

Agenda Item: 8.

Memorandum

To: PPO Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: October 31, 2012
Re: Review and Recommendation for Glacier Creek Project Purchase Agreement

Previously, the Board approved two funding sources for the purchase of 76.16 acres of land north of Allwine Prairie, see attached map. The University of Nebraska-Omaha (UNO) addressed the Board in May 2011, requesting funds to help secure the purchase of this land from Heritage, LLC., who had already platted the area for residential housing. This parcel is vital to Allwine Prairie as it would expand its existing 241 acres to 318 acres. This provides a unique ecosystem in an urban area and also protects a viewshed which allows an undisturbed view of the prairie.

In March 2012, the Board approved an application to the NRCS Farm and Ranch Protection Program (FRPP) where the District could receive federal funds to administer an easement over the property, preserving the 76.16 acres as farm and ranchland. The FRPP application was successful and \$630,000 in federal dollars is planned to be contributed toward the purchase.

The attached purchase agreement outlines the details of the purchase of the 76.16 acres from Heritage, LLC to UNO, who will be the owner. The total purchase price is \$1,822,509. The District will contribute to the purchase \$370,000 from the District's general fund and will contribute its receipt of FRPP dollars in the amount of \$630,000. UNO will provide the remaining costs, \$822,509.00, which includes \$481,000 of Nebraska Environmental Trust dollars. The District will hold and maintain the FRPP permanent easement on the property.

The closing of the property is intended to take place before the end of the year.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Glacier Creek Project Purchase Agreement with Heritage, LLC and the University of Nebraska Omaha in the amount of \$1,822,509, for the 76.16 acres north of Allwine Prairie, with a District contribution of \$370,000 in general fund dollars and \$630,000 in Farm and Ranchland Protection Program grant funds from the Natural Resources Conservation Service, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Glacier Creek Project

1 March 2012

For questions, contact librage@umn.edu
(402-980-7089)

Red = Approximate outline of Heritage property

Black = Boundary of Allwine Prairie, including area purchased in 2010.

Blue = Boundary of Kobs' property (planned for future purchase)

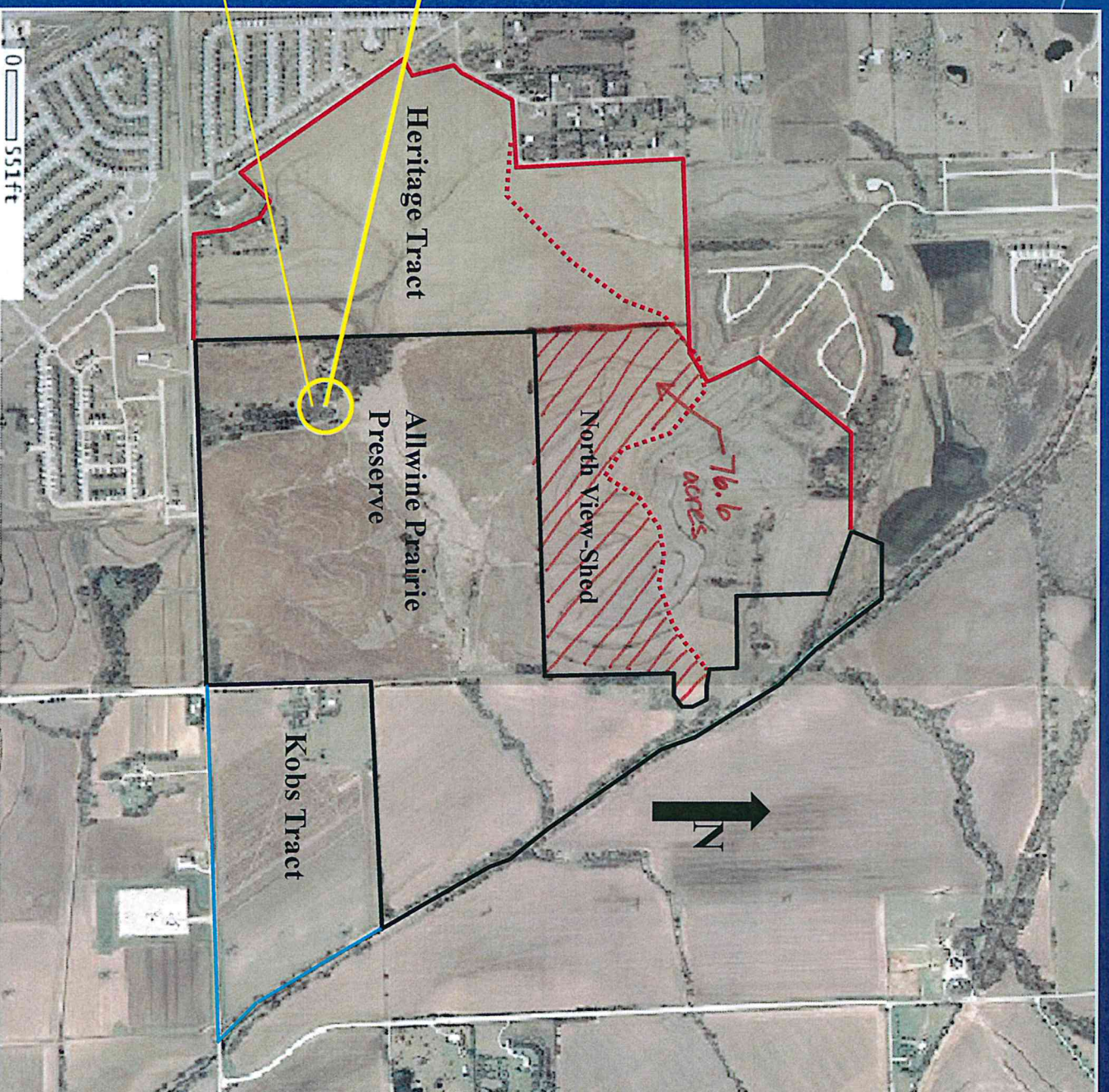
Yellow (dashed) = Approximate boundary of the area planned for acquisition in 2012.



