

## THE CITY OF LINCOLN, NEBRASKA

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF LINCOLN, NEBRASKA AUTHORIZING AND APPROVING A LEASE-PURCHASE TRANSACTION WITH UNION BANK AND TRUST COMPANY, THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS OF ACQUIRING REAL PROPERTY AND THE BUILDINGS THEREON AND REMODELING, RENOVATING, EQUIPPING AND FURNISHING THE SAME; APPROVING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$8,000,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN SUCH LEASE; FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF CERTAIN PROVISIONS OF THE LEASE; AND RELATED MATTERS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINCOLN, NEBRASKA AS FOLLOWS:

**Section 1.** The Council of The City of Lincoln, Nebraska (the “City”) hereby finds and determines as follows:

(a) It is necessary, desirable, advisable and in the best interests of the City that the City acquire the real property located at 901 West Bond Street and 949 West Bond Street (the “**Real Property**”) and the buildings located thereon and remodel, renovate, equip and furnish the same (collectively, the “**Project**”) to provide space for certain of the City’s municipal operations.

(b) The City has carefully considered the options available to it with respect to financing the acquisition and construction of the Project.

(d) In order to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to take the following actions:

1. Enter into a Site Lease (the “**Site Lease**”) between the City, as lessor, and Union Bank and Trust Company (the “**Trustee**”), as lessee, pursuant to which the City will lease the Real Property to the Trustee on the terms and conditions set forth therein, the form of which is attached hereto;

2. Enter into a Lease-Purchase Agreement (the “**Lease**”) with the Trustee, pursuant to which the City, as lessee, will lease the Project from the Trustee, as lessor, with an option to purchase the Trustee’s interest in the Project, the form of which is attached hereto;

3. Execute and deliver a Tax Compliance Agreement (the “**Tax Agreement**”) pursuant to which the City makes certain representations and covenants related to the exclusion of the interest portions of basic rent under the Lease from gross income for purposes of federal income taxation, the form of which is attached hereto;

4. Approve a Declaration of Trust (the “**Declaration of Trust**”) by the Trustee, pursuant to which to Certificates of Participation, Series 2010B (the “**Certificates of Participation**”), evidencing proportionate interests of the owners thereof in basic rent payments

to be made by the City under the Lease, will be executed and delivered, the form of which is attached hereto; and

5. Approve an Official Statement respecting the Certificates of Participation, to be in substantially the same form as the Preliminary Official Statement respecting the Certificates of Participation, the form of which is attached hereto (the **“Preliminary Official Statement,”** and together, the **“Official Statement”**).

The Site Lease, the Lease and the Tax Agreement are referred to together herein as the **“City Documents.”**

**Section 2. Authorization and Approval of City Documents and Declaration of Trust.** The City Documents and the Declaration of Trust are hereby approved in substantially the forms submitted to and reviewed by the Council on the date hereof, with such changes therein as are approved by the Finance Director.

The Finance Director is hereby authorized and directed to determine (a) the principal amount of the Lease, which shall not exceed \$8,000,000 (b) the principal installments to be due thereunder, (c) the final maturity of the Lease, which shall not be later than December 31, 2025, (d) the rate of interest to be carried by each principal installment such that the true interest cost shall not exceed 5.00%, and (e) the prepayment provisions, which may include a prepayment premium not to exceed 2.00%. The Finance Director, after receiving advice from the City Attorney and special tax counsel, is hereby authorized to make such changes, additions or deletions with respect to the Lease as may be in the best interests of the City prior to the signing thereof. The Finance Director’s execution of the City Documents will be conclusive evidence of such approval.

The Finance Director is hereby authorized and directed to execute and deliver the City Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the City. The Clerk is hereby authorized to affix the City’s seal to the City Documents and attest such seal.

**Section 3. Approval of Official Statement.** The final Official Statement is hereby authorized and approved, supplementing, amending and completing the Preliminary Official Statement, with such changes therein and additions thereto as are approved by the officer of the City executing the final Official Statement, such officer’s execution thereof to be conclusive evidence of said officer’s approval thereof, and the public distribution of the final Official Statement are in all respects hereby authorized and approved. The Finance Director of the City is hereby authorized to execute and deliver the final Official Statement on behalf of and as the act and deed of the City.

**Section 4.** The Certificates shall be sold with a maximum underwriting discount of 1.00% and a maximum net original issue discount of 1.00% to the responsible bidder offering to purchase the Certificates at the lowest true interest cost to the City as described in the Notice to Bidders dated as of such date as shall be determined by the Finance Director on behalf of the City (the **“Notice to Bidders”**) with respect to the Certificates. The Notice to Bidders, in the form attached hereto is hereby approved, adopted, ratified and affirmed together with such changes, additions, deletions or modifications as the Finance Director, the City Attorney, and special tax counsel shall approve as being in the best interests of the City. The Finance Director, on behalf of the City, is hereby authorized and directed to take all necessary actions and execute all necessary documents to award the sale of the Certificates to such lowest bidder.

**Section 5.** The Mayor, Finance Director, City Clerk, Deputy City Clerk, City Treasurer, Deputy City Treasurer, City Attorney and any Assistant City Attorney, are hereby authorized to execute and

deliver for and on behalf of the City the City Documents and all additional certificates, documents, opinions, or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

**Section 6.** Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Mayor, Finance Director, Treasurer, Clerk, City Attorney, Controller and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with special tax counsel, the Lessor and its counsel, the purchaser of the Certificates and its counsel, shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs to the Finance Director the right, power and authority to exercise his independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Lease and the Certificates not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates. The execution and delivery by the Finance Director or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Finance Director and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of special tax counsel, financial advisors, and other agents in connection with the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

**Section 7.** The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the execution and delivery of the City Documents and the sale of the Certificates and the terms and provisions thereof shall constitute a contract between the City, the Lessor and the registered owners of the Certificates, and the provisions thereof shall be enforceable by any owner of a Certificate for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska (the “State”) in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the City Documents, and the issuance, sale and delivery of the Certificates, this Ordinance and any supplemental ordinance shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Ordinance.

