

# LEASE

## Lease for Police Substation

This Lease for Police Substation (“Lease”), dated as of \_\_\_\_\_, 2006, executed in duplicate, by and between **Kinport Corporation**, a Nebraska corporation, 720 O Street, Lincoln, Nebraska 68508, Telephone: (402) 477-6767, Fax: (402) 477-6781, Federal ID # 47-0526758 (“Kinport”), and the **City of Lincoln, Nebraska**, a municipal corporation on behalf of the City of Lincoln Police Department (“City”).

Capitalized terms shall have the following definitions and shall apply for words and phrases as used in this Lease unless more particularly defined in this Lease.

- a. “Architect” shall mean Champion & Olson Architects.
- b. “City Leased Premises Improvements” shall mean trade fixtures, equipment, personal property, office furniture, furnishings, equipment, files, supplies, records, and other improvements constructed, installed or made by City or City’s contractor, at City’s expense, and more particularly described on Exhibit “3,” which is attached hereto and incorporated herein by this reference.
- c. “Kinport Leased Premises Improvements” shall mean the original building, trade fixtures, equipment, personal property or improvements owned, constructed, installed or made by Kinport or Kinport’s contractor, at Kinport’s expense, within the Leased Premises and more particularly described on Exhibit “3.”
- d. “Leased Premises” shall mean Lots 1 & 2, and a portion of Lot 3, Block 95, University Place, Lincoln, Lancaster County, Nebraska which shall be used for a Police Station and other public purpose uses acceptable to Kinport as evidenced by advance written approval of Kinport. The Leased Premises includes the building space, related parking and yard. The Leased Premises are illustrated on Exhibit “1,” which is attached hereto and incorporated herein by this reference.
- e. “Leased Premises Improvements” shall mean Kinport Leased Premises Improvements and the City Leased Premises Improvements.
- f. “Redevelopment Agreement” shall mean the Redevelopment Agreement entered into by and between the City and Kinport related to the Redevelopment Project.

g. “Redevelopment Plan” shall mean individually and collectively the 48<sup>th</sup> & Huntington Avenue Redevelopment Plan Amendment, dated October 24, 2005 and the University Place Redevelopment Plan, dated December 7, 1998 Resolution No. A-79200, as amended by Resolution No. A-81098 on September 17, 2001, Resolution No. A-82040 adopted on April 14, 2003, Resolution No. A-82825 adopted on June 21, 2004 and Resolution No. A-83606 adopted on October 24, 2005, as may be amended from time to time (collectively “Redevelopment Plan”), copies of which, together with any and all amendments thereto, are on file in the Office of the City Clerk.

h. “Redevelopment Project” shall mean the 48<sup>th</sup> & Huntington Redevelopment Project and includes the Leased Premises and the remainder of the area west of the Leased Premises as generally depicted on Exhibit “2.”

i. “Schematic Drawings” shall mean the Schematic Design Drawings of the Project, as prepared by the Architect, which are incorporated herein by this reference solely for purposes of the general description and location of planned improvements.

#### **WITNESSETH**

**1. LEASED PREMISES.** Kinport hereby leases to the City, the Leased Premises for a Police Station and other public purpose uses acceptable to Kinport as evidenced by advance written approval of Kinport. Kinport warrants and represents that it is the owner of the Leased Premises, with appurtenances, subject to the dedicated right of way, easements and restrictions of record. The Leased Premises will be renovated, constructed, improved, and operated in conformity with the objectives and provisions of the Redevelopment Plan and the Redevelopment Agreement. The Leased Premises are part of the Redevelopment Project as shown on Exhibit “2.”