The Barn
Environmental
Education and
Research Center



Tractor Barn



GLACIER CREEK PROJECT PURCHASE AGREEMENT

THIS **PURCHASE AGREEMENT** ("this **AGREEMENT**") is made as of this ____ day of _____, 2012, by and between NS – **THE HERITAGE, L.L.C.**, a Nebraska limited liability company ("**HERITAGE**"), **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate and governing body of the University of Nebraska ("**UNIVERSITY**"), and **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a political subdivision of the state of Nebraska ("**NRD**").

This purchase is being made to implement the Glacier Creek Project, a joint project of the **UNIVERSITY** and the **NRD**, and is intended to create an adjunct to the Allwine Prairie Preserve and provide under unified management a continuous prairie-wetland-creek ecosystem complex in support of environmental education, research and native habitat conservation.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms, conditions, representations and warranties set forth in this **AGREEMENT**, the parties hereby agree as follows:

1. **Sale.** In return for payment to **HERITAGE** of the sum of One Million Eight Hundred Twenty Two Thousand Five Hundred Nine and No/100 Dollars (\$1,822,509.00) (the "**PURCHASE PRICE**"), **HERITAGE** agrees to sell and convey to the **UNIVERSITY** the parcel of land depicted and legally described under the heading "Parcel Description" in Exhibit A attached hereto and incorporated herein by reference, comprising 76.16 acres, more or less (the "**SALE PROPERTY**"). The **PURCHASE PRICE** shall be paid by the **UNIVERSITY** and the **NRD**. The **UNIVERSITY** shall pay Eight Hundred Twenty Two Thousand Five Hundred Nine and No/100 Dollars (\$822,509.00) of the **PURCHASE PRICE** and the **NRD** shall pay Three Hundred Seventy Thousand and No/100 Dollars (\$370,000.00) of the **PURCHASE PRICE** directly, and shall pay Six Hundred Thirty Thousand and No/100 Dollars (\$630,000.00) in funding from the Farm and Ranch Lands Protection Program, for a total of One Million and No/100 Dollars (\$1,000,000.00) ("**NRD'S CONTRIBUTION**"). Notwithstanding anything herein to the contrary, if for any reason the full amount of the **PURCHASE PRICE** is not paid to **HERITAGE** as of **CLOSING** (defined below), including the **NRD'S CONTRIBUTION**, **HERITAGE** shall be under no obligation to proceed with the **CLOSING**.

