

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (the “**First Lease Agreement Amendment**”) is made and entered into this ___ day of March, 2005 among the Lincoln-Lancaster County Public Building Commission in the State of Nebraska (the “**Commission**”), as lessor, and the City of Lincoln, Nebraska (the “**City**”), and The County of Lancaster, Nebraska (the “**County**”), jointly, as lessee.

RECITALS

I.

The Commission is a body politic and corporate and an instrumentality of the State of Nebraska existing pursuant to Sections 13-1301 to 13-1312, inclusive, Reissue Revised Statutes of Nebraska, as amended (the “**Act**”), duly activated by the City and the County pursuant to the Act for the purpose of facilitating the ownership and use of projects (as defined in the Act) for the benefit and use of the City and the County.

II.

The Commission, as lessor, and the City and the County, jointly, as lessee, have heretofore entered into a Lease Agreement, dated as April 1, 1996 (the “**Original Lease Agreement**”), to lease certain real property more particularly described in **Exhibit A** and **Exhibit B** to the Original Lease Agreement, on which the Commission has constructed the Project (as defined in the Original Lease Agreement) for the use of the City and the County and their respective departments, agencies, and functions.

III.

Pursuant to Resolution No. 37, duly passed March 12, 1996 (the “**1996 Bond Resolution**”), the Commission has heretofore issued, sold and delivered \$29,000,000 in aggregate principal amount of its Tax Supported Lease Rental Revenue Building Bonds, Series 1996, dated April 1, 1996 (the “**1996 Bonds**”), for the purpose of paying the costs of the Project (as defined in the Original Lease Agreement) of which \$25,035,000 in aggregate principal amount are presently outstanding and unpaid (the “**Outstanding 1996 Bonds**”).

IV.

Pursuant to Resolution No. ___, duly passed March 22, 2005 (the “**2005 Bond Resolution**”), the Commission has authorized the issuance of not to exceed \$27,000,000 in aggregate principal amount of its Tax Supported Lease Rental Revenue Refunding Bonds, Series 2005, dated the date of delivery thereof (the “**2005 Bonds**”), for the purpose of (a) providing for the payment and redemption of the Outstanding 1996 Bonds, (b) funding a debt service reserve fund for the 2005 Bonds and (c) paying the costs of issuing the 2005 Bonds.

V.

The Commission, the City and the County have determined that certain amendments, modifications and changes are required to be made to the Original Lease Agreement in connection with the issuance of the 2005 Bonds.

NOW THEREFORE, in consideration of the foregoing, the Act, the terms, conditions and mutual covenants of this First Lease Agreement Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission, the City and the County hereby agree as follows:

Section 1. Section 1 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 1. Ratification of Acts of Commission. All agreements and actions of the Commission with respect to Tract 1, Tract 2, the Existing Facilities, the Project, the New Facilities, the 1996 Bonds and the 2005 Bonds made, entered into, or undertaken to date are hereby approved, confirmed and ratified by both the City and the County.

Section 2. Section 2 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 2. Use of the New Facilities. The City and the County shall jointly use the New Facilities, the City being allotted 68.41% of the space in the New City-County Building (exclusive of the top floor thereof not leased hereby) and 33.62% of the space in the Hall of Justice, and the County being allotted 31.59% of the space in the New City-County Building (exclusive of the top floor thereof not leased hereby) and 66.38% of the space in the Hall of Justice; provided, however, that the City and the County may agree, in writing, to revise the percentage of allocation of space between themselves at any time. The Commission may at any time permit the use by either such party of allotted but unoccupied space of the other on a temporary basis until such time as the space is required by the party to whom it is allotted. The specific amount of space to be occupied by the City and the County in each of the New Facilities, up to their respective maximum allotments, shall be based upon their respective requests to the Commission for space. Except as specifically provided by an amendment or amendments to this Agreement, the New Facilities shall be occupied by and used exclusively for the governmental purposes and operations of the City and the County; provided, however, that the City and the County may lease or sublease to the United States of America, the State of Nebraska or to any body, board, agency, corporation or other governmental entity or unit of either or to any other governmental body for governmental use, any portion or part of the New Facilities to the extent that such is not required by the City or the County. The Commission, the City and the County jointly and severally certify and covenant to each other and to and for the benefit of the registered owners of the 1996 Bonds and the 2005 Bonds that so long as any of either the 1996 Bonds or the 2005 Bonds remain outstanding under the 1996 Bond Resolution or the 2005 Bond Resolution, respectively, no part of the New Facilities will be used or otherwise occupied in any manner which would cause the interest on either the 1996 Bonds or the 2005 Bonds to be includable in gross income for federal income tax purposes. The Commission, the City and the County shall, prior to entering into any lease or other agreement for the use of any portion of the New Facilities with the United States of America, or any body, board, agency, corporation or other governmental entity or unit of the United States of America, obtain a written opinion of bond counsel to the Commission that such leasing or other use will not cause the interest on either the 1996 Bonds or the 2005 Bonds to be includable in gross income for federal income tax purposes.