**2. TERM.** The initial term of this Lease shall be for a period of fifteen (15) years (“Initial Term”) unless sooner terminated as hereinafter provided, beginning on the date of Substantial Completion defined below and not later than September 1, 2006 (“Commencement Date”) on which date Kinport hereby agrees and warrants to deliver possession of the Leased Premises to the City in a condition of Substantial Completion (defined below). The Initial Term shall continue to and

include the last day of the same calendar month of the fifteenth (15th) year thereafter (“Termination Date”). The Leased Premises shall be deemed to be substantially completed when Kinport shall have substantially performed all of the Leased Premises Improvements specified on Exhibit “3,” to be installed by Kinport as evidenced by the issuance of a certificate of occupancy with respect to the Leased Premises, which improvements (excluding punch list) shall be completed in a good and workmanlike manner, using first quality materials (“Substantial Completion”).

The Commencement Date is time critical and Kinport will use its best efforts to attain Substantial Completion as soon as reasonably possible. Prior to the Commencement Date, the City may inspect the Leased Premises and Kinport and the City shall prepare and execute a punch list. The punch list shall list incomplete, minor and other details of construction, necessary mechanical adjustments, and needed finishing touches to be completed by Kinport within thirty (30) days after the Commencement Date.

It is agreed between Kinport and the City that in the event the City has fully complied with all the terms of this Lease, the City at the expiration of the Initial Term shall have the right, exercisable at its sole option, to extend this Lease for a period of three (3) additional renewal terms of five (5) consecutive years (collectively “Renewal Term”), upon the same terms and conditions as those set forth herein and allowing for the Rent Adjustments in Paragraph 4; provided, however, that City notifies Kinport in writing of its exercise of such right within one hundred eighty (180) calendar days before the end of the then-current Initial Term or Renewal Term. If any of the terms or conditions of this Lease are to be changed during the Renewal Term, prior written approval of the City and Kinport must be obtained. The Initial Term and the exercised Renewal Term are referred to herein as the “Term.”

**3. BASE RENTAL.** The annual base rental for the Leased Premises for the first year of the Initial Term shall be \$184,800.00. Throughout the Term of the Lease, the annual base rental for the Leased Premises shall be subject to adjustment on the anniversary of the Commencement Date of each year during the Term hereof as follows:

(a) \$162,495.00 (\$10.36 per BOMA square foot) of the base rental shall be subject to the Rental Adjustments pursuant to Paragraph 4 (a) of this Lease; and

(b) \$22,305.00 (\$1.42 per BOMA square foot) of the base rental shall be subject to Expense Adjustments pursuant to Paragraph 4 (b) of this Lease. The City's percentage of the Expense Adjustment is 100%.

City shall pay Kinport the annual base rental (as may be adjusted) in equal monthly installments payable in advance on the first day of each month beginning on the Commencement Date and continuing on the first day of each successive calendar month thereafter during the Term hereof. Rent payable hereunder for any period of time less than one calendar month shall be determined by prorating the monthly rental herein specified based on the actual number of days in the month. Rental shall be paid to Kinport at the address specified in Paragraph 6 below or to such other address as Kinport may designate to the City by a notice in writing.

#### **4. RENTAL ADJUSTMENTS AND CITY EXPENSE ADJUSTMENTS.**

(a) Rental Adjustments. That portion of the annual base rental provided in Paragraph 3 (a) shall be subject to adjustment ("Rental Adjustments") for each calendar year following the calendar year of the Commencement Date during the Term of this Lease to an amount which shall be determined by multiplying said portion of the annual base rental payable for the immediately preceding calendar year by the CPI Adjustment for such year; however, in no event shall said portion of the annual base rental be less than the amount shown in Paragraph 3(a) of this Lease. The CPI Adjustment for a calendar year shall be a fraction, the numerator of which shall be the average CPI for the twelve (12) months ending with the September immediately preceding such calendar year and the denominator of which shall be the average CPI for the twelve (12) months ending with the September before the September immediately preceding such calendar year. The term "CPI" as used in this Lease shall mean the Consumer Price Index for All Urban Consumers - All Items -U.S. City Average (1967=100 or the then current basis, if changed by the Department of Labor) published by the United States Department of Labor, Bureau of Statistics. If the issuance of the CPI by the federal government is discontinued, Kinport shall use the official index published by a federal governmental agency which is most nearly equivalent to the CPI.

