

**FIRST AMENDMENT TO LEASE AGREEMENT
PROVIDING FOR THE LEASE OF
3140 "N" STREET (HEALTH DEPARTMENT FACILITIES)
AND
BLOCK 101, ORIGINAL PLAT(CITY-COUNTY PARKING FACILITIES)
FROM
LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION
TO
CITY OF LINCOLN, NEBRASKA
AND
THE COUNTY OF LANCASTER, NEBRASKA**

This First Amendment to Lease Agreement (the "**First Amendment to Agreement**") is made and entered into this ____ of _____, 2004 by and among the Lincoln-Lancaster County Public Building Commission (the "**Commission**"), as lessor, the City of Lincoln, Nebraska (the "**City**") and The County of Lancaster, Nebraska (the "**County**"), as lessees, as follows:

RECITALS

I.

The Commission is a body politic and corporate and an instrumentality of the State of Nebraska (the "**State**"), exercising essential governmental functions, existing pursuant to Sections 13-1301 through 13-1312, inclusive, Reissue Revised Statutes of Nebraska, as amended (the "**Act**"), and has been 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 lessees, have heretofore entered into a Lease Agreement dated August 21, 2002 (the "**Original Agreement**") with respect to certain property (1) located at 3140 "N" Street in the City and commonly known as the Lincoln-Lancaster County Health Department Building (the "**Health Department Building**") and (2) described as Block 101, Original Plat, City of Lincoln, Lancaster County, Nebraska on which the Commission has constructed facilities and related improvements for the use of the City and the County and their respective departments, agencies, and functions.

III.

Pursuant to Resolution No. 95, adopted July 9, 2002 (the "**2002 Bond Resolution**"), the Commission has heretofore issued, sold and delivered \$9,895,000 aggregate principal amount of its Tax-Supported Lease Rental Revenue and Refunding Bonds, Series 2002, dated the date of delivery (August 21, 2002) thereof (the "**Series 2002 Bonds**"), for the purpose of (a) refinancing certain outstanding indebtedness of the Commission, the proceeds of which were used to repair, remodel, renovate, equip, furnish and improve the Health Department Building (the "**Prior Project**") and (b) paying the costs of acquiring certain property and constructing, equipping and furnishing parking facilities thereon (the "**2002 Project**") for the joint use of the City and the County.

IV.

The City and the County have heretofore determined that it is necessary, desirable, advisable, and in the best interests of the City and the County that an addition and other improvements be made to the Health Department Building, together with such related equipment and furnishings as is appropriate (the

“**2004 Project**”), and that certain amendments, modifications and changes are required to the Original Agreement.

V.

Pursuant to Resolution No. _____ adopted _____, 2004 (the “**2004 Bond Resolution**”), the Commission has authorized the issuance of \$ _____ aggregate principal amount of its Tax Supported Lease Rental Revenue Bonds, Series 2004, dated the date of delivery thereof (the “**Series 2004 Bonds**”) for the purpose of (1) paying the costs of the 2004 Project, (2) funding a debt service reserve fund with respect to the Series 2004 Bonds, (3) paying a portion of the interest accruing and falling due on the Series 2004 Bonds through and including _____, 200 __, and (4) paying the costs of issuance thereof.

VI.

The City and the County have approved the issuance by the Commission of the Series 2004 Bonds pursuant to Ordinance No. _____ of the City, adopted July ____, 2004 (the “**City Ordinance**”) and Resolution No. 04-____ of the County, adopted July ____, 2004 (the “**County Resolution**”), respectively.

VII.

In connection with the issuance of the Series 2004 Bonds, the Commission, the City and the County have determined that it is necessary, desirable, advisable and in the best interest of the Commission, the City and the County that certain amendments, modifications and changes are required to the Original Agreement.

VIII.

The 2004 Bond Resolution, the City Ordinance and the County Resolution each contemplate, approve and authorize the execution of this First Amendment to Agreement for the purpose of governing the acquisition, construction, improvement and operation of the Prior Project, the 2002 Project and the 2004 Project (collectively, the “**Project**”) and certain matters related to the Series 2002 Bonds and the Series 2004 Bonds.

NOW THEREFORE, in consideration of the foregoing, the Act, the terms and conditions of this Agreement, 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 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 the Project, the Series 2002 Bonds and the Series 2004 Bonds prior to the date of this Agreement are hereby approved, confirmed and ratified by the City and the County. Specifically, but without limitation, the City and the County hereby approve and ratify the acquisition, construction and improvement of the 2002 Project and the 2004 Project, the expenditure of funds therefor, and the entering into of contracts and agreements in connection therewith.

