

48th & Huntington Avenue REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (“Agreement”) is entered into as of this ____ day of _____, 2006, by and between the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska, 555 South 10th Street, Lincoln, Nebraska 68508 (“City”), and Kinport Corporation, a Nebraska corporation, 720 O Street, Lincoln, Nebraska 68508 (“Kinport”).

RECITALS

1. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the 48th & Huntington Avenue Redevelopment Plan Amendment, dated October 24, 2005 and 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 and as may be amended from time to time (collectively “Redevelopment Plan”) providing for redevelopment in the general area of North 48th Street from Colby on the south, one half block north of Adams Street on the north, half a block west of North 47th Street on the west and North 50th Street on the east, copies of which, together with any and all amendments thereto, are on file in the Office of the City Clerk (“City Clerk”).

2. The City is the owner of real estate as shown on Exhibit “A”, which is attached hereto and incorporated herein, and more particularly described as follows: The West Half of Lot Four (4) and all of Lots Five (5) and Six (6), Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska (“City Property”).

3. Kinport is the owner of real estate as shown on Exhibit “A” and more particularly described as follows: Lot One (1), Two (2), Three (3) and the East Half of Lot Four (4), Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska (“Kinport Property”) which the City will acquire from Kinport to assemble the redevelopment site along with the City Property, prepare for redevelopment and transfer all said real estate back to Kinport for redevelopment at fair value consistent with and for purposes of redevelopment according to the Redevelopment Plan.

4. Kinport will redevelop the site to create a private redevelopment and adaptive reuse including new construction and improvements for mixed use retail, residential, commercial or office use, including parking and related uses as provided in this Agreement.

5. The Redevelopment Plan describes the Redevelopment Project (defined herein), along with the acquisition of the Kinport Property. The City has previously acquired the City Property including the necessary demolition of the existing structures on the City Property.

Together with the Kinport Property, the City shall prepare the two parcels as a single redevelopment site (“Redevelopment Project Area”) and conveyance to Kinport for redevelopment as provided herein.

6. The City and Kinport enter into this Agreement to implement the redevelopment of the Kinport Improvements and the Public Improvements (collectively “Redevelopment Project” or “Redevelopment Project Improvements”) for the purposes and in accordance with the Redevelopment Plan.

7. The City and Kinport mutually agree that the redevelopment of the Redevelopment Project Area is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

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

- A. “Architect” shall mean Champion & Olson Architects.
- B. “Building Space” shall mean the building space on two levels and related enclosed parking area for the building space located upon the Leased Premises as shown on Exhibit “B,” which is attached hereto and incorporated herein by this reference.
- C. “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” of the Lease.
- D. “City Property” shall mean the West Half of Lot Four (4) and all of Lots Five (5) and Six (6), Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska.
- E. “Easements” shall mean the easements described in Section 809 below.
- F. “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” of the Lease.
- G. “Kinport Mixed-Use Premises Improvements” shall mean new building(s), trade fixtures, equipment, personal property or improvements owned, constructed, installed or made by Kinport or Kinport’s contractor, at Kinport’s expense, or by Kinport’s tenants within the Mixed-Use Property and more particularly described in Section 801(A).

H. “Kinport Improvements” shall mean the Kinport Leased Premises Improvements and the Kinport Mixed-Use Premises Improvements.

I. “Kinport Property” shall mean Lot One (1), Two (2), Three (3) and the East Half of Lot Four (4), Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska.

J. “Lease” shall mean the Lease for Police Substation, dated as of _____, 2006, executed by and between Kinport and the City.

K. “Leased Premises” shall mean Lots 1 & 2, Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska and further described in the Lease. The Leased Premises are illustrated on Exhibit “B.”

L. “Mixed-Use Premises” shall mean the mixed-use buildings and improvements located west of the Leased Premises and legally described as Lots Three (3), Four (4), Five (5) and Six (6), Block Ninety-Five (95), University Place, Lincoln, Lancaster County, Nebraska, but excluding the Leased Premises, as generally depicted on Exhibit “B.”

M. “Public Improvements” shall mean the improvements owned, constructed, installed or made by the City or City’s contractor, at City’s expense, within the Redevelopment Project Area and more particularly described in Sections 802.

N. “Redevelopment Plan” shall mean individually and collectively the 48th & 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 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.