(b) Expense Adjustments. That portion of the annual base rental provided in Paragraph 3 (b) shall be subject to upward or downward adjustment ("Expense Adjustments") for each calendar year throughout the Term of this Lease (including the calendar year of the Commencement Date)

to the extent that the City Expenses for any calendar year, determined pursuant to Paragraph 4 (c) of this Lease, differs from an amount set forth in Paragraph 3 (b). By the end of each calendar year during the term of this Lease, Kinport shall deliver to City an estimate of the City Expenses for the following calendar year, and for each following calendar years during the Lease Term. The parties agree to reconcile any overpayment by the City or undercollection by Kinport of the City Expenses within 30 days after Kinport delivers to the City a statement of the actual City Expenses for such year.

(c) City Expenses. "City Expenses" shall mean all real ad valorem and personal property taxes and special assessments, license tax, rental tax, and other governmental levies imposed on or with respect to the Leased Premises, together with any taxes or assessments imposed in substitution of or as a supplement to any taxes or assessments previously included within the definition of City Expenses but excluding any federal, state or local income, franchise, estate, occupation or inheritance tax. Upon request, Kinport shall provide the City with a copy of the receipt evidencing payment of all such taxes and assessments. In the event any portion of the Leased Premises is declared exempt from ad valorem taxes, then the City shall annually pay a fee in lieu of the amount of the increment of the ad valorem taxes that would have been generated if any portion of the building space or underlying real estate of the Leased Premises was not declared exempt from ad valorem taxes.

(d) Kinport covenants that it will pay all taxes and assessments levied or assessed against the Building, if any, prior to delinquency. Upon request, Kinport shall provide the City with a copy of the receipt evidencing payment of such taxes and assessments.

**5. FIRST RIGHT OF REFUSAL.** During the Term of this Lease, Kinport hereby grants to the City a first right of refusal to purchase said Leased Premises from Kinport. Said first right of refusal shall be exercisable in the event Kinport receives an executed written offer to purchase said Leased Premises from a third party on terms acceptable to Kinport or Kinport delivers to a third party an executed written offer to sell the Leased Premises on terms acceptable to the third party. Kinport shall then immediately deliver said written offer to purchase or written offer to sell to the City. The City shall have twenty-one (21) days after receiving a copy of said written offer to purchase or written offer to sell to then deliver written notice to Kinport that the City, to the extent allowed by law, agrees to step into the position of the third party under the same terms and

conditions as said written offer to purchase or written offer to sell. The City and Kinport shall then close said written offer to purchase or written offer to sell pursuant to the terms and conditions of said written offer to purchase or written offer to sell.

**6. NOTICES.** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

To Kinport at:                      Kinport Corporation  
720 O Street  
Lincoln, Nebraska 68508  
Attention: President

With a copy to:                      Kent Seacrest  
Seacrest & Kalkowski, P.C.  
1111 Lincoln Mall, Suite 350  
Lincoln, Nebraska 68508

To the City at:                      City of Lincoln Police Dept.  
575 S. 10th Street  
Lincoln, Nebraska 68508  
Attn: Chief of Police

With a copy to:                      City Attorney's Office  
575 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

**7. ASSIGNMENT AND SUBLETTING.** The City shall not assign this Lease without the prior written consent of Kinport, but shall in any event have the right to sublet the Leased Premises to another city department or other agency, office or department of any governmental subdivision. Any occupant, assignee, or subtenant must agree to abide by all of the terms and provisions of this Lease. Kinport's consent to any assignment, subleasing, or other transfer shall not release the City from any of the City's obligations hereunder or be deemed to be a consent to any subsequent assignment, subleasing, or transfer unless Kinport so agrees in writing. The collection or acceptance of rent or other payment by Kinport from any person other than the City shall not be deemed the acceptance of any assignee or subtenant as the tenant hereunder or a release of City from any obligation under this Lease. Kinport's assignment to any other owner, either in whole or in part will

require the prior written consent of the City except in the event of a court approved assignment for the benefit of creditors or otherwise. The City's consent to any assignment or other transfer shall not release Kinport from any of Kinport's obligations hereunder or be deemed to be a consent to any subsequent assignment or transfer unless the City so agrees in writing.