**Section 8.** With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance, the City Documents or the Certificates is intended or should be construed to confer upon or give to any person other than the City, the Trustee and the

registered owners of the Certificates, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Lessor and the registered owners from time to time of the Certificates as herein and therein provided.

**Section 9.** No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the City Documents or the payment of the principal or interest on any Certificate. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

**Section 10.** Whenever this Ordinance or the City Documents requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance or the City Documents the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

**Section 11.** If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the City Documents, but the Lessor and the registered owners of the Certificates shall retain all the rights and benefits afforded to them hereunder and under the City Documents or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

**Section 12.** This Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

**Section 13.** Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**Section 14.** This ordinance shall take effect and be in force from and after its passage and publication according to law.

**INTRODUCED BY:**

\_\_\_\_\_

**PASSED** \_\_\_\_\_, **2010.**

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

\_\_\_\_\_

**ABSENT OR NOT VOTING:**

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\_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

**City Attorney**

\_\_\_\_\_

**Special Tax Counsel**

**CONFLICT OF INTEREST:**

\_\_\_\_\_

**APPROVED:** \_\_\_\_\_, **2010.**

\_\_\_\_\_

**Mayor**

**GILMORE & BELL, P.C.**  
**DRAFT #1**  
**SEPTEMBER 16, 2010**

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**SITE LEASE**

**between**

**THE CITY OF LINCOLN, NEBRASKA**

**and**

**UNION BANK AND TRUST COMPANY,  
Trustee**

**Dated [Closing Date], 2010**

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## SITE LEASE

**THIS SITE LEASE** (the “**Site Lease**”), dated [Closing Date], 2010, by and among **THE CITY OF LINCOLN, NEBRASKA**, a city of the primary class and political subdivision organized and existing under the laws of the State of Nebraska (together with its successors, the “**City**”), as lessor, and **UNION BANK AND TRUST COMPANY**, a state banking corporation organized and existing under the laws of the Nebraska, acting in its capacity as Trustee under the Declaration of Trust hereinafter referred to (the “**Trustee**”), as lessee:

### WITNESSETH:

**WHEREAS**, in order to carry out the essential governmental and proprietary functions of the City, the City deems it necessary, desirable, advisable and in the best interest of City for the City to acquire certain real property located in the City and described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Project Site**”) and to remodel, renovate, equip and furnish the buildings and facilities located thereon (the “**Project**”); and

**WHEREAS**, the Trustee proposes to lease the Project Site from the City, to pay the cost of acquiring the Project and to lease the Project to the City pursuant to a Lease Purchase Agreement dated the date hereof (as amended or supplemented from time to time, the “**Lease**”), by and between the Trustee and the City; and

**WHEREAS**, the Trustee will obtain the funds required to pay the cost of the Project by the sale of one or more series of Certificates (as defined in the Lease), and the Trustee proposes to enter into the Declaration of Trust, dated the date hereof (the “**Declaration of Trust**”), setting forth the terms of the Certificates, the security therefor and other terms with respect to the Certificates; and

**WHEREAS**, the City desires to lease the Project Site to the Trustee for the rentals and upon the terms and conditions herein set forth and the City desires to lease the Project from the Trustee upon the terms and conditions set forth in the Lease,

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, the City and the Trustee do hereby covenant and agree as follows:

**Section 1. Representations by the City.** The City represents, warrants and covenants as follows:

(a) The City is a city of the primary class and political subdivision organized and existing under the laws of the State of Nebraska.

(b) The lease of the Project Site by the City to the Trustee and the lease of the Project by the Trustee to the City, as provided in the Lease, is necessary, desirable and in the public interest, and the City hereby declares its current need for the Project.

(c) The City, pursuant to an ordinance adopted by its governing body, has full power and authority to enter into the transactions contemplated by this Site Lease and the Lease and to carry out its obligations hereunder, and has been duly authorized to execute and deliver this Site Lease and the Lease and by proper action has duly authorized the execution and delivery of this Site Lease and the Lease.

(d) Neither the execution and delivery of this Site Lease nor the Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound.

(e) The City has good and marketable fee title to the Project Site.

(f) The Project Site is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance that would prohibit or materially interfere with the use of the Project as contemplated by the Lease.

(g) All taxes, assessments or impositions of any kind with respect to the Project Site, except current taxes, have been paid in full.

(h) The Project Site is properly zoned for the Project.

(i) The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in any property now or hereafter included in the Project will be or may be impaired, changed or encumbered in any manner whatsoever except as permitted by this Site Lease and the Lease.

(j) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the proceedings of the governing body of the City authorizing this Site Lease and the Lease or the power or authority of the City to enter into the Lease or this Site Lease or the validity or enforceability of the Lease or this Site Lease or that, if adversely determined, would adversely affect the transactions contemplated by the Lease or this Site Lease of the interest of City under the Lease or this Site Lease.

**Section 2. Lease.** The City hereby leases to the Trustee, and the Trustee hereby rents and leases from the City, the Project Site on the terms and conditions hereinafter set forth.

**Section 3. Term.** The term of this Site Lease will commence as of [Closing Date], 2010, and will end on \_\_\_\_\_, 202\_\_, unless the term is extended or sooner terminated as hereinafter provided, but in no event will the term of this Site Lease end until all of the Principal Portion and the Interest Portion of the Certificates are no longer Outstanding (as that term is defined the Declaration of Trust).

