

LICENSE AGREEMENT FOR PARKING

THIS LICENSE AGREEMENT FOR PARKING ("Agreement") is made and entered into by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation ("City"), and the Community Health Endowment, an agency of the City ("CHE").

WHEREAS, the parties have entered into a Memorandum of Understanding authorized by Executive Order No. 84336 dated August 29, 2011 ("MOU") for the construction of the construction and operation of a mixed-use building to be called the Active Living Center ("Center") to be located on the southeast corner of the intersection of North 21st Street and Q Street in Union Plaza in the Antelope Valley Redevelopment Area. The Center shall have three condominium units: (1) a meeting/rental space to be owned by City, (2) CHE administrative offices on the second floor, and (3) a retail space limited to certain purposes with a separate exterior entrance;

WHEREAS, limited parking exists in the area for users of the Center;

WHEREAS, the City of Lincoln shall construct a limited number of off-street parking spaces in a parking lot immediately north of the Center;

WHEREAS, the parties have agreed pursuant to MOU that CHE shall be entitled to a minimum of four (4) parking spaces in this parking lot;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties as follows:

1. PARKING SPACES. Subject to the terms and conditions herein contained, City hereby provides a license to CHE of four (4) parking spaces on the following described property, those parking spaces hereinafter called the "Premises," to wit:

Outlot A, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska as shown in Exhibit "A" and marked as "Stalls."

2. TERM. This Agreement shall become effective on May 1, 2012 and shall continue for a term of twenty (20) years and ending on April 30, 2032 unless sooner terminated or renewed as hereinafter provided.

3. USE. CHE agrees to utilize the Premises for parking in the four (4) spaces provided by the City. The Premises shall not be utilized for any other purposes or other improvements other than parking as shown on Exhibit "A." CHE shall not keep or store on or about the Premises any objects except as permitted by the City in writing. CHE agrees not to

make any alterations, additions or improvements to the Premises without first obtaining the written consent of the City.

4. COMPENSATION. CHE shall pay \$1.00 for compensation for use of the Premises, which together with the mutual covenants herein and the benefit to the public for use of parking spaces in a convenient, accessible, and visible location, shall constitute consideration for this Agreement.

5. RESTRICTION OF ASSIGNMENT, SUBLETTING. CHE agrees not to assign, sublet, or in any manner transfer this Agreement or any estate or interest therein without the previous written consent of City, which shall not be unreasonably withheld. The parties agree that the use of the parking spaces shall be assigned and transferred with sale of the condominium unit.

6. RENEWAL. CHE may have the option to renew this Agreement for four (4) additional terms of ten (10) years, provided CHE is not in default with any of the provisions or covenants contained within this Agreement. Each renewal shall be exercised at least ninety (90) days prior to the expiration of the current Agreement.

7. TERMINATION AND CANCELLATION. Either party has the right to terminate this Agreement if the other party substantially breaches the terms of this Agreement. Termination rights for breach may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice.

8. RETURN OF PROPERTY TO ITS PRESENT CONDITION. Upon the termination of this Agreement or any renewals thereof, CHE agrees to return the Premises to the City in its present condition, ordinary wear and tear excepted. City hereby further covenants and agrees that City shall be permitted to enter upon the Premises at all reasonable times to examine the condition of the same.

9. PERSONAL PROPERTY AT RISK OF CHE. All personal property on the Premises shall be at the risk of the CHE only. City shall not be or become liable for any damage to such personal property or for CHE's improvements on the Premises or to CHE or any other persons or property on the Premises or for any damage arising from any act or neglect of CHE, CHE's employees, or invitees of the Premises.

10. INSURANCE. CHE agrees to maintain such insurance as will fully protect both CHE and City from any and all claims of whatsoever kind or nature for damage to property or for bodily injury including death made by anyone whomsoever which may arise from use of the Premises under this Agreement, including defense of the City pursuant to the indemnification provisions herein.

11. NOTICES. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served if sent by registered or certified mail, postage prepaid, addressed to the City to the Director of the Parks & Recreation Department at 2740 A Street, Lincoln, NE 68502 or addressed to the CHE to the CEO of the Community Health

Endowment, 250 North 21st Street, Lincoln, NE 68502, or at such other address or addresses as either party may hereafter designate in writing to the other. Any notice or demand so mailed shall be effective for all purposes at the time of deposit thereof in the United States mail.

