



14550  
no/ARTHUR BL  
JS

Execution copy

---

**DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

**Dated December 31, 2010**

---

made by

**THE CITY OF LINCOLN, NEBRASKA**

and

**BLOCK 21 L.L.C.,  
collectively, Trustor**

TO

**MUTUAL OF OMAHA BANK,  
Deed Trustee**

for the benefit of

**MUTUAL OF OMAHA BANK  
(as lender under the Lease Agreement hereinafter identified),  
Beneficiary**

---

**\$14,000,000  
The City of Lincoln, Nebraska  
Recovery Zone Facility Industrial Development Revenue Note  
Series 2010  
(BLOCK 21 L.L.C. Project)**

---

---

This Deed of Trust, Construction Security Agreement and Assignment of Rents and Leases constitutes a fixture filing under Section 9-501 of the Uniform Commercial Code of the State of Nebraska.

1011-14899

*(Handwritten mark)*

**DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**SECURITY INTEREST IN PERSONAL PROPERTY**

Section 1.1.	Personal Property .....	5
Section 1.2.	Security Agreement.....	5

**ARTICLE II**

**ASSIGNMENT OF RENTS AND LEASES**

Section 2.1.	Assignment of Rents .....	6
Section 2.2.	Collection Upon Default .....	6
Section 2.3.	Statutory Rights.....	6

**ARTICLE III**

**COVENANTS AS TO TAXES AND ASSESSMENTS**

Section 3.1.	Payment By Company .....	7
Section 3.2.	No Deduction For Taxes .....	7

**ARTICLE IV**

**INSURANCE**

Section 4.1.	Coverage .....	7
Section 4.2.	Collection of Insurance .....	7
Section 4.3.	Rights in Policies Upon Default.....	7
Section 4.4.	Deed Trustee's Right to Obtain Insurance .....	7

**ARTICLE V**

**GENERAL REPRESENTATIONS AND COVENANTS**

Section 5.1.	Payments.....	8
Section 5.2.	Title .....	8
Section 5.3.	Alterations, Additions, Removals .....	8
Section 5.4.	Inspection and Repairs by the Deed Trustee .....	8
Section 5.5.	No Transfer of Property .....	9
Section 5.6.	No Set-Offs .....	9
Section 5.7.	Payment of Costs and Expenses of Deed Trustee and Beneficiary.....	9
Section 5.8.	Change in Tax Status of Deed of Trust.....	9

Section 5.9.	No Security Interests in Pledged Property .....	10
Section 5.10.	Further Action .....	10
Section 5.11.	Protection of Deed of Trust Lien.....	10
Section 5.12.	Environmental Concerns.....	10

**ARTICLE VI**

**DAMAGE, DESTRUCTION OR CONDEMNATION**

Section 6.1.	Damage or Destruction .....	13
Section 6.2.	Application of Insurance Proceeds.....	13
Section 6.3.	Condemnation .....	13
Section 6.4.	No Postponement of Payments .....	13

**ARTICLE VII**

**EVENTS OF DEFAULT AND REMEDIES**

Section 7.1.	Events of Default .....	13
Section 7.2.	Acceleration - Remedies Upon Default .....	14
Section 7.3.	Other Remedies.....	16
Section 7.4.	Power of Sale; Purchase by Beneficiary .....	16
Section 7.5.	Waiver of Errors and Notices.....	16
Section 7.6.	Remedies Cumulative .....	17
Section 7.7.	Possession of Pledged Property .....	17
Section 7.8.	No Waiver Implied.....	17
Section 7.9.	Sale as a Whole or in Parcels .....	18
Section 7.10.	Waiver of Exemptions.....	18
Section 7.11.	Waiver of Trial by Jury .....	18
Section 7.12.	Application of Proceeds.....	18
Section 7.13.	Advances by Beneficiary .....	18

**ARTICLE VIII**

**MISCELLANEOUS PROVISIONS**

Section 8.1.	Notices.....	19
Section 8.2.	Satisfaction of Deed of Trust.....	20
Section 8.3.	Definitions of Certain Terms.....	20
Section 8.4.	Amendments .....	20
Section 8.5.	Invalid Provision Disregarded.....	21
Section 8.6.	Section Headings.....	21
Section 8.7.	Governing Law .....	21

EXHIBIT A - PROPERTY DESCRIPTION.....	A-1
EXHIBIT B - PERMITTED EXCEPTIONS.....	B-1

**THIS IS A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING IMPROVEMENTS ON THE REAL PROPERTY DESCRIBED HEREIN.**

**DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

This **DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES**, dated December 31, 2010 (the "**Deed of Trust**") is by and among **THE CITY OF LINCOLN, NEBRASKA** (the "**City**"), a city of the primary class and political subdivision of the State of Nebraska (the "**State**"), and **BLOCK 21 L.L.C.** (the "**Company**"), a Utah limited liability company, and its successors and assigns, collectively, as trustor (the "**Trustor**"), to **MUTUAL OF OMAHA BANK**, a federal savings bank, as trustee hereunder (the "**Deed Trustee**"), for the benefit of **MUTUAL OF OMAHA BANK**, a federal savings bank as lender under the Lease Agreement (hereinafter defined) and as the beneficiary (the "**Beneficiary**") hereunder.

**RECITALS**

1. The City is authorized and empowered under Article XIII, Section 2 of the Nebraska Constitution and Sections 13-1101 to 13-1110, inclusive, Reissue Revised Statutes of Nebraska, as amended (collectively, the "**Act**"), to issue its industrial development revenue bonds for the purpose of acquiring land, buildings or other improvements, and all real and personal properties deemed necessary in connection therewith located in an area which, in accordance with the provision of the Community Development Law (Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended, the "**Community Development Law**"), has been designated as blighted and substandard, within the meaning of such terms as used in Article XIII, Section 2 of the Nebraska Constitution, and which are suitable for any enterprise, including, but not limited to, profit or nonprofit commercial, business, governmental, or multifamily housing enterprises.

2. Pursuant to Resolution No. A-85768, adopted by the Council of the City on March 8, 2010, and approved by the Mayor on March 10, 2010, the City has declared all of the area within the corporate limits of the City as the "**Recovery Zone**" for the City, for the purpose of issuing Recovery Zone Facility Bonds pursuant to Section 1400U-3 of the Internal Revenue Code of 1986, as amended.

3. The Company has proposed that the City issue its \$14,000,000 principal amount Recovery Zone Facility Industrial Development Revenue Note, Series 2010 (BLOCK 21 L.L.C. Project), dated the date of its delivery (the "**2010 Note**"), for the purpose of acquiring, constructing, installing, improving and completing on the real estate (the "**Project Site**") described on **Exhibit A** attached hereto (a) a building and other related fixtures and improvements which are suitable for use by the Company (the "**Project Improvements**"), and (b) certain items of equipment and personal property (the "**Project Equipment**") for use in connection with the Project Improvements (such Project Site, Project Improvements and Project Equipment being hereinafter sometimes referred to together as the "**Project**") and to lease the Project to the Company as a project pursuant to a Lease Agreement dated December 31, 2010 concurrently herewith (the "**Lease Agreement**") in order to provide for the acquisition, purchase, construction, improvement, betterment and extension of economic development in Nebraska.

4. The City has authorized the issuance of the 2010 Note to finance the costs of the Project and has designated the 2010 Note as a Recovery Zone Facility Bond pursuant to Section 1400U-3 of the Internal Revenue Code of 1986, as amended.

5. The rentals payable to the City pursuant to the Lease Agreement will be sufficient to pay the principal or redemption price of and interest on the 2010 Note, when and as the same become due.

6. This instrument, together with any and all amendments, modifications, renewals and extensions hereof, is called the "**Deed of Trust.**"

7. In order to provide a source of payment and security for the 2010 Note and any additional Notes issued under the Lease Agreement (collectively, the "**Notes**"), which are special, limited obligations of the City payable only from the revenues derived from owning the Project and leasing the same to the Company, the City has assigned to the Lender in the Lease Agreement all of the City's rights to receive Lease Payments under the Lease Agreement and all amounts payable by the Company thereunder and hereunder.