**Section 4. Rental.** As and for rental hereunder and in consideration for the leasing of the Real Property to the Trustee, the Trustee will take the following actions:

(a) simultaneously with the delivery of this Site Lease, enter into the Lease;

(b) simultaneously with the delivery of this Site Lease, pay to the City the sum of \$1.00 and provide such other consideration as the Trustee and City may agree; and

(c) deposit funds in the amount and in the funds and accounts established and as set forth in the Declaration of Trust.

**Section 5. Assignments and Subleases.** It is intended that the Trustee will hold this Site Lease and its rights hereunder for the benefit of Owners of the Certificates (as defined in the Declaration of Trust). The Trustee thereafter may assign this Site Lease and its rights hereunder or lease or sublease the

Park Project without the written consent of the City (a) in connection with any assignment of its rights under the Lease, (b) if the Lease is terminated for any reason, or (c) if an Event of Default as defined in the Lease has occurred.

**Section 6. Termination.** This Site Lease will terminate upon the completion of the term set forth in **Section 4**; provided, however, that in the event the City makes payment of the purchase price or makes all of the rental payments provided for in **Article IV** of the Lease and exercises its option to purchase the Trustee's interest in the Project pursuant to **Article X** of the Lease, then this Site Lease will be considered assigned to the City and terminated through merger of the leasehold interest hereunder with the fee interest of the City if the City is the owner of the fee interest.

If an Event of Default under the Lease, the Trustee will have the right to possession of the Project for the remainder of the term of this Site Lease and will have the right to sublease the Project or sell its interest in the Project and this Site Lease upon whatever terms and conditions it deems prudent.

**Section 7. Default.** The City will not no right to exclude the Trustee from the Project or take possession of the Project (other than pursuant to the Lease) or to terminate this Site Lease prior to the expiration of its term upon any default by the Trustee hereunder, except that if, upon the exercise of the option to purchase the Trustee's interest in the Project granted to the City in **Article X** of the Lease and after the payment of the purchase price specified therein and other sums payable under the Lease, the Trustee fails to convey its interest in the Project to the City pursuant to such option, then the City will have the right to terminate this Site Lease, such termination to be effective 30 days after delivery of written notice of such termination to the Trustee. In the event of any default by the Trustee hereunder, however, the City may maintain an action, if permitted in equity, for specific performance.

**Section 8. Quiet Enjoyment.** At all times during the term of this Site Lease, the Trustee will peaceably and quietly have, hold and enjoy all of the Project, and the City will provide to the Trustee the ability to quietly have, hold and enjoy all of the Project, all of this being subject to the rights of the City under the Lease.

**Section 9. No Merger.** No union of the interests of the City and the Trustee herein will result in a merger of this Site Lease and the title to the Project or any part thereof, except as and to the extent provided in **Section 6**.

**Section 10. Taxes and Assessments.** The City covenants and agrees to pay any and all assessments of any kind or character and all taxes levied or assessed upon the Project.

**Section 11. Warranties, Covenants and Indemnities Regarding Environmental Matters.**

(a) As used in this **Section 11**, the following terms have the following meanings:

**"Environmental Laws"** means any now-existing or hereafter enacted or promulgated federal, state, local, or other law, statute, ordinance, rule, regulation or court order pertaining to (i) environmental protection, regulation, contamination or clean-up, (ii) toxic waste, (iii) underground storage tanks, (iv) asbestos or asbestos-containing materials, or (v) the handling, treatment, storage, use or disposal of Hazardous Substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and The Resource Conservation and Recovery Act, all as exist from time to time.

**“Hazardous Substances”** means all (i) “hazardous substances” (as defined in 42 U.S.C. §9601(14)), (ii) “chemicals” subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time (iii) natural gas liquids, liquefied natural gas or synthetic gas, (iv) any petroleum, petroleum-based products or crude oil or any fraction, or (v) any other hazardous or toxic substances, wastes or materials, pollutants, contaminants or any other substances or materials that are included under or regulated by any Environmental Law.

(b) The City warrants and represents to the Trustee that (i) there has not, at any time during the ownership of the Project Site by the City, nor, to the knowledge of the City, at any time prior to the ownership of the Project site by the City, been any “release” (as defined in 42 U.S.C. §9601(22)) by the City or any third party of any Hazardous Substances on, about, or near the Project Site (including without limitation adjacent or nearby properties) that could have come to be located upon the Project Site, or in the water or the groundwater thereon or thereunder; (ii) no part of the Project Site is or has been used at any time during the ownership of the Project Site by the City nor, to the knowledge of the City, at any time prior to the ownership of the Project Site by the City as the site of any handling, treatment, storage, refining or disposal of any Hazardous Substances; (iii) no part of the Real Property is or has been at any time during the ownership of the Project Site by the City nor, to the knowledge of the City, at any time prior to the ownership of the Project Site by the City, a “facility” (within the meaning of 42 U.S.C. §9607(a)); (iv) there are not now, nor has there been during the ownership of the Project Site by the City, nor, to the knowledge of the City, at any time prior to the ownership of the Project Site by the City, any underground storage tanks located in, on or about any of the Project Site; (v) no asbestos or asbestos-containing materials are located in or have been installed, used, incorporated into or disposed of on or about the Project; (vi) no polychlorinated biphenyls are located on or about the Project, including without limitation in any electrical transformers or in fluorescent light fixtures or ballasts; (vii) there are no conditions on or about the Project Site that are violative of any Environmental Laws; and (viii) no claims or demands have been asserted or made by any third parties arising out of, relating to or in connection with any Hazardous Substances on or about or allegedly on or about the Project Site for any injuries suffered or incurred or allegedly suffered or incurred by reason of any of the foregoing.

(c) The City will provide the Trustee with copies of any notifications of releases of Hazardous Substances or of any environmental hazards or potential hazards that are given by or on behalf of the City to any federal, state or local or other agencies or authorities or that are received by the City from any federal, state or local or other agencies or authorities with respect to the Project Site. Such copies will be sent to the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within ten days after they are received by the City.

