

GROUND LEASE

THIS GROUND LEASE is made and entered into this _____ day of _____ 2006, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City," and the LINCOLN/LANCASTER COUNTY CHILD ADVOCACY CENTER, INC., a Nebraska nonprofit corporation, hereinafter referred to as the "Center."

RECITALS

WHEREAS, the City is the owner of the real property legally described below (the "Leased Premises"):

Lots 1 through 12, inclusive, Block 128, University Place, Lincoln, Lancaster County, Nebraska; and

WHEREAS, the Center desires a suitable site to construct a facility to provide a safe, child-friendly environment for interviews and medical exams of abused and assaulted children; and

WHEREAS, such a center would assist the City in bringing perpetrators to justice in a manner that promotes the welfare and best interests of the child victim; and

WHEREAS, the Center desires to lease from the City, and the City desires to lease to the Center, the Leased Premises in accordance with the terms and conditions set forth below; and

WHEREAS, this use by the Center promotes and protects the general welfare of the public.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties as follows:

1. **Lease.** The City hereby leases to the Center the Leased Premises, subject to the terms and conditions set forth herein. For the purposes of this Lease, the Leased Premises shall not include any buildings, fixtures, improvements, additions or alterations constructed by the Center, which property shall at all times during the Term (as hereinafter defined) of this Lease remain the sole property of the Center and shall be referred to herein as the "Improvements." The Improvements and all alterations, additions, and improvements thereto may, at the Center's option, be removed by the Center, at its sole cost and expense, at the end of the Term hereof, provided that the Center shall restore the Leased Premises to the condition thereof as of the Commencement Date.

2. **Consideration.** In exchange for the Center providing a facility and personnel to further police investigations, the City will provide the Center with the Leased Premises on which a facility may be constructed to do such work in a setting that is suitable for children.

3. **Term and Possession.** The term of this Lease shall commence on the date of execution hereof by both parties (the "Commencement Date") and shall continue for a period

of thirty (30) years (the "Initial Term"). In the event that the Commencement Date shall be other than the first day of the calendar month, then the Initial Term shall continue to and include the last day of the same calendar month of the thirtieth (30th) year thereafter, unless sooner terminated pursuant to the terms hereof. Provided that the Center is not in default of any material term, condition or covenant contained in this Lease at the time of renewal, this Lease may be extended upon the mutual agreement of both parties, for five (5) consecutive renewal terms of ten (10) years each (each, a "Renewal Term") commencing on the day following the last day of the Initial Term or the previous Renewal Term, as the case may be, and terminating on the 10th anniversary of such expiration date, on the same terms and conditions set forth herein. In order to exercise each such renewal option, the Center must deliver written notice of its desire to renew this Lease to the City no less than one hundred eighty (180) days prior to the date on which such Renewal Term is to commence. In the event that the City does not deliver written notice of its intent not to renew this Lease to the Center within thirty (30) days of receipt of such notice, the City shall be deemed to have consented to such renewal. The Initial Term and Renewal Terms, if any, shall be referred to collectively herein as the "Term."

4. **Maintenance and Utilities.** The Center agrees to keep the Improvements in a clean and sanitary condition at all times, to maintain and repair the Improvements as shall be reasonably necessary to keep the Leased Premises in good condition. The Center shall be responsible for snow removal on the Leased Premises. The City, at its sole cost and expense, agrees to mow the Leased Premises in the course of its normal operations. During the Term hereof, the Center agrees to pay for all fuel, gas, oil, heat, electricity, power, materials, and services which may be used by it in or about the Leased Premises.

5. **Inspection.** The Center recognizes that the City has a duty to insure that the Leased Premises are maintained in the best interest of the public. The Center recognizes the right and obligation of the City to maintain order and a healthy environment to insure the general welfare of the public, and the City's power of supervision and control of the use of the Leased Premises. Nothing herein shall be construed to divest the City of its legislative or administrative authority. The Center shall operate the Leased Premises as to conform with all ordinances of the City and laws of the State of Nebraska, and give assistance to the City in seeking conformity with such ordinances, statutes, and park regulations. Any official of the City may enter the Leased Premises at any reasonable hour for inspection purposes.

6. **Taxes and Assessments.** As of the Commencement Date, the Center shall pay all real and personal property taxes and assessments levied or assessed against the Leased Premises, if any, during the Term hereof directly to the taxing authority. Real and personal property taxes and assessments which are levied or assessed against the Leased Premises during the first and last years of the Term of this Lease shall be prorated between the Center and the City based upon the number of days in which this Lease is in effect during such years. In the event North 51st Street is paved during the Term of this Lease, the Center shall not be responsible for any assessments or costs in connection therewith.

7. **Risk of Loss.** The City is not in any way responsible for the property of the Center or any of its employees, agents, invitees kept, stored, or maintained on the Leased Premises and in no way assumes responsibility for any loss of property through fire, theft, pilferage, malicious mischief, or any other happening whatsoever.

8. **Advertising.** No display signs or advertising shall be placed on the grounds, or structure, or affixed in any manner, except upon written approval of the City in advance.