8. The City and the Company have duly authorized the execution and delivery of this Deed of Trust to secure all of the obligations of the City and the Company under the Notes, the Lease Agreement, this Deed of Trust, and any other document or instrument executed by the Company or the City evidencing, securing or relating to any of the foregoing (collectively, the "**Note Documents**").

**NOW, THEREFORE, THIS DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES FURTHER WITNESSETH**, that the Company and the City, in consideration of the premises and the sum of one dollar duly paid to the Company and the City by the Deed Trustee, and of other good and valuable considerations, the receipt of which is hereby acknowledged, and to secure the payment and performance of the Company's duties and obligations under the Lease Agreement and of the Company and the City under this Deed of Trust and the other Note Documents, do hereby grant, bargain and sell, convey and confirm unto the Deed Trustee and its successors and its assigns, forever, in trust with power of sale for the benefit of the Beneficiary, all and singular, the real property described in **Exhibit A** attached hereto and made a part hereof (the "**Project Site**").

**TOGETHER** with the tenements, hereditaments, appurtenances and all the estates and rights of the Company and the City in and to the Project Site.

**TOGETHER** with all the right, title and interest of the Company and the City in and to all streets, roads and public places, opened or proposed, adjoining the Project Site, and all easements and rights of way, public or private, now or hereafter used in connection with the Project Site.

**TOGETHER** with all right, title and interest of the Company and the City, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Project Site to the extent of the interest of the Company therein, now or hereafter acquired.

**TOGETHER** with all right, title and interest of the Company and the City, now owned or hereafter acquired, in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with the Project Site.

**TOGETHER** with all right, title and interest of the Company and the City in and to all buildings, structures and improvements of every kind and description now or hereafter erected or placed on the Project Site, including the Project.

**TOGETHER** with all right, title and interest of the Company and the City in and to all fittings, appliances, apparatus, equipment, machinery, building materials, supplies and fixtures now or at any time

hereafter, affixed or attached to or placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, operation, maintenance and occupancy of the Project Site, buildings structures and improvements.

**TOGETHER** with all right, title and interest of the Company and the City in and to all construction contracts and other agreements between the Company or the City and third parties for the construction of any Project Additions, all of which construction contracts and agreements shall be caused to be assigned to the Deed Trustee by the Company and the City. The Company and the City will execute and deliver to the Deed Trustee on demand such assignments and instruments as the Deed Trustee may require to implement, confirm, maintain and continue the assignment hereunder.

**TOGETHER** with all of the right, title and interest of the Company and the City now owned or hereafter acquired in and to (a) all fittings, appliances, apparatus, equipment, machinery, furniture, fixtures, chattels, building materials and other articles of tangible personal property of any kind or nature, together with all replacements thereof, substitutions therefor and additions and accessions thereto, now, or at any time hereafter, affixed or attached to or placed upon, or used in any way in connection with the use, enjoyment, operation, maintenance and occupancy of the Project; (b) all inventory of the Company wherever located; (c) all other goods of the Company; (d) all accounts, accounts receivable, receipts, revenues and income (including investment income) received by or on behalf of the Company derived from all sources, including, without limitation, the operation or leasing of the Project, and including, without limitation, fees paid or payable by or on behalf of clients, and any insurance proceeds and condemnation awards of the Company and the City and all rights to receive the same whether in the form of accounts receivable, general intangibles, contract rights, chattel paper, investment property or other instruments; and (e) all general intangibles and other personal property and all rights and things of value of every kind and nature, tangible or intangible, absolute or contingent, equal or equitable, and regardless of whether or not the provisions of the Uniform Commercial Code (the "UCC") are applicable thereto, including without limitation:

- (1) all lessee or other customer lists, books and records, ledger and account cards, computer tapes and programs, software, disks, printouts and records, whether now in existence or hereafter created, of the Company;
- (2) all rights (including without limitation rights to payment) of the Company under governmental contracts to the extent the same may be lawfully assigned or a security interest therein lawfully granted;
- (3) all rights and claims in and to the Project Fund, Construction Account and Issuance Expense Account established under the Lease Agreement, and all securities, money and other property held therein;
- (4) all licenses, permits, approvals, authorizations, consents, orders or rights, obtained or hereafter obtained, including without limitation those benefiting or permitting the use or operation of the Project or any part thereof;
- (5) all liens, security interests, mortgages, warranties, guarantees, sureties, payment bonds, performance bonds, insurance policies, maintenance, repair or replacement agreements, and other contractual obligations of any contractor, subcontractor, surety, guarantor, manufacturer, dealer, laborer, supplier or materialman, with respect to the Project;
- (6) all causes of action, goodwill, trade names, franchises, tax refund claims, rights and claims against carriers and shippers and all rights to indemnification of the Company;

- (7) all bank and other accounts, deposits and credit balances of the Company;
- (8) all plans, specifications and drawings relating to the Project;
- (9) all claims, rights, powers or privileges and remedies relating to the foregoing or arising in connection therewith including, without limitation, all rights to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, waiver or approval; and
- (10) all investment property (as defined in the UCC);

together with full power and authority to demand, receive, enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which may be necessary or advisable in connection with any of the foregoing (all property described in clauses (a) through (e), and all proceeds thereof, being hereinafter referred to collectively as the "**Personal Property**" and all property described in clause (d) being hereinafter referred to collectively as "**Gross Revenues**").

**TOGETHER** with all right, title and interest of the Company and the City in any leases (including, but not limited to, the Lease Agreement) or subleases with respect to the Project or any portion thereof now or hereafter existing or entered into (collectively, the "**Leases**"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and rents, issues, profits, revenues, royalties, income and other benefits with respect to the Project and the operation thereof (collectively, the "**Rents**").

**TOGETHER** with all products and proceeds of any and all of the foregoing real property, Personal Property, Leases and Rents.

**ALL** of which property, and rights therein, hereinabove described or mentioned being hereinafter collectively called the "**Pledged Property**."

**IN TRUST NEVERTHELESS**, upon the terms and subject to the conditions hereinafter set forth.

This Deed of Trust shall equally and ratably secure the 2010 Note and Notes of all other series issued pursuant to the Lease Agreement, to the same extent as if such Notes of other series were issued on the date of the execution of this Deed of Trust. This Deed of Trust shall also secure payment of all amounts due under the 2010 Note, the other Note Documents, the Additional Documents (as defined in the Lease Agreement) and the performance of all the covenants and agreements of the City and the Company set forth in or arising under the Note Documents and the Additional Documents. This Deed of Trust shall also secure interest, service charges and any disbursements made for the payment of taxes, assessments, maintenance, care, protection, or insurance on the Pledged Property, with interest on such disbursements.