(d) The City warrants and represents that it has provided the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter **“Environmental Notices”**) that relate to the Project Site previously given, as of the date hereof, by the City to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 *et seq.*, or any other Environmental Laws. The City will provide the Trustee with copies of all Environmental Notices that relate to the Project Site subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 or any other Environmental Laws. Such copies of subsequent Environmental Notices will be sent to the Trustee concurrently with their being mailed to any such governmental authority or agency.

(e) The City will comply with and operate and at all times use, keep and maintain the Project and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et seq.*) in conformance with all Environmental Laws. Without limiting the generality of the foregoing, the City will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or

on the Project or any part thereof nor cause, suffer, allow or permit anyone else to do so except in the ordinary course of the operation of the City's business and in compliance with all Environmental Laws.

(f) The City agrees to indemnify, protect and hold harmless the Trustee from and against any and all claims, demands, costs, liabilities, damages or expenses, including, without limitation, attorneys' fees and expenses, arising from (i) any release (as defined above) or threat of a release, actual or alleged, of any Hazardous Substances, upon or about the Project or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Project, regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise, (ii) (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any Environmental Laws relating to or affecting the Project, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any Environmental Laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Project, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise, (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances on or about or allegedly on or about the City, or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this **Section 11**. This subsection (f) will survive any termination of this Site Lease.

**Section 12. Waiver of Liability.** All liabilities under this Site Lease on the part of the Trustee are solely liabilities of the Trustee serving as Trustee under the Declaration of Trust, and, to the extent permitted by law, the City hereby releases each and every director, employee, agent, attorney and officer of the Trustee of and from any personal or individual liability under this Site Lease. No director, employee, agent, attorney or officer of the Trustee will at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Trustee hereunder. The Trustee will not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct.

All liabilities under this Site Lease on the part of the City are solely corporate liabilities of the City as a municipal corporation, and, to the extent permitted by law, the Trustee hereby releases each and every official, member, employee or agent of the City of and from any personal or individual liability under this Site Lease. No official, member, employee or agent of the City will at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the City hereunder.

**Section 13. Eminent Domain.** (a) In the event the whole or any part of the Project is taken by eminent domain proceedings, the interest of the Trustee will be recognized. The proceeds of said condemnation will be applied as provided in **Article IX** of the Lease. Under Nebraska statutes, the City has the power to condemn property for its purposes, and the City acknowledges that if the City condemned the Project, such action could adversely affect the continuation of this Site Lease. The City further acknowledges that condemnation of the Project would adversely affect the Trustee and that without the Trustee's interest in the Project, the Trustee might not lease the Project to the City pursuant to the Lease.

The City and the Trustee have reached agreement on the terms of the acquisition of the Project, at City's option, and to the use of the Project, all as set forth in the Lease. Any acquisition of the Trustee's interest in the Project or rights to its use by the City (whether pursuant to the exercise of eminent domain

powers or otherwise) will be pursuant to and in accordance with the Lease, including payment of Rent Payments and the applicable Purchase Price (as defined and set forth in the Lease).

The City hereby covenants and agrees, to the extent it may lawfully do so, that if for any reason it exercises the power of eminent domain with respect to the Project, the appraisement value of the Project will not be less than the Rent Payments then due plus the then applicable Purchase Price as defined and set forth in the Lease.

(b) In the event that title to all or a portion of the Project is challenged or threatened by means of competent legal or equitable action, the City covenant that it will cooperate with the Trustee and will take all reasonable actions, including where appropriate the lawful exercise of the City's power of eminent domain, in order to quiet title to the Project in the City.

**Section 14. Leaseback to City; Term; Rental.** Contemporaneously herewith, the Trustee and the City will execute the Lease whereby (a) the Trustee leases back to the City and the City leases from the Trustee the Project Site, and (b) the Trustee leases to the City and the City leases from the Trustee the Project, all in accordance therewith. The Lease includes in **Article X** thereof the option of the City, upon payment of the specified purchase price, to purchase the Trustee's interest in the Project.

**Section 15. Partial Invalidity.** If any one or more of the terms, provisions, covenants or conditions of this Site Lease will to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease will be affected thereby, and each provision of this Site Lease will be valid and enforceable to the fullest extent permitted by law.

**Section 16. Notices.** All written notices to be given under this Site Lease will be given by mail to the party entitled thereto as set forth in the Declaration of Trust.

**Section 17. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

**Section 18. Amendments, Changes and Modifications.** This Site Lease may not be effectively amended, changed, modified, altered or supplemented except with the written consent of the Trustee, JAVA and the City and as provided in the Declaration of Trust.

**Section 19. Applicable Law.** This Site Lease will be governed by and construed in accordance with the laws of the State of Nebraska.

**Section 20. Execution.** This Site Lease may be executed in any number of counterparts, each of which will be deemed to be an original but all together will constitute but one and the same Site Lease. It is also agreed that separate counterparts of this Site Lease may be executed by the Trustee and the City all with the same force and effect as though the same counterpart had been executed by both the Trustee and the City.

**Section 21. Successors.** This Site Lease will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Upon removal or resignation of the Trustee, all moneys, estates, properties, rights, powers, trusts, duties and obligations of such Trustee will vest in the successor Trustee as provided in the Declaration of Trust.

**Section 22. Complete Agreement.** This written agreement is a final expression of the agreement between the parties hereto and such agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties hereto. No unwritten oral agreement between the parties exists.