2. **Farm and Ranch Lands Protection Program Easement.** As a condition to **CLOSING** (defined below), and payment of the Farm and Ranch Lands Protection Program portion of the **NRD'S CONTRIBUTION**, **HERITAGE** agrees to enter into an easement, in a form substantially the same as that attached hereto and incorporated herein by reference as Exhibit B (the "**FRLPP EASEMENT**").

3. **Other Restrictions.** It is acknowledged that prior to or concurrent with **CLOSING**, **HERITAGE** shall cause the recording of that certain Declaration of Restrictions in the form as set forth in Exhibit C (the "**RESTRICTIVE COVENANT**"), restricting the **UNIVERSITY**, **NRD**, and any of their respective successors or assigns to place any fencing

along that portion of the SALE PROPERTY which directly borders the Heritage Subdivision, unless (i) such fencing does not exceed 48" in height and is a prairie style fence, such as split rail or barbed wire fencing or a chain link fence in a dark color, or (ii) without the prior written consent of HERITAGE, which shall be determined in its reasonable judgment based on whether such fencing would be detrimental to any sales or resales of lots or developed properties along such area. This restriction shall survive CLOSING for the term provided therein.

4. **Payment.** The PURCHASE PRICE shall be paid by the UNIVERSITY and the NRD to HERITAGE by certified check or wire transfer of immediately available funds at the closing of this transaction (the "**CLOSING**").

5. **Title Insurance.** Within thirty (30) days after the date of HERITAGE'S execution of this AGREEMENT, HERITAGE shall deliver to UNIVERSITY a commitment for a title insurance policy for the SALE PROPERTY, as follows:

a. Such commitment shall be issued by a title company approved by the UNIVERSITY in the amount of the PURCHASE PRICE and shall be required to show marketable fee simple title to the SALE PROPERTY vested in HERITAGE, free and clear of all leases, mortgages, liens and other encumbrances (the "**NON-PERMITTED EXCEPTIONS**") except for those easements, covenants, restrictions and rights expressly agreed to in writing by the UNIVERSITY (the "**PERMITTED EXCEPTIONS**") and prior year real estate taxes.

b. If the aforesaid commitment discloses any NON-PERMITTED EXCEPTIONS, HERITAGE shall have thirty (30) days from the date of delivery of the commitment to HERITAGE to have such NON-PERMITTED EXCEPTIONS removed from the policy or commitment, or, at HERITAGE'S expense, to have the title insurer commit to insure the UNIVERSITY and the NRD as of CLOSING against loss or damage that may be occasioned by such NON-PERMITTED EXCEPTIONS (the "**TITLE CORRECTION DEADLINE**").

c. If HERITAGE fails to have the NON-PERMITTED EXCEPTIONS removed, or in the alternative, to obtain the commitment for title insurance specified above as to such NON-PERMITTED EXCEPTIONS, then on or prior to the TITLE CORRECTION DEADLINE, UNIVERSITY or the NRD may, at either party's election, either terminate this AGREEMENT or may agree that the UNIVERSITY should take title to the SALE PROPERTY as title then is, in either case by giving HERITAGE written notice of UNIVERSITY'S and the NRD'S election and, in the latter case, by tendering performance on UNIVERSITY'S and NRD's part. Failure of UNIVERSITY or NRD to elect to terminate this AGREEMENT within ten (10) days following the expiration of TITLE CORRECTION DEADLINE, will be deemed an election by UNIVERSITY and NRD to waive the obligation to remove the NON-PERMITTED EXCEPTION and their agreement to proceed with Closing.

6. **Closing.** CLOSING shall occur at a mutually agreed upon date and time following the date when all conditions and contingencies set forth in this AGREEMENT are satisfied. Notwithstanding the foregoing, the parties agree that CLOSING shall occur within six (6) months of the date of this AGREEMENT; provided that the parties shall use all reasonable efforts to complete the Closing on or before December 31, 2012. In the event the CLOSING shall not have been completed by within six (6) months of the date of this AGREEMENT, any party hereto shall have the right to terminate this AGREEMENT upon written notice, whereupon this AGREEMENT shall be null and void.

7. **Deed.** The SALE PROPERTY shall be conveyed by HERITAGE to UNIVERSITY by Special Warranty Deed, in the form attached hereto and incorporated herein by reference as Exhibit D, free and clear of all NON-PERMITTED EXCEPTIONS.