**TO HAVE AND TO HOLD** the Pledged Property with all privileges and appurtenances hereby conveyed, pledged and assigned, or agreed or intended so to be, to the Deed Trustee for the benefit of the Beneficiary, their successors and to them and their assigns forever in fee, subject to Permitted Encumbrances as defined in **Exhibit B** attached hereto;

**CONDITIONED, HOWEVER**, that if (a) the Company shall pay or cause to be paid to the Beneficiary the amounts due under the Lease Agreement and this Deed of Trust at the times and in the

manner stipulated therein or shall provide, in the case of amounts due under the Lease Agreement and this Deed of Trust, as permitted thereby and hereby, for the payment thereof by depositing with the Beneficiary the entire amount due or to become due thereon and if the Company shall keep, perform and observe all and singular the covenants and promises in the Lease Agreement and this Deed of Trust expressed as are to be kept, performed and observed by it or on its part, and (b) the City shall pay or cause to be paid to the Beneficiary the amounts due under the Notes and this Deed of Trust at the times and in the manner stipulated therein or shall provide, in the case of amounts due under the Notes, the Lease Agreement, and this Deed of Trust, as permitted thereby and hereby, for the payment thereof by depositing with the Beneficiary the entire amount due or to become due thereon and if the City shall keep, perform and observe all and singular the covenants and promises in the Note, the Lease Agreement and this Deed of Trust expressed as are to be kept, performed and observed by it or on its part, then the conveyance and security interest granted hereby shall cease, determine and be void, otherwise to be and remain in full force and effect;

**AND** at all times until the entire unpaid principal indebtedness of the Note and the Lease Agreement, including all sums now or hereafter due to the Deed Trustee and the Beneficiary under the terms hereof, are fully paid, together with all interest thereon, the Company and the City covenant, promise and agree with the Deed Trustee as follows:

## ARTICLE I

### SECURITY INTEREST IN PERSONAL PROPERTY

**Section 1.1. Personal Property.** Except as otherwise permitted under the Lease Agreement or under this Deed of Trust, the Company and the City represent and warrant that all of the Personal Property is either (a) owned by the City and leased to the Company pursuant to the Lease Agreement or (b) owned by the Company and in any case free from any prior conditional sales, chattel mortgages, security interests, liens or encumbrances other than the Lease Agreement and is intended to be subject to the lien of and security interests created under this Deed of Trust. If any Personal Property is or shall be subject to a conditional bill of sale, chattel mortgage or security interest other than that created hereby, then, in the event of any default hereunder, all the right, title and interest of the City or the Company in and to any such instrument and all deposits made thereunder are hereby assigned to the Deed Trustee, together with the benefit of any payments now or hereafter made thereon.

**Section 1.2. Security Agreement.** This Deed of Trust constitutes a security agreement under the Nebraska Uniform Commercial Code and the City and the Company hereby grant to Beneficiary a security interest in the Personal Property as described in the granting clauses hereof and all that property (and the proceeds and products thereof) included in the Pledged Property which might otherwise be deemed "personal property" or fixtures. In addition, upon filing this Deed of Trust in the Office of the Register of Deeds of Lancaster County, Nebraska, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. This Deed of Trust also constitutes a "construction mortgage" within the meaning of Section 9-334(h) of the UCC.

The City and the Company shall execute, deliver, file and refile any financing statements, continuation statements, or other security agreements which may be required from time to time to confirm the lien of this Deed of Trust with respect to such property. All costs of such filing and refile shall be paid by the Company. The Company shall not change its name or its principal place of business without giving the Deed Trustee at least 30-days' prior written notice thereof, which notice shall be accompanied by new financing statements executed by the City and the Company in the same form as the financing statements delivered to the Deed Trustee on the date hereof except for the change of name or change of



address. Without limiting the foregoing, each of the City and the Company hereby irrevocably appoints the Deed Trustee and each of its officers attorneys-in-fact for the City and the Company, respectively, to execute, deliver and file such instruments for and on behalf of the City and the Company, respectively. Notwithstanding any release of any or all of that property included in the Pledged Property which is deemed "real property", any proceedings to exercise any remedy under this Deed of Trust or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the obligations of the City and the Company as are now or hereafter evidenced by the Note Documents.

The principal executive office and place of business of the Company is c/o Woodbury Corporation, 2733 Parleys Way #300, Salt Lake City, Utah 84109 and the Company will not move its principal executive office or place of business or operations or change its state of organization except to such new location as the Company may establish in accordance with this **Section 1.2**. The originals of all documents evidencing any portion of the Pledged Property and the only original books of account and records of the Company relating thereto are, and will continue to be, kept at such principal executive office or at such new location as the Company may establish in accordance with this **Section 1.2**.

## ARTICLE II

### ASSIGNMENT OF RENTS AND LEASES

**Section 2.1. Assignment of Rents.** The Company and the City hereby absolutely assign and transfer and grant a security interest to the Beneficiary all of their right, title and interest in the Rents under any and all leases and agreements for use or occupancy of the whole or any part of the Pledged Property, and hereby give to and confer upon the Beneficiary the right, power and authority to collect such Rents arising from the Pledged Property. The City and the Company irrevocably appoint the Beneficiary their true and lawful attorney-in-fact, at the option of the Beneficiary, at any time and from time to time, to take possession and control of the Pledged Property and to demand, receive and enforce payment, to give receipts, releases and satisfaction, and to sue, in the name of the City, the Company or the Beneficiary, for all such Rents and apply the same to the Notes; provided, however, that the Company shall have a license to possess and control the Pledged Property and to collect such Rents, which is revocable at any time upon an Event of Default by the Company or the City under the Lease Agreement or This Deed of Trust. The assignment of the Rents of the Pledged Property in this **Article II** is intended to be an absolute assignment from the City and the Company to the Beneficiary and not merely the passing of a security interest.

**Section 2.2. Collection Upon Default.** Upon any Event of Default under either the Lease Agreement or this Deed of Trust, the Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Notes enter upon and take possession of the Pledged Property, or any part thereof, and in its own name sue for or otherwise collect such Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon the Notes, and in such order as the Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Pledged Property, or the application thereof as provided or the preparation and submission of applications or other documentation, as necessary, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

**Section 2.3. Statutory Rights.** The Beneficiary, in addition to and not in limitation of any of the foregoing or any other remedies provided herein or otherwise available under applicable law, shall

have all of the rights provided under the laws of the State regarding enforcement of the assignment of rents and leases contained herein.

### ARTICLE III

#### COVENANTS AS TO TAXES AND ASSESSMENTS

**Section 3.1. Payment By Company.** The Company shall cause to be paid and discharged all taxes, assessments, water and sewer rents and charges and all license or permit fees, levies, and governmental charges, payments in lieu of any of the foregoing, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which are or may have been, or may hereafter be, charged, assessed, levied, confirmed or imposed upon or against the Pledged Property, or any part thereof, by any lawful authority, or which may become a lien thereon, all in accordance with **Section 6.04** of the Lease Agreement.

**Section 3.2. No Deduction For Taxes.** The Company covenants and agrees to pay to the Beneficiary all rental due under the Lease Agreement and all other payments provided under the Note Documents and the Additional Documents and the principal and interest on every other obligation secured hereby without deduction or credit for any amount for taxes assessed or to be assessed against the Pledged Property. The City covenants and agrees to pay to the Beneficiary, but only from the payments received from the Company pursuant to the Lease Agreement, the principal, redemption price and interest owing on the Notes.

### ARTICLE IV

#### INSURANCE

**Section 4.1. Coverage.** The Company covenants and agrees to insure the Pledged Property and provide all other insurance coverage required under the Lease Agreement, all at the Company's cost and expense.

**Section 4.2. Collection of Insurance.** In the event of any loss or damage to the Pledged Property, the Company will give immediate written notice thereof to the Deed Trustee and the Beneficiary, and any claims arising from such loss or damage shall be adjusted and the proceeds applied as provided in the Lease Agreement.

**Section 4.3. Rights in Policies Upon Default.** If the Beneficiary shall acquire title to the Pledged Property, by virtue of a deed in lieu of foreclosure, the exercise of the power of sale granted by this Deed of Trust, a judicial sale thereof pursuant to proceedings under the Note Documents, or otherwise, then all of the City's and the Company's estate, right, title and interest in and to all such policies, including unearned premiums thereon and the proceeds thereof, shall vest in the Beneficiary.

**Section 4.4. Beneficiary's Right to Obtain Insurance.** If the Company shall fail to procure, pay for and deliver to the Beneficiary any policy or policies of insurance and/or renewals thereof as required in this **Article IV**, the Beneficiary may at its option, but shall be under no obligation to do so, effect such insurance and pay the premiums therefor, and the Company will repay to the Beneficiary on demand any premiums so paid, with interest thereon at a rate equal to the interest rate on the Notes plus five (5) percent (the "**Default Rate**").