**Section 23. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[Remainder of Page Intentionally Left Blank.]*

**IN WITNESS WHEREOF**, the City and the Trustee have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

**THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

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

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

(SEAL)

**UNION BANK AND TRUST COMPANY**

ATTEST:

By: \_\_\_\_\_  
Assistant Vice President

By: \_\_\_\_\_  
Authorized Officer

(SEAL)



**EXHIBIT A**

**TO SITE LEASE DATED [CLOSING DATE], 2010, BETWEEN THE CITY OF LINCOLN, NEBRASKA AND UNION BANK AND TRUST COMPANY, TO LEASE PURCHASE AGREEMENT DATED [CLOSING DATE], 2010, BETWEEN UNION BANK AND TRUST COMPANY AND THE CITY OF LINCOLN, NEBRASKA, AND TO DECLARATION OF TRUST DATED [CLOSING DATE], 2010 BY UNION BANK AND TRUST COMPANY.**

**THE PROJECT SITE**

**Lots 4, 5, 6, 7, 8, 9, and 10, Block 4 and Lot 9, Block 7, Union Pacific Addition  
Lincoln, Lancaster County, Nebraska**

**GILMORE & BELL, P.C.**  
**DRAFT #1**  
**SEPTEMBER 16, 2010**

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**LEASE PURCHASE AGREEMENT**

**between**

**UNION BANK AND TRUST COMPANY,  
Trustee**

**and**

**THE CITY OF LINCOLN, NEBRASKA**

**Dated [Closing Date], 2010**

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## LEASE PURCHASE AGREEMENT

This **LEASE PURCHASE AGREEMENT** (the “**Lease**”), dated [Closing Date], 2010, is entered into between **UNION BANK AND TRUST COMPANY**, a state banking corporation organized and existing under the laws of the State of Nebraska, as Trustee (the “**Trustee**”), and **THE CITY OF LINCOLN, NEBRASKA**, a city of the primary class and political subdivision organized and existing under the laws of the State of Nebraska (the “**City**”).

### WITNESSETH:

**WHEREAS**, the City and the Trustee have entered into a Site Lease dated [Closing Date], 2010 (the “**Site Lease**”), pursuant to which the City has leased to the Trustee the Project Site described on **Exhibit A**, including any existing improvements thereon (the “**Project Site**”); and

**WHEREAS**, concurrently herewith the Trustee is entering into a Declaration of Trust (hereinafter defined) pursuant to which the Trustee will execute and deliver one or more series of Certificates (defined in the Declaration of Trust), the proceeds of which will be used to provide the funds to (a) pay the costs of (1) acquiring the Project Site together with all buildings and facilities located thereon, and (2) remodeling, renovating, equipping and furnishing such buildings and facilities, together with all replacements, repairs and additions incorporated therein or affixed thereto (the “**Project**”) and (b) pay certain costs connected to the execution and delivery of the Certificates; and

**WHEREAS**, the Trustee desires to lease the Project to the City, all subject to the terms and conditions and for the purposes set forth in this Lease; and

**WHEREAS**, the City is authorized under the constitution and laws of the State of Nebraska to enter into this Lease for the purposes set forth herein,

**NOW, THEREFORE**, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise specifically requires or indicates to the contrary, the following terms as used in this Lease will have the following meanings:

“**Additional Certificates**” means the Additional Certificates as defined in the Declaration of Trust.

“**Architect**” means \_\_\_\_\_, Lincoln, Nebraska, or any other architect or engineer hired by the City with respect to the Project.

“**Basic Rent**” means the Basic Rent Payments comprised of a Principal Portion and an Interest Portion as set forth on **Exhibit B**, as **Exhibit B** may be revised as provided in **Section 3.09** of the Declaration of Trust and in **Section 4.07**.

**“Basic Rent Payment”** means a payment of Basic Rent.

**“Basic Rent Payment Date”** means each [1Int Pay Date] and [2Int Pay Date] during the Lease Term, commencing on [1Int Pay Date], 2011.

**“Business Day”** means a day other than (a) a Saturday, Sunday or legal holiday, (b) a day on which banks located in any city in which the principal corporate trust office or designated payment office of the Trustee is located are required or authorized by law to remain closed, or (c) a day on which the Securities Depository or the New York Stock Exchange is closed.

**“Certificates”** means the Series 2010B Certificates and any Additional Certificates.

**“City”** means The City of Lincoln, Nebraska, a city of the primary class duly created, organized and existing under and by virtue of the laws of the State of Nebraska, and its successors.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

**“Completion Certificate”** means the certificate of the City given in accordance with **Section 5.03**.

**“Completion Date”** means the date of completion of the Project as that date will be certified as provided in **Section 5.03**.

**“Construction Agreement”** means one of any agreements between the City and various parties, if any, providing for the acquisition, construction and installation of various portions of the Project.

**“Continuing Disclosure Certificate”** means the Continuing Disclosure Certificate executed and delivered by the City in connection with the execution and delivery of a series of Certificates, as from time to time amended.

**“Costs of the Project”** means all reasonable or necessary expenses related or incidental to the acquisition, construction and installation of the Project, including the expenses of studies, surveys, title policies, architectural and engineering services, legal and other special services and all other necessary and incidental expenses, including interest on the Certificates to the Completion Date. Costs of the Project includes Costs of Issuance.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of the Certificates, including advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Trustee, legal fees of parties to the transaction and all other initial fees and disbursements contemplated by this Lease and the Declaration of Trust.

**“Declaration of Trust”** means the Declaration of Trust dated [Closing Date], 2010, made by the Trustee, as the same may from time to time be amended or supplemented in accordance with its terms.

**“Event of Default”** means an Event of Default as described in **Section 12.01**.

**“Fiscal Year”** means the fiscal year of the City, currently the twelve-month period beginning September 1 and ending on August 31.