**8. INSPECTION.** Intentionally Omitted.

**9. BUILDING SPACE.** Kinport shall provide to the City, as appurtenant to the Leased Premises the exclusive right to the interior building space for the use of the City twenty-four (24) hours a day seven (7) days a week, subject only to reasonable rules as made by Kinport in the form attached as Exhibit 5. The City shall enforce unlawful trespassing.

**10. PARKING.** Kinport shall provide to the City, as appurtenant to the Leased Premises the exclusive right at no additional charge to the fourteen (14) interior parking stalls in the building space and the seven (7) exterior parking stalls for the use of the City twenty-four (24) hours a day seven (7) days a week, subject only to reasonable rules as made by Kinport. The City shall post appropriate signs regarding the use of the parking.

**11. YARD.** Kinport shall provide to the City, as appurtenant to the Leased Premises the exclusive right at no additional charge to the yard for the use of the City twenty-four (24) hours a day seven (7) days a week, subject only to reasonable rules as made by Kinport on the form attached as Exhibit 5. The City shall enforce unlawful trespassing.

**12. ALTERATIONS.** The City will not permit any alterations of or additions to any part of the Leased Premises, except by prior written consent of Kinport, which consent shall not be unreasonably withheld, and all alterations and additions to the Leased Premises shall remain for the benefit of Kinport unless otherwise provided in said consent. Notwithstanding the foregoing, the City may, without consent of Kinport, make alterations, additions, maintenance, repairs, replacement or redecorating to the City Leased Premises Improvements or the Leased Premises of a non-structural nature, provided that upon completion of such alterations, additions, maintenance, repairs, replacement or redecorating, the fair market value of the Leased Premises and rental value thereof

will not be less than the fair market value and rental value of the Leased Premises immediately prior to such alterations and additions or Kinport, at its election, can require the City, at the City's expense, to remove said alterations, additions, maintenance, repairs, replacement or redecorating at the end of the Term and repair any damage occasioned to the Leased Premises by reason of such removal. The City covenants to keep the Leased Premises free of liens and any additional encumbrances. The City hereby indemnifies Kinport against liens, costs, damages and expenses with respect to any such alterations, additions, maintenance, repairs, replacement or redecorating. City covenants and agrees that all such alterations, additions, maintenance, repairs, replacement or redecorating or other work done by City to the Leased Premises shall be performed in a good and workmanlike manner, using first quality materials and in full compliance with applicable codes, regulations, and other requirements of the law.

**13. FIXTURES AND PERSONAL PROPERTY.** Any City Leased Premises Improvements installed in or attached to the Leased Premises by or at the expense of the City, shall be and remain the property of the City and Kinport agrees that the City shall have the right to remove any and all of its City Leased Premises Improvements at the end of the Term. The Kinport Leased Premises Improvements, equipment and other personal property which may have been stored or installed by or at the expense of Kinport shall be and remain the property of Kinport. The City agrees that it will, at its expense, repair any damage occasioned to the Leased Premises by reason of the removal of its City Leased Premises Improvements.

**14. RETURN OF PREMISES.** At the conclusion of this Lease or any extension thereof, the City shall return the Leased Premises to Kinport in the same condition as it was received at commencement of this Lease, normal wear and tear excepted. If at the conclusion of this Lease or any extension thereof, Kinport is of the opinion that the City is not leaving the Leased Premises in the same condition as it was received, normal wear and tear excepted, then such costs of restoration will be determined by a majority vote of a panel of three (3) persons consisting of the City, Kinport, and one (1) person selected by mutual consent of both parties.