## ARTICLE V

### GENERAL REPRESENTATIONS AND COVENANTS

#### Section 5.1. Payments.

(a) The Company shall pay to the Beneficiary, as assignee of the City under the Lease Agreement, all of the rental payments and other amounts due under the Lease Agreement and the other amounts required to be paid pursuant thereto, including all sums now or hereafter due the Beneficiary or the Deed Trustee under the terms of the Note Documents or the Additional Documents, together with all interest thereon, punctually as and when the same shall become due by the terms thereof and time being of the essence. The Company will observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of the Company to be observed and performed under the Note Documents and the Additional Documents.

(b) The City will pay, but only from amounts received from the Company pursuant to the Lease Agreement, the principal or redemption price of and the interest on the entire unpaid principal indebtedness of the Notes punctually as and when the same shall become due by the terms thereof and time being of the essence. The City will observe and perform all of the terms, provisions, conditions, covenants and agreements on the part of the City to be observed and performed under the Note Documents.

**Section 5.2. Title.** The City warrants and covenants that it is the owner of a fee simple estate in the Project Site free of all liens, encumbrances and other exceptions (other than the exceptions set forth in **Exhibit B** hereto) and it has good and marketable title to the remainder of the Project, and it is lawfully authorized to mortgage and encumber the Project and that it has not created and will not create or suffer to be created any liens or encumbrances on the Project other than the Lease Agreement, this Deed of Trust and the Permitted Encumbrances. The Company warrants and covenants that it is the holder of a leasehold interest in the Project Site free of all liens, encumbrances and other exceptions (other than the exceptions set forth in **Exhibit B** hereto) and it has a leasehold interest in the remainder of the Project and has good and marketable title to the remainder of the Pledged Property, and it is lawfully authorized to mortgage and encumber the Pledged Property and that it has not created and will not create or suffer to be created any liens or encumbrances on the Pledged Property other than the Lease Agreement, this Deed of Trust and the Permitted Encumbrances. The City and the Company covenant to warrant and defend the title to the Pledged Property unto the Beneficiary against all persons and all claims of every kind or nature other than the Permitted Encumbrances.

**Section 5.3. Alterations, Additions, Removals.** Except as provided in the Lease Agreement, neither the City nor the Company will make any structural alterations or any additions to the Pledged Property or cause or permit any building, structure or improvement or other property now or hereafter covered by the lien of this Deed of Trust and comprising part of the Pledged Property to be removed, or demolished in whole or in part, or any Personal Property comprising part of the Pledged Property to be removed, severed or destroyed, without the prior written consent of the Beneficiary. All alterations and additions approved by the Beneficiary shall become part of the Pledged Property subject to the lien of this Deed of Trust. Neither the City nor the Company will abandon or cause or permit any waste to the Pledged Property.

**Section 5.4. Inspection and Repairs by the Beneficiary .** The City and the Company will permit the Beneficiary and the Beneficiary's representatives to enter the Pledged Property at reasonable times to inspect the same. Such right of access shall include, without limitation, the right to enter upon

the Pledged Property to conduct such tests, analyses, environmental audits, inspections and borings as the Beneficiary may deem necessary or advisable, in its sole discretion. In case of any breach or default by the Beneficiary in its maintenance and repair obligations with respect to the Pledged Property under the Lease Agreement, the Beneficiary may, at its option, enter the Pledged Property to protect, restore or repair any part thereof, but the Beneficiary shall be under no obligation to do so.

**Section 5.5. No Transfer of Property.** Neither the City nor the Company shall, by deed, mortgage, pledge, lease, easement or other instrument, grant, mortgage, pledge, convey, assign, devise or otherwise transfer all or any part of the Pledged Property or any interest therein, directly or indirectly, other than a conveyance, assignment or transfer permitted under the terms of the Lease Agreement, nor shall the City or the Company suffer or permit such conveyance, assignment or transfer by execution sale or operation of law or otherwise. In the event of a violation of the provisions of this **Section 5.5**, the Beneficiary may, at the Beneficiary's option, declare all the sums secured by this Deed of Trust to be immediately due and payable.

**Section 5.6. No Set-Offs.** The City and the Company represent to the Beneficiary that neither has any knowledge of any set-offs, recoupments, counterclaims or defenses to the principal indebtedness secured hereby, or to any part thereof, or the interest thereon, either at law or in equity. The Company, within three days of its receipt of a written request by the Beneficiary, will furnish a duly acknowledged written statement in form satisfactory to the Beneficiary stating either that the Company knows of no set-offs, recoupments or defenses existing against the Deed of Trust indebtedness or, if such set-offs, recoupments, counterclaims or defenses are alleged to exist, the nature and extent thereof.

**Section 5.7. Payment of Costs and Expenses of Deed Trustee and Beneficiary.** The Company shall promptly pay upon demand all expenses and costs incurred by the Deed Trustee or the Beneficiary, including reasonable attorneys' fees and expenses in connection with (a) any action, proceeding, litigation or claim instituted or asserted by or against the Deed Trustee or the Beneficiary or in which the Deed Trustee or the Beneficiary becomes engaged, wherein it becomes necessary in the opinion of the Deed Trustee or the Beneficiary to defend or uphold the lien of this Deed of Trust, or the validity or effectiveness of any assignment or any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by the City or the Company to the Deed Trustee or the Beneficiary hereunder, or the priority of any of the same, and (b) the exercise or enforcement of any other rights or remedies of the Deed Trustee or the Beneficiary hereunder, and in any case all such expenses and costs, may be added to and become part of the principal indebtedness of the Company hereunder, bear interest at the Default Rate and be secured in all respects hereby as if part of the principal indebtedness of the Company hereunder and under the Lease Agreement.

**Section 5.8. Change in Tax Status of Deed of Trust.** In the event of the passage after the date of this Deed of Trust of any law of the State or any other governmental entity, changing in any way the laws now in force for the taxation of mortgages, or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes, so as to affect the interest of the Beneficiary, then and in such event, the Company shall bear and pay the full amount of such taxes, provided that if for any reason payment by the Company of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Note Documents or otherwise, the Beneficiary may, at the Beneficiary's option, declare the whole sum secured by this Deed of Trust, with interest thereon, to be due and payable 60 days after notice thereof, or the Beneficiary may, at the Beneficiary's option, pay that amount or portion of such taxes as render the loan or indebtedness secured hereby unlawful or usurious, in which event the Company shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes.

**Section 5.9. No Security Interests in Pledged Property.** Other than as permitted under the Lease Agreement, neither the City nor the Company will create or suffer to be created any security interest under the Nebraska Uniform Commercial Code or other encumbrance in favor of any party other than the Beneficiary, or create or suffer any reservation of title by any such other party, with respect to any of the Pledged Property. The City and the Company will deliver to the Beneficiary on demand any contracts, bills of sale, statements, receipted vouchers or agreements, under which either the City or the Company claims title to any Personal Property incorporated in the Project or subject to the lien of this Deed of Trust.

**Section 5.10. Further Action.** The City and the Company shall at the expense of the Company promptly upon request of the Deed Trustee or the Beneficiary: (a) do all acts and things, including but not limited to the execution of any further assurances deemed necessary by the Deed Trustee, to establish, confirm, maintain and continue the lien created and intended to be created hereby, all assignments made or intended to be made pursuant hereto and all other rights and benefits conferred or intended to be conferred on the Deed Trustee hereby, and the Company shall pay all costs incurred by the Deed Trustee in connection therewith, including all filing and recording costs, cost of searches, and reasonable attorneys' fees incurred by the Deed Trustee and (b) furnish the Deed Trustee with a written certification signed by the Company, or an officer of the Company on the Company's behalf, as to all then existing leases for space covering any part of the Pledged Property, the names of the tenants, the rents payable thereunder and the dates to which such rents are paid, together with executed copies of all such leases.

**Section 5.11. Protection of Deed of Trust Lien.** The City and the Company will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Pledged Property, noncompliance with which may affect the security of this Deed of Trust, or which may impose any duty or obligation upon the City or the Company or any lessee or other occupant of the Pledged Property or any part thereof, noncompliance with which may affect the security of this Deed of Trust, and the Company shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Pledged Property.

