

**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "Lessor," and the UNITED STATES POSTAL SERVICE, an independent establishment of the Executive Branch of the United States Government (39 U.S.C. § 201) hereinafter referred to as "USPS" or "Lessee."

WHEREAS, the Woods Park United States Post Office located at 35<sup>th</sup> and "O" Street closed on or about May 6, 2011;

WHEREAS, the closure of this post office location has created a need for additional drop-off locations for U.S. Mail in the surrounding area;

WHEREAS, the City of Lincoln has been approached about locating a drop-off location for U.S. Mail at the Woods Park parking lot located generally at 33<sup>rd</sup> and "L" Street;

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

1. PREMISES LEASED. Subject to the terms and conditions herein contained, the Lessor hereby leases to the Lessee the following described premises, hereinafter called the "Premises," to wit:

On the northern most parking lot island of Wood Park Tennis Court and Swimming Pool Complex on a portion of Lots 3 and 5, Irregular Tract, located in the Northwest Quarter of Section 30, Township 10 North, Range 7 East of the 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska as shown in Exhibit "A" and marked as "Mailbox Location."

2. TERM. This Agreement shall become effective on March 1, 2012 and shall continue for a term of seven (7) years and ending on February 28, 2019 unless sooner terminated as hereinafter provided.

3. USE. Lessee agrees to utilize the Premises for approximately a four foot by four foot concrete paved area with one or more USPS drop-off mailboxes facing northwest. The Premises shall not be utilized for any other purposes or other improvements other than those shown on Exhibit "A." Lessee shall not keep or store on or about the Premises any other objects other than the aforementioned improvements. Lessee agrees not to make any alterations, additions or improvements to the Premises without first obtaining the written consent of the Lessor.

4. RENTAL. Lessee shall pay \$1.00 for rental of the Premises, which together with the mutual covenants herein and the benefit to the public for use of the mailbox in a convenient, accessible, and visible location, shall constitute consideration for this Agreement.

5. RESTRICTION OF ASSIGNMENT, SUBLETTING. Lessee agrees not to assign, sublet, or in any manner transfer this Agreement or any estate or interest therein without the previous written consent of Lessor.

6. LEASE RENEWAL. Lessee may have the option to renew this Agreement for two (2) additional terms of five (5) years provided Lessee is not in default with any of the provisions or covenants contained within this Agreement, and Lessor consents to the renewal. Each renewal shall be exercised at least ninety (90) days prior to the expiration of the current Agreement.

7. TERMINATION AND CANCELLATION. Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights for breach may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. Lessor also has the right to terminate this Agreement for any reason for its own convenience with sixty (60) days written notice.

8. RETURN OF PROPERTY TO ITS PRESENT CONDITION. Upon the termination of this Agreement or any renewals thereof, Lessee agrees to return the Premises to the Lessor in its present condition. Lessor hereby further covenants and agrees that Lessee shall be permitted to enter upon the Premises at all reasonable times to examine the condition of the same.

9. PERSONAL PROPERTY AT RISK OF LESSEE. All personal property on the Premises shall be at the risk of the Lessee only. Lessor shall not be or become liable for any damage to such personal property or for Lessee's improvements on the Premises or to Lessee or any other persons or property on the Premises or for any damage arising from any act or neglect of Lessee, Lessee's employees, or invitees of the Premises.

10. INSURANCE.

A. It is understood that the Federal Tort Claims Act ("FTCA"), 28 U. S. C. §§1346(b) (1), 2671-80, governs any claims that arise from the negligent acts or omissions of a Postal employee who is acting within the scope of his or her employment. It is understood that because of the remedies afforded under the FTCA, Lessee does not purchase private insurance and is not insured under any insurance liability policy or self-insured. Lessee agrees it is subject to suit for damages and is authorized to pay proper claims against it pursuant to the FTCA. Unlike private insurance there is no dollar limitation on the coverage provided under the FTCA. Lessee agrees that under the FTCA a party may present a claim for losses to Lessee for adjudication and if the matter is not resolved administratively, a party may pursue the matter in federal district court. To the extent that Lessee is found liable for damages under the provisions of the FTCA, payment of any settlement or judgment comes from Lessee's general fund.

B. It is understood that the Federal Employees Compensation Act ("FECA") is the worker's compensation law that governs civilian federal employees, including USPS employees. Lessee agrees that a USPS employee may present a claim for injury to the USPS for adjudication under the FECA, and if the matter is not resolved administratively, an employee may pursue the matter in federal district court.

11. NOTICES. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served if sent by registered or certified mail, postage prepaid, addressed to the Lessor to the Director of the Parks & Recreation Department at 2740 A

Street, Lincoln, NE 68502 or addressed to the Lessee to the Lincoln Postmaster General at the United States Postal Service, 700 R Street, Lincoln, NE 68501-9998, or at such other address or addresses as either party may hereafter designate in writing to the other. Any notice or demand so mailed shall be effective for all purposes at the time of deposit thereof in the United States mail.

