

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is made and entered into by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (“Lessor”) and 1100 Y STREET LLC, a Nebraska limited liability company, (“Lessee”).

WHEREAS, the Lessor and Lessee have entered into a Redevelopment Agreement whereby Lessee will construct a multi-unit apartment building located generally at 11th and Y Streets in the City of Lincoln, Nebraska;

WHEREAS, the Lessee requires a staging area where equipment, workers, and materials may be staged throughout the construction process for the aforementioned apartment building;

WHEREAS, the Lessor owns a parking lot located generally of the intersection of 12th and Charleston Streets;

WHEREAS, Lessee desires to use Lessor’s parking lot for purposes of staging construction equipment, workers, and materials throughout the construction of the aforementioned apartment building; and

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

1. PREMISES LEASED. Subject to the terms and conditions herein contained, the Lessor hereby leases to the Lessee the following described property on an area of land generally east of the intersection of 12th and Charleston Streets, as shown on Exhibit A, herein called the “Premises”, to wit:

Lot 1, Block 14, Antelope Valley 1st Addition

2. TERM. This Agreement shall become effective as of the date of execution and shall continue for a term terminating September 1, 2015, unless modified by mutual agreement of the parties in writing as provided herein.
3. USE. Lessee agrees to utilize the Premises solely for the purpose of staging construction equipment, workers, and materials in conjunction with the construction of a multi-unit apartment building as described in the 11th & Y Redevelopment agreement between Lessee and Lessor. Lessee shall not use or permit the Premises to be used for any purpose other than a staging area for construction operations.
4. RENTAL. The rent for the term of this Agreement to be paid by Lessee to Lessor shall be Five Thousand and No/100 Dollars (\$5,000.00). Rent shall be due and payable no later than August 15, 2014.

5. RESTRICTION OF ASSIGNMENT, SUBLETTING. Lessee agrees not to assign or in any manner transfer this Agreement or any estate or interest therein without the prior written consent of Lessor and not to sublet the Premises without like consent. Consent by the Lessor to one assignment of this Agreement or to one subletting of said Premises shall not operate to exhaust Lessor's right hereunder.
6. PERSONAL PROPERTY AT RISK OF LESSEE. All personal property on the Premises shall be at the risk of the Lessee only. The Lessor shall not be or become liable for any damage to such personal property or to Lessee or any other persons or property on the Premises or for any damage arising from any act or neglect of Lessee, occupants, employees, or invitees of Lessee.
7. INSURANCE.

Lessee shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Lessee and City of Lincoln, its officials, employees, and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations are by Lessee, Lessee's employees, or those directly or indirectly employed by Lessee. The policy shall insure the Lessee and City up to limit of \$2,000,000 for each occurrence. This insurance shall be written by an insurance company authorized to do business in the State of Nebraska. Such insurance shall provide protection for replacement from all risks covering all improvements constructed or installed by Lessee. Said insurance shall not be subject to cancellation except after at least thirty (30) days prior written notice to the City. It shall provide that the City's coverage will not be affected by acts or omissions of Tenant, and the City shall be specifically named as an additional insured on said policy. Finally, a duly executed certificate of insurance, together with any satisfactory evidence of the payment of premium due thereon, shall be deposited with the City at the commencement of the term of this Agreement. Tenant shall provide proof of such insurance in a manner satisfactory to the City before taking possession of the property.

8. RETURN OF PROPERTY TO ITS PRESENT CONDITION. Upon termination of this Agreement, Lessee agrees to return the Premises to the Lessor in its present condition. This shall include removal of any and all personal property belonging to Lessee and anyone permitted by Lessee to use the Premises during the term of this Agreement. It shall also include repair of any damage done to the Premises arising out of Lessee's use of the Premises during the term of this Agreement.
9. NOTICES. Any and all notices or demands required or permitted to be given hereunder shall be deemed to be properly served if sent by registered or certified mail, postage prepaid, addressed to Lessor, attention Urban Development Department at 555 S. 10th Street, Suite 205, Lincoln, Nebraska 68508 or addressed to Lessee at

1100 Y Street LLC, Attn: Chris Elsey, 1532 College Avenue F19, Manhattan, KS 66502, or at such other address or addresses as either party may hereafter designate in writing to the other. Any notice or demand so mailed shall be effective for all purposes at the time of deposit thereof in the United States mail.