O. “Redevelopment Project” shall mean the 48th & Huntington Avenue Redevelopment Project and includes the Leased Premises and Mixed-Use Premises, as generally depicted on Exhibit “B.”

P. “Redevelopment Project Area” shall mean the Mixed-Use Premises and Leased Premises.

Q. “Redevelopment Project Improvements” shall mean Kinport Improvements, City Leased Premises Improvements and the Public Improvements.

R. “Schematic Drawings” shall mean the Schematic Design Drawings of the Redevelopment Project, as prepared by the Architect, which are attached hereto as Exhibit “C”

and incorporated herein by this reference solely for purposes of the general description and location of planned improvements.

NOW THEREFORE, in consideration of the mutual obligations in this Agreement, the City and Kinport agree as follows:

**ARTICLE I.
KINPORT'S RESPONSIBILITIES**

Section 101. Kinport Improvements. Kinport, at its own cost and expense, will purchase in fee simple the Redevelopment Project Area from the City as provided in this Agreement at fair value as described herein to complete the Kinport Improvements in connection with the Redevelopment Project. Kinport, at its own cost and expense, shall design, construct and rehabilitate an appropriate adaptive reuse thereof consisting of buildings for mixed use residential, retail, commercial or office use thereof according to Approved Plans as provided in Section 801 of this Agreement and commence construction within 180 days after Closing. The Redevelopment Project is anticipated to be built in phases and may be physically connected to form one larger building or may be built to comprise two (2) or three (3) separate buildings. The development is intended to provide for market rate mixed use residential, retail, commercial and/or office space, subject to economic conditions. The Kinport Leased Premises Improvements for the Redevelopment Project shall be substantially completed within one hundred and eighty (180) days after the date of closing. The Kinport Mixed-Use Premises Improvements (excluding tenant improvements) for the Redevelopment Project shall be substantially completed within two years from the date of closing.

Section 102. Grant of Easements to City. At Closing, Kinport will grant to the City without additional consideration the appropriate North 48th Street public improvements easement as generally shown on Exhibit "D," which is attached hereto and incorporated herein by this reference.

Section 103. Architect. Kinport will use the services of Architects as Redevelopment Project Architect or another architect or designer acceptable to the City.

Section 104. Complete Site Preparation. The City will cause the Lincoln Electric overhead line in the alley to be relocated underground in the alley and to repave the damaged portion of the alley. The City agrees to pay for one-third (1/3) of said costs and Kinport agrees to pay for two-thirds (2/3) of said costs. Kinport, at its expense, shall complete the remaining site preparation and utility work associated with the Redevelopment Project. Any preparation and work that is located within the City's right-of-way shall be carried out pursuant to the City's design standards. "Site preparation" shall include preparation, governmental approvals, utility service line(s) shut off and relocation, demolition, removal, hauling and landfill charges, filling cavities and subsurface holes, including but not limited to building footings, basements, vault space and foundations, and rough site grading in anticipation of the buildings shown on Exhibit "C." Notwithstanding any contrary provision herein, Kinport shall have the right prior to

Closing to carry out site preparation work associated with the Kinport Property and City Property and pile said debris in an orderly fashion on the site in order to permit Kinport to begin construction of the building footings and other related building improvements as soon as possible pursuant to the Right of Entry shown on Exhibit "E," which is attached hereto and incorporated herein by this reference. The Mayor is authorized to execute and deliver the Right of Entry prior to Closing.

Section 105. Complete Kinport Improvements. Kinport, at its expense, shall complete the Kinport Improvements as described in Article VIII below.

**ARTICLE II.
REPRESENTATIONS AS TO DEVELOPMENT;
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

Section 201. Purpose. Kinport represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of the Redevelopment Project and not for speculation in land holding.

Section 202. Restrictions on Assignments of Rights or Obligations.

A. Kinport represents and agrees that prior to completion of Kinport Improvements provided for in Section 101 above there shall be no sale or transfer of the Redevelopment Project facility or assignment of its rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld), other than mortgages as permitted herein, and involuntary transfers by reason of death, insolvency, or incompetence.

B. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

1. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Kinport; and

2. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Kinport under this Agreement and agreed to be subject to all the conditions and restrictions stated herein; and

3. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefor shall be indicated to Kinport in writing. If the City fails to

render an approval or disapproval to Kinport within seven (7) days from the date of the request for approval, the approval of the City may be presumed by Kinport.