9. **Fair Employment Practices.** The Center shall not discriminate against any employee or any applicant for employment, to be employed in the performance of this lease, with respect to his compensation, terms, advancement potential, conditions, or privileges of employment because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status, pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122 (Reissue 1988, as amended).

10. **Fair Labor Standards.** The Center under this Lease shall maintain fair labor standards in the performance of the contract as required by Neb. Rev. Stat. §§ 73-101, et seq. (Reissue 1990, as amended).

11. **Unemployment Compensation.** The Center, where applicable, shall be required to pay to the Unemployment Compensation Fund of the State of Nebraska under the provisions of the Nebraska Employment Security Law, Neb. Rev. Stat. §§ 48-601, et seq. (Reissue 1988, as amended) on wages paid to individuals employed by the Center.

12. **No Partnership, Joint Venture or Principal/Agent Relationship Created.** Nothing in this Lease shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties.

13. **Cumulative Rights.** No right or remedy given in this Lease to the Center or the City is intended to be exclusive of any other right or remedy hereof provided by law. Each right and each remedy shall be cumulative and in addition to every other right or remedy given in this Lease or now or hereafter existing at law or in equity or by statute.

14. **"As Is".** The Center agrees that it is accepting the Leased Premises "as is," that the Center has inspected the Leased Premises and has determined the Leased Premises to be suitable for the intended use. No representations have been made by the City as to the condition of the Leased Premises.

15. **Assignment and Subletting.** Except for a transfer contemplated by Section 25 of this Lease, the Center may not assign or transfer this Lease or any interest in this Lease or any portion of the Leased Premises without the prior written consent of the City each instance. The Center may not sublet the Leased Premises or any part of the Leased Premises without the prior written consent of the City in each instance. This provision shall apply to any assignment, transfer or sublease, whether by voluntary act, operation of law, or otherwise. Consent by the City to one assignment, transfer or sublease of this Lease or the Leased Premises shall not be a waiver to City's rights under this Lease as to any subsequent assignment, transfer or sublease. No assignment, transfer or sublease shall release the Center of its obligations under this Lease.

16. **If Center is a Corporation.** If the Center is a corporation, then a merger, consolidation, reorganization, liquidation, or any other change in the form of the

corporation which results in a change in voting control of the corporation will be treated as an assignment of this Lease requiring written consent of the City. Any transfer, hypothecation, or other change in the ownership of the shares of voting stock of the Center which results in a Change in voting control of the corporation will be treated as an assignment of this Lease requiring written consent of the City. A change of the voting, control of the Center occurs if the person or persons owning a majority of shares on the date of this Lease no longer own a majority of the shares.

17. **Hazardous Material.** The Center shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Leased Premises by the Center, its agents, employees, contractors, or invitees, without the prior written consent of the City (which the City shall not unreasonably withhold as long as the Center demonstrates to the City's reasonable satisfaction that such hazardous material is necessary or useful to the Center's business and will be used, kept and stored in a manner that complies with all laws regulating any such hazardous material so brought upon or used or kept in or about the Leased Premises). If the Center breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Leased Premises caused or permitted by the Center results in contamination of the Leased Premises, or if contamination of the Leased Premises by hazardous material otherwise occurs therefrom, the Center shall indemnify, defend and hold City harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of the City by the Center includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial action, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Leased Premises. Without limiting the foregoing, if the presence of any hazardous material on the Leased Premises caused by or permitted by the Center results in any contamination of the Leased Premises, the Center shall promptly take all actions at its sole expense as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such hazardous material to the Leased Premises; provided that the City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Leased Premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority of the United States Government.

18. **Construction Liens.** The Center hereby agrees that the Center will not permit or allow any construction, mechanic's or materialman's liens to be placed on the City's interest in the Leased Premises during the Term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Center shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that the Center may contest any such lien, provided the Center first posts a

surety bond in favor of and insuring the City in an amount sufficient to remove the lien pursuant to the terms of the Nebraska Lien Law.

19. **ADA Clause.**

A. The Center, at its sole cost and expense, shall comply with all requirements of the Americans with Disabilities Act with respect to the Center's activities in the Leased Premises and modification of nonstructural components of the Leased Premises.

B. The Center shall defend, save harmless, and indemnify the City from any costs, expense, or liability (including reasonable attorneys fees and other costs of defense) arising out of the Center's failure to fulfill its obligations under this Lease with respect to the Americans with Disabilities Act.

20. **Insurance.** The Center shall obtain and maintain in full force and effect, at its sole cost and expense, fire and "all risk" extended coverage/named perils insurance for the full replacement value of the Improvements. In addition, the Center shall purchase such insurance as shall protect the Center from claims which may arise out of or result from the Center's operations on the Leased Premises for which the Center may be legally liable, whether such operations be by the Center itself or by anyone directly or indirectly employed by the Center or by anyone for whose acts any of them may be liable. The insurance required shall be written for not less than the following amounts:

<u>Workers' Compensation</u>	<u>Commercial General Liability</u>
State - Statutory	Bodily Injury and Property Damage
Federal - Statutory	- \$1,000,000 combined single limit each occurrence
	- \$2,000,000 aggregate