**“Funds”** means the Funds as defined in the Declaration of Trust.

**“Government Obligations”** means (a) direct noncallable obligations of the United States of America and obligations the timely payment of principal and interest on which is fully and unconditionally guaranteed by the United States of America, and (b) trust receipts or certificates evidencing participation or other direct ownership interests in principal or interest payments to be made upon obligations described in clause (a) above that are held in a custody or trust account free and clear of all claims of persons other than the holders of such trust receipts or certificates, and (c) obligations that are noncallable or for which the call date has been irrevocably determined having an investment rating in the highest rating category of either Moody’s or S&P as a result of the advance refunding of such obligations by the deposit of direct noncallable obligations of the United States of America in a trust or escrow account segregated and exclusively set aside for the payment of such obligations and that mature as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to timely pay such principal and interest.

**“Interest Portion”** means the portion of each Basic Rent Payment that represents the payment of interest as set forth on **Exhibit A**.

**“Lease”** means this Lease Purchase Agreement, dated [Closing Date], 2010, between the Trustee, as lessor, and the City, as lessee, as amended and supplemented from time to time in accordance with its terms.

**“Lease Revenue Fund”** means the Lease Revenue Fund as defined in the Declaration of Trust.

**“Lease Term”** means the term of this Lease beginning [Closing Date], 2010 and ending on \_\_\_\_\_, 202\_\_, unless earlier terminated in accordance with the provisions hereof.

**“Moody’s”** means Moody’s Investors Service, Inc., and its successors and assigns, and, if that firm will be dissolved or liquidated or no longer performs the functions of a securities rating service, “Moody’s” will be deemed to refer to any other nationally recognized securities rating service designated by the City, with notice to the Trustee.

**“Net Proceeds”** means the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all reasonable expenses, including attorneys’ fees, incurred in the collection thereof.

**“Opinion of Counsel”** means a written opinion of counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the City.

**“Outstanding”** means Outstanding as defined in the Declaration of Trust.

**“Principal Portion”** means the principal portion of the Basic Rent Payments as set forth in **Exhibit A**.

**“Project”** means the Project Site, together with the remodeling, renovation, equipping and furnishing of the buildings and facilities thereon.

**“Project Fund”** means the Project Fund as defined in the Declaration of Trust.

**“Project Site”** means the Project Site described in **Schedule 1**.

**“Purchase Price”** means the amount designated as such in **Article X** that the City may pay to the Trustee to purchase the Trustee’s interest in the Project.

**“Rent”** means, collectively, Basic Rent and Supplemental Rent.

**“Rent Payment”** means a payment of Rent.

**“Series 2010B Certificates”** means the Series 2010B Certificates as defined in the Declaration of Trust.

**“Site Lease”** means the Site Lease dated [Closing Date], 2010, among the Joint Antelope Valley Authority, the City, jointly, as lessor, and the Trustee, as lessee.

**“Special Tax Counsel”** means Gilmore & Bell, P.C., or any other attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds or other obligations issued by states and political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America.

**“State”** means the State of Nebraska.

**“Supplemental Declaration of Trust”** means any amendment or supplement to the Declaration of Trust entered pursuant to **Article VIII** of the Declaration of Trust.

**“Supplemental Lease”** means any amendment or supplement to this Lease entered pursuant to **Section 13.05**.

**“Supplemental Rent”** means all amounts due hereunder other than Basic Rent.

**“Supplemental Rent Payment”** means a payment of Supplemental Rent.

**“Tax Agreement”** means the Tax Compliance Agreement between the City and the Trustee in connection with the execution and delivery with each series of Certificates.

**“Trustee”** means the party acting as Trustee under the Declaration of Trust.

**Section 1.02. Rules of Construction.** Words of the masculine gender will be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context will otherwise indicate, the words importing the singular number will include the plural and vice versa, and words importing person will include firms, associations and corporations, including public bodies, as well as natural persons.

The words “herein,” “hereby,” “hereunder,” “hereof,” “hereto,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Lease and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article, section, exhibit, schedule or appendix will be construed to be a reference to the specified article or section hereof or exhibit, schedule or appendix hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the words “including,” such listing is not intended to be a listing that excludes items not listed.

The section and article headings herein are for convenience only and in no way define, limit or describe the scope or intent of any of the provisions hereof.

**Section 1.03. Execution of Counterparts.** This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed to be an original, and all of which together will constitute but one and the same instrument.

**Section 1.04. Severability.** If any provision of this Lease is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Lease contained will not affect the remaining portions of this Lease, or any part thereof.

**Section 1.05. Governing Law.** This Lease will be governed by and construed in accordance with the laws of the State.

## ARTICLE II

### REPRESENTATIONS

**Section 2.01. Representations of the City.** The City represents and warrants, as of the date of delivery hereof, as follows:

(a) The City is a city of the primary class duly created, organized and existing under and by virtue of the constitution and laws of the State with full power and authority to enter into the Site Lease and this Lease and the transaction contemplated thereby and hereby and to perform all of its obligations thereunder and hereunder.

(b) The City has full power and authority to enter into the transactions contemplated by the Site Lease and this Lease and has been duly authorized to execute and deliver the Site Lease and this Lease by proper action by its governing body. The Site Lease and this Lease are valid, legal and binding obligations of the City enforceable in accordance with their terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws and equitable principles affecting creditor's rights generally. The City is authorized by Section 15-201.01, Reissue Revised Statutes of Nebraska, as amended, to enter into contracts for the purchase of real or personal property, which contracts need not be restricted to a single year and may provide for the purchase of such property in installment payments to be made over more than one fiscal year.

(c) The lease of the Project by the Trustee to the City, as provided in this Lease, is necessary, desirable, advisable, in the public interest and consistent with the permissible scope of the City's authority. The City hereby declares its current need for the Project and its current expectation that it will continue to need and use the Project throughout the Lease Term.

