmless against any and all claims, actions, damages, liability, and expenses in connection with injury or loss of life to person or damage to property arising out of the use, occupancy or operation of the City Library Center on the Property; provided however, the City shall not indemnify or hold LPS harmless for any matter arising out of the negligence of LPS. Except as otherwise provided in this Agreement, LPS agrees to indemnify and hold the City harmless against any and all claims, actions, damages, liability and expenses in connection with injury or loss of life to person or damage to property arising out of the use, occupancy, or operation of the LPS School Facility on the Property; provided however, LPS shall not indemnify or hold the City harmless for any matter arising out of the negligence of the City.
2. Except as otherwise provided in this Agreement, the parties shall each maintain their own insurance coverages as their interests appear, except that the Joint Administrators or their designees, shall continually review and make recommendations to the governing bodies of the parties on risk management, liability, and insurance coverage issues in the best interests of the parties.

ARTICLE X.
GENERAL COVENANTS

1. Any improvements or alterations that increase floor area of the City Library Center after completion of initial construction shall be approved by the governing bodies of the parties. Any other improvements or alterations, or interior design modifications, changes or alterations shall be approved by the Joint Administrators.
2. On request by the Joint Administrators the parties shall assist in maintaining the physical security of the facilities in this joint venture.
3. The City may not assign, sell, transfer, or pledge its interest in this Agreement or any part of its interest in the Property without the prior written consent of LPS. Any assignment, sale, transfer, pledge or other transfer or alienation made in violation of this provision shall be null and void and terminate the Agreement at the option of LPS.
4. The method of financing the joint or cooperative undertaking under this Agreement shall be

through the use and expenditure of funds of the parties.

5. In the event the Joint Administrators cannot agree on the sharing or allocation of the costs of any joint or cooperative undertaking or expenditure, the cost of such undertaking or expenditure shall be either paid by the party who owns or has leased that portion of the Property or in the event of default by that party, the payment may be made by the other party.
6. The Joint Administrators may acquire and dispose of personal property necessary for the operation of the joint venture. In the event of a partial or complete termination of this Agreement or the agreed upon sale of property, the proceeds of the sale of that property shall be distributed to the party owning or contributing the funds for the property. With respect to jointly owned property, a division of the proceeds would be to the parties in the same proportion as the parties contributed to the acquisition of the property. Property owned by LPS or jointly owned by both parties must be disposed of in a manner consistent with Board of Education Policy and/or applicable statute or regulations.

ARTICLE XI. **TERMINATION**

This Agreement shall continue in effect as provided herein until the occurrence of one or more of the following events:

1. The Agreement is terminated by a majority vote of all the members of the City governing body and a majority vote of all the members of the LPS governing body.
2. The Agreement becomes illegal or null and void by act of the Legislature of the State of Nebraska or final decision of a court of proper jurisdiction.
3. Upon termination of this Agreement, LPS shall have the option to purchase the City's interests under this Agreement. If the parties are unable to mutually agree on price, the price shall be determined either through arbitration or by decree of a court of competent jurisdiction in an action for partition or an accounting. In the event LPS does not wish to exercise the option to purchase, the City's interests under this Agreement shall be sold and the proceeds of the sale of those properties shall be distributed to the City, and jointly owned personal property shall be sold or otherwise disposed of as the parties may mutually agree and the proceeds of the sale of those properties shall be distributed to the parties in proportion to ownership percentage.
4. The payment of costs and expenses of sale shall be paid by the party which has ownership of the property being sold. If the property being sold is personal property owned by the joint

venture, the proceeds shall be distributed to LPS and the City in proportion to ownership percentage or as otherwise mutually agreed.

5. LPS and the City shall execute all documents necessary to transfer their interests upon sale or other disposition. If the property owned by the joint venture is not disposed of by agreement after termination, either LPS or the City may bring an action in a court of proper jurisdiction to partition and divide the jointly owned personal property in kind on the basis of each party's ownership share.
6. This Agreement may be amended in writing and upon approval by resolution of the governing bodies of both parties.
7. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns.

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

CITY OF LINCOLN, NEBRASKA

By: _____
Title: _____

**LANCASTER COUNTY SCHOOL DISTRICT
#0001 a/k/a LINCOLN PUBLIC SCHOOLS**

By: _____
Title: _____

Exhibit "A"

Ex "A" page 1 of 1.