8. **Delivery of Possession.** Possession of the SALE PROPERTY shall be delivered to UNIVERSITY at CLOSING or at such other time as may be agreed upon in writing by HERITAGE and UNIVERSITY.

9. **Permitted easements.** UNIVERSITY acknowledges that the SALE PROPERTY shall be subject to as of the date of CLOSING the following existing easements, covenants, restrictions and rights to be recorded at or immediately prior to CLOSING, and such instruments shall be deemed "PERMITTED EASEMENTS" even though not of record as of the date hereof:

- a. The FRLPP EASEMENT in the form attached hereto as Exhibit B; and
- b. The RESTRICTIVE COVENANT in the form attached hereto as Exhibit C.

10. **New Liens or Conditions.** During the period this AGREEMENT is in effect, HERITAGE shall not transfer, convey or otherwise dispose of any right, title or interest in any of the SALE PROPERTY, except subject to the terms of this AGREEMENT or with written consent of UNIVERSITY and the NRD. HERITAGE further agrees to not consent to, or allow, any new lien, encumbrance, condition, reservation, easement, lease, restriction or covenant against the SALE PROPERTY, other than the lien for current real estate taxes due but not yet delinquent.

11. **Leases and Other Interests.** At the time of the CLOSING, except for the EXISTING FARM LEASE (defined below), no portion of the SALE PROPERTY will be subject to any agreement (except as provided herein) or any right of first refusal; no portion of the SALE PROPERTY will be subject to any lease or other undisclosed and/or unrecorded interest, right or restriction; and, no labor will have been performed or materials will have been furnished to any portion of the SALE PROPERTY by any person or entity who has not been paid in full. HERITAGE hereby agrees to indemnify and hold UNIVERSITY and the NRD harmless from any breach of such covenants. For purposes of this AGREEMENT, the term "EXISTING FARM LEASE" shall mean that certain Farm Lease Agreement dated November 19, 2011 between HERITAGE and Terry Christensen ("EXISTING TENANT"), as amended, pursuant to which among other terms, EXISTING TENANT has the right to access the SALE PROPERTY until

December 31, 2012 to harvest and remove crops from such ground. HERITAGE agrees to deliver a written termination of the EXISTING FARM LEASE signed by EXISTING TENANT at or prior to CLOSING.

12. No Litigation. HERITAGE warrants that no litigation is pending, threatened or likely with respect to the SALE PROPERTY, HERITAGE'S interest therein, or which would inhibit the UNIVERSITY obtaining clear title to the SALE PROPERTY.

13. Hazardous Materials. HERITAGE shall execute and deliver to UNIVERSITY at the CLOSING an affidavit and agreement representing and warranting to UNIVERSITY as follows, to-wit:

a. That HERITAGE has not used, generated, stored or disposed of, above, in, on, under or around the SALE PROPERTY any "hazardous materials" (i.e., any material or substance which is listed in the United States Department of Transportation Hazardous Materials' Table (49 CFR 172.101) which is kept, used or disposed of in a manner and in quantities which do not comply with applicable laws and regulations pertaining to said materials or substances;

b. As of the date of this AGREEMENT, HERITAGE has no actual or personal knowledge that there are any hazardous materials above, in, on, under, or around the SALE PROPERTY; and,

c. That HERITAGE will indemnify and hold the UNIVERSITY harmless from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any portion of the SALE PROPERTY of hazardous materials or asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any portion of the SALE PROPERTY, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on any portion of the SALE PROPERTY (except costs and expenses relating to any such substances or materials introduced by UNIVERSITY or its employees, officers, contractors or agents) (collectively the "**ENVIRONMENTAL LIABILITIES**"); provided however, the indemnification obligation of HERITAGE under this Section for ENVIRONMENTAL LIABILITIES shall be limited to ENVIRONMENTAL LIABILITIES arising during HERITAGE's ownership of the SALE PROPERTY and to claims, costs, and liabilities resulting from the representations and warranties set forth in Paragraphs 11(a) and 11(b) being untrue.