The City and the County each hereby appoint the Commission as their agent for the purposes of leasing or subleasing any space in the New Facilities allotted to either of them and not required by the City or the County, as the case may be. The Commission is authorized to enter into leases for any such space upon such terms and conditions as the Commission shall, in its sole discretion, determine. The Commission shall give written notice to the City and the County of any

such proposed lease or sublease not less than fifteen (15) days prior to the effective date thereof, specifying the identity of the proposed lessee/sublessee, the square footage and location of the space proposed to be leased/subleased, the proposed rentals to be provided for, the proposed term and renewal options to be included and the use of such space by the proposed lessee/sublessee permitted thereby.

Section 3. Section 3(e) of the Original Lease Agreement is hereby amended in its entirety to read as follows:

(e) Definition of Pro Rata Share. For purposes of this Agreement, the Pro Rata Share of any Operating Expenses, property taxes and debt service on the 2005 Bonds (for all purposes of this Agreement, the phrases “debt service” and “debt service on the 2005 Bonds” shall mean and include all scheduled installments of the principal of, redemption premium, if any, and interest on the 2005 Bonds) payable by the City or the County shall be determined by dividing the aggregate amount of New City-County Building and Hall of Justice square footage allotted to each by the sum of the New City-County Building and Hall of Justice square footage allotted to both of them and applying the resulting percentages to the total of such expenses, debt service, and taxes. The Commission shall credit towards the Pro Rata Share of Operating Expenses, property taxes and debt service on the 2005 Bonds due from the City and the County any amount received from any other tenant of the New Facilities for such Operating Expenses, taxes, and debt service payments.

Section 4. Section 6 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 6. Contributions for Payment of Debt Service on the 2005 Bonds and to Cure Deficiencies in the 2005 Reserve Fund.

(a) The Commission does hereby warrant, represent, covenant and agree, for the security and benefit of the City, the County, the registered owners of the 2005 Bonds, and any trustee or other fiduciary for the registered owners of the 2005 Bonds, that it shall, for so long as any 2005 Bonds remain outstanding and unpaid, (1) annually levy the maximum amount of taxes that it is from time to time authorized by law to impose, provided that such tax so levied shall in no event (except as otherwise provided in this Section 6(a)) be in an amount equal to less than 1.7 cents on each \$100 upon the actual valuation of all the taxable property in Lancaster County, Nebraska, and (2) apply the entire amount of tax revenues received by it as a result of such levy, to the extent that such tax revenues are not otherwise required to pay the principal of, redemption premium, if any, and interest on, in the following order, (A) the \$3,695,000 original aggregate principal amount of the Commission’s Tax Supported Lease Rental Revenue and Refunding Bonds, Series 1998 (the “1998 Bonds”), (B) the \$9,895,000 original aggregate principal amount of the Commission’s Tax Supported Lease Rental Revenue and Refunding Bonds, Series 2002 (the “2002 Bonds”) and (C) the \$11,295,000 in original aggregate principal amount of the Commission’s Tax Supported Lease Rental Revenue Bonds, Series 2004 (the “2004 Bonds”), solely and only in payment, first, of the debt service on the 2005 Bonds in full and when due, and next, if the 2005 Bond Resolution contemplates that the same is to be cured, to the curing of any deficiency in the amount required to be on deposit in the 2005 Reserve Fund created by the 2005 Bond Resolution within the period(s) of time specified in the 2005 Bond Resolution for the curing of such deficiency; *provided, however*, that the Commission shall never be required by the provisions of this Agreement to so levy any taxes, or to so apply any tax revenues, in excess of those required to assure the payment in full and when due of all debt service on the 2005 Bonds and the curing of any deficiencies in the 2005 Reserve Fund in the manner provided for in and contemplated by the 2005 Bond Resolution.

