

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

RESOLUTION REGARDING THE SALE OF)
PROPERTY GENERALLY LOCATED AT)
2202 SOUTH 11th STREET, LEGALLY) RESOLUTION NO. R-19-0006
DESCRIBED HEREIN, AND LOCATED IN)
THE CITY OF LINCOLN, LANCASTER)
COUNTY, NEBRASKA)

WHEREAS, pursuant to Neb. Rev. Stat. § 23-107.01, as amended, the Lancaster County Board of County Commissioners (“Board”) has the power to sell Lancaster County (“County”) property which no longer serves a county purpose;

WHEREAS, Neb. Rev. Stat. § 23-107.01 further provides that the County may sell such property after determining the fair market value of the property and conducting a public hearing for interested parties to speak for or against the sale of the property and raise any issue regarding the fair market value;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-107.01, the County is required to set a date, within two months of the date of the public hearing, for sale to the highest bidder;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-107.01, if the Board receives no bids or if the bids received are substantially lower than the fair market value, the Board may negotiate a contract for sale of the real estate if such negotiated contract is in the best interests of the County;

WHEREAS, pursuant to Neb. Rev. Stat. §§ 23-103 and 23-104, the Board has the power to sell any real estate owned by the County in such manner and upon such terms and conditions as may be deemed in the best interest of the County;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104.03, the County has the authority to sell, real estate necessary for use of the county to plan, initiate, fund, maintain, administer, and evaluate facilities, programs, and services that meet the rehabilitation, treatment, care, training,

educational, residential, diagnostic, evaluation, community supervision, and protective service needs of dependent, aged, blind, disabled, ill, or infirm persons, persons with a mental disorder, and persons with an intellectual disability domiciled in the County;

WHEREAS, the County owns real estate generally located at 2202 South 11th Street, Lincoln, Lancaster County, Nebraska, legally described as:

Lot Three (3), Saint Francis 1st Addition, Lincoln, Lancaster County, Nebraska (“Property”);

WHEREAS, on February 6, 2018, the Board conducted a public hearing wherein interested parties were given the opportunity to speak for or against the sale of the Property;

WHEREAS, pursuant to Resolution R-18-0010, the Board resolved that the Property no longer served a County purpose; that the fair market value of the Property was \$2,025,000.00; that the public sale of the Property should be set for Thursday, March 8, 2018, at 2 P.M.; and that the County Clerk was to provide notice in accordance with Neb. Rev. Stat. § 23-107.01(3);

WHEREAS, pursuant to Resolution R-18-0010, the Board reserved its right pursuant to Neb. Rev. Stat. § 23-107.01, if the Board receives no bids or if the bids received were substantially lower than the fair market value, to negotiate a contract for sale of the real estate if such negotiated contract is in the best interests of the County;

WHEREAS, following notice in accordance with Neb. Rev. Stat. § 23-107.01(3), the Lancaster County Sheriff’s Office conducted a public sale of the Property on March 8, 2018, returning to the Board a high bid of \$800,000 for the Property;

WHEREAS, pursuant to Resolution R-18-0022, the Board determined that the bids received during the public sale were substantially lower than the Property’s fair market value;

rejected such bids; and restated that, pursuant to Neb. Rev. Stat. § 23-107.01(4), it may negotiate a sale of the Property if such negotiated contract for sale was in the best interest of the County;

WHEREAS, pursuant to County Contract No. C-18-0663, dated November 6, 2018 (“Real Estate Purchase Agreement”), following negotiations concerning the Real Estate Purchase Agreement, the Board and CenterPointe, a Nebraska nonprofit corporation, (“CenterPointe”) entered into a contract for sale of the Property in the best interests of the County, which Real Estate Purchase Agreement is incorporated herein by this reference;

WHEREAS, pursuant to the terms and conditions of the Real Estate Purchase Agreement, which terms and conditions contain certain use restrictions related to the services described in Neb. Rev. Stat. § 23-104.03, the Board wishes to convey and sell the Property, with an anticipated closing date of January 31, 2019;

WHEREAS, pursuant to the Real Estate Purchase Agreement and to facilitate the sale and conveyance of the Property, the Board wishes to authorize the Chairperson of the Board to execute the Warranty Deed, the Commercial Affidavit and Indemnification, the Utility Transfer Agreement, the Seller Statement of Understanding, and the Declaration of Use Restrictions (collectively, “Closing Documents”), all of which are attached hereto and incorporated herein by this reference, and to deliver on or before the anticipated closing date said executed Closing Documents to Nebraska Title Company; and