**15. DESTRUCTION OF PREMISES.** In the event that the entire Leased Premises, or a Material Portion (as hereinafter defined) thereof, are rendered unfit for occupancy due to fire,



unavoidable casualty, or an act of God, either party may elect to terminate this Lease by delivering written notice to the other party within thirty (30) days of the date of such damage or destruction, in which event this Lease shall terminate as of the date of such destruction and the City shall pay rent only to the time of such termination. The portion of any advance lease payment which is attributed to the period of time after this Lease has been terminated in the above manner shall be refunded by Kinport to the City. If less than a Material Portion of the Leased Premises is damaged or destroyed, Kinport shall be responsible for repairing the same in a timely manner at Kinport's own expense or insurance proceeds and the rental payments shall be suspended to the extent that the Leased Premises are unfit for use by City in the ordinary conduct of its business until said Leased Premises have been put in proper condition for occupancy, except that Kinport shall not be required to repair or reconstruct any City Leased Premises Improvements which are located in the Leased Premises and are removable by City under the provisions of this Lease. Notwithstanding the foregoing, if the Leased Premises or any other portion of the Redevelopment Project is damaged by fire or other casualty resulting from the fault or negligence of City or any of City's agents, employees, contractors, licensees or invitees, City shall be liable to Kinport for the cost and expense of the repair and restoration of the Leased Premises or the Redevelopment Project caused thereby to the extent such cost and expense is not covered by insurance proceeds. "Material Portion" as used in this paragraph shall mean that more than fifty percent (50%) of the BOMA leaseable square feet of the building space has been rendered unfit for use by the City in the ordinary conduct of its business as a result of the fire or other casualty.

**16. REPAIR AND MAINTENANCE.** The City shall maintain and repair the Leased Premises Improvements as described in Exhibit "3" as maintained by LPD in good repair and tenantable condition. Kinport shall maintain and repair the Leased Premises Improvements as described in Exhibit "3" as maintained by Kinport in good repair and tenantable condition. During the Term hereof, the City, at its expense, shall provide daily janitorial services, pest control, trash removal, window cleaning, carpet cleaning, sweeping, general repairs, furnishing and replacing electric light bulbs, fluorescent tubes, ballasts, cut and care for the yard, leaf removal, weed control, tree and bush trimming, and snow and ice removal from the Leased Premises. Wesleyan University acknowledges the benefit of the Leased Premises to Wesleyan University and the surrounding neighborhood and

has expressed its appreciation by graciously assisting in the care of the yard as described in a letter attached hereto as Exhibit "4," and incorporated herein by this reference.

**17. SERVICES AND UTILITIES.** During the Term hereof, City shall be responsible for paying all gas, heat, electricity, and power which may be furnished to the Leased Premises or used by the City in or about the Leased Premises and to keep the Leased Premises free and clear of any lien or encumbrance of any kind whatsoever. During the Term hereof, the City, at its expense, shall be responsible for paying telephone, radio, communications, internet, and computer services. Kinport shall not be liable, and the rental payments and other payments to Kinport shall not abate, for interruptions to the telephone, radio, communications, internet, computer services, plumbing, heating, ventilating, air conditioning, electrical or other mechanical or utility systems or cleaning services, by reason of accident, emergency, repairs, alterations, improvements, shortages or lack of availability of materials or services.

**18. HOLDING OVER.** In the event the City remains in possession of the Leased Premises after the expiration of the Term hereof, or any extension thereof, this Lease shall be automatically extended on a month-to-month basis, subject to thirty (30) days termination by either party, and otherwise on the terms and conditions herein specified.

**19. GENERAL PROVISIONS: EMINENT DOMAIN.** If the whole of the Leased Premises or a substantial part of the Leased Premises which, as a result thereof, constitutes such a major change in the character of the Leased Premises as to prevent the City from using the same in substantially the same manner as theretofore used, shall be taken or condemned by any competent authority for any public use or purpose, the terms of this Lease shall end on the day prior to the taking of possession by such authority or on the day prior to the vesting of title in such authority, whichever first occurs, and without apportionment of the award, and current rent shall be apportioned to the date of termination. In the event that City shall remain in possession and occupation of the remaining portion of the Leased Premises, all the terms and conditions of this Lease shall remain in full force and effect with respect to such remaining portion, except that the rent reserved to be paid hereunder shall be equitably adjusted according to the amount and value of such remaining space.