(b) As a part of the rentals payable by them hereunder, the City and the County each agree to pay to the Commission from legally available funds an amount equal to its Pro Rata Share of the debt service on the 2005 Bonds, and the amount of any deficiency in the 2005 Reserve Fund required by the 2005 Bond Resolution to be cured, not paid or provided for by the Commission in the manner provided for in, and contemplated by, subsection (a) of this Section 6. The City and the County shall each pay its respective Pro Rata Share of (1) the principal of, redemption premium, if any, and interest on the 2005 Bonds to the Trustee under the 2005 Bond Resolution not less than fifteen days prior to the date such principal or interest shall become due and payable to the registered owners of the 2005 Bonds and (2) any deficiency in the 2005 Reserve Fund to the Trustee under the 2005 Bond Resolution within eighteen months after receipt of notice of such deficiency from the Trustee or the Commission. To the extent such rental payments are not made from other sources, the City, subject to the specific limitations set forth in Section 13-1311(5) of the Act, and the County do each hereby individually warrant, represent, covenant and agree, for the security and benefit of the other party and also for the benefit of the Commission and the registered owners of the 2005 Bonds, and any trustee or other fiduciary for the registered owners of the 2005 Bonds, that it shall levy and collect taxes on all property in its respective jurisdiction, and shall appropriate such funds or other funds sufficient in rate and amount, in the aggregate, to pay the foregoing lease rentals. The Commission, the City, and the County may, by a supplemental agreement or agreements from time to time, provide for a different formula for calculating rental payments due from the City and the County hereunder constituting contribution of amounts for payment of the foregoing pursuant to this subsection (b) of this Section 6, which shall include the appropriation of funds and levy of taxes by the City and the County adequate to assure the payment of lease rentals sufficient to meet all debt service payments on the 2005 Bonds and cure such deficiencies in the 2005 Reserve Fund to the extent not otherwise adequately provided for in subsection (a) of this Section 6.

(c) The City hereby pledges its authority to levy taxes and appropriate funds pursuant to Section 13-1311(5) of the Act and this Section 6 and the County hereby pledges its obligation to levy taxes and appropriate funds as provided in this Section 6 for the further security and benefit of each of the other parties hereto, the registered owners of the 2005 Bonds, and any trustee or other fiduciary for the registered owners of the 2005 Bonds. The Commission, the City, and the County agree that all lease rental payments received by the Commission from the City and the County pursuant to the provisions of this Agreement shall be applied first to the payment of debt service on the 2005 Bonds, in full and when due, with any balance then remaining, if any, to be applied next, to the full extent thereof if necessary, to cure any deficiencies in the 2005 Reserve Fund, and then next, if any sums then remain, to the payment of Operating Expenses and other amounts payable to the Commission pursuant to this Agreement.

(d) The obligations of the Commission, the City and the County pursuant to this Section 6 shall be performed without setoff, counterclaim, or defense for any reason and without abatement or deduction or defense, and notwithstanding any breach or failure of performance by any other party to this Agreement. No party hereto will suspend or discontinue any such obligations or payments, and will fully and promptly perform and observe all of their other agreements in this Agreement, and will not terminate this Agreement for any cause, including without limitation any act or circumstance that may constitute failure of consideration, destruction or damage to the New Facilities, the taking of all or any part of Tract 1, Tract 2, or the New Facilities by condemnation or otherwise, the lawful prohibition of the use of the New Facilities, the interference with such use by any governmental entity or private person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of any party, change

in the tax or other laws or administrative rulings or actions of the United States of America or the State of Nebraska or any political subdivision thereof, or failure of any party to perform and observe any agreement, whether express or implied, of any duty, liability or obligation arising out of or connected with this Agreement, Tract 1, Tract 2, or the New Facilities, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the obligations and amounts payable by the Commission, the City and the County hereunder shall be performed and paid in full and when due and without any delay or diminution whatever.

