05-101

CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LINCOLN, NEBRASKA AUTHORIZING AND APPROVING A LEASE-PURCHASE AGREEMENT AMONG THE CITY, UNION BANK & TRUST COMPANY, AS LESSOR, AND UNION BANK & TRUST COMPANY, AS REGISTRAR AND PAYING AGENT, WITH RESPECT TO THE PURCHASE AND INSTALLATION OF STREET LIGHT POLES AND RELATED EQUIPMENT; APPROVING THE ISSUANCE, SALE AND DELIVERY BY THE LESSOR OF NOT TO EXCEED $2,000,000 AGGREGATE PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN SAID LEASE; FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF CERTAIN PROVISION OF THE LEASE; AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA AS FOLLOWS:

Section 1. The Mayor and Council of the City hereby find and determine as follows:

(a) It is necessary, desirable, advisable and in the best interests of the City that a supply of new street light poles and related equipment (collectively, the **"Equipment"**) be purchased to adequately light certain of the City's streets and provide for the continued health, safety and welfare of the City's residents;

(b) The City has carefully considered the options available to it with respect to financing the purchase of the Equipment; and

(c) The proposal to finance the Equipment by and through a lease-purchase agreement with Union Bank & Trust Company (the **"Lessor"**) pursuant to the provisions of Section 15-201.02, Reissue Revised Statutes of Nebraska, as amended, under which the Lessor would issue certificates of participation evidencing proportionate interests in its right to receive payments under such lease-purchase agreement from the City in an aggregate principal amount not to exceed $2,000,000 is hereby accepted and approved.

Section 2. The Lease-Purchase Agreement dated the date of its execution and delivery (the **"Lease"**) among the City, the Lessor and Union Bank & Trust Company, as registrar and paying agent (the **"Registrar"**), relating to the financing of the Equipment and in substantially the form attached hereto as **Exhibit A** is hereby approved. The Finance Director is hereby authorized and directed to determine (a) the principal amount of the Lease, which shall not exceed $2,000,000, (b) the principal installments to be due thereunder, (c) the final maturity of the Lease, which shall not be later than December 31, 2015, (d) the rate of interest to be carried by each principal installment such that the true interest cost shall not exceed 4.25%, and (e) the prepayment provisions, which may include a prepayment premium not to exceed 2.00%. The Finance Director, after receiving advice from the City Attorney and special tax counsel, is hereby authorized to make such changes, additions or deletions with respect to the Lease as may be in the best interests of the City prior to the signing thereof.

Section 3. The issuance, sale and delivery by the Lessor of certificates of participation evidencing proportionate interests in its right to receive payments from the City under the Lease (the **"Certificates"**) in an aggregate principal amount not to exceed $2,000,000, the terms of which are set forth in the Lease, are hereby approved.

Section 4. The sale of the Certificates to Ameritas Investment Corp. (the **"Underwriter"**), according to the terms and conditions of a Certificate Purchase Agreement to be dated the date of execution and delivery thereof (the **"Purchase Agreement"**) among the City, the Lessor and the Underwriter, in substantially the form attached hereto as **Exhibit B**, is hereby approved.

Section 5. The Mayor, Finance Director, City Clerk, Deputy City Clerk, City Treasurer, Deputy City Treasurer, City Attorney and any Assistant City Attorney, are hereby authorized to execute and deliver for and on behalf of the City the Lease, the Purchase Agreement, and all additional certificates, documents, opinions, or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 6. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Mayor, Finance Director, City Treasurer, City Clerk, City Attorney, City Controller and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with special tax counsel, the Lessor and its counsel, the Underwriter and its counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs to the Finance Director the right, power and authority to exercise his independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Lease and the Certificates not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the Lease and the issuance, sale and delivery of the Certificates. The execution and delivery by the Finance Director or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of special tax counsel, financial advisors, and other agents in connection with the execution and delivery of the Lease and the issuance, sale and delivery of the Certificates, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 7. The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the execution and delivery of the Lease and the sale of the Certificates and the terms and provisions thereof shall constitute a contract between the City, the Lessor and the registered owners of the Certificates, and the provisions thereof shall be enforceable by any owner of a Certificate for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska (the **"State"**) in any court of competent jurisdiction. Said contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the Lease, and the issuance, sale and delivery of the Certificates, this Ordinance and any supplemental ordinance shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Ordinance.

Section 8. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance, the Lease or the Certificates is intended or should be construed to confer upon or give to any person other than the City, the Lessor and the registered owners of the Certificates, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Lessor and the registered owners from time to time of the Certificates as herein and therein provided.

Section 9. No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the Lease or the payment of the principal of or interest on any Certificate. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 10. Whenever this Ordinance or the Lease requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance or the Lease the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 11. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Lease, but the Lessor and the registered owners of the Certificates shall retain all the rights and benefits afforded to them hereunder and under the Lease or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

Section 12. This Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

Section 13. Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

Section 14. This ordinance shall take effect and be in force from and after its passage and publication according to law.

INTRODUCED BY:

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PASSED _____, **2005.**

ABSENT OR NOT VOTING:

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AYES: _____

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NAYS: _____

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Approved as to Form:

_____
City Attorney

_____
Special Tax Counsel

CONFLICT OF INTEREST:

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APPROVED: _____, **2005.**

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Mayor