All liability insurance policies shall be written on an occurrence basis only, shall be endorsed to add the City, its agents, and employees as an additional insured as related to this Lease and shall be maintained without interruption during the Term hereof. All insurance coverage shall be placed with an insurance company authorized to do business in the State of Nebraska and shall be placed with an insurer that has an AM best rating of not less than A:VII, unless specific written approval has been granted by the City to deviate from this requirement. The Center shall not commence construction of the Improvements until the insurance required under this section has been approved by the City Attorney for the City of Lincoln. All certificates of insurance evidencing such coverage shall be filed with the agreement showing the specific limits of insurance coverage required and any deductibles required. Such certificate shall specifically state the insurance policies are to be endorsed to require the insured to provide the City thirty (30) days notice of cancellation, nonrenewal, or any material reduction of insurance coverage.

21. **Operator to Hold City Harmless.** To the fullest extent permitted by law, the Center shall indemnify, defend, and hold harmless the City, its agents, and employees from and

against, damages, losses, and expenses including, but not limited to, attorney's fees, arising out of, resulting from or related to in any claim for damage whatsoever including, without limitation, any bodily injury, sickness, disease, death, or injury to or destruction of tangible or intangible property, including the loss of use resulting therefrom that is caused in whole or in part by the Center or anyone directly or indirectly employed by the Center, or anyone for whose acts any of them may be liable. This section shall not require the Center to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. In addition, the City shall not be responsible nor be held liable for any damage consequent upon the use, misuse, or failure of any City equipment, material, or supplies used by the Center or anyone directly or indirectly employed by the Center. The acceptance or use of any such equipment, material, or supplies shall be construed to mean that the Center accepts the full responsibility for and in addition to paying for any loss or damage thereto, Center agrees to exonerate, indemnify, and save harmless the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, material, or supplies, whether such damage be to the employee or property of Center, the City or other persons, even though such equipment may be furnished, rented, or loaned to the Center by the City. Center agrees that should this lease be declared of no force and effect, it will hold the City harmless for any and all losses to the Center.

22. **Entire Agreement.** This Lease contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings with respect to such subject matter.

23. **Representations.** No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this agreement. Neither party has relied on any verbal representations, agreements, or understandings not expressly set forth in this agreement.

The City specifically makes no warranties as to the legality or suitability of the use by the Center. Center has made its own investigation of the Leased Premises, researched the legal issues, and has independently satisfied itself that this lease is proper as to form and legality. By signing this lease, the Center assumes all risks associated with this use.

24. **Waiver.** Any waiver by any party of a default of any other party of this agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this agreement shall be a waiver of any party's right to demand exact compliance with the terms of this agreement.

25. **Leasehold Mortgages.** The Center shall have the right to mortgage, pledge or collaterally assign its leasehold interest under this Lease, or the Improvements located on the Leased Premises, to any lender or financial entity, subject, however, to the limitations herein contained. Any such mortgage, pledge, collateral assignment ("Lessee's Mortgage") shall be for a term not to exceed the Term hereof, including any Renewal Terms exercised by the Center. Lessee's Mortgage shall be subject and subordinate to the fee interest of the City and the holder of any mortgage or deed of trust of the fee in and/or upon which the Leased Premises is located.

26. **Notices.** All notices, requests, demands or other communications hereunder

(including notices of all asserted actions, claims or demands) shall be given in writing and shall be deemed to have been duly delivered upon personal delivery to the other party, or twenty-four (24) hours after deposit with a reputable overnight, courier service, or forty-eight (48) hours after deposit in the U.S. Mail, certified mail, return receipt requested, to the addressee at the address herein designated or at such other address as may be designated in writing by notice given in the manner provided herein:

If to the City: Mayor
City of Lincoln
555 South 10th Street
Lincoln, Nebraska 68508

If to the Center: Child Advocacy Center
3200 Sumner Street
Lincoln, Nebraska 68502

27. **Memorandum of Lease.** Under no circumstances shall this Lease be recorded; however, a Memorandum of Lease, suitable for recording in the Office of the Register of Deeds of Lancaster County, Nebraska, describing the Leased Premises, the Commencement Date, the Initial Term and Renewal Terms, shall be executed and the Center may cause a copy of said Memorandum of Lease to be recorded.

28. **Quiet Enjoyment.** The City covenants and agrees with the Center that so long as the Center materially observes and performs the terms, covenants and conditions of this Lease, the Center may peaceably and quietly enjoy the Leased Premises subject, nevertheless, to the terms and conditions of this Lease and to all rights-of-way, easements, covenants, restrictions and other matters of record affecting the Leased Premises (the "Permitted Exceptions") and the Center's possession will not be disturbed by anyone claiming by, through or under the City, subject to the Permitted Exceptions.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date set forth above.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a Municipal Corporation

City Clerk

Mayor

LINCOLN/LANCASTER COUNTY CHILD
ADVOCACY CENTER, INC.,
a Nebraska nonprofit corporation

Kathryn LeBaron
President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City of Lincoln, Nebraska.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 1ST day of September, 2006, by Kathy LeBaron, President of the Lincoln/Lancaster Child Advocacy Center, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.

Norma Hardle
Notary Public