14. Tests. Not later than five (5) days after the full execution of THIS AGREEMENT, HERITAGE shall provide to UNIVERSITY and the NRD all soil tests, engineering reports, wetland studies, and all notices, reports or other documents concerning the existence of hazardous materials above, in, on, under or around the SALE PROPERTY, or other similar drawings and technical information relating to the SALE PROPERTY that HERITAGE has in its possession, at no additional cost to UNIVERSITY or the NRD. The UNIVERSITY and the NRD shall have thirty (30) days after receiving such information to object in writing to any of the physical conditions of the SALE PROPERTY therein disclosed, whereupon HERITAGE may either terminate this AGREEMENT or within thirty (30) days after receipt of such objection provide such cure of such condition as may be acceptable to UNIVERSITY and the NRD.

Prior to Closing, the UNIVERSITY will conduct an environmental site assessment (the "ESA") on the SALE PROPERTY at its sole cost and expense. HERITAGE expressly recognizes and agrees that the ESA is required by the UNIVERSITY in order for the UNIVERSITY to acquire the SALE PROPERTY. In the event that the ESA indicates areas of concern as determined by either the UNIVERSITY or the NRD in their sole discretion, then UNIVERSITY shall have thirty (30) days after receiving such information to object in writing to any of the environmental conditions of the SALE PROPERTY therein disclosed, whereupon HERITAGE may either terminate this AGREEMENT or within thirty (30) days after receipt of such objection provide such cure of such condition as may be acceptable to UNIVERSITY. Any conditions identified in the ESA not objected to by UNIVERSITY within the 30-day period or any condition objected to which is then corrected by HERITAGE and such correction is approved by UNIVERSITY shall be deemed accepted, and shall not be the basis for any claim for future indemnification under Section 11.c. above.

15. Right of Entry. UNIVERSITY and the NRD, and their respective duly authorized agents, shall have the right to enter into and upon the SALE PROPERTY upon reasonable prior notice to HERITAGE, in order to make, at their own expense, all surveys, measurements, soil tests, environmental studies and other tests as UNIVERSITY or the NRD shall deem necessary. UNIVERSITY and the NRD agree to restore any resulting damage to the SALE PROPERTY and to indemnify, hold harmless and defend HERITAGE from any and all claims, losses, damages or liabilities of any nature whatsoever arising from or related to their (or any employees, agents or contractors acting on behalf of UNIVERSITY or the NRD) exercise of such right of entry, diligence and testing, hereunder, including all actions, suits, proceedings, demands, assessments, costs, expenses and attorney fees.

16. Conditions Precedent. The obligation of UNIVERSITY and the NRD to consummate the transaction contemplated herein is expressly subject to satisfaction as determined by UNIVERSITY and the NRD, in their absolute discretion, of the conditions listed below.

a. **Title.** The condition of title to the SALE PROPERTY being established in accordance with this AGREEMENT, subject only to exceptions waived or agreed to by the UNIVERSITY and the NRD.

b. **Warranties.** All warranties and representations of HERITAGE and the NRD, expressed herein, being true and correct in all material respects as of the date hereof and as of the CLOSING.

c. **Receipt of NRD CONTRIBUTION.** NRD's receipt of Farm and Ranch Lands Protection Program funds to be applied toward the PURCHASE PRICE and delivery of the NRD CONTRIBUTION.

d. **Receipt of NEBRASKA ENVIRONMENTAL TRUST GRANT.** UNIVERSITY'S receipt of Nebraska Environmental Trust funds by the UNIVERSITY to be applied toward the PURCHASE PRICE.

e. **UNIVERSITY Requirements and Approvals.** HERITAGE acknowledges that the UNIVERSITY is a State of Nebraska educational institution and that the UNIVERSITY must obtain necessary approvals for its purchase of the SALE PROPERTY. Accordingly, it is agreed and understood that all promises and conditions of the UNIVERSITY made pursuant to this Agreement are subject to the approvals of the UNIVERSITY as required by law or administrative policy or regulation. This AGREEMENT is contingent upon such approvals. UNIVERSITY represents and warrants that as of the CLOSING, UNIVERSITY shall have obtained all necessary approvals and shall thereupon be authorized to complete the CLOSING of the transaction on the terms set forth herein.

f. **FRLPP Easement.** HERITAGE's delivery of the executed FRLPP EASEMENT prior to CLOSING.

g. **Farm Lease Termination.** HERITAGE's delivery of a written termination of the EXISTING FARM LEASE signed by EXISTING TENANT at or prior to CLOSING. Such termination shall state that the EXISTING TENANT shall have no rights to the SALE PROPERTY after December 31, 2012.

h. **Performance.** HERITAGE shall have duly performed all of the covenants and obligations to be performed by HERITAGE under this Agreement and shall have delivered all of the documents, instruments and other items required to be delivered under this AGREEMENT.