12. NO OTHER AGREEMENTS. This Agreement contains the entire understanding and agreement of the parties, supersedes all prior understandings and agreements, and cannot be revised, adjusted or modified unless in writing signed by the party against whom the same is to be enforced.

13. INDEMNIFICATION. Lessee, by acceptance of this Agreement, agrees to indemnify and hold Lessor, its employees, officers, agents, successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees for any loss, injury, death, or damage to persons or property which at any time is suffered or sustained by Lessor, its employees, the public, or by any person whosoever may at any time be using, occupying, visiting, or maintaining the property that is the subject of said Agreement, or be on or about the Premises that is the subject of said Agreement, when such loss, injury, death, or damage is asserted to have been caused by any negligent act or omission or intentional misconduct of Lessee or its agents, servants, employees, invitees, or contractors. Lessor does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. Lessee does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. Lessor shall not be liable, and Lessee waives and releases Lessor from all claims for damage to persons or property sustained by Lessee or its employees, agents, servants, invitees, contractors, or customers resulting by reason of the use of the Premises. This section survives any termination of this Agreement.

14. EXPLANATORY PROVISIONS. The provisions of this Agreement shall be binding upon, inure to the benefit of and apply to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Headings are given to the paragraphs of this Agreement solely as a convenience to facilitate reference and shall not be deemed material or relevant to the construction of the Agreement or any provision thereof.

15. IMPROVEMENTS. Lessee agrees to do no remodeling or install any permanent fixtures or additions to the Premises without first obtaining the written approval of the Lessor. All improvements shall become the property of the Lessor upon termination of this Agreement unless the parties hereto agree otherwise. Lessee shall bear the cost of any alterations or improvements which are required to be made to the Premises as a result of the nature of Lessee's business and Lessee agrees to comply with applicable laws, ordinances, rules and regulations of the City of Lincoln, State of Nebraska, or United States government. Lessee agrees to pay promptly for any work done or materials furnished on or about the Premises, will not suffer or permit any lien to attach to the Premises, and further agrees to cause any such lien or any claims thereof to be released promptly; provided, however, that in the event Lessee contests any such claim, Lessee agrees to indemnify and secure Lessor to Lessor's satisfaction. Lessee shall apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any federal applicable law or regulations that relate to use of the Premises and to conduct all activities related to use of the Premises in a lawful manner.

16. ADVERTISING. No display signs or advertising shall be placed on the Premises structure, or affixed in any manner, except the official United States Postal Service emblem and

signage for purposes of identification or notification of use. Lessee agrees any other signage or advertising is excluded except upon written approval of the Lessor in advance.

17. "AS IS". Lessee agrees that it is accepting the Premises "as is," that Lessee has inspected the Premises and has determined the Premises to be suitable for the uses intended. No representations have been made by the Lessor as to the condition of the Premises.

18. HAZARDOUS MATERIAL. Lessee shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Premises by the Lessee, its agents, employees, contractors, or invitees, without the prior written consent of the Lessor (which Lessor shall not unreasonably withhold as long as Lessee demonstrates to Lessor's reasonable satisfaction that such hazardous material is necessary or useful to Lessee'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 Premises). If Lessee breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused or permitted by Lessee results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs therefrom, the Lessee shall indemnify Lessor as described in Paragraph 13 above, to include costs incurred in connection with any investigation of site conditions or any clean-up, remedials, 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 Premises. Without limiting the foregoing, if the presence of any hazardous material on the Premises caused by or permitted by Lessee results in any contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such hazardous material to the Premises; provided that Lessor'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 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 or the United States Government.

19. ADA CLAUSE.

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

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

20. 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.

21. NEBRASKA LAW. This Agreement shall be governed and interpreted by the applicable laws of the United States Government who has jurisdiction over Lessee, except to the extent expressly waived by federal statute, in which case the State of Nebraska shall have jurisdiction over Lessee.

22. CAPACITY. The undersigned persons do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

**CITY OF LINCOLN, NEBRASKA,**  
A municipal corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor Chris Beutler

**UNITED STATES POSTAL SERVICE,**  
An agency of the U.S. federal government

By: Kerry J. Kowalski

Its: Postmaster, Lincoln, NE

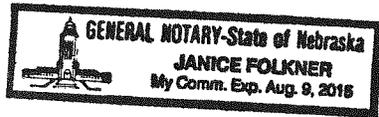
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City of Lincoln, Nebraska.

\_\_\_\_\_  
Notary Public

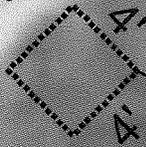
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 12 day of March, 2012, by Kerry J. Kowalski, the Postmaster General of Lincoln on behalf of United States Postal Service.



Janice Folkner  
Notary Public

Concrete Pad for  
U.S. Mail Drop Box



Pad Location