**20. COMPLIANCE WITH LAW.** Kinport shall, at its expense, comply with all applicable statutes, charters, laws, ordinances, building and maintenance codes, rules, regulations, requirements and orders of duly constituted public authorities now or hereafter in any manner affecting the Kinport Leased Premises Improvements, or the use thereof, or Kinport's duties hereunder, whether or not any such statutes, charters, laws, ordinances, rules, regulations, requirements, or orders which may be hereinafter enacted involved a change of policy on the part of the governmental body enacting the same. The City shall, at its expense, comply with all applicable statutes, charters, laws, ordinances, building and maintenance codes, rules, regulations, requirements and orders of duly constituted public authorities now or hereafter in any manner affecting the City Leased Premises Improvements, or the use thereof, or the City's duties hereunder, whether or not any such statutes, charters, laws, ordinances, rules, regulations, requirements, or orders which may be hereinafter enacted involved a change of policy on the part of the governmental body enacting the same. The City and Kinport shall comply with all building and use or occupancy restrictions, rules and regulations, conditions and covenants of record. The City and Kinport shall comply with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Leased Premises. The Leased Premises shall, at Kinport's expense, meet all current code requirements on the Commencement Date, including but not limited to, fire/life safety codes and the Americans with Disabilities Act accessibility guidelines.

**21. RULES AND REGULATIONS.** The Leased Premises and the City, as tenant, is subject to reasonable rules made by Kinport, as landlord, which are attached hereto as Exhibit "5," and incorporated herein by this reference and any subsequent and reasonable amendments thereto.

**22. FUTURE ADDITIONAL SPACE.** At a later date, the City, at its expense, may make improvements to the "Future Additional Space" as shown on the Schematic Drawings and said improvements shall be deemed City Leased Premises Improvements under the terms of this Lease. Prior to the construction of any City Leased Premises Improvements in the Future Additional Space, the City must first submit construction plans and specifications, prepared by a license designer on behalf of the City, at the City's expense, for the contemplated City Leased Premises Improvements to be constructed. Such construction plans and specifications must be approved by Kinport prior to any construction by the City.

**23. MUTUAL STANDARD OF OPERATION.** Subsequent to completion of the Kinport Leased Premises Improvements and the City Leased Premises Improvements respectively, it is the express intention of the parties to retain their respective interests in the Leased Property and Redevelopment Project and to use best efforts to operate or cause the same to be operated, in accordance with commonly accepted and applicable commercial standards.

**24. PROPERTY INSURANCE.**

(a) Kinport's Insurance. Kinport, at its expense, shall provide at replacement value for the Kinport Leased Premises Improvements and with insurer(s) approved by and satisfactory to City, insurance against loss by special perils. In the event Kinport fails, refuses or otherwise causes, suffers or allows the insurance to terminate for any reason, then the City shall have the ability, but not the obligation, to obtain and keep in full force and effect during the Term hereof, insurance against loss by special perils of the Kinport Leased Premises Improvements. In addition, Kinport may obtain insurance for the Leased Premises and the rents from the Leased Premises against such other perils as Kinport reasonably considers appropriate. All such policies shall contain a waiver by the insurance company of any right of subrogation, shall name the City and Kinport as co-insureds, as their interests may appear.

(b) City Insurance. City, at its expense, shall provide at replacement value for the City Leased Premises Improvements against loss by special perils. In the event the City fails, refuses or otherwise causes, suffers or allows the insurance to terminate for any reason, then Kinport shall have the ability, but not the obligation, to obtain and keep in full force and effect during the Term hereof, insurance against loss by special perils of the City Leased Premises Improvements. All such policies shall contain a waiver by the insurance company of any right of subrogation, shall name the Kinport and any mortgagee of the Leased Premises of co-insureds, as their interests appear.

