

THE CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AMENDMENT NUMBER ONE IN CONNECTION WITH THE ISSUANCE OF \$2,800,000 PRINCIPAL AMOUNT INDUSTRIAL DEVELOPMENT RECOVERY ZONE FACILITY REVENUE BOND, SERIES 2010 (TELESIS, INC. PROJECT); DELEGATING, AUTHORIZING AND DIRECTING THE MAYOR, FINANCE DIRECTOR AND CLERK TO EXERCISE THEIR OWN INDEPENDENT DISCRETION AND JUDGMENT IN DETERMINING AND FINALIZING THE TERMS, PROVISIONS, FORM AND CONTENTS OF SUCH DOCUMENT; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE AND THE TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT; AND RELATED MATTERS.

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

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

(a) The City is duly organized and validly existing as a city of the primary class and a political subdivision of the State of Nebraska (the “**State**”) with lawful power and authority to pass and adopt this Ordinance acting by and through the Mayor and Council.

(b) Pursuant to (1) Article XIII, Section 2 of the Nebraska Constitution and Sections 13-1101 to 13-1110, inclusive, Reissue Revised Statutes of Nebraska, as amended (the “**Act**”) and (2) Ordinance No. 19478 (the “**Ordinance**”), adopted November 22, 2010, the City authorizing the issuance of its \$2,800,000 principal amount Industrial Development Recovery Zone Facility Revenue Bond, Series 2010 (Telesis, Inc. Project), dated December 30, 2010 (the “**Bond**”) and has loaned the proceeds thereto to The Dairy House, LLC (the “**Company**”) pursuant to a Loan Agreement, dated December 30, 2010 (as amended and supplemented from time to time, the “**Loan Agreement**”) among the City, the Company and Pinnacle Bank (the “**Lender**”) for the purpose of a paying the costs of constructing a building addition and other related improvements and acquiring certain items of equipment and personal property (collectively as the “**Project**”) for the use of the Borrower.

(c) The Borrower and the Lender have determined that it is necessary, desirable, advisable and in the best interests of the City, the Borrower and the Lender to amend the amortization schedule with respect to the Bond through the execution and delivery of a Loan Agreement Amendment Number One (the “**Amendment**”) by the City, the Borrower and the Lender.

(d) The Bond is a special limited revenue obligation of the City payable solely out of the basic rental payments of the Company under the Loan Agreement and other amounts pledged pursuant to the Loan Agreement, and shall not be a general liability of the City or a charge against its general credit or taxing powers.

(e) The Bond does not and shall never constitute a debt, liability or general obligation of the State of Nebraska, or any political subdivision, agency or instrumentality thereof, nor will the faith and

credit or the taxing power of the State of Nebraska be pledged to the payment of the principal of or interest on the Bond. Under no circumstance will any tax revenues ever be used to pay any portion of the debt service on the Bond.

Section 2. Authorization and Approval of Amendment. The Amendment is hereby approved in substantially the form presented to the City and attached to this Ordinance (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the Amendment with such changes therein as shall be approved by the Mayor or the Finance Director and the City Attorney, such officers' signatures thereon being conclusive evidence of their approval and the City's approval thereof.

Section 3. Execution of Amendment. The Mayor or the Finance Director are hereby authorized and directed to execute and deliver the Amendment for and on behalf of and as the act and deed of the City. The Clerk or any Deputy Clerk is hereby authorized and directed to attest to the Amendment and to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 4. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action, and to approve and execute such other documents, certificates and instruments, including, without limitation, any security documents, financing statements, note endorsements, arbitrage certificates, closing certificates or tax forms as may be necessary or desirable to carry out and comply with the intent of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Loan Agreement.

Section 5. Severability. If any one or more provisions of this Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid in any particular case in any jurisdiction or jurisdictions, or in all cases because it conflicts with any constitution or statute or rule or 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 6. Section Headings. The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Ordinance.

Section 7. Repeal of Conflicting Ordinances. All prior ordinances of the City or any parts thereof in conflict with any or all of this Ordinance are hereby repealed to the extent of such conflict.

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 Clerk.

INTRODUCED BY:

PASSED _____, **2012**

AYES: _____

NAYS: _____

ABSENT OR NOT VOTING:

Approved as to Form:

City Attorney

Bond Counsel

CONFLICT OF INTEREST:

APPROVED: _____, **2012**

Mayor