The Property*

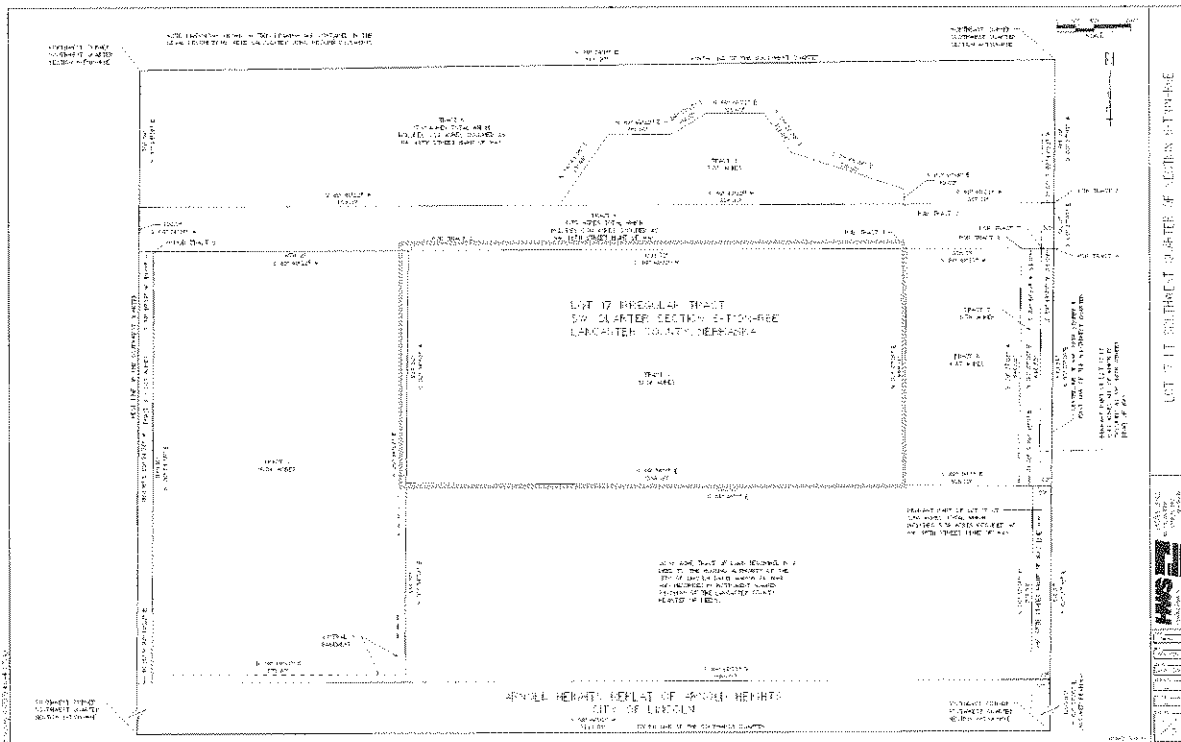
*The exact metes and bounds legal description to be developed upon closing of purchase by LPS

TRACT 1

A TRACT OF LAND LOCATED IN LOT 17 IRREGULAR TRACT IN THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 10 NORTH, RANGE 5 EAST OF THE SIXTH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE N 00°37'00" E, ASSUMED BEARING, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2160.00 FEET TO A POINT 2160.00 FEET NORTHERLY OF, PERPENDICULAR MEASUREMENT, THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE S 90°42'22" W, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 492.04 FEET TO A POINT 392.00 FEET WESTERLY OF, PERPENDICULAR MEASUREMENT, SAID EAST LINE AND THE POINT OF BEGINNING; THENCE S 89°49'20" W, PARALLEL WITH SAID SOUTH LINE, A DISTANCE OF 1338.72 FEET TO THE NORTHERLY PROLONGATION OF THE WEST LINE OF THE TRACT OF LAND DESCRIBED IN A DEED TO THE HONORABLE AUTHORITY OF THE CITY OF LINCOLN, DATED MARCH 24, 1994 AND RECORDED IN INSTRUMENT NUMBER 94-21468 OF THE LANCASTER COUNTY REGISTER OF DEEDS; THENCE S 00°34'50" W, ALONG THE NORTHERLY PROLONGATION OF SAID WEST LINE, A DISTANCE OF 624.00 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE S 89°49'20" E, ALONG THE NORTH LINE OF SAID TRACT OF LAND, A DISTANCE OF 1338.90 FEET TO A POINT 392.00 FEET WESTERLY OF, PERPENDICULAR MEASUREMENT, SAID EAST LINE; THENCE N 00°37'00" E, PARALLEL WITH SAID EAST LINE, A DISTANCE OF 637.14 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 19.38 ACRES, MORE OR LESS.

Full View



April 5, 2007 Draft

EXHIBIT "B"

Ex "B" page 1 of 1.

(The legal description of the "Leased Land" or "Ground Lease" along with any agreed upon easements for access and use on the Property to be dated and signed by the parties and inserted here)