(c) Proof of Loss Upon Damage to Property. If any loss occurs which may be covered by insurance, City and Kinport will immediately notify each other of the loss and shall make the proof of loss within the earlier of thirty (30) days or the time required under the insurance policy.

(d) Settlement with Insurance Carrier. If the hazard insurance carrier refuses to pay a claim or offers to settle for less than the full cost of repairs or replacement, City and Kinport shall advise each other and cooperate with each other, and the City and Kinport agree not to make a settlement for less than the full cost of repair or replacement without the written consent of the other

party. Any attorney fees or other costs which are incurred in any action against an insurance carrier shall be borne by the parties in the same proportion as the proceeds are distributed.

(e) Waiver. Kinport and the City expressly waive all rights and claims including claims of subrogation they may have against the other, their subsidiaries and affiliates for loss or damage covered by insurance required in this article. Each insurance policy procured by Kinport and the City shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any Party prior to the occurrence of a loss.

(f) Administration. In the event of property damage rendering the Leased Premises Improvements or any portion thereof untenable, any insurance proceeds paid or disbursed to the Parties on account of such property (proceeds) shall be held in trust for the purposes of paying the cost of the property repair work or for distribution as provided in Paragraph 15.

**25. LIABILITY INSURANCE.** It is understood and agreed that Kinport maintains and will continue to maintain liability coverage of not less than \$2,000,000 for any occurrences related to Kinport's use of the Leased Premises Improvements. The City of Lincoln, a political subdivision in the State of Nebraska, is self-insured for general liability and worker's compensation. The City maintains specific funds as self insurance reserves to pay legal liabilities. The City has the general power to sue and be sued under City Charter and state law. The City is legally authorized to pay lawful judgments and settlements. The City also has the authority to levy taxes in an amount sufficient to pay its legal liabilities.

**26. INDEMNIFICATION.** The City hereby waives all claims against Kinport, its agents and employees for loss, theft or damage to Leased Premises Improvements, equipment, furniture, records and other property on or about the Leased Premises, for loss or damage to the City's business or for death or injury to persons on or about the Leased Premises, except to the extent caused by the negligence or willful misconduct of Kinport, its agents or employees. The City shall indemnify and hold harmless Kinport, its agents and employees from and against any and all claims and liability for the loss, theft or damage to property on or about the Leased Premises except the City's indemnification shall not include an indemnification for liability for the negligence or willful misconduct of Kinport, its agents or employees. The City shall indemnify and hold Kinport, its agents and employees harmless from and against any and all claims and liability arising from any

breach or default by the City in the performance of any obligation of the City under this Lease or arising from the negligence or willful misconduct of the City, its agents, employees or visitors. Kinport shall not be liable to the City for any third party negligence or act of any occupant of the Leased Premises or any owner or occupant of any property adjoining the Leased Premises other than Kinport, its agents and employees.

**27. DEFAULT.** In the event the City fails to pay any rental due hereunder or fails to keep and perform any of the other terms or conditions hereof, time being of the essence, then thirty (30) days after written notice of default from Kinport, Kinport may, if such default has not been corrected, resort to any and all legal remedies or combination of remedies which Kinport may desire to assert, including but not limited to, one or more of the following: (1) declare the Lease at an end and terminated; (2) sue for the rent due and to become due under the Lease or for any damages sustained by Kinport; and/or (3) continue the Lease in effect and relet the Leased Premises on such terms and conditions as Kinport may deem advisable with the City remaining liable for the monthly rent plus the reasonable cost of obtaining possession of the Leased Premises and of any repairs and alterations necessary to prepare the Leased Premises for reletting, less the rentals received from such reletting, if any. No action by Kinport shall be construed as an election to terminate this Lease unless written notice of such intention be given to City. The remedies of Kinport set forth in this paragraph shall not be exclusive, but shall be cumulative and in addition to all rights and remedies now or hereafter provided or allowed by law or equity, including, but not limited to, the right of Kinport to seek and obtain an injunction and the right of Kinport to damages in addition to those specified herein. In case Kinport, after written notice from the City indicating Kinport has failed to comply with any requirements of this Lease in regard to a specified condition, shall fail, refuse or neglect to comply therewith, within thirty (30) days of written notice thereof from the City to Kinport, or in the event of an emergency constituting a hazard to the health or safety of the City's employees, property, or invitees, the City may perform such maintenance or make such repair at its own cost and, in addition to any other remedy the City may have, may deduct the amount thereof from the rent that may then be or thereafter become due hereunder.