**ARTICLE III.
CITY DUTIES**

Section 301. City Duties. The City at its own cost and expense shall:

A. Identify for Kinport the existing public storm and sanitary sewer, water, electrical, and other utility easements within the Redevelopment Project as soon as reasonably possible and terminate without additional consideration any utility easements no longer needed no later than the Closing. In the event the City requires any existing utility easement(s) to remain and Kinport in good faith concludes that the Redevelopment Project can not proceed with said utility easement(s) remaining in place, then Kinport shall have the right prior to Closing to terminate this Agreement. In the event of termination of this Agreement by Kinport, neither party shall be liable to the other party for damages due to termination, including consequential damages, anticipated income or lost opportunity related to or arising out of this Agreement.

B. Complete, prior to Closing, the environmental testing as provided in Section 405 and approvals for the City to assemble and prepare the Redevelopment Project Area for the Redevelopment Project and complete the transfer of the City Property and Kinport Property for purposes of constructing the Redevelopment Project, preserving necessary easements and other appropriate use restrictions provided under this Agreement.

C. Execute and deliver to Kinport, at Closing, the Lease.

**ARTICLE IV.
REAL ESTATE SALES AGREEMENT**

Section 401. Property Description. The City, at its expense, shall acquire and assemble the real property for the Redevelopment Project comprising the Redevelopment Project Area. The City desires to sell and Kinport desires to acquire the Redevelopment Project Area, subject to the terms and conditions of this Agreement and the Redevelopment Plan.

Section 402. Transfer of Property.

402.1 Sale and Purchase. At Closing (as hereinafter defined), Kinport shall sell and transfer to the City the Kinport Property and the City shall sell and transfer to Kinport the Redevelopment Project Area. The net exchange of land for assembling the Redevelopment Project Area will result in a Boot Price payable to Kinport of Three Hundred Ninety Three Thousand Eight Hundred Forty Three and no/100 Dollars (\$393,843.00) in good funds from the City payable at Closing, subject to adjustments and prorations as herein provided.

402.2 Right of Entry, Testing and Demolition. Upon execution of this Agreement, Kinport shall grant to the City the Right of Entry as shown on Exhibit "E" to permit entry upon the Redevelopment Project Area for testing, demolition of the existing structures thereon and site preparation in accordance with the assembly of the Redevelopment Project provided in this Agreement.

402.3 Closing. The closings of the purchase and sale of the Kinport Property and the Redevelopment Project Area shall take place at the offices of the City of Lincoln's Urban Development Department, 129 North 10th Street, Lincoln, Nebraska on or before April 15, 2006; provided, however, the closings shall be automatically extended until the Lincoln City Council has approved the sales as provided by law, or at such other time, date and place as the parties may mutually agree, but no later than May 15, 2006.

402.4 Title and Possession. Kinport agrees to deliver at Closing a general corporate warranty deed to the Kinport Property conveying to the City marketable title to the Kinport Property, free and clear of all mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, encroachments, boundary line disputes, charges or adverse claims of any kind or character whatsoever, except for easements and restrictions of record. City agrees to deliver at Closing a general warranty deed to the Redevelopment Project Area conveying to Kinport marketable title to the Redevelopment Project Area, free and clear of all mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, encroachments, boundary line disputes, charges or adverse claims of any kind or character whatsoever, except for easements and restrictions of record that do not prevent the use of the Redevelopment Project Area for Kinport's intended uses and the following use restrictions, which restrictions have been negotiated and considered to constitute the basis for the fair value determined for the Redevelopment Project Area:

A. Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 75% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations;

B. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 75% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

C. Any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service.

D. Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or petroleum store.

E. Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law.

F. Any business whose predominant operation is warehousing or storage of goods, materials or merchandise.

G. Any business involving sale or display of weapons, industrial manufacturing, off-site outdoor advertising on the premises, illegal activities, or sale of any illegal goods or products.

402.5 Title Insurance. On or prior to January 1, 2006, the parties and its counsel shall receive a commitment for an owner's policy of title insurance which insures marketable title to the Redevelopment Project Area and Kinport Property respectively, subject only to the easements, restrictions (including those provided in this Agreement) and other matters of record which do not prevent Kinport from using the Redevelopment Project Area for its intended uses. Written notice of any easement, restriction or other matter affecting title to the Redevelopment Project Area that is unacceptable shall be delivered prior to Closing. Written notice of any easement, restriction or other matter affecting title contained in the updated commitment that is unacceptable shall be delivered prior to Closing. The curing party shall have a reasonable period, not exceeding thirty (30) days, to cure any unacceptable easement, restriction or other matter affecting title. The premium for the title insurance policies shall be paid by the City.