**Section 5.12. Environmental Concerns.**

(a) For purposes of this Deed of Trust, the following terms shall have the following meanings:

**"Environmental Enforcement Actions"** shall mean collectively, all actions or orders instituted, threatened, required or completed by a governmental authority and all claims made or threatened by any person against the City, the Company or the Pledged Property (or any other occupant, prior occupant or prior owner thereof), arising out of or in connection with any of the Environmental Laws or the assessment, monitoring, clean-up, containment, remediation or removal of, or damages caused or alleged to be caused by, any Hazardous Substances (a) located on or under the Pledged Property, (b) emanating from the Pledged Property, or (c) generated, stored, transported, utilized, disposed of, managed or released by the City or the Company (whether or not on, under or from the Pledged Property).

**"Environmental Laws"** shall mean collectively, all Legal Requirements applicable to (a) environmental conditions on, under or emanating from the Pledged Property including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act and the Federal Clean Air Act and (b) the generation, storage, transportation, utilization, disposal,

management or release (whether or not on, under or from the Pledged Property) of Hazardous Substances by the City or the Company.

**“Legal Requirements”** shall mean all federal, state, City, municipal and other governmental statutes, ordinances, bylaws, codes restrictions, orders, judgments, decrees and injunctions (including, without limitation, all applicable building, health code, zoning, subdivision, and other land use and health-care licensing statutes, ordinances, bylaws and codes) or, to the best of the Company’s knowledge, any rule or regulation to which either the City or the Company is subject, whether now or hereafter enacted, affecting the Pledged Property and/or the construction, development, maintenance, management, repair use and/or operation thereof.

(b) To the best of the knowledge of the Company and the City, after all appropriate inquiry into previous ownership and uses of the property, none of the Pledged Property has ever been used by previous owners, lessees and/or operators to generate, manufacture, refine, produce, store, handle, transfer, process, transport or dispose of Hazardous Substances (as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)), 42 U.S.C.A. § 9601(14), as now in effect or as hereafter from time to time may be amended), Hazardous Wastes (as defined by the Resource Conservation and Recovery Act (RCRA)), 42 U.S.C.A. § 6903(5), as now in effect or as hereafter from time to time may be amended), oils, radioactive materials, asbestos in any form or condition, or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any other Environmental Laws, regulation, ordinance or requirements relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, all as now in effect or hereafter from time to time may be amended (all of which are hereafter collectively referred to as “Hazardous Substances”). The City and the Company have not in the past, and will not in the future, use the Pledged Property for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing, transporting or disposing of Hazardous Substances.

(c) Neither the City nor the Company has received, and upon receipt shall immediately notify the Beneficiary of, a summons, citation, directive, letter or other communication, written or oral, from any applicable governmental agency concerning: (1) any intentional or unintentional action or omission on the part of the City or the Company resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances, into the waters or onto the lands of the State, or into the waters outside the jurisdiction of the State resulting in damage to the lands, waters, fish, shellfish, wildlife, biota, air and other resources owned, managed, held in trust or otherwise controlled by the State; (2) any release to air or the environment of Hazardous Substances; or (3) any violation of any applicable Environmental Laws.

(d) The City and the Company shall operate the Pledged Property or cause it to be operated in compliance in all material respects with all applicable Environmental Laws. The City and the Company shall have the right in good faith to contest or appeal from such laws, ordinances and regulations and any decision adverse to the City and the Company based thereon, but all costs, fees, and expenses incurred in connection with such proceedings shall be borne by the Company.

(e) The City and the Company shall not cause or permit to exist, as a result of an intentional or unintentional action or omission on its part, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of a Hazardous Substance into waters of the State or onto the lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the State where damage may result to the lands, waters, fish, shellfish, wildlife, biota, air and other resources owned, managed, held in trust or otherwise controlled by the State, unless said release, spill, leak, pumping, emitting, pouring, emptying or dumping is pursuant to and in compliance with the conditions of a permit issued by

the appropriate Federal or state governmental authorities. The City and the Company shall not cause or permit the release of a Hazardous Substance into the air or environment unless said release is pursuant to and in compliance with the conditions of a permit issued by an appropriate Federal or state governmental authorities.

(f) Should the City or the Company cause or permit any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances, into the waters or onto the lands of the State or any other parties, or into the waters outside the jurisdiction of the State resulting in damage to the lands, waters, fish, shellfish, wildlife, biota, air or other resources owned, managed or held in trust or otherwise controlled by the State without having obtained a permit issued by the appropriate governmental authorities, the City and the Company shall promptly clean up the same in accordance with the provisions of applicable Environmental Laws. Should the City and the Company cause or permit the release of a Hazardous Substance to the air or environment without having obtained a permit issued by the appropriate governmental authorities, the City and the Company shall promptly clean up the same in accordance with the provisions of applicable Environmental Laws.

(g) In all of its future leases with tenants other than leases for residential occupancy, if any, the City and the Company shall include provisions similar to those contained in this Section 5.12 imposing upon its tenants substantially the same obligations with respect to the environmental matters as set forth herein.

(h) Upon request by the Beneficiary, the City and the Company shall provide the Beneficiary with information regarding the use and operation of the Pledged Property, including but not limited to (1) the location and description of all operations conducted upon the Pledged Property; (2) the location and type of all Hazardous Substances generated, manufactured, refined, produced, stored, handled, transferred, processed, transported, disposed of or otherwise located on the Pledged Property; and (3) any other information which the Beneficiary may reasonably require.

(i) (1) The City and the Company shall and hereby agree to indemnify, exonerate, defend (with counsel acceptable to the Deed Trustee, the Beneficiary and the registered and beneficial owners of the Notes (collectively, the "Owners")) and hold Deed Trustee, the Beneficiary and the Owners harmless from and against any claim, liability, loss, cost, damage or expense (including, without limitation, environmental consultants' and experts' fees and expenses, attorneys' fees and expenses, court costs and all costs of assessment, monitoring, clean-up containment, removal, remediation and restoration) arising out of or in connection with (A) any breach of any of the representations, warranties, conditions and covenants of this Deed of Trust or any of the other Note Documents or Additional Documents relating to Hazardous Substances or Environmental Laws (whether any such matters arise before or after foreclosure proceedings are commenced or entry for the purpose of foreclosure is made or foreclosure of this Deed of Trust is completed), (B) the exercise by the Deed Trustee, the Beneficiary or the Owners of any of their respective rights and remedies hereunder or (C) the enforcement of the aforesaid indemnification agreement. Notwithstanding the foregoing, the Deed Trustee, the Beneficiary and the Owners shall have the option of conducting their defense with counsel of their own choosing, but at the expense of the Company as aforesaid.

(2) The matters covered by the foregoing indemnity with respect to any property other than the Pledged Property shall not include any costs incurred as a result of the clean-up, containment, remediation or removal of Hazardous Substances on, under or from such other property or the restoration thereof if such Hazardous Substances did not originate on, under or from the Pledged Property, unless the clean-up, containment, remediation or removal thereof or

the restoration of such other property is either required in connection with any Environmental Enforcement Action or is necessary to prevent the migration of Hazardous Substances from such other property to the Pledged Property. The City and the Company acknowledge and agree that their obligations pursuant to the provisions hereof are in addition to any and all other legal liabilities and responsibilities (at law or in equity) that the City or the Company may otherwise have as "owner" or "operator" of the Pledged Property or a "responsible party" within the meaning of any of the Environmental Laws, as the case may be. The Indemnity provisions of this **Section 5.12(i)** shall survive the payment and performance of the obligations under the Notes and the Note Documents and the Additional Documents, the discharge of this Deed of Trust and/or the foreclosure of this Deed of Trust (or deed in lieu thereof).

## ARTICLE VI

### DAMAGE, DESTRUCTION OR CONDEMNATION

**Section 6.1. Damage or Destruction.** In case of damage to or destruction of the Pledged Property, or any part thereof, the City and the Company shall promptly comply with the requirements of **Article VIII** of the Lease Agreement.

