

DAWSON COUNTY OPPORTUNITY CENTER
OCCUPANCY AGREEMENT

THIS OCCUPANCY AGREEMENT made and entered into as of _____, 2010, by and between the CITY OF LEXINGTON, NEBRASKA (CITY) and CENTRAL COMMUNITY COLLEGE, (CCC).

WHEREAS, the parties intend joint use of the DAWSON COUNTY OPPORTUNITY CENTER (CENTER) to provide educational, cultural, and other activities and services for students of CCC and citizens of Dawson County;

WHEREAS, the CITY owns and operates the CENTER;

THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

1. Description of Premises: The Opportunity Center shall include the building and real estate owned by CITY and described as Tract 1, and the North 80 feet of Tract 2, Wal-Mart Subdivision in the City of Lexington, Dawson County, Nebraska. CCC shall be entitled to occupancy of the following:
 - a. CCC shall jointly occupy an area of 20,000 more or less, square feet of the building for the purpose of educational related activity.
 - b. CCC shall be entitled to share with other occupants, educational classrooms, technology centers, conference rooms and other educational facilities, subject to regulations developed by the City, approval of CCC and common usage that will be developed between the parties. (Shared Areas).
2. Occupancy Payment: CCC shall pay a monthly occupancy payment of \$1,000 additionally, it is understood that CCC, at its own expense, will provide the necessary furnishings and technology equipment/wiring it deems appropriate within the facility, estimated to be a capital expense of \$500,000.
3. Term of Occupancy: The parties anticipate and agree that CCC shall occupy the premises according to the terms of this Agreement for a period of twenty (20) years, and in the absence of a notice of intent to terminate, this Agreement shall continue for successive terms of one year, which shall coincide with the calendar year. In the event that CCC wishes to terminate this Agreement during the term of this agreement, written notice of intent to terminate shall be given to CITY at least twelve (12) months prior to the date of termination. Upon such termination, CCC shall not be entitled to recover any of the costs provided under Paragraph 2 above after the tenth year, but may remove furnishings, other than floor coverings, and personal property. In the event that CITY wishes to terminate during the term of this agreement, written notice of intent to terminate shall be given twelve (12) months prior to the date of termination. Upon such termination, CCC shall be entitled to recover: in the first year 90% of the cost of capital expense declining by 10%

each year thereafter, CCC will retain ownership of any equipment purchased and installed by the college, without regard to its characterization as a fixture.

4. Services and Utilities: The parties agree that trash removal, janitorial services/supplies, pest control snow removal, water, sewer and electric utility services will be provided by CITY, and that CCC shall be billed and shall pay for these services pursuant to the further agreement of the parties which shall be in written form and attached as an addendum hereto. CCC shall be responsible for contracting and paying for cable TV, internet services and telephone service as needed by CCC.
5. Maintenance: CITY shall maintain the premises in good repair and tenantable condition. CITY obligations include the maintenance and repair of the plumbing, heating, electrical, air conditioning and ventilating equipment and fixtures. CCC obligations include the maintenance and repair of their technology/data systems and personal utility services within the facility.
6. Alterations: CCC shall not make, install or erect any alterations, additions or improvements in or to the premises or introduce any electrical apparatus or devices therein without first presenting plans and specifications to CITY and obtaining the written consent of the CITY, which consent shall not be unreasonably withheld. All alterations, additions and improvements shall be at CCC expense.

All alterations, additions and improvements made and installed by the CCC, including, without limitation, any type of floor covering that may be attached or otherwise affixed to the floors of the premises, shall become the property of the CITY at the termination of this Agreement and shall remain with the premises.

7. Insurance:
 - a. CITY shall maintain a policy or policies of insurance against loss or damage to the entire building.
 - b. CCC shall maintain a policy or policies of comprehensive public liability insurance in standard form, in the amount of \$2,000,000 protecting CITY and CCC against any and all liability arising out of the use and occupancy of the premises and commons area. Such insurance shall be provided on an occurrence basis. CITY shall be named as an additional insured on the policy. CCC shall be responsible for their personal property.
 - c. All insurance provided for in this article shall be affected under valid and enforceable policies issued by insurers licensed to do business in the State of Nebraska. Each policy of insurance provided by CCC or CITY shall have attached thereto an endorsement that such policy shall not be cancelled or materially changed without a thirty (30) day prior written notice to the other party and that no act or thing done by either party shall invalidate the policy against the other party. Each party shall deliver to the other party insurance policies or duplicates or certificates thereof (with receipts or other evidence satisfactory to the other party of full payment of the premiums thereon) and thereafter, not less than thirty (30) days

prior to the expiration of each insurance policy required to be furnished by the other party pursuant hereto, each party shall deliver to the other party a renewal policy or duplicate or certificate thereof, together with receipts or other evidence satisfactory, to the other party of full payment of the premiums thereon. Each party shall cooperate with the other party in expediting and obtaining insurance recoveries.