**28. RESERVATION.** Kinport reserves the right from time to time: to install, use maintain, repair, replace and relocate for service to the Leased Premises and/or other parts of the building

space pipes, ducts, conduits, wires, appurtenant fixtures, and mechanical systems, wherever located in the Leased Premises.

**29. ESTOPPEL CERTIFICATE.** The City shall upon ten (10) days written notice from Kinport, execute, acknowledge and deliver to Kinport a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modifications and certifying that this Lease as so modified is in full force and effect; (ii) acknowledging that there are not, to the City's knowledge, any uncured defaults on the part of Kinport hereunder, or specifying such defaults if any are claimed; and (iii) setting forth the date of commencement of rents and the date of expiration of the term of this Lease and setting forth any options of the City to extend the term of this Lease, the nature of such options and whether any such options have been exercised by the City. Any such statement may be relied upon by any then existing or prospective lender, purchaser or encumbrances of all or any portion of the real property of which the Leased Premises are a part.

**30. TERMINATION.** On termination of the Lease, the City shall execute and deliver to Kinport immediately upon Kinport's request a quitclaim deed in recordable form transferring to Kinport any interest of the City in the Leased Premises.

**31. BROKER.** The City represents and warrants to Kinport that it has not had dealings with any broker or finder in locating the Leased Premises or producing this Lease. Kinport represents and warrants to the City that it has not had dealings with any broker or finder in locating the Leased Premises or producing this Lease. Kinport discloses that while William D. Scott, an officer and shareholder of Kinport, is a licensed broker, no broker or finder fees, charges or other broker related expenses have been incurred by either party related to this Agreement

**32. MODIFICATION.** This Lease and the Redevelopment Agreement contain all of the terms and conditions agreed upon by Kinport and the City with respect to the Leased Premises and the Redevelopment Project. All prior negotiations, correspondence and agreements are superseded by this Lease and any other contemporaneous documents. This Lease may not be modified or changed except by written instrument signed by Kinport and the City.

**33. WAIVER.** The acceptance of rent or other payments by Kinport, or the endorsement or statement on any check or any letter accompanying any check for rent or other payment shall not be deemed an accord or satisfaction or a waiver of any obligation of the City regardless of whether Kinport had knowledge of any breach of such obligation. Failure to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder, at any one time or more times, be deemed a waiver or relinquishment of such rights and powers at any other time or times or under any other circumstance(s).

**34. PARTIAL INVALIDITY.** If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**35. INTERPRETATIONS.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Lease, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**36. SUCCESSORS AND ASSIGNS.** This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

**37. EXHIBITS.** All exhibits, riders, and schedules, if any, attached hereto shall be deemed a part of this Lease.

Executed by the City of Lincoln, Nebraska on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

“City”

ATTEST:

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

\_\_\_\_\_

By: \_\_\_\_\_



City Clerk

Coleen J. Seng, Mayor

Executed by Kinport Corporation, a Nebraska corporation, on \_\_\_\_ day of \_\_\_\_\_, 2006.

“Kinport”

**KINPORT CORPORATION**, a Nebraska corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

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

(Seal)

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

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, as \_\_\_\_\_ of Kinport Corporation, a Nebraska corporation, on behalf of the corporation.

(Seal)

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