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

The City and the County shall jointly use the Project and the City and the County shall each be allotted one-half (½) of the space in the Project; 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 use by either 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 in the Project to be occupied by the City and the County, up to their maximum allotment, 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 Prior Project and the 2004 Project shall be occupied by and used exclusively for the administration and operation of the City-County Health Department and the 2002 Project shall be occupied by and used exclusively to provide parking facilities for the employees of the City and the County and the persons conducting business at the offices of the City and the County; provided, however, that the City and the County may lease to the United States of America, the State of Nebraska or any body, board, agency, corporation or other governmental entity of either of them, or other governmental units for use by them, the 2002 Project to the extent that such use 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 purchasers and owners of the Bonds that so long as any of the Bonds remain outstanding under the Bond Resolution, the Project will not be used or otherwise occupied in any manner which would cause the interest on either the Series 2002 Bonds or the Series 2004 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 Project with the United States of America, or any body, board, agency, corporation or other governmental entity 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 the Bonds to be includable in gross income for federal income tax purposes.

Section 3. The first two paragraphs of Section 6 of the Original Agreement are hereby amended in their entirety to read as follows:

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 Series 2002 Bonds and the Series 2004 Bonds (collectively, the "Bonds"). To the extent such payments are not made from other sources, the City, subject to the specific limitations set forth in Section 13-1306 of the Act, and the County hereby each covenant, warrant and agree to levy and collect taxes on all property in their respective jurisdiction, and to appropriate such funds or other funds of the City or County, sufficient in rate and amount, in the aggregate, to pay the principal, premium, if any, and interest on the Bonds when due. The Commission, the City and the County may, by a supplemental agreement or agreements from time to time, provide for a different formula for contribution of amounts for payment of principal, premium, if any, and interest on the Bonds, which shall include the appropriation of funds and levy of taxes by the City and the County sufficient to pay all principal, premium, if any, and interest on the Bonds without contribution by the Commission.

The Commission, pursuant to the 2002 Bond Resolution, the 2004 Bond Resolution and the Act, shall levy a tax on all taxable property in the County sufficient in rate and amount to pay the principal of, premium, if any, and interest on, first, the Series 2002 Bonds, and then the Series 2004 Bonds as the same shall become due to the extent the payments made by the City and the County hereunder are insufficient for such purposes. The City hereby pledges its authority to levy taxes and appropriate funds pursuant to Section 13-1306 of the Act and this section and the County hereby pledges its obligation to levy taxes and appropriate funds as provided in this section for the security and benefit of the holders of, first, the Series 2002 Bonds and then the Series 2004 Bonds. The Commission, the City and the County agree that all payments received by the Commission pursuant to the provisions of this Agreement shall be applied first, to the payment of the principal of, redemption premium, if any, and interest on the Series 2002 Bonds, second, to the payment of the principal of redemption premium, if any and interest on the Series 2004 Bonds and the remainder to the payment of Operating Expenses and other amounts payable to the Commission pursuant to this Agreement.

Section 4. The second paragraph of Section 9 of the Original Agreement is hereby amended in its entirety to read as follows:

Except for amendments, changes or modifications as provided in the preceding paragraph, no amendment, change or modification of this Agreement shall be made without the consent of a majority of the owners of all of the Bonds outstanding; provided, however, that no such amendment shall be permitted which would have the effect of causing the Commission to be in default in making the payments on Bonds outstanding under the 2002 Bond Resolution or the 2004 Bond Resolution.

Section 5. Section 10 of the Original 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 of the Bonds are outstanding under either the 2002 Bond Resolution or the 2004 Bond Resolution. At such time as no Bond is outstanding under either the 2002 Bond Resolution or the 2004 Bond Resolution, this Agreement may be extended for such period as may be agreed in writing by the parties hereto or this Agreement may be terminated by the mutual agreement of the parties hereto. 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 6. All of the terms and conditions of the Original Lease not expressly modified and/or amended by this First Amendment to Lease are hereby affirmed and remain in full force and effect.

Section 7. This First Amendment to Agreement 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.

[The remainder of this page intentionally left blank.]

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

Executed by the Commission this ____ day of _____, 2004.

**LINCOLN-LANCASTER COUNTY PUBLIC
BUILDING COMMISSION**

Chair

Executed by the City this ____ day of _____, 2004.

ATTEST:

CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

City Clerk

Mayor

Executed by the County this ____ day of _____, 2004.

ATTEST:

THE COUNTY OF LANCASTER, NEBRASKA

County Clerk

Chair, Board of Commissioners

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, Chairman of the Lincoln-Lancaster Public Building Commission, on behalf of said Commission.

Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by Coleen 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 _____, 2004, by Ray A. Stevens, Chair of the Board of Commissioners of The County of Lancaster, Nebraska, on behalf of said County.

Notary Public