17. **HERITAGE Conditions Precedent.** The obligation of HERITAGE to consummate the transaction contemplated herein is expressly subject to the satisfaction as determined by HERITAGE, in its absolute discretion, of the conditions listed below.

a. **Warranties.** All warranties and representations of the UNIVERSITY and NRD, expressed herein, being true and correct in all material respects as of the date hereof and as of the CLOSING.

b. **Performance.** UNIVERSITY and NRD shall have duly performed all of the covenants and obligations to be performed by each of UNIVERSITY and NRD under this AGREEMENT and shall have delivered all of the documents, instruments and other items required to be delivered under this AGREEMENT.

18. **Risk of Loss and Condemnation.** Until CLOSING, HERITAGE has the risk of loss or damage to the SALE PROPERTY. If any material loss or damage occurs prior to CLOSING, UNIVERSITY may, at its option, either cancel this AGREEMENT, or accept the SALE PROPERTY with the PURCHASE PRICE reduced by the cost of replacement or repair. If all or any material part of the SALE PROPERTY is condemned or any condemnation action or proceeding is commenced prior to CLOSING, UNIVERSITY or the NRD may, at their option, either cancel this AGREEMENT, or complete the purchase with all condemnation proceeds and claims being assigned to UNIVERSITY and the NRD, as their interests may appear. For the purpose of this paragraph whether a loss, damage or condemnation is "material" shall be as reasonably determined by the UNIVERSITY.

19. **Closing Costs and Apportionments.**

a. **Real Estate Taxes.** All consolidated real estate taxes against the SALE PROPERTY that become delinquent in the year in which the CLOSING takes place shall be treated as though all are current taxes, and such current taxes shall be paid by HERITAGE as of the date of the CLOSING on the basis of a 365-day calendar year. All prior years' taxes, interest and other charges related thereto, if any, shall be paid by HERITAGE.

b. **Special Assessments.** HERITAGE agrees that, except as provided in this AGREEMENT, HERITAGE shall pay and/or be responsible for all special assessments, preliminary or final, including any deficiency assessments or such assessments deferred for any reason, which affect the SALE PROPERTY as of the date of the CLOSING, with all such payments being made at the time of the CLOSING, or by way of escrow or bond as determined by UNIVERSITY which would allow for payment at the time of final assessment. In the event that special assessments for installation of public improvements have not been levied as of the CLOSING for which work on such public improvements has been commenced at the SALE PROPERTY, there shall be escrowed from the CLOSING an amount equal to the estimated amount of such special assessments. In the event the actual special assessments are greater than the estimates, HERITAGE shall be responsible for the difference; and, in the event that the estimated special assessments are more than the actual assessments the balance shall be returned to HERITAGE.

c. **Recording Fees.** NRD shall be responsible for payment of recording fees for the deed of conveyance and the FRLPP EASEMENT. As the UNIVERSITY is a public body corporate, neither the UNIVERSITY nor HERITAGE shall be responsible for the payment of a documentary stamp tax.

d. **Title Insurance.** HERITAGE shall pay the cost of the title insurance required by this AGREEMENT (provided that the UNIVERSITY shall be solely responsible for the costs of any endorsement premiums for endorsements requested by the UNIVERSITY) and each shall pay one-half of the cost of the CLOSING fee charged by the CLOSING company or agent selected by UNIVERSITY to assist with the closing of this transaction.

20. **Other Documents.** HERITAGE agrees to deliver at the CLOSING such other documents and assurances on forms as may be reasonably required by UNIVERSITY to affirm the title of the SALE PROPERTY, and to verify to HERITAGE'S satisfaction the conditions of this AGREEMENT, including, but not limited to: affidavit of possession, lien and special assessment affidavit and indemnity.

21. **Payment in Full.** The PURCHASE PRICE and performance of other obligations recited herein and in instruments delivered in connection with the CLOSING shall constitute payment or reimbursement in full for any and all diminishment in the value of HERITAGE'S remainder or other damages or expenses that may be sustained or incurred by HERITAGE by reason of the severance of the SALE PROPERTY from the remaining property of HERITAGE pursuant to this AGREEMENT.