402.6 Taxes, Assessments and Other Costs.

402.6.1 City Property. At Closing, the City shall pay all taxes related to the City Property respectively for 2005 and all prior years and any such taxes for 2006 shall be prorated to the date of Closing and based on the most recent property valuation and the most recent levy. Any special assessment arising out of any improvements completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by City up to the date of Closing.

402.6.2 Kinport Property. At Closing, Kinport shall pay all taxes related to the Kinport Property respectively for 2005 and all prior years and any such taxes for 2006 shall be prorated to the date of Closing and based on the most recent property valuation

and the most recent levy. Any special assessment arising out of any improvements completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Kinport up to the date of Closing.

402.6.3 Assessments. Assessments for improvements constructed after Closing shall be paid by Kinport.

402.6.4 Transfer Taxes. City shall pay any and all transfer taxes or similar fees, if any, which are payable upon the recording of the instruments of transfer.

402.7 Representations and Warranties of City. City represents and warrants to Kinport as follows:

402.7.1 Power. The City is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and to enter into this Agreement and perform the obligations hereunder.

402.7.2 Sale Approval. Pursuant to law all sales of property owned by the City must be approved by the City Council after an appraisal of the fair market value. The transfer of property is conditioned on the approval of the sale for fair value by the City Council as provided by law.

402.7.3 Authority Relative to Agreement. This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. The City is the owner of the City Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

402.7.4 Brokers. The City has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Kinport to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and City is not aware of any claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. 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.

402.7.5 Special Assessments and Liens. There are no costs or expenses of any kind or character whatsoever associated with the construction or maintenance

of any street, sidewalk, parking area or utility improvement surrounding or serving the area adjacent to the Redevelopment Project Area, including, without limitation, the costs and expenses attributable to paving, extension of water, sanitary sewer, storm sewer lines, street and parking lot lighting, street traffic signals and signs, engineering design and city engineering assessed against the Redevelopment Project Area up to the date of Closing.

402.7.6 Floodplain. The City Property is not located in a designated floodplain.

402.7.7 “As Is.” The City has sold the City Property as is, making no representations or warranties concerning it of any kind or nature, except as is expressly set forth in this Agreement.

402.8 Representations and Warranties of Kinport. Kinport represents and warrants to City as follows:

402.8.1 Organization; Power; Good Standing. Kinport is a Nebraska corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

402.8.2 Authority Relative to Agreement. This Agreement has been duly executed and delivered by Kinport and constitutes a legal, valid and binding obligation of Kinport, enforceable against Kinport in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies.

402.8.3 Effect of Agreement. The execution, delivery and performance of this Agreement by Kinport and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Kinport and except as contemplated hereby, will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Kinport to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Kinport, and will not conflict with or violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind or character to which Kinport is a party.

402.8.4 Brokers. Kinport has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of City to pay any finder’s fee, brokerage or agent’s commission, or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Kinport is not aware of any claim or basis for any claim for payment of any finder’s fee, brokerage or agent’s commission, or other like payment in connection with

the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Kinport discloses that William D. Scott is a licensed real estate broker. 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.

402.8.5 “As Is.” Kinport is transferring the Kinport Property to the City as is, making no representations or warranties concerning it of any kind or nature, except as is expressly set forth in this Agreement.

Section 403. Indemnification.

403.1 Indemnification by City. Upon the terms and subject to the conditions set forth in this Agreement, the City agrees to indemnify and hold Kinport harmless against, and will reimburse Kinport upon demand for, any payment, loss, cost or expense (including reasonable attorney’s fees) made or incurred by or asserted against Kinport in respect of any and all damages resulting from:

A. Any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of City contained in this Agreement,

B. Any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished pursuant to this Agreement or contemplated hereby.

403.2 Indemnification by Kinport. Upon the terms and subject to the conditions set forth in this Agreement, Kinport agrees to indemnify and hold City harmless against, and will reimburse City upon demand for, any payment, loss, cost or expense (including reasonable attorney’s fees) made or incurred by or asserted against City in respect of any and all damages resulting from:

A. Any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Kinport contained in this Agreement; and

B. Any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished pursuant to this Agreement or contemplated hereby.

Section 404. Survey. At Kinport’s election, Kinport, at Kinport’s expense, may order an ALTA boundaries and improvements survey of the Redevelopment Project Area to determine if there are any encroachments or boundary line disputes which would impede Kinport’s intended uses of the Redevelopment Project Area. In the event Kinport does order an ALTA survey and the survey shows no encroachments or boundary line disputes, then the City’s warranty deed delivered to Kinport at Closing will exclude language that the Redevelopment Project Area is free and clear of encroachments and boundary line disputes.