Section 5. Section 7 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 7. Observation of Budget and Spending Limitations. The Commission, the City and the County each warrant, represent, covenant, and agree to observe all budget and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of their tax levies or other monies shall be lawfully available to pay and satisfy all of their obligations under this Agreement, and further covenant and agree that such obligations, including the obligations related to tax levies and appropriations for payment of debt service on the 2005 Bonds and all other amounts contemplated hereby, are not such as may reasonably be expected to require levies or appropriations in excess of any applicable levy limit. Specifically, but without limitation, the Commission warrants, represents, covenants, and agrees that its obligations hereunder do not exceed the limitation imposed by Section 13-1304 of the Act; the City warrants, represents, covenants, and agrees that its obligations hereunder do not exceed the limitations imposed by Section 13-1306 of the Act, and the County warrants, represents, covenants, and agrees that its obligations hereunder do not exceed the limitations imposed by Article VIII, Section 5 of the Nebraska Constitution and Section 23-120, Reissue Revised Statutes of Nebraska, as amended.

Section 6. Section 8 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 8. Benefit of Agreement. This Agreement is entered into for, and shall insure and accrue to the benefit of and be enforceable by each of the other parties hereto, the registered owners of the 2005 Bonds, and by any trustee or other fiduciary for the registered owners of the 2005 Bonds.

Section 7. Section 9 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 9. Amendments. The parties hereto may from time to time, without the approval of the registered owners of the 2005 Bonds, consent to any amendment, change or modification of this Agreement for the purpose of curing any ambiguity, formal defect, or omission or for the purpose of making any other change herein which, in the judgment of the Commission, is not to the material prejudice of the Commission or the registered owners of the 2005 Bonds.

Except for amendments, changes or modifications made in accordance with the preceding paragraph, no amendment, change or modification of this Agreement shall be made without the consent of the registered owners of a majority in aggregate principal amount of all of the 2005 Bonds then outstanding; provided, however, that no such amendment shall be permitted which would have the effect of the causing the Commission to at any time be in default in paying debt service on the 2005 Bonds.

Section 8. Section 10 of the Original Lease Agreement is hereby amended in its entirety to read as follows:

Section 10. Term of Agreement; Miscellaneous. This Agreement shall be in full force and effect from and after the date hereof, and shall remain in full force and effect so long as any 2005 Bonds remain outstanding under the 2005 Bond Resolution. At such time as no 2005 Bonds shall remain outstanding under the 2005 Bond Resolution, this Agreement may be extended for such period as may be agreed upon in writing signed by each of the parties hereto or this Agreement may be terminated by the mutual agreement of said parties. This Agreement constitutes the entire agreement of the Commission, the City and the County with respect to the subject matter hereof. This Agreement is governed by the laws of the State of Nebraska, including specifically but without limitation, the Act.

Section 9. All of the terms and conditions of the Original Lease Agreement not expressly modified and/or amended by this First Lease Agreement Amendment are hereby affirmed and remain in full force and effect and all references to "Agreement" shall mean the Original Lease Agreement as amended by this First Lease Agreement Amendment.

Section 10. This First Lease Agreement Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Commission, the City and the County have caused this First Lease Agreement Amendment to be executed by their duly authorized officers.

Executed by the Commission this ____ day of March, 2005.

**LINCOLN-LANCASTER COUNTY PUBLIC
BUILDING COMMISSION IN THE STATE OF
NEBRASKA**

By: _____
Chair

Executed by the City this ____ day of March, 2005.

CITY OF LINCOLN, NEBRASKA

ATTEST:

By: _____
Mayor

By: _____
City Clerk

Executed by the County this ____ day of March, 2005.

THE COUNTY OF LANCASTER, NEBRASKA

ATTEST:

By: _____
Chair

By: _____
County Clerk

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of March, 2005, by Larry Hudkins, Chair of the Lincoln-Lancaster County Public Building Commission in the State of Nebraska, on behalf of said Commission.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of March, 2005, by Colleen J. Seng, Mayor of the City of Lincoln, Nebraska, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of March, 2005, by Larry Hudkins, Chair of the Board of Commissioners of The County of Lancaster, Nebraska, on behalf of said County.

Notary Public