WHEREAS, the Board also wishes to authorize the County’s Chief Administrative Officer, Kerry Eagan, to execute on behalf of the Board any additional documentation or instruments that may be required to effect the sale of the Property pursuant to the terms and conditions of the Real Estate Purchase Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board that the County shall sell and convey the Property to CenterPointe pursuant to the terms and conditions of the Real Estate Purchase Agreement, with an anticipated closing date of January 31, 2019;

AND BE IT FURTHER RESOLVED by the Board that:

1. The Chairperson of the Board is hereby authorized to execute the Closing Documents, and is hereby directed to deliver on or before the anticipated closing date the executed Closing Documents to Nebraska Title Company to effect the sale of the Property pursuant to the terms and conditions of the Real Estate Purchase Agreement; and
2. The County's Chief Administrative Officer, Kerry Eagan, is hereby authorized to execute on behalf of the Board any additional documentation or instruments that may be required to effect the sale of the Property pursuant to the terms and conditions of the Real Estate Purchase Agreement.

DATED this ____ day of January, 2019, at the County City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this ____ day of
January, 2019.

Deputy County Attorney

for PATRICK CONDON
Lancaster County Attorney

ATTEST

By: _____
Dan Nolte
Lancaster County Clerk

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of
January, 2019, by _____

_____,
Commissioners, Deputy County Attorney, and County Clerk of Lancaster County, Nebraska, a
political subdivision of the State of Nebraska.

Notary Public

DECLARATION OF USE RESTRICTIONS

This Declaration of Use Restrictions (“Declaration”) is made this ____ day of _____, 2019, by the County of Lancaster Nebraska, a political subdivision of the State of Nebraska (“Seller”), and CenterPointe, a Nebraska nonprofit corporation (“Buyer”).

RECITALS

WHEREAS, Seller and Buyer entered into a Real Estate Purchase Agreement, dated November 6, 2018, and also referred to as County Contract No. C-18-0663 (“Agreement”), for the real estate (as defined in Neb. Rev. Stat. § 76-201) located at 2202 S. 11th Street, Lincoln, NE and legally described as follows: Lot Three (3), Saint Francis 1st Addition, an addition to the City of Lincoln,- Lancaster County, Nebraska (the "Property");

WHEREAS, pursuant to Paragraph 12.C of that Agreement the use restrictions contained in Section 12.C of that Agreement shall be embodied in a declaration of use restrictions to be recorded against the Property at Closing and shall be enforceable for the full Use Restriction Period; and

WHEREAS, the Lancaster County Board of County Commissioners (“Board”) by resolution expressly has authorized the Chairperson to execute this Declaration on behalf of the Board for the Seller;

DECLARATION

NOW THEREFORE, Seller and Buyer hereby declare as follows:

For a term beginning on the Closing Date and terminating twenty (20) years following substantial completion of the Improvements (the “Use Restriction Period”), Buyer makes the following post-closing covenants (“post-closing covenants” and/or “use restrictions”):

- i. Buyer shall ensure the Property is to be used only for the benefit of the

public by providing treatment and care for mental and/or physical health and wellness, rehabilitation, and/or housing for homeless and low-income persons, and uses reasonably related or reasonably ancillary thereto. Furthermore, Buyer shall not commit or allow waste on the Property, and Buyer shall maintain the Property in good condition and repair.

- ii. Without in any way limiting the provisions of Section i above, Buyer additionally shall ensure that the Property is not used, directly or indirectly, for:
 - a. any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such Property is for sale or lease by the owner thereof;
 - b. any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of fifty percent (50%) of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations;
 - c. any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of fifty percent (50%) of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;
 - d. any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;
 - e. any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;
 - f. any freestanding cell towers, excluding a cell antenna on top of the building located on the property;

- g. any business providing payday loans, liens, check cashing services, or other similar services except for banks, savings and loans, insurance companies, investment companies, stock brokers, credit unions, and automated teller machines;
- h. any private or commercial golf course, country club, massage parlor, hot tub facility, or suntan facility.

For so long as Buyer, its heirs, successors, assigns, lessees, or agents, own or operate the Property, if the Buyer materially breaches the post- closing covenants provided in this Declaration, Seller shall have remedies available at law or in equity, including the right to specific performance requiring compliance with the applicable use restriction. The use restrictions shall be enforceable for the full Use Restriction Period; provided, however, that the use restrictions contained in this Declaration shall terminate in the event of a breach and subsequent payment of liquidated damages pursuant to Section 12.D of the Agreement. For purposes of this Declaration, substantial completion of the Improvements shall occur when the City of Lincoln's Department of Building and Safety issues to the Buyer an occupancy permit or permits for the Improvements to the Property. The Improvements shall consist of those alterations and modifications to the Property necessary for Buyer to utilize the Property to provide all of the following services to homeless and low income persons: i) mental and/or physical health treatment; ii) rehabilitation; and iii) housing.