Section 405. Inspection and Testing. At any time after the date of this Agreement, the City, Kinport and their respective employees and agents shall have the right to enter upon the Redevelopment Project Area and perform such tests and inspections as the City deems necessary for site preparation and Kinport deems necessary to determine suitability of the Redevelopment Project Area for its intended uses. Unless otherwise approved by the other party in writing, the testing party shall restore the Redevelopment Project Area to original condition if such tests alter the grade, compaction, or vegetation. As to the City Property, the City represents that as of the date of this Agreement it has no knowledge of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement the City has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the City Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to such Hazardous Materials. As to the Kinport Property, Kinport represents that it has no knowledge as of the date of this Agreement of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement Kinport has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the Kinport Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to such Hazardous Materials. The parties hereby agree that in the event that inspection, testing or other activities contemplated by this Agreement should identify areas of concern regarding site conditions that would likely interfere, delay or require remediation over and above contingencies for related components (including but not limited to Hazardous Materials) that the party discovering the same shall immediately notify the other party and the parties shall use their respective best efforts to resolve the concerns where feasible. In the event the parties cannot in good faith agree on a resolution permitting the Redevelopment Project to proceed, this Agreement may be terminated upon such terms and conditions as the parties may agree upon considering the costs incurred related to this Agreement after the date of this Agreement and up to the date of termination. In the event of termination of this Agreement, neither party shall be liable to the other party for damages due to termination, including consequential damages, anticipated income or lost opportunity related to or arising out of this Agreement. The City, at its expense, has ordered a phase one and two environmental assessment for the Redevelopment Project Area and said phase one and two reports will be completed by Closing. The City agrees to provide a complete copy of said phase one and two reports to Kinport as soon as the reports are completed and delivered to the City.

Section 406. Permits and Approval; Signs. Kinport agrees to use its best efforts to secure all permits and licenses necessary for its intended use of the Redevelopment Project Area, including, but not limited to, a building permit and applicable permits or licenses.

Section 407. Right to Effectuate Exchange. The City acknowledges that Kinport may undertake an Internal Revenue Code Section 1031 tax deferred exchange of its interest in all or any portion of the Redevelopment Project Area. Kinport's rights and obligations under this Agreement may be assigned to facilitate such exchange(s). The City agrees to cooperate with Kinport and any assignee to enable Kinport to qualify for such exchange(s); provided that such

cooperation shall not require the City to incur any additional costs or liability and the City shall be able to realize all intended benefits of this Agreement.

ARTICLE V. TAX AGREEMENT

Section 501. Valuation of Property Within the Redevelopment Project Area. It is understood that the City intends to use the ad valorem tax provisions as set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (as amended), which will be attributable in part to the rehabilitation and redevelopment contemplated under this Agreement. The tax increment revenues which are to be used to pay debt service for the Redevelopment Project Area will be derived from the increased valuation from redeveloping the Redevelopment Project Area as provided in this Agreement. So long as any of the debt issued with respect to the Redevelopment Project Area funds remain outstanding and unpaid, Kinport (including its successors and assigns where applicable) agrees not to contest any taxable valuation assessed for the Redevelopment Project Area which does not exceed \$2,881,427.00; provided that the construction of the Redevelopment Project is completed as provided in this Agreement.

Section 502. Restriction on Transfer. Kinport will not, for a period of fifteen (15) years after the effective date of the ad valorem tax provision, or so long as the tax increment indebtedness remains outstanding whichever period of time is shorter (Tax Increment Period): (i) convey the Redevelopment Project Area to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions; or (ii) in the event any portion of the underlying real estate is declared exempt from ad valorem taxes, then Kinport shall annually pay a fee in lieu of the amount of the increment of the ad valorem taxes that would have been generated if the underlying real estate was not declared exempt from ad valorem taxes.

Section 503. Agreement to Pay Taxes. Kinport agrees to pay all real property taxes levied upon the Redevelopment Project Area prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Kinport shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Kinport to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Kinport to waive its right to protest or contest the valuation of the Redevelopment Project Area and improvements for tax purposes.

Section 504. Damage or Destruction of Redeveloper's Property. During the Tax Increment Period, Kinport agrees to keep the construction area and completed premises insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. In the event of any insured damage or destruction, Kinport agrees to restore the Redevelopment Project Area to its prior condition within twelve (12) months from the

date of the damage or destruction, and shall diligently pursue the same to completion. In the event Kinport fails to restore the same for any reason, Kinport shall pay to the City the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

Section 505. Condemnation. In the event that during the tax increment period all or a substantial portion of the Redevelopment Project Area is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemnor an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the tax increment period.

ARTICLE VI. REMEDIES

Section 601. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City or Kinport, or any successors to such parties, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach, including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Kinport shall be deemed to be a curing by Kinport. Any default or breach which cannot, by its nature, be cured in the time allowed shall be deemed cured if curing is commenced in the time allowed and diligently pursued to completion thereafter.

Section 602. Other Rights and Remedies: No Waiver by Delay. The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

Section 603. Delay in Performance For Causes Beyond Control of Party. For the purpose of any provisions of this Agreement, the parties or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, acts of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of Kinport, contractors, or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of

any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay; provided, that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall within thirty (30) days after the beginning of any such delay notify the other party thereof in writing, and of the cause or causes thereof.

Section 604. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

ARTICLE VII. MISCELLANEOUS

Section 701. Conflicts of Interest: City Representatives Not Individually Liable. No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Kinport, any successors in interest or transferees of Kinport, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Kinport, its successors or transferees, or on any obligations under the terms of this Agreement.

Section 702. Persons Authorized to Issue Approvals. For purposes of this Agreement and the approvals and disapprovals required hereunder, Kinport shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development as constituting the approval or disapproval required by any one or more of the City, the Mayor, or the Director of the Department of Urban Development. Until the City receives further written notice from Kinport, City shall be entitled to rely on the written approval of the President or Vice President of Kinport as constituting the approval or disapproval of Kinport.

Section 703. Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally, in the case of Kinport to President, 720 O Street, Lincoln, Nebraska 68508; and, in the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

Section 704. Access to Redevelopment Project Area. During construction of the Redevelopment Project, Kinport shall permit the representatives of the City to enter all areas of the Redevelopment Project Area and at any and all reasonable times, as the City may deem necessary for the purposes of this Agreement, including but not limited to, work and inspection of all work being performed in connection with the construction of the facility.

Section 705. Provisions Run With the Land. The provisions and covenants of this Agreement shall run with the Redevelopment Project Area and shall inure to and bind the undersigned parties, successors and assigns.

Section 706. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 707. Integrated Contract: Severance of Provisions: Governing Law. It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of Nebraska.

Section 708. Expiration of Agreement. Except for the provisions of the use restrictions contained in Sections 402.4 A. through G, inclusively, 402.7, 402.8 403.1, 403.2 and 809, this Agreement shall expire upon expiration of the Tax Increment Period.

ARTICLE VIII. REDEVELOPMENT PROJECT

Section 801. Kinport Improvements Requirement. The Kinport Improvements required to be constructed by Kinport at its expense shall include:

A. Construction of building(s) for new mixed-use residential, commercial or office use development space and related shell space improvements, (not less than 9,000 gross square feet and not more than 25,000 gross square feet) and Kinport Mixed-Use Premises Improvements located upon the Mixed-Use Premises as generally depicted in the approved Schematic Drawings in Exhibit C which is attached hereto and incorporated herein by this reference or alternative Schematic Drawings approved by the Mayor, provided: (i) said alternative Schematic Drawings meet the square feet requirements described in this Section; and (ii) the Schematic Drawings do not require any additional public expenditures greater than the City Uses of funds as shown on Exhibit F;

B. Rehabilitation of the Building Space (former Telephone Company Building) and related Kinport Leased Premises Improvements located upon the Leased Premises as generally depicted in the approved Schematic Drawings in Exhibit C;

C. Parking stalls and related parking improvements as required by the Lincoln Municipal Code and as generally depicted in the Schematic Drawings;