(d) The City's financial statements that have been used in connection with any offering of the Certificates present fairly, in accordance with generally accepted accounting principles and applicable regulations consistently applied throughout the periods involved, the financial position of the City as at their respective dates and the revenues and expenses and changes in fund balances for the periods covered thereby.

(e) Neither the execution and delivery of the Site Lease or this Lease, nor the fulfillment of or compliance with the terms and conditions thereof or hereof, nor the consummation of the transactions contemplated thereby or hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is a party or by which the City is bound.

(f) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the proceedings of the governing body of the City authorizing the Site Lease and this Lease or the power or authority of the City to enter into this Lease or the Site Lease or the validity or enforceability of this Lease or the Site Lease or that, if adversely determined, would adversely affect the transactions contemplated by this Lease or the Site Lease or the interest of the Trustee under this Lease or the Site Lease.

(g) The City has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby the City's interests in any property now or hereafter included in the Project will be or may be impaired, changed or encumbered in any manner whatsoever, except as contemplated by the Site Lease and this Lease.

(h) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists.

(i) Upon completion, the Project will be structurally sound and in compliance with all applicable building and design codes and the City's requirements.

(j) The City has complied or will comply with any public bidding requirements that may be applicable to this Lease and the acquisition, construction and installation of the Project.

### ARTICLE III

#### DEMISING OF THE PROPERTY; LEASE TERM

**Section 3.01. Lease of Project.** The Trustee hereby demises, leases, subleases and lets to the City, and the City rents, leases, subleases and hires from the Trustee, the Project in accordance with this Lease for the Lease Term.

**Section 3.02. Lease Term.** The term of this Lease begins [Closing Date], 2010 and ends on \_\_\_\_\_, 202\_\_, unless earlier terminated in accordance with the provisions hereof.

**Section 3.03. Enjoyment of Project.** The Trustee will provide the City during the Lease Term with quiet use and enjoyment of the Project, and the City will, during the Lease Term, peaceably and quietly have, hold and enjoy the Project, without suit, trouble or hindrance from the Trustee, except as expressly set forth in this Lease. The City will have the right to use the Project for any essential governmental or proprietary purpose of the City, subject to the limitations contained in this Lease.

Notwithstanding any other provision in this Lease, the Trustee will have no responsibility to cause the Project to be acquired, constructed or installed or to maintain, repair or insure the Project. The City will comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project, as to the manner and use or the condition of the Project. The City will also comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried by the provisions of **Article VII**. The City will pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the City to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the City will have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer and during such contest or review, the City may refrain from complying therewith, if the City furnishes, on request, to the Trustee, at the City's expense, indemnity satisfactory to the Trustee.

**Section 3.04. Inspection.** The Trustee will have the right at all reasonable times and with reasonable notice during business hours to enter into and upon the Project for the purpose of inspecting the Project.

## ARTICLE IV

### RENT

**Section 4.01. Basic Rent.** The City will promptly pay all Basic Rent, subject to **Sections 3.04** and **4.03**, in lawful money of the United States of America on each Basic Rent Payment Date in such amounts as are described on **Exhibit A**. A portion of each Basic Rent Payment is paid as, and represents payment of, interest as set forth on **Exhibit A** (such interest to be attributable to the various principal components in accordance with the per annum rates set forth on **Exhibit A**).

To provide for the timely payment of Basic Rent, the City will pay to the Trustee for deposit in the Lease Revenue Fund not less than five Business Days before each Basic Rent Payment Date, the amount due on such Basic Rent Payment Date.

The City will, in accordance with the requirements of law and its normal budgeting procedures, fully budget and appropriate sufficient funds for the current Fiscal Year to make the Rent Payments scheduled to come due during the Lease Term, and to meet its other obligations for the Lease Term, and such funds will not be expended for other purposes.

**Section 4.02. Supplemental Rent.** The City will pay, subject to **Sections 3.04** and **4.03**, as Supplemental Rent (a) all Impositions (defined in **Article VI**); (b) all amounts required under **Sections 4.04** or **4.05** and all other payments of whatever nature that the City has agreed to pay or assume under this Lease; (c) all expenses, including attorneys' fees and expenses to the extent permitted by law, incurred in connection with the enforcement of any rights under this Lease or the Site Lease by the Trustee; (d) all fees, charges and expenses of the Trustee as further provided in **Section 4.06**; and (e) any payments required to be made pursuant to the Tax Compliance Agreement. Amounts required to be paid under this Section will be paid directly to the person or entity owed.

**Section 4.03. Advances.** In the event the City will fail to either maintain the insurance required by this Lease or keep the Project in good repair, the Trustee may, but will be under no obligation to, purchase the required insurance and pay the cost of the premiums therefor and maintain and repair the

Project and pay the cost thereof. All amounts so advanced by the Trustee will constitute Supplement Rent, and the City covenants and agrees to pay such amounts so advanced by the Trustee with interest thereon from the due date until paid at a rate per annum equal to the prime rate of the Trustee plus 2% or the maximum amount permitted by law, whichever is less.

**Section 4.04. Credit Against Basic Rent Payment Obligation.** The City will receive credit against its obligation to pay the Interest Portion or Principal Portion of Basic Rent to the extent moneys are on deposit in the Lease Revenue Fund and are available to pay the Interest Portion or the Principal Portion of Basic Rent represented by the Certificates.

**Section 4.05. Net Lease.** This Lease is intended to be triple net to the Trustee, subject to Section 4.04, and the obligations of the City to make payment of the Rent Payments and to perform and observe the other covenants and agreements contained herein will be absolute and unconditional in all events without abatement, diminution, deduction, setoff or defense, for any reason, including any failure of the Project to be acquired, constructed or installed, any defects, malfunctions, breakdowns or infirmities in the Project or any accident, condemnation or unforeseen circumstances.