12. NO OTHER AGREEMENTS. This Agreement contains the entire understanding and agreement of the parties, supersedes all prior understandings and agreements, except as provided in the MOU and the condominium documents executed contemporaneously herewith. This Agreement cannot be revised, adjusted or modified unless in writing signed by the party against whom the same is to be enforced.

13. INDEMNIFICATION. CHE, by acceptance of this Agreement, agrees to indemnify and hold City, its employees, officers, agents, successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees for any loss, injury, death, or damage to persons or property which at any time is suffered or sustained by City, its employees, the public, or by any person whosoever may at any time be using, occupying, visiting, or maintaining the Premises that is the subject of said Agreement, or be on or about the Premises that is the subject of said Agreement, when such loss, injury, death, or damage is asserted to have been caused by any negligent act or omission or intentional misconduct of CHE or its agents, servants, employees, invitees, or contractors. City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. CHE does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. City shall not be liable, and CHE waives and releases City from all claims for damage to persons or property sustained by CHE or its employees, agents, servants, invitees, contractors, or customers resulting by reason of the use of the Premises. This section survives any termination of this Agreement.

14. EXPLANATORY PROVISIONS. The provisions of this Agreement shall be binding upon, inure to the benefit of and apply to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Headings are given to the paragraphs of this Agreement solely as a convenience to facilitate reference and shall not be deemed material or relevant to the construction of the Agreement or any provision thereof.

15. IMPROVEMENTS. CHE agrees to do no remodeling or install any permanent fixtures or additions to the Premises without first obtaining the written approval of the City. All improvements shall become the property of the City upon termination of this Agreement unless the parties hereto agree otherwise. CHE agrees to comply with applicable laws, ordinances, rules and regulations of the City of Lincoln, State of Nebraska, or United States government. CHE agrees to pay promptly for any work done or materials furnished on or about the Premises, will not suffer or permit any lien to attach to the Premises, and further agrees to cause any such lien or any claims thereof to be released promptly; provided, however, that in the event CHE contests any such claim, CHE agrees to indemnify and secure City to City's satisfaction. CHE shall apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to use of the Premises and to conduct all activities related to use of the Premises in a lawful manner. City shall maintain the Premises in good condition and repair. The City shall clear snow from the Premises as needed to provide access to the Center. CHE shall be responsible for a portion of capital improvement costs of the

Premises to maintain good condition and repair, and such proportionate responsibility shall be determined by the parties in advance of the capital improvement.

16. ADVERTISING. No display signs or advertising shall be placed on the Premises structure, or affixed in any manner, except signage for purposes of identification or notification of use of the Premises for parking for CHE. CHE agrees any other signage or advertising is excluded except upon written approval of the City in advance.

17. "AS IS". CHE agrees that it is accepting the Premises "as is," that CHE has inspected the Premises and has determined the Premises to be suitable for the uses intended. No representations have been made by the City as to the condition of the Premises.

18. HAZARDOUS MATERIAL. CHE shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Premises by the CHE, its agents, employees, contractors, or invitees, without the prior written consent of the City (which City shall not unreasonably withhold as long as CHE demonstrates to City's reasonable satisfaction that such hazardous material is necessary or useful to CHE's business and will be used, kept and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the Premises). If CHE breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused or permitted by CHE results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs therefrom, the CHE shall indemnify City as described in Paragraph 13 above, to include costs incurred in connection with any investigation of site conditions or any clean-up, remedials, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any hazardous material on the Premises caused by or permitted by CHE results in any contamination of the Premises, CHE shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such hazardous material to the Premises; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority or the United States Government.

19. WAIVER. Any waiver by any party of a default of any other party of this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this Agreement.

20. NEBRASKA LAW. This Agreement shall be governed and interpreted by the applicable laws of the United States Government who has jurisdiction over CHE, except to the extent expressly waived by federal statute, in which case the State of Nebraska shall have jurisdiction over CHE.

21. CAPACITY. The undersigned persons do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2012.


ATTEST:

CITY OF LINCOLN, NEBRASKA,
A municipal corporation

City Clerk

Mayor Chris Beutler

**COMMUNITY HEALTH
ENDOWMENT,**
An agency of the City of Lincoln

By: 

Its: President/CEO