11-109

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 11-109 by accepting the attached Substitute Ordinance, Bill No. 11-109S, to replace the current ordinance.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Lauren Wismer, Bond Counsel

Reason for Request: Final revisions to bond ordinance.

SUBSTITUTE

Bill No. 11-109S **Introduce: July 25, 2011**

THE CITY OF LINCOLN, NEBRASKA

_____

ORDINANCE NO. _____

(Passed _____, 2011

Approved _____, 2011)

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AN ORDINANCE AMENDING ORDINANCE NO. 19510

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 19510 TO MODIFY THE FINAL MATURITY DATE OF THE BONDS; TO REPEAL CERTAIN PROVISIONS OF ORDINANCE NO. 19510, IN CONNECTION THEREWITH; TAKING OTHER ACTION IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.

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

Section 1. The Council (the **"Council"**) of The City of Lincoln, Nebraska (the **"City"**) hereby finds and determines as follows:

(a) Pursuant to the provisions of Ordinance No. 19510 (the "**Ordinance No. 19510**") passed by the Council on March 21, 2011, and approved by the Mayor on March 24, 2011, the City authorized the issuance of its not to exceed $2,800,000 principal amount North Haymarket Hotel Phase II Redevelopment Project Tax Allocation Bonds (the "**Bonds**") to finance the Project (as defined in Ordinance No. 19510).

(b) Capitalized terms used and not otherwise defined in this Ordinance have the meanings assigned to those terms in the Ordinance No. 19510.

(c) Ordinance No. 19510 specified that the final maturity of the Bonds would not be later than November 1, 2026.

(d) It is necessary, desirable, advisable and in the best interest of the City that certain amendments be made to Ordinance No. 19510 to modify the final maturity date of the Bonds, as determined by the Finance Director in the exercise of his sole and absolute discretion, as provided in the Bond Ordinance.

Section 2. Section 3.1 of Ordinance No. 19510 is hereby amended to read as follows:

> **Section 3.1. Authorization of Bonds.** Pursuant to and in full compliance with the Redevelopment Law, the Home Rule Charter of the City, and this Ordinance, and for the purpose of providing funds to pay (a) the cost of acquiring, purchasing, constructing, reconstructing, improving, extending, rehabilitating, installing, equipping, furnishing, and completing the Project, and (b) the costs of issuing the Bonds, the City shall issue Bonds from time to time in one or more series, which may be Taxable Bonds or Tax-Exempt Bonds, in the aggregate principal amount not to exceed $2,800,000. The Bonds shall be designated as "The City of Lincoln, Nebraska North Haymarket Hotel Phase II Redevelopment Project [Taxable/Tax-Exempt] Tax Allocation Bonds," shall have an appropriate series designation as determined by the Finance Director, shall be dated the Date of Original Issue for such issue, shall mature, subject to right of prior redemption, not later than the November 1 following the sixteenth anniversary of the Effective Date (as defined in the Redevelopment Agreement), as determined by the Finance Director, and shall bear interest (computed on the basis of a 360-day year consisting of twelve, 30-day months) at a rate not to exceed 9.00% per annum. Each series of Bonds shall be issued as a single Bond as further described in **Section 3.2**. Bonds shall only be due and payable to the extent moneys are available therefor in accordance with the terms of this Ordinance.

The Bonds, together with the interest thereon, are special, limited obligations of the City payable solely from the Revenue and the amounts on deposit in the funds and accounts established by this Ordinance. The Bonds shall not in any event be a debt of the City (except to the extent of the Revenue and other money pledged under this Ordinance), the State, nor any of its political subdivisions, and neither the City (except to the extent of the Revenue and other money pledged under this Ordinance), the State nor any of its political subdivisions is liable in respect thereof, nor in any event shall the principal of and interest on the Bonds be payable from any source other than the Revenue and other money pledged under this Ordinance. The Bonds do not constitute a debt within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the City and does not impose any general liability upon the City. Neither any official of the City nor any person executing the Bonds shall be liable personally on the Bonds by reason of its issuance. The validity of the Bonds is not and shall not be dependent upon the completion of the Project or upon the performance of any obligation relative to the Project.

The Revenue and the amounts on deposit in the funds and accounts established by this Ordinance are hereby pledged and assigned for the payment of the Bonds, and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Ordinance. The Bonds shall not constitute a debt of the City within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the City, and the City shall not be liable for the payment thereof out of any money of the City other than the Tax Revenue and the other funds referred to herein.

Nothing in this Ordinance shall preclude the payment of the Bonds from (a) the proceeds of future bonds issued pursuant to law or (b) any other legally available funds. Nothing in this Ordinance shall prevent the City from making advances of its own funds howsoever derived to any of the uses and purposes mentioned in this Ordinance.

Section 3. Section 3.2 (k) of Ordinance No. 19510 is hereby amended to read as follows:

(k) The Finance Director is hereby authorized to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance, (1) the Date of Original Issue, the principal amount of each Bond in accordance with **Section 3.2(a)** and the series designation thereof, (2) the maturity date of the Bonds, which shall be not later than the November 1 following the sixteenth anniversary of the Effective Date (as defined in the Redevelopment Agreement), (3) whether a series of Bonds shall be issued as Taxable Bonds or Tax-Exempt Bonds and the rate of interest per annum to be carried by Bonds of such series in accordance with the first paragraph of **Section 3.1** and (4) any other term of the Bonds not otherwise specifically fixed by the provisions of this Ordinance.

Section 4. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City or the Registrar to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement 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 Bonds, but the Owners of the Bonds shall retain all the rights and benefits accorded to them hereunder and under 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 whatever.

Section 5. Law and Place of Enforcement of this Ordinance. The 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 6. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 7. Repeal of Inconsistent Ordinances. The Title and Sections 1.1, 3.1, 3.2(a) and 3.2(f) of Ordinance No. 19510 are hereby repealed. 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 8. Publication and Effectiveness of This Ordinance. Pursuant to Article VII, Section 7, of the City Charter, this Ordinance shall be posted on the official bulletin board of the City in lieu of and in place of newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the City Clerk.

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INTRODUCED BY:

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PASSED _____, 2011.

ABSENT OR NOT VOTING:

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AYES: _____

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NAYS: _____

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Approved as to Form:

_____
City Attorney

_____
Bond Counsel

CONFLICT OF INTEREST:

_____

APPROVED: _____, 2011.

_____
Mayor