10. NO OTHER AGREEMENTS. This Agreement contains the entire understanding and agreement of the parties, supersedes all prior understandings and agreements, and cannot be revised, adjusted, or modified unless in writing signed by the party against whom the same is to be enforced.
11. INDEMNIFICATION. Lessee has sole control of the Premises and assumes all obligations to correct known defects or defects for which Lessee should have knowledge. To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless Lessor, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Lessee, its agents and employees, or anyone for whose acts any of them may be liable. This section will not require Lessee to indemnify or hold harmless Lessor for any losses, claims, damages, and expenses arising out of the sole negligence of Lessor. Lessor does not waive governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. Lessor assumes no responsibility for the property of Lessee including no responsibility for loss from fire, theft, pilferage, or malicious mischief. This section survives any termination of this Agreement.
12. IMPROVEMENTS. Lessee agrees to do no remodeling or install any permanent fixtures or additions to the Premises without first obtaining the written approval of the Lessor. All improvements shall become the property of the Lessor upon termination of this Agreement unless the parties hereto agree otherwise. Lessee shall bear the cost of any alterations or improvements which are required to be made to the Premises as a result of the nature of Lessee's use of the Premises, and Lessee agrees to comply with applicable laws, ordinances, regulations, and rules of the City of Lincoln or any Department thereof. Lessee agrees to maintain the landscape screen adjacent to the paved parking lot. Lessee agrees to pay promptly for any work done or materials furnished on or about the Premises and will not suffer or permit any lien to attach to the Premises and Lessee further agrees to cause any such lien or any claims thereof to be released promptly; provided, however, that in the event Lessee contests any such claim, Lessee agreed to indemnify and secure Lessor to Lessor's satisfaction. Lessor shall, at its sole cost, keep and maintain the entirety of the Premises, and all improvements and facilities placed thereon, in good order, condition, and repair and in a clean, safe condition.

13. ADVERTISING. No display signs or advertising shall be placed on the Premises or affixed in any manner, except upon written approval by the Lessor in advance.
14. "AS IS". Lessee agrees that it is accepting this Premises "as is". Furthermore Lessee agrees that Lessee has inspected the Premises and has determined the Premises to be suitable for the uses intended. No representations have been made by the Lessor as to the condition of the Premises.
15. HAZARDOUS MATERIALS. Lessee shall not cause or permit any hazardous material to be brought upon, kept, or used in or about the Premises by the Lessee, its agents, employees, contractors, or invitees, without the prior written consent of the Lessor (which Lessor shall not unreasonably withhold so long as Lessee demonstrates to Lessor's reasonable satisfaction that such hazardous material is necessary or useful to Lessee's operations on the Premises and will be used, kept, and stored in a manner that complies with all laws regulating such hazardous material so brought upon, used, or kept on or about the Premises). If Lessee breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused or permitted by Lessee results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs therefrom, the Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal, or restoration work required by any federal, state, or local government agency or political subdivision because of hazardous materials present in the soil or ground water on or under the Premises. Without limiting the foregoing, if the presence of any hazardous material on the Premises cause by or permitted by Lessee results in any contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such hazardous material to the Premises, provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. As used herein, the term "hazardous material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local government authority or the United States Government.
16. EXPLANATORY PROVISIONS. The provisions of this Agreement shall be binding upon, inure to the benefit of, and apply to the respective heirs, executors,

administrators, successors, and assigns of the parties hereto. Headings are given to the paragraphs of this Agreement solely as a convenience to facilitate reference and shall not be deemed material or relevant to the construction of the Agreement or any provision thereof.

17. WAIVER. Any waiver by any party of a default of any other party to this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this Agreement.

18. NEBRASKA LAW. This Agreement shall be governed and interpreted by the laws of the State of Nebraska without reference to the principles of conflicts of law.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2014.

ATTEST:

CITY OF LINCOLN, NEBRASKA
A municipal corporation

City Clerk

Mayor Chris Beutler

1100 Y Street LLC
A Nebraska limited liability company

Name
Title