**Section 6.2. Application of Insurance Proceeds.** All insurance proceeds payable on account of damage or destruction to, or title defects with respect to, the Pledged Property shall be paid to the Beneficiary as provided in the Lease Agreement and the amount thereof, less the actual costs, fees and expenses, if any, incurred in connection with adjustment of the loss shall be applied as provided in the Lease Agreement.

**Section 6.3. Condemnation.** In the event that the Pledged Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (hereinafter collectively called "**Condemnation Proceedings**"), the rights of the City, the Company and the Beneficiary to participate in any such Condemnation Proceedings and the award that may be made in any such proceeding or the proceeds thereof shall be determined pursuant to **Section 8.01** of the Lease Agreement.

**Section 6.4. No Postponement of Payments.** No damage or destruction of, or condemnation proceeding with respect to, or the occurrence of a title defect with respect to the Pledged Property nor any application of insurance or condemnation proceeds to the payment of the obligations secured by this Deed of Trust shall postpone or reduce the amount of any of the current installments of rental becoming due under the Lease Agreement, or principal and interest on the Notes, which shall continue to be made in accordance with the terms of the Notes until the Notes and all interest due thereunder is paid in full.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.1. Events of Default.** Any one or more of the following events shall constitute an event of default hereunder (an "**Event of Default**"):

- (a) subject to any applicable grace or cure period, failure to pay when due and payable any installment of interest or principal on the indebtedness evidenced by the Notes or the Lease Agreement, or in the payment of any other sum which is payable under the Note



Documents, as and when the same shall become due and payable as further described in the Note Documents; or

(b) the occurrence of an "Event of Default" defined as such under **Section 11.01** of the Lease Agreement; or

(c) if the Company violates the provisions of **Sections 5.5, 5.9 or 5.12** hereof; or

(d) if either the City or the Company defaults in the due observance or performance of or compliance with any of the provisions, warranties, covenants, promises, agreements, terms or conditions to be observed, performed, or complied with by the City or the Company, respectively, as contained in this Deed of Trust, other than those referred to in **Section 7.1(a), (b) and (c)** hereof, and such default shall continue uncured for a period of 30 days after written notice thereof to the City and the Company, except that in the case of a default under this **Section 7.1(d)** which cannot with due diligence be cured within such period of 30 days, the time within which the City and the Company may cure the same shall be extended for such period as may be reasonably necessary in the Beneficiary's discretion to cure the same with due diligence (but in no event more than 90 days), provided the City and the Company commence within such thirty (30) days and proceeds diligently to cure the same; or

(e) any representation or warranty made by either the City or the Company herein, or any other statement or certificate furnished by it pursuant hereto, shall prove to have been untrue in any material respect as of the date of the issuance or making thereof.

**Section 7.2. Acceleration - Remedies Upon Default.** Upon the happening of any one or more Events of Default set forth above, the Beneficiary may declare the entire unpaid balance of some or all of the principal indebtedness, accrued interest and all other sums secured by this Deed of Trust to be immediately due and payable without notice or demand, and the Beneficiary may forthwith, with or without accelerating the Notes, direct the Deed Trustee to exercise any and all rights available to it at law or equity, elect to apply any of the following remedies or any remedy set forth in the Lease Agreement (which remedies shall be cumulative) and may without further delay:

(a) **Foreclosure.** Institute an action of mortgage foreclosure, or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed thereon to final judgment and execution thereon for the entire unpaid balance of the principal indebtedness which has been accelerated, with interest, at the rates and pursuant to the methods of calculation specified in the applicable debt instrument, together with all other sums secured by this Deed of Trust, all costs of suit, interest at the above rates on any judgment obtained by the Deed Trustee from and after the date of any sale of the Pledged Property until actual payment is made of the full amount due the Beneficiary and the Deed Trustee, and reasonable attorneys' fees, without further stay, any law, usage, or custom to the contrary notwithstanding.

(b) **Entry.** Enter into possession of the Pledged Property; lease the same; collect all rents and profits therefrom and, after deducting all costs of collection and administration expenses, apply the net rents and profits to the payment of taxes, water and sewer rents, charges (including but not limited to agents' compensation and fees and costs of counsel and receivers) and to the maintenance, repair or restoration of the Pledged Property, or on account and in reduction of the principal, interest, or principal and interest hereby secured, in such order and amounts as the Beneficiary, in the Beneficiary's sole discretion, may elect. The Beneficiary and

the Deed Trustee shall be liable to account only for rents and profits actually received by the Beneficiary and the Deed Trustee, respectively.

(c) **Receivership.** To have a receiver appointed to enter into possession of the Pledged Property, collect the rents, issues and profits therefrom and apply the same as required by this Deed of Trust and the other Note Documents. The Beneficiary shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of the Company or any other person who may be legally or equitably liable to pay moneys secured hereby and the Company and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should the Beneficiary or any receiver collect rents, issues or profits from the Pledged Property, the moneys so collected shall not be substituted for payment of the debt nor can they be used to cure the default, without the prior written consent of the Beneficiary. The Beneficiary or any receiver shall be liable to account only for rents, issues and profits actually received by the Beneficiary or any receiver.

(d) **Security Interests.** Take possession of any of the Pledged Property and sell any portion of such property pursuant to the provisions of the UCC and generally exercise any of such other rights and remedies with respect to such property as may be provided by the UCC. Any requirement of the UCC as to reasonable notice shall be met by delivering written notice to the Company ten days prior to any such sale. In the event of any foreclosure under this Deed of Trust, the Personal Property may be sold in whole or in part as part of the realty or separately.

(e) **Judicial Proceedings.** Proceed by one or more suits, actions or proceedings at law or in equity or otherwise or by any other approval means to enforce payment of the Notes and all other amounts due under the Note Documents or the Additional Documents by the Company or the City or protect and enforce any of the Beneficiary's or the Deed Trustee's rights or powers under the Lease Agreement or this Deed of Trust.

(f) **Sale.** Sell the Pledged Property pursuant to the power of sale granted under Section 7.4 hereof.

(g) **Other Rights.** Exercise any and all rights of a secured party with respect to the Personal Property under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies:

(1) take possession of, assemble and collect the Personal Property or render it unusable by the City and the Company; or

(2) require the Company to assemble the Personal Property and make it available at any place the Beneficiary may designate so as to allow the Beneficiary to take possession or dispose of the Personal Property.

(h) **Gross Revenues.** With respect to the Gross Revenues and any other rents, accounts receivable, general intangibles and contract rights, to ask for, demand, collect, receive, compound and give acquittance therefor or any part thereof, to extend the time of payment of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any thereof, to endorse the name of the Company on any checks, drafts or other orders or instruments for the payment of moneys payable to the Company which shall be issued in respect thereof, to exercise and enforce any rights and remedies in respect thereof, to file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by the Beneficiary necessary or advisable for the purpose of collecting or enforcing payment and performance

thereof, to make test verifications thereof or any portion thereof, to notify any or all account debtors thereunder to make payment thereof directly to the Beneficiary for the account of the Beneficiary and to require the Company to forthwith give similar notice to the account debtors, and to require the Company forthwith to account for and transmit to the Beneficiary in the same form as received all proceeds (other than physical property) or collection thereof received by the Company and, until so transmitted, to hold the same in trust for the Beneficiary and not commingle such proceeds with any other funds of the Company.

In connection herewith, written notice mailed to the City and the Company, as provided herein, 10 days prior of the date of public sale of the Personal Property or prior to the date, after which private sale of the Personal Property will be made, shall constitute reasonable notice.