This Declaration may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

“SELLER”

LANCASTER COUNTY, a political
subdivision of the State of Nebraska

ATTEST:

By: _____

County Clerk

By: _____

Chairperson

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ and _____, Chairperson and County Clerk of Lancaster County, Nebraska, a political subdivision of the State of Nebraska.

Notary Public

“BUYER”

CENTERPOINTE,
a Nebraska nonprofit corporation

By: _____

Topher Hansen, Chief Executive Officer

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Topher Hansen, Chief Executive Officer of CenterPointe, a Nebraska nonprofit corporation, on behalf of the corporation.

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Notary Public

WARRANTY DEED

County of Lancaster, Nebraska, GRANTOR, whether one or more, in consideration of One Dollar and other good and valuable consideration received from GRANTEE, CenterPointe, a Nebraska non-profit corporation, conveys to GRANTEE, the following-described real estate (as defined in Neb. Rev. Stat. 76-201).

Lot Three (3), Saint Francis 1st Addition, Lincoln, Lancaster County, Nebraska.

GRANTOR covenants with GRANTEE that GRANTOR:

- (1) is lawfully seised of such real estate and that it is free from encumbrances, **except** for any easements and restrictions now of record;
- (2) has legal power and lawful authority to convey the same; and
- (3) warrants and will defend title to the real estate against the lawful claims of all persons.

Executed on this _____ day of _____, 20____

ATTEST:

COUNTY OF LANCASTER, NEBRASKA, a
political subdivision of the State of Nebraska

By: _____
County Clerk

By: _____
Chairperson

State of Nebraska)
) ss.
County of Lancaster)

The foregoing instrument was acknowledged before me on this _____ day of _____, _____, by _____ and _____, Chairperson and County Clerk of the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska.

Notary Public

COMMERCIAL AFFIDAVIT AND INDEMNIFICATION

FILE NO. 6103278

The undersigned, hereinafter referred to as affiant, whether one or more and whether masculine or feminine, being of lawful age and being first duly sworn upon oath deposes and says:

1. That this affidavit is given for the purpose of inducing **Old Republic National Title Insurance Company** to issue its policy of title insurance on the property legally described as follows:

Lot Three (3), Saint Francis 1st Addition, Lincoln, Lancaster County, Nebraska.

with an address of **2202 South 11th Street, Lincoln, NE 68502**

2. That the owner (whether one or more) of the described property is:

County of Lancaster, Nebraska

3. The owner's use and enjoyment of the property has been peaceful and undisturbed and the title to the property has never been disputed or questioned to my/our knowledge, nor do I/we know of any facts by reason of which title to, or possession of the property might be disputed or questioned, or by any reason of which any claim to the property or any portion thereof might be adversely asserted.
4. That no one is in possession of said property other than the owner above named and the tenants of said owner who occupy same. A complete list of all parties in possession (Tenants) of any portion of the property is attached hereto and made a part hereof. There are no other tenancies, leases, parties in possession or other occupancies of the property, and all tenants are as tenants only, with no right of first refusal or options to purchases. If no tenants or other parties are in possession of said property state "None" on the space provided. None.
5. That the named owner has owned the described property and the improvements thereon exclusively and continuously for more than twelve (12) months preceding the date hereof, and that no improvements have been erected upon the described property within twelve (12) months preceding the date hereof, and that without exception, no alterations or repairs have been made to any existing improvements on said real estate within the last twelve (12) months, for which all bills for labor and materials have not been paid in full.
6. I/We know of no contract for the making of repairs or improvements on the property except as follows: (Attach exhibit if necessary or state if not applicable – Do Not Leave Blank). N/A.
7. That there are no unpaid special assessments levied against the Property as of the Closing date.
8. That all management fees and site and/or assessment fees are fully paid.

9. Owner has not received any notice of future improvements which might result in special assessments.
10. There are no unrecorded contracts, leases, easements, agreements, documents, notices of claims relating to the property, other than NONE . (If none, state "NONE").
11. Owner has not received notice of any violation of any covenants, conditions or restrictions, if any, affecting the property.
12. If improvements are located on the Property, the undersigned has not been notified of any zoning violations or violations of local setback or building restrictions regulations.
13. That no proceedings in Bankruptcy have ever been instituted by or against the aforesaid owner nor has said owner ever made an assignment for the benefit of creditors; that no action or proceeding relating to said property or owner is now pending in any state or federal court, and no judgment or any state or federal tax lien of any kind of nature whatsoever exists which now constitutes a lien upon the aforesaid property, except as stated herein.
14. Seller/Owner agrees to indemnify and hold harmless Old Republic National Title Insurance Company and Nebraska Title Company against all payments and expenses, including court costs and attorney fees, if any of the above representations prove inaccurate in whole or part.