**Section 4.06. Obligations Unconditional.** The obligations of the City under this Lease to pay Rent during the Lease Term on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the Trustee's title to the Project or to any part thereof is defective or non-existent, and notwithstanding any damage to, loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the City's use thereof, the eviction or constructive eviction of the City, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Trustee's legal organization or status, or any default of the Trustee hereunder, and regardless of the invalidity of any action of the Trustee, and regardless of the invalidity of any portion of this Lease, and the City hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the City therefrom.

**Section 4.07. Compensation of the Trustee.** The City will, from time to time, upon the written request of the Trustee, (a) pay to the Trustee reasonable compensation for its services as agreed to by the City and the Trustee from time to time (which compensation will not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and (b) reimburse the Trustee for all reasonable advances and expenditures, including but not limited to, advances to and reasonable fees and expenses of independent appraisers, accountants, consultants, counsel, agents and attorneys or other experts employed by it in the exercise and performance of its powers and duties hereunder. Compensation under this Section (except the initial fee which is included in Costs of Issuance) is to be paid as Supplemental Rent as set forth in Section 4.02. The Trustee will have a first lien against the Trust Estate for its reasonable costs, fees, expenses and advancements hereunder.

**Section 4.08. Increased Basic Rent.** Notwithstanding any other provision of this Lease, the Trustee and the City may enter into a Supplemental Lease or Supplemental Leases that increase the amount of Basic Rent payable by the City on any Basic Rent Payment Date to provide funds to pay the costs of (a) repairing, replacing or restoring the Project, (b) improving, upgrading or modifying the Project, (c) additional improvements to the Project or the acquisition of additional Project Site to be

included in the Project or the acquisition, purchase construction or installation of additions to or expansions or remodeling or modification of the Project, and (d) refunding any or all of the Certificates. Each such Supplemental Lease will include an amended **Exhibit A** reflecting separately the Principal Portion and the Interest Portion of Basic Rent allocable to the original Lease and to each Supplemental Lease due on each Basic Rent Payment Date as well as the total Basic Rent on each Basic Rent Payment Date.

**Section 4.09. Obligations Under the Declaration of Trust.** The City agrees that, whenever the Declaration of Trust by its terms imposes a duty or obligation upon the City, such duty or obligation shall be binding upon the City to the same extent as if the City were an express party to the Declaration of Trust, and the City shall perform or cause to be performed all covenants and agreements required on the part of the City under the Declaration of Trust, and shall deliver to the Trustee all reports, opinions and other documents required by the Declaration of Trust to be submitted to the Trustee at the times required by the Declaration of Trust.

## ARTICLE V

### ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE IMPROVEMENTS

**Section 5.01. Acquisition, Construction and Installation.** The City represents, warrants, covenants and agrees as follows:

(a) It has entered into or will enter into Construction Agreements providing for the acquisition, construction and installation of the Project in accordance with the plans and specifications or will construct and install the Project with City employees in accordance with the plans and specifications;

(b) It will cause the acquisition, construction and installation of the Project to be completed with all reasonable dispatch in accordance with the applicable provisions of this Lease;

(c) All contracts entered into or to be entered into by the City relating to such work will be in accordance with all applicable requirements of the laws of the State and will have the performance bonds required by **Section 7.01(e)**;

(d) It has obtained or will obtain all necessary or required permits, licenses, consents and approvals that are material for the purchase, construction, installation, operation and maintenance of the Project and will comply with all lawful requirements of any governmental body regarding the use or condition of the Project, whether existing or later enacted or foreseen or unforeseen or whether involving any change in governmental policy or requiring structural or other change to the Project and irrespective of the cost of so complying;

(e) It will pay all fees, costs and expenses incurred in completing the Project or, to the extent there is money in the Project Fund available therefor, will request the Trustee to make such payments from the Project Fund in the manner hereinafter and in the Declaration of Trust provided; and

(f) It will ask, demand, sue for and use its best efforts to recover and receive such sums of money, debts or other demand to which it may be entitled under any contract, order, receipt, guaranty, warranty, writing or instruction in connection with the purchase, construction and installation of the Project, and it will use its best efforts, to the extent economically reasonable, to enforce the provisions of any contract, agreement, obligation, bond or other security in connection therewith, and any such amounts

received in connection with the foregoing, after deduction of expenses incurred in recovering such amounts, will be paid to the Trustee for deposit in the Project Fund if the Completion Date has not occurred or for deposit in the Lease Revenue Fund Account if the Completion Date has occurred.

If the purchase, construction and installation of the Project or any portion thereof is delayed or fails to occur for any reason, there will be no diminution in or postponement of the payments to be made by the City hereunder.

The Trustee is not the agent or representative of the City, and the City is not the agent of the Trustee, and this Lease will not be construed to make the Trustee liable to materialmen, contractors, subcontractors, craftsmen, laborers or others for goods or services delivered by them in connection with the Project, or for debts or claims accruing to the aforesaid parties against the City. This Lease will not create any contractual relation either expressed or implied between the Trustee and any materialmen, contractors, subcontractors, craftsmen, laborers or any other person supplying any work, labor or materials in connection with the Project. Notwithstanding anything herein or in the Declaration of Trust to the contrary, during the Lease Term, the Trustee will not be deemed to exercise control over or be an operator or owner of the Project and will not be responsible or liable for the operation, use and maintenance of the Project.

**Section 5.02. Payment for Construction of the Project .** In compliance with **Section 6.04** of the Declaration of Trust, costs and expenses of every nature incurred in the acquisition, construction or installation of the Project that qualify as Costs of Project will be paid by the Trustee from the Project Fund upon receipt by the Trustee of a completed request of the City signed by the Authorized Representative of the City and, except for requisitions for Costs of Issuance, the Architect and containing the statements, representations and certifications set forth