**Section 7.3. Other Remedies.** Upon the occurrence of an Event of Default, the Beneficiary, pursuant to the foregoing rights and remedies or in addition thereto, (a) shall be entitled to resort to its several securities for the payment of the sums secured hereby in such order and manner as the Beneficiary may think fit without impairing the Beneficiary's lien in or rights to any of such securities and without affecting the liability of any person, firm or corporation for the sums secured hereby, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Beneficiary from the proceeds of such security; (b) may, in the Beneficiary's sole discretion, release for such consideration as the Beneficiary may require, any portion of the Pledged Property without, as to the remainder of the security, in any way impairing or affecting the lien of this Deed of Trust or the priority thereof or improving the position of any subordinate lienholder with respect thereto, except to the extent that the indebtedness secured hereby shall have been reduced by the actual monetary consideration, if any, received by the Beneficiary for such release; and/or (c) may accept the assignment or pledge of any other property in place thereof as the Beneficiary may require without being accountable for so doing to any other lienor. In the event of any breach or anticipatory breach by the City or the Company of any of the covenants, agreements, terms or conditions contained in this Deed of Trust, the Beneficiary shall be entitled to enjoin such breach or anticipatory breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though other remedies were not provided for in this Deed of Trust.

**Section 7.4. Power of Sale; Purchase by Beneficiary.** If an Event of Default exists, then this Deed of Trust shall remain in force, and the Deed Trustee, or a successor trustee as hereinafter described, may proceed to sell the Pledged Property and any and every part thereof at public venue, to the highest bidder, at such place or location as shall be specified by law, for cash, first giving any public notice required by law, and upon such sale shall execute and deliver such deed of conveyance and bill of sale of the property sold to the purchaser or purchasers thereof as may be specified or required by law, and any statement or recital of fact in such deed in relation to the non-payment of money hereby secured to be paid, existence of the indebtedness so secured, notice of advertisement, sale, receipt of money, and the happening of any of the aforesaid events whereby the successor trustee became successor as herein provided, shall be prima facie evidence of the truth of such statement or recital. The proceeds of such sale shall be applied as provided for in **Section 7.12** hereof.

**Section 7.5. Waiver of Errors and Notices.** To the extent permitted by law, the City and the Company hereby waive and release (a) all technical errors, defects and imperfections in any proceedings instituted by the Beneficiary or the Deed Trustee under this Deed of Trust and (b) all notices not herein or elsewhere specifically required of the default of either the City or the Company or of the exercise, or election to exercise, by the Beneficiary of the Deed Trustee of any option or remedy under this Deed of Trust.

**Section 7.6. Remedies Cumulative.** Each right and remedy of the Deed Trustee and/or the Beneficiary provided for in this Deed of Trust shall be cumulative and shall be in addition to every other right or remedy provided for in this Deed of Trust or in the Lease Agreement or now or hereafter existing at law, in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Deed Trustee and/or the Beneficiary of any one or more of the rights or remedies provided for in this Deed of Trust or now or hereafter existing at law, in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the Deed Trustee and/or the Beneficiary of any or all other rights or remedies provided for in this Deed of Trust or now or hereafter existing at law, in equity or by statute or otherwise.

**Section 7.7. Possession of Pledged Property.** After the occurrence of an Event of Default, the City and the Company shall, on demand, surrender possession of the Pledged Property to the Beneficiary and the City and the Company hereby agree that, at any time after such demand, the Beneficiary may enter upon the Pledged Property, breaking locks if necessary and without liability for trespass, damages or otherwise, take possession, custody and control of same, let the same, collect all rents therefrom and apply the rents, after payment of all charges and expenses, on account of the obligations of the City and the Company hereunder and of the debt secured hereby whether then matured or not; and the Beneficiary, by virtue of such right to possession and as attorney-in-fact of the Company may dispossess, by summary proceedings or otherwise, any tenant of all or any part of the Pledged Property then or thereafter in default under his lease and any tenant whose leasehold estate is subordinate to the lien of this Deed of Trust whether or not such tenant is so in default; and the Company hereby irrevocably appoints the Beneficiary attorney-in-fact of the Company for all such purposes. In the event that the City, the Company or any party claiming through either of them is an occupant of part of the Pledged Property, the City, the Company and any such party shall surrender possession to the Beneficiary immediately upon any default hereunder and demand by the Beneficiary, and if the City, the Company or any party claiming through either of them remains in possession, such possession shall be as tenant of the Beneficiary, and the Company or such party shall pay monthly in advance to the Beneficiary such rent for the premises so occupied as the Beneficiary may reasonably demand, and in default of so doing, the City, the Company or such party may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of rents and profits of the Pledged Property, the covenants of this paragraph may be enforced by such receiver.

**Section 7.8. No Waiver Implied.** Any failure, forbearance or delay by the Beneficiary in insisting upon the strict performance by either the City or the Company of any of the terms, covenants, agreements, conditions and provisions hereof shall not be deemed to be a waiver of any of the terms, covenants, agreements, conditions and provisions hereof, and the Beneficiary, notwithstanding any such failure, forbearance or delay, shall have the right thereafter to insist upon the strict performance by the City and the Company of any and all of the terms, covenants, agreements, conditions and provisions of this Deed of Trust to be performed by each of the City and the Company. None of the City, the Company, nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Deed of Trust shall be relieved of such obligation by reason of the failure of the Beneficiary to comply with any request of the City, the Company or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Deed of Trust, or by reason of any agreement or stipulation between any subsequent owner or owners of the Pledged Property and the Beneficiary extending the time of payment or modifying the terms of the Note Documents or the Additional Documents without first having obtained the consent of the City, the Company or such other person, and in the latter event, the City, the Company and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Beneficiary.

Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Pledged Property, the Beneficiary may direct the Deed Trustee to release the obligation of anyone at any time liable for any of the indebtedness secured by this Deed of Trust or any part of the security held for the indebtedness and may extend the time for payment or otherwise grant indulgences, modify the terms of the Note Documents, or both, without, as to the security or the remainder thereof, in any way impairing or affecting the lien of this Deed of Trust or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien. The holder of any subordinate lien shall have no right to terminate any lease affecting the Pledged Property whether or not such lease be subordinate to this Deed of Trust. For the payment of the indebtedness secured hereby the Beneficiary may resort to any other security therefor held by the Beneficiary in such order and manner as the Beneficiary may elect.

**Section 7.9. Sale as a Whole or in Parcels.** In case of any sale under this Deed of Trust by virtue of judicial proceedings or otherwise, the Pledged Property (and the interests of the City and the Company therein) may be sold in one parcel and as an entirety or in such parcels (or interests), manner or order as the Beneficiary in its sole discretion may elect.

**Section 7.10. Waiver of Exemptions.** The City and the Company hereby waive and relinquish the benefits of any present or future laws: (a) exempting the Pledged Property or any part thereof from attachment, levy or sale on execution, or any part of the proceeds arising from any sale thereof by the Beneficiary; (b) staying execution or other process or extending the time for payment; and (c) requiring valuation or appraisal of any part of the Pledged Property levied or sold on execution on any judgment recovered for the indebtedness secured hereby. The City and the Company hereby also waive the application of the doctrine of marshaling of assets in connection with any exercise of rights or remedies under this Deed of Trust.

**Section 7.11. Waiver of Trial by Jury.** The City and the Company waive trial by jury in any litigation in any court with respect to, in connection with, or arising out of, this Deed of Trust, the other Note Documents and the Additional Documents, or any instrument or document delivered pursuant to any of them or the validity, protection, interpretation, collection or enforcement thereof.

**Section 7.12. Application of Proceeds.** Following an acceleration of the Notes by the Beneficiary pursuant to **Section 11.02(a)** of the Lease Agreement (unless such acceleration has been annulled), any money received by the Beneficiary in connection with the exercise of any of the remedies set forth in this **Article VII** shall be applied as provided in **Section 11.02(d)** of the Lease Agreement.

**Section 7.13. Advances by Beneficiary.** The Beneficiary may, but is not obligated to, pay any sum or perform any other obligation for the account of the City or the Company which either of them has failed to pay or perform, and sums so spent by the Beneficiary shall be added to the principal sum secured by this Deed of Trust and be repayable by the Company on demand, and shall bear interest from the date of advance by the Beneficiary at the Default Rate or the highest rate of interest permitted by law, whichever is less.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### Section 8.1. Notices.

(a) All notices, demands, requests and consents required under this Deed of Trust shall be in writing. All such notices, demands, requests and consents shall be deemed to have been properly given when made by telecopy or facsimile transmission, delivered by hand or overnight courier, or mailed by first-class mail, postage prepaid, addressed to the following, or at such other address or addresses as a particular party may hereafter designate in writing to the others:

#### If to City:

The City of Lincoln, Nebraska  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508  
Telephone: (402) 441-7412  
Facsimile: (402) 441-8325  
Attention: Finance Director

If to **Company**:

BLOCK 21 L.L.C.  
c/o Woodbury Corporation  
2733 Parleys Way #300  
Salt Lake City, Utah 84109  
Telephone: (801) 485-7770  
Facsimile: (801) 485-0292  
Attention: Jeffrey K. Woodbury

If to **Deed Trustee and Beneficiary**:

Mutual of Omaha Bank  
Commercial Real Estate  
3333 Farnam Street  
Omaha, Nebraska 68131  
Telephone: (402) 351-4425  
Facsimile: (402) 351-4317  
Attention: Jim Barrett

(b) The City, the Company, the Beneficiary, and the Deed Trustee request that a copy of any notice provided hereunder, provided according to applicable law or provided by the terms of any other security agreement or deed of trust covering the security herein, be mailed to them at the address provided above.

**Section 8.2. Satisfaction of Deed of Trust.** If the City and the Company comply with the provisions of this Deed of Trust and the City and the Company pay to the Beneficiary all sums, and performs all obligations, secured hereby in accordance with the terms of and at the times provided in the Note Documents and the Additional Documents, without deduction, fraud or delay, then this Deed of Trust and the estate and security interest hereby granted and created shall cease, terminate and become void, and the powers of attorney granted hereunder to the Deed Trustee by the Company shall be deemed to be canceled or terminated, and the Beneficiary and the Deed Trustee shall execute and deliver such deeds of reconveyance, mortgage satisfactions, termination statements and other documents as the City and the Company may reasonably request to evidence the same.

**Section 8.3. Definitions of Certain Terms.** Wherever used in this Deed of Trust, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "**Company**" shall include its successors and assigns or any subsequent lessee or lessees of the Pledged Property; the word "**Deed Trustee**" shall mean the party acting as trustee under this Deed of Trust and any duly appointed successor trustee; the word "**Beneficiary**" shall be the party for whose benefit this Deed of Trust is given or any subsequent beneficiary or beneficiaries of this Deed of Trust, including without limitation the Trustee; the word "**person**" shall mean an individual, corporation, general partnership, limited partnership, unincorporated association, or any other legal entity; and the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter gender shall include the other genders.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease Agreement.

**Section 8.4. Amendments.** All amendments and modifications of this Deed of Trust must be in writing, executed by the Company, the Deed Trustee and the Beneficiary.

**Section 8.5. Invalid Provision Disregarded.** If any term or provision of this Deed of Trust or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Deed of Trust 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 Deed of Trust shall be valid and be enforced to the fullest extent permitted by law.

**Section 8.6. Section Headings.** The headings of the Articles and Sections of this Deed of Trust and the Table of Contents are for convenience of reference only and shall not limit or affect the meaning, scope or effect of any terms and conditions hereof.

**Section 8.7. Governing Law.** This Deed of Trust shall be construed and enforced in accordance with the laws of the State.

**Section 8.8. Substitution of Deed Trustee.** The Beneficiary may, from time to time, by a written instrument executed and acknowledged by The Beneficiary, mailed to Trustor and recorded in the county in which the Project is located and by otherwise complying with the provisions of the applicable law of the State, substitute a successor or successors to the Deed Trustee named herein or acting hereunder.

*[The remainder of this page intentionally left blank.]*

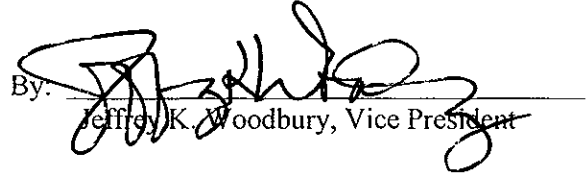


IN WITNESS WHEREOF, the Company and the City have caused this Deed of Trust to be duly executed under seal the day and year first above written.

(SEAL)


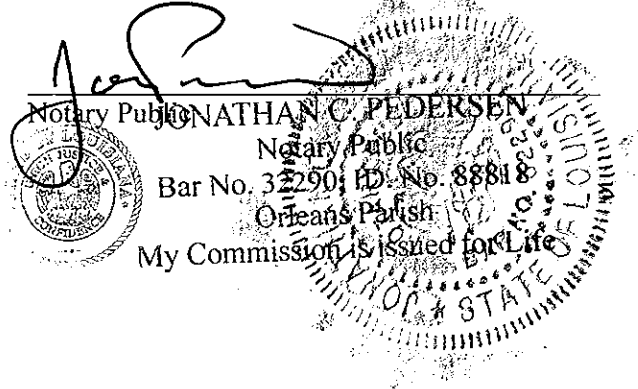
BLOCK 21 L.L.C., a Utah limited liability company

By: WOODBURY CORPORATION, a Utah corporation, its Manager

By:   
Jeffrey K. Woodbury, Vice President

STATE OF ~~ALABAMA~~ <sup>LOUISIANA</sup> )  
~~PARISH~~ ) ss.  
COUNTY OF ~~DRLEANS~~ )


The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of December, 2010, by Jeffrey K. Woodbury, the vice president of Woodbury Corporation, a Utah corporation, in its capacity as the manager of BLOCK 21 L.L.C., a Utah limited liability company, on behalf of the company.

  
Notary Public NATHAN C. PEDERSEN  
Notary Public  
Bar No. 32290; ID. No. 88818  
Orleans Parish  
My Commission is issued for Life  


**BLOCK 21 L.L.C.**, a Utah limited liability company

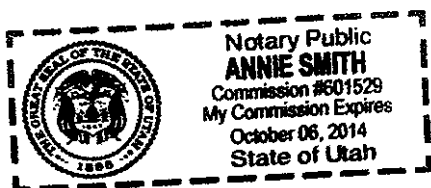
(SEAL)

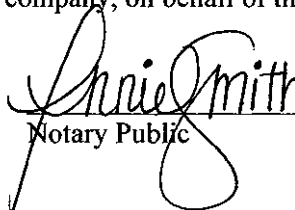
By: **WOODBURY CORPORATION**, a Utah corporation, its Manager

By:   
O. Randall Woodbury, Secretary

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE        )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of December, 2010, by O. Randall Woodbury, the secretary of Woodbury Corporation, a Utah corporation, in its capacity as the manager of BLOCK 21 L.L.C., a Utah limited liability company, on behalf of the company.



  
Annie Smith  
Notary Public

THE CITY OF LINCOLN, NEBRASKA

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

Finance Director

*[Handwritten Signature]*

STATE OF NEBRASKA )

) ss.

COUNTY OF LANCASTER )

On this 29<sup>th</sup> day of December, 2010, before me, the undersigned, a Notary Public in and for said County in said State, personally appeared Don Herz, to me personally known, who, being by me duly sworn, did say that he is the Finance Director of The City of Lincoln, Nebraska (the "City") and that such instrument was signed in behalf of the City by authority of its Mayor and Council, and such officer acknowledged said instrument to be executed for the purposes therein stated and as the voluntary act and deed of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

(SEAL)



*[Handwritten Signature: Sandy L. Dubas]*  
Notary Public

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**Lot 1, The Arts and Humanities Block Addition, Lincoln, Lancaster County, Nebraska**

**EXHIBIT B**

**PERMITTED ENCUMBRANCES**

(a) Easements, restrictions and reservations stated in Policy No. \_\_\_\_\_ issued by Nebraska Title Company as the local agent for Lawyer's Title Insurance Corporation bearing an effective date of \_\_\_\_\_, 2010.

(b) Taxes and assessments, general and special, not due and payable as of the date of this Deed of Trust.

(c) The rights of the public in and to any parts of the premises lying or being in public roads or alleys or highways.

*B*