8. Occurrence of Casualties: If the premises are substantially destroyed (more than fifty percent of the gross square feet of the entire building where the premises is located) or totally destroyed by fire or any other casualty during the term of this Agreement, CCC, at its option, may cancel this Agreement by notice given to CITY within thirty (30) days after the occurrence of such fire or other casualty, and if such notice be given, this Agreement shall expire, as the case may be, as of the date of occurrence of such fire or other casualty. If this Agreement shall be so cancelled, all fire insurance proceeds attributable to damage to or destruction of the buildings and improvements and property shall be paid to CITY as CITY'S sole and absolute property. Insurance proceeds, if any, attributable to damage to or destruction of CCC separate property shall be paid to CCC.

If the premises are damaged by fire or other casualty to an extent which is not substantial (as defined above), or if CCC shall not exercise its right to cancel this Agreement after a substantial or total destruction, the CITY promptly shall repair, reconstruct and replace the premises and any other damaged improvements to a condition at least equal in quality to their condition immediately prior to the damage or destruction. In the event of default of prompt, repair, reconstruction and replacement to said condition by CITY, CCC may, at CCC option, either conduct the repair, reconstruction and replacement at the expense of and for the account of CITY or cancel this Agreement in the manner provided above.

9. Assignment and Subletting: CCC shall not assign this Agreement, or the premises, in whole or in part, without the prior written consent of the CITY, which consent shall not be unreasonably withheld.
10. Signs: CCC agrees to review the design and installation of its corporate identification signs to be installed on the premises, so that there is consistency with the other signs that will be designed and installed on the other businesses located in the building on the real estate.

11. Indemnification:

- a. CITY shall indemnify CCC, its agents and employees against, and hold CCC, its agents and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, judgments and expenses (including, without limitation, attorneys' fees and court costs) incurred in connection with or arising from each of the following and except to the extent the same was caused by CCC, its agents or employees:
 1. any activity, work, or thing, done or permitted or suffered by CITY in or about the premises;
 2. any acts, omissions, or negligence of CITY or any person claiming under CITY or the contractors, agents, employees, invitees, or visitors of CITY or any such person in the remainder of the Opportunity Center wherein the

premises is a part thereof;

3. any breach, violation or nonperformance by CITY, or any person claiming under CITY, or the employees, agents, contractors, invitees, or visitors of CITY, or any such person, of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind.

- b. CCC shall indemnify CITY, its agents and employees against, and hold CITY, its agents and employees harmless from, any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, judgments or expenses (including, without limitation, attorney's fees and court costs) incurred in connection with or arising from each of the following and except to the extent the same was caused by the negligence of the CITY, its agents or employees;

1. any activity, work, or thing, done or permitted or suffered by CCC in or about the premises;
2. any acts, omissions, or negligence of CCC or any person claiming under CCC or the contractors, agents, employees, invitees, or visitors of CCC or any such person in the remainder of the Opportunity Center wherein the premises is a part thereof;
3. any breach, violation or nonperformance by CCC, or any person claiming under CCC, or the employees, agents, contractors, invitees, or visitors of CCC, or any such person, of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind.

12. Miscellaneous Provisions: The words "CITY" and "CCC" shall include the plural, wherever the context requires, and all pronouns used herein and referring to said parties shall be construed accordingly, regardless either of the number or gender thereof.

Headings of the various paragraphs are inserted merely as a matter of convenience for reference and shall not be considered as defining, limiting or describing the scope or intent of the particular paragraphs to which they refer or as affecting the meaning or construction of the language in the body of such paragraphs.

All provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns, subject however, to provisions requiring CITY's consent to any assignment by CCC.

Every notice or consent authorized or required by this Agreement shall be effective when delivered if written and hand delivered or when deposited in the mail sent by United States registered or certified mail, return receipt requested, with postage prepaid, and addressed to CITY, P.O. Box 70, Lexington, Nebraska, 68850, and to CCC Central Community College, Attention College Business Officer, P.O. Box 4903, Grand Island NE 68802, or at such other address as either party shall from time to time designate in writing.

In the event that any of the provisions of this Agreement shall by court order be held invalid, such invalidation shall not affect the remainder of this Agreement, which shall be construed to enforce the remaining understandings of the parties. The Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

Time shall be of the essence of every part of this Agreement.

13. Rules and Regulations: The CITY will develop and promulgate building rules and regulations for the Opportunity Center. The CITY agrees to solicit the participation of the CCC in preparing these rules and regulations. A copy of the Building Rules and Regulations so prepared are attached hereto and hereby made a part of this Agreement.
14. Additional Tenants: The parties agree that the Opportunity Center is available to other public entities for occupancy involving educational programming or non-educational uses. CCC agrees that any rental or occupancy agreements with such additional occupants shall be solely in the discretion of CITY. CITY warrants only that no such occupancies shall interfere with the reasonable and peaceful exercise of CCC's right to occupancy and conduct of its programs. Repair of damage to equipment or facility that occurs during use of others will be solely the responsibility of the CITY or repair or replace.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY OF LEXINGTON

Mayor

CENTRAL COMMUNITY COLLEGE

President

STATE OF NEBRASKA)
) ss.
COUNTY OF DAWSON)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2010, by John Fagot, Mayor for the City of Lexington, a Public Corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2010, by _____, President for the Central Community College, a Public Corporation, on behalf of the corporation.

Notary Public