Dated: _____

County of Lancaster, Nebraska, a political
subdivision of the State of Nebraska

By: _____
Chairperson

State of Nebraska)
) ss.
County of Lancaster)

The foregoing instrument was acknowledged before me on this _____ day of _____, _____, by _____, Chairperson of the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska.

Notary Public

UTILITY TRANSFER AGREEMENT

File No.: 6103278

RE: 2202 South 11th Street, Lincoln, NE 68502

Buyer hereby agrees to have all utility services indicated below transferred into Buyer's name no later than the first business day following closing. Buyer also agrees to accept responsibility for payment of any utility charges accrued after the date of closing. It is the Buyer's sole and absolute responsibility to make any arrangements necessary for the transfer of utilities into their name.

_____ **WATER**

_____ **ELECTRIC**

_____ **GAS**

NOTICE REGARDING WATER: Buyer and Seller accept responsibility for reading the water meter to enable processing of the final water bill and providing the meter reading to Nebraska Title Company within 24 hours of the date of closing.

Seller agrees to be responsible for payment of final bills for said utilities. Nebraska Title Company has escrowed Seller's proceeds for payment of the final water bill based on billing history from Lincoln Water System. In the event the amount escrowed is insufficient to pay the final water bill Seller will be responsible for any additional amount due.

Buyer and Seller agree to hold Nebraska Title Company and their agents harmless from any liability associated with the transfer of all utility services.

Date: _____

Date: _____

County of Lancaster, Nebraska, a political
subdivision of the State of Nebraska

Centerpointe,
a Nebraska non-profit corporation

By: _____
Chairperson

By: _____
Topher Hansen, Chief Executive Officer

SELLER STATEMENT OF UNDERSTANDING

File No.: 6103278
Property: 2202 South 11th Street, Lincoln, NE 68502

I/We understand and agree that any payoff(s) made on our behalf in this escrow transaction are made by **Nebraska Title Company** with complete reliance on figures supplied by the lender, creditor or taxing agency. Such figures may not be accurate. In the event that additional funds are required to complete said payoff(s), I/we agree to immediately, upon request by **Nebraska Title Company**, provide the additional funds needed to complete said payoff(s). In the event **Nebraska Title Company** suffers a loss due to my/our failure to provide such funds, I/we agree to indemnify **Nebraska Title Company** for such loss, including all costs of collection and attorneys fees.

I/We agree that all the terms contained in the Purchase Agreement have been met. I/We further acknowledge that any and all inspections and/or repairs ordered by us or on our behalf have been paid in full or will be paid for out of our proceeds at the time of closing.

I/We agree to make myself/ourselves available for contact by **Nebraska Title Company**. I/We will be able to be reached as follows:

Phone: 402-441-6865 Email: keagan@lancaster.ne.gov

I/We agree to review the Closing Settlement Statements at time of closing. The Closing Settlement Statement must be signed prior to disbursement of any funds. Signed approval of the Closing Settlement Statement shall be considered as authorization to **Nebraska Title Company** to disburse funds as shown thereon, and deliver all instruments held. Faxed and electronic signatures will be accepted as authorization.

I/We agree that in consideration of **Nebraska Title Company** allowing funds to be disbursed for the closing of the above referenced property, if requested by **Nebraska Title Company**, to fully cooperate and adjust any misstatement, inaccuracy, missing document or clerical error, on any or all loan or title documentation deemed necessary to conform with the terms of this transaction. This shall include adjustment to any errors which have been made in the computation of the settlement statement, whether in mathematics or by reason of omission. Further, I/we agree to comply with any request(s) within five (5) days from the date of receipt of such request(s) from **Nebraska Title Company**.

I authorize the sale proceeds to be disbursed as follows:

Please forward the net proceeds check by:

no Overnight Mail (Additional charges will apply)

no Regular Mail Service

Address to send check: n/a

YES Personally picked up by me/us

no Delivered by Real Estate Agent

no Wire Transfer (Additional charges will apply)

Name of Bank: n/a

City and State: n/a

ABA No.: n/a Acct. No.: n/a

Name on Account: n/a

Address on Account: n/a

Dated: _____

County of Lancaster, a political
subdivision of the State of Nebraska

By: _____
Chairperson