22. **Waiver.** HERITAGE waives compliance by the UNIVERSITY and the NRD with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Neb. Rev. Stat. § 25-2501, Reissue 2008, *et seq.*).

23. **Broker Fees.** HERITAGE shall be solely responsible for and pay all real estate commissions due Boyer Young in connection with this transaction. HERITAGE hereby agrees to defend, indemnify and hold harmless UNIVERSITY from and against any claims by Boyer Young or any other real estate broker whom HERITAGE engaged regarding this transaction, for brokerage commissions, finders' or other fees relative to this AGREEMENT or the sale of the SALE PROPERTY. The parties represent that no other broker is involved in this AGREEMENT.

24. **Remedies of the Parties.** If any party defaults in the performance of any provision of this AGREEMENT, any other non-defaulting party shall be entitled to any and all remedies available at law or in equity.

25. **Prior Agreements.** This AGREEMENT evidences the entire agreement of the parties, replaces any and all prior written or oral representations, offers, letters of intent or agreements made by either party, and shall be binding upon the parties hereto, their successors and assigns. This AGREEMENT may not be changed or altered in any way, except by a written instrument signed by all parties. No oral representations of any kind shall be binding upon either party unless fully set forth herein or in such a written instrument.

26. **Survival of Warranties.** All warranties and representations and all indemnifications hereunder or in any documents delivered in connection with the CLOSING shall survive CLOSING for a period of twelve (12) months from the date of CLOSING; provided

however, that any representations or warranties (and any related indemnifications) of HERITAGE under Section 11 shall survive for the statute of limitation period applicable to environmental matters, and any representations or warranties (and any related indemnifications) of HERITAGE regarding title to the SALE PROPERTY shall survive indefinitely; and provided further, that any representations and warranties of the UNIVERSITY under Section 14.e. regarding authority shall survive indefinitely.

27. Construction. This AGREEMENT shall be construed in accordance with the laws of the State of Nebraska. Wherever possible, each provision of this AGREEMENT shall be interpreted in such manner as to be effective and valid. If any provision of this AGREEMENT shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this AGREEMENT. Time is of the essence of this AGREEMENT. The captions contained in this AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of this AGREEMENT.

28. Non-waiver. No delay or failure by any party to exercise any right under this AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any party shall not be deemed to extend the amount of time available to perform any other act required under this AGREEMENT.

29. Further Agreements. Each party will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as may be necessary, expedient or proper in the opinion of the requesting party in order to complete any and all conveyances, transfers, and assignments herein provided, and will do any and all other acts and execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of this AGREEMENT.

30. Assignment. Neither this AGREEMENT, nor any interest of any party hereunder, may be assigned in whole or in part by any party without the prior written consent of both other parties.

31. Notices. All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this AGREEMENT to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed as set forth below, and shall be effective on the date of such deposit or the date of delivery, as the case may be:

To HERITAGE:	Jerry G. Banks
	NS - THE HERITAGE, L.L.C.
	6336 Pershing Drive
	Omaha, NE 68110

To UNIVERSITY:

The University of Nebraska at Omaha
Office of the Vice Chancellor
Business and Finance
60th & Dodge Streets
EAB 209
Omaha, Nebraska 68182-0047
Telecopy No. 402-554-2244

To NRD:

John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138

[Remainder of page intentionally left blank; signature page to follow]

Dated this _____ day of _____, 2012.

NS – THE HERITAGE, L.L.C., a Nebraska limited liability company

By _____
Jerry G. Banks
Secretary

Date: _____

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body corporate and governing body of the University of Nebraska

By: _____
Name: _____
Its: _____

Date: _____

Attest:

Carmen Maurer, Corporation Secretary

Date: _____

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a political subdivision of the state of Nebraska

By _____
John Winkler
General Manager

Date: _____

Exhibit A to Purchase Agreement

SALE PROPERTY

(To Be Attached Upon Completion of Survey)

Exhibit B to Purchase Agreement

FORM OF FRLPP EASEMENT

(See attached)

Exhibit C to Purchase Agreement

FORM OF RESTRICTIVE COVENANTS

(See attached)

REGISTER OF DEEDS USE

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this “Declaration”) is made effective as of the ____ day of _____, 2012, by **NS – THE HERITAGE, L.L.C.**, a Nebraska limited liability company, herein after referred to as “Declarant”.