D. Demolition, removal of buildings, foundation, parking lots and improvements, fill and compaction of below grade level areas and rough grading of the Kinport Property;

E. To the extent tax increment funds are not available, public sidewalks for North 48th Street, Huntington Avenue and North 49th Street abutting the Redevelopment Project Area;

F. To the extent tax increment funds are not available, Kinport will contribute two-thirds of the cost to relocate underground the Lincoln Electric System electric overhead line as described in Section 802 E. below;

G. Logistical improvements: on-site electric, water, telephone, coax cable and sanitary sewer service lines to the buildings and separate service conduit and cables to the buildings for phone and cable; and

H. Tenant improvements: Kinport, at its expense and under separate contract, shall cause (or cause its tenant to provide) the design and construction of the tenant improvements and interior space improvements (interior walls, interior utilities, and heating, ventilation and air conditioning improvements), electric, water, and sanitary sewer within the buildings and separate conduit and cables within the buildings for phone and cable and such tenant improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes.

Section 802. Public Improvements. As part of the Redevelopment Project, City, at its expense, will contract, design, and pay for the following Public Improvements:

A. Acquisition of the City Property;

B. Demolition, removal of buildings, foundation, parking lots and improvements, fill and compaction of below grade level areas and rough grading of the City Property;

C. Acquisition of the Kinport Property;

D. Phase 1 and Phase 2 Environmental Audits of the Redevelopment Project Area;

E. Relocate underground the Lincoln Electric System overhead electric line in the alley and to repave the damaged portion of the alley. The City agrees to pay for one-third (1/3) of the costs and Kinport agrees to pay for two-thirds (2/3) of the costs. To the extent tax increment funds are available the City will apply the extra funds to the relocation and Kinport's share will be reduced accordingly; and

F. Improvements to on-street parking areas of North 49th Street as generally shown on Exhibit B.

G. To the extent tax increment funds are available, public sidewalks for North 48th Street, Huntington Avenue and North 49th Street abutting the Redevelopment Project Area.

Section 803. North 48th Street Public Improvements. The Redevelopment Plan and the City's Capital Improvement Plan outline the City's responsibility to carry out traffic signal, intersection and lane improvements to North 48th Street in the general vicinity of the Redevelopment Project Area. These North 48th Street public improvements are not part of the Redevelopment Project. The City will use its best efforts to continue to show these North 48th Street public improvements in the City's Capital Improvement Plan.

Section 804. Salvage Rights. Prior to demolition of the Kinport Property for purposes of constructing the Redevelopment Project, Kinport shall have the option to salvage and remove, at Kinport's expense, any on site materials and improvements on the Kinport Property scheduled for demolition.

Section 805. Schematic Drawings of the Redevelopment Project. The Redevelopment Project Schematic Drawings have been prepared by Kinport, at Kinport's expense, as shown in Exhibit "C."

Section 806. Construction Documents; Changes in Construction Documents. The Mayor and Kinport shall be entitled to review and approve the Construction Documents for the Redevelopment Project Improvements, and such approval shall be granted if the Construction Documents are consistent with the Schematic Drawings and the terms and conditions of this Agreement. Neither Kinport nor the City shall have unilateral authority to initiate material changes to the Construction Documents without the other party's approval. A party requesting a change shall submit any material changes in the Construction Documents to the other party for approval which approval shall not be unreasonably withheld. A party shall be deemed to have approved the submitted Construction Documents or proposed changes thereto unless the requesting party receives written notice within fourteen (14) days after receipt of the proposed Construction Documents or proposed changes. The requesting party shall be obligated to pay the additional costs and fees of the Architect incurred as a result of such changes.

Section 807. Construction. Kinport will use its best efforts to substantially complete construction of the Kinport Leased Premises Improvements within one hundred and eighty 180 days of the date of closing and the Kinport Mixed-Use Premises Improvements (excluding tenant improvements) within two years of the date of closing. The City shall substantially complete the associated Public Improvements by the time of the substantial completion of the Kinport Leased Premises Improvements.

Section 808. Maintenance and Repairs. The City will be responsible for all costs in regards to the maintenance, repairs and replacement of the Public Improvements, except as otherwise provided by law. Subject to the terms of the Lease, Kinport will be responsible for all other costs in regards to the maintenance, repairs and replacement of Kinport Improvements.

Section 809. Easements to be Granted.

809.1 Intention. It is the intention of the City and Kinport that the Redevelopment Project Area shall have all necessary and reasonably desirable easements for support, installation, construction, maintenance, repair, replacement, improvement, ingress and

egress for the Redevelopment Project Area as shown on the Schematic Drawings and Construction Drawings. City and Kinport deem it desirable to impose a general plan of easements, covenants, conditions, reservations, and restrictions to provide for the foregoing.

809.2 Declaration. In order to effectuate the foregoing, the City and Kinport do hereby certify and declare that each does hereby establish the covenants, conditions, restrictions, and reservations hereinafter contained for the design, installation, construction, protection, maintenance, repair, replacement, improvement, ingress and egress and development of the Redevelopment Project Area, as shown on the Construction Drawings. These covenants, conditions, restrictions, easements and reservations shall run with the Redevelopment Project Area and each lot thereof, and shall be binding upon all persons having or acquiring any right, title or interest therein or any portion thereof, and shall inure to the benefit of and bind each owner thereof and their respective successors and assigns in interest and are imposed upon the Redevelopment Project Area and each and every lot thereof as a covenant running with the land and in favor of the parcel(s) intended to be benefited thereby for the time period specified, and if no time period is specified, then for a period of thirty (30) years and thereafter for so long as is reasonably required for any then existing Redevelopment Project and Redevelopment Project Improvements.

809.3 Mutual Cooperation. The successful operation of the Redevelopment Project is dependent upon the continued cooperation and good faith of the owners and users of all of the interrelated uses therein. Such cooperation shall be required of all parties interested in any phase or element of the Redevelopment Project Area. Every covenant, restriction or easement herein stated shall be construed in recognition of this interdependence and need for continued mutual cooperation. Any easement or license herein or hereinafter granted by the owner of any of the lots or interests in the Redevelopment Project Area for the use or enjoyment of the public or for another owner or user of any other interest in the Redevelopment Project Area shall be liberally construed with the intention of providing such rights and privileges as may be reasonably necessary or convenient to adequately and properly operate the benefited facilities and properties without encroaching or interfering needlessly with the subservient facility or property. No person or entity involved with or interested in any part of the Redevelopment Project Area shall take any action or permit any action to be taken to interfere with the free beneficial use and enjoyment of any easement provided for herein or hereafter, or as may be expressly agreed by the interested parties, or as may be necessary for proper maintenance or repairs. This covenant shall have no time limit and shall last as long as any of the Redevelopment Project and Redevelopment Project Improvements exist.

809.4 North 48th Street Road Easement. At Closing, Kinport will grant to the City without additional consideration the appropriate North 48th Street public improvements easement as generally shown on Exhibit "D."

809.5 Construction Easement. The City and Kinport shall grant to each other a temporary construction easement to use and temporarily occupy during the initial construction of the Redevelopment Project, and appurtenances and improvements thereto, for the accommodation of construction equipment, construction activity, materials and excavated earth over and across the Redevelopment Project Area. The grant of said easement shall be at no cost

to any party and shall terminate upon completion of the Redevelopment Project Improvements and tenant improvements, final inspection and acceptance thereof by the City and Kinport.

809.5 Other Easements. If, after the completion of the development of improvements, the parties agree that a particular easement granted or reserved hereunder is not necessary or should be terminated for some other reason or should be modified or relocated, the parties shall execute an instrument in recordable form terminating or modifying such easement or relocating same. The parties agree that if any additional easement is determined to be reasonably required, then the parties shall promptly enter into an appropriate written agreement establishing such easement. The parties agree that no easement reserved or granted therein is intended in any way to change or alter the responsibilities and obligations of the parties to construct the Redevelopment Project Improvements in accordance with this Agreement and in accordance with the Construction Documents and all responsibilities and obligations shall be as set forth in this Agreement and Construction Documents.

Section 808. Intention; Standard of Operation. Subsequent to completion of the Redevelopment Project it is the express intention of Kinport to retain its interest in Redevelopment Project and to operate the same, or cause the same to be operated, in accordance with commonly accepted industry standards for facilities of a similar size and nature.

Executed by City this ____ day of _____, 2006.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

City Clerk

By: _____
Coleen J. Seng, Mayor

Executed by Kinport this ____ day of _____, 2006.

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 municipal corporation.

Notary Public

(Seal)

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.

Notary Public

(Seal)