WHEREAS, Declarant is the owner of that certain real property generally known as the Heritage subdivision, located in Douglas County, Nebraska, the “Declarant Property” as more particularly described in Exhibit A hereto

WHEREAS, Declarant is also the owner of that certain real property more particularly described in Exhibit B, attached hereto and incorporated by reference herein, which property is hereafter referred to as the “Burdened Property”;

WHEREAS, Declarant will convey the Burdened Property to The Board of Regents of the University of Nebraska, a public body corporate and governing body of the UNIVERSITY of Nebraska (“University”), pursuant to a separate deed dated on or about the effective date of this Declaration; and

WHEREAS, Declarant desires to establish certain restrictions on the Burdened Property for the benefit of the Declarant Property.

NOW, THEREFORE, Declarant for itself, its successors and assigns does hereby declare that the Burdened Property shall be subject to and shall be used in conformance with the following covenants, restrictions and agreements:

1. No fence or similar improvement shall be constructed, made or maintained on or along that portion of the Burdened Property which directly borders the Declarant Property, unless (i) such fencing does not exceed 48" in height and is a prairie style fence, such as split rail or barbed wire fencing or a dark color chain link fence, or (ii) without the prior written consent of Declarant, which shall be determined in its reasonable judgment based on whether such fencing would be detrimental to any sales or resales of lots or developed properties along such area. In the event that any portion of the Declarant Property shall hereafter cease to be either (i) owned by Declarant, or (ii) property that is part of the Heritage subdivision subject to the HOA (as defined below) (collectively, the "Non-Benefitted Property"), then the foregoing fence restriction shall automatically terminate with regard to, but solely with regard to, that portion of the Burdened Property that directly borders any Non-Benefitted Property.

2. The foregoing restrictions may be waived, amended, modified, released or terminated at any time and from time to time in writing by Declarant.

3. The foregoing restrictions (a) are imposed upon the Burdened Property for the benefit of the Declarant Property and all portions thereof, (b) shall be effective for a period of thirty (30) years from the date hereof unless sooner released or terminated as provided herein, and (c) shall be deemed restrictive covenants running with the land and shall be binding upon the Burdened Property and any person who may from time to time own, lease or otherwise have an interest in the Burdened Property or any portion thereof.

4. All rights arising hereunder for the benefit of the Declarant Property may be assigned at any time by Declarant to a homeowner's association to be established in relation to the Heritage subdivision (the "HOA"), and upon such assignment, the HOA shall have the right to enforce any and all restrictions or obligations arising against or relating to the Burdened Property as set forth hereunder.

[Remainder of page intentionally left blank; signature page to follow]

Executed this _____ day of _____, 2012.

NS – THE HERITAGE, L.L.C., a Nebraska
limited liability company

By: _____
Name: _____
Its: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on _____, 2012 by
_____, the _____ for and on behalf of NS – THE HERITAGE,
L.L.C., a Nebraska limited liability company.

Notary Public

My Commission expires:

Exhibit D to Purchase Agreement

FORM OF DEED

(See attached)

REGISTER OF DEEDS USE

SPECIAL WARRANTY DEED

NS -- THE HERITAGE, L.L.C., a Nebraska limited liability company ("GRANTOR") in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration received from **THE BOARD OF REGENTS OF THE UNIVERISTY OF NEBRASKA**, a public corporate body and agency of the State of Nebraska ("GRANTEE"), hereby conveys to GRANTEE the real estate (as defined in Neb. Rev. Stat. § 76-201) described in Exhibit A attached hereto and incorporated herein by reference.

GRANTOR covenants with GRANTEE that GRANTOR:

- (1) is lawfully seized of such real estate and that it is free from encumbrances, subject to restrictions, covenants and easements of record, real estate taxes not yet delinquent and any SID special assessments;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend the title to the real estate against the lawful claims of all persons claiming or to claim the same or any part thereof by, through or under GRANTOR, but not otherwise.

[Remainder of page intentionally left blank; signature page to follow]

Executed this _____ day of _____, 2012.

NS – THE HERITAGE, L.L.C.

By _____
Name _____
Its _____
Date _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2012 by _____, the _____ for and on behalf of NS – The Heritage, L.L.C., a Nebraska limited liability company.

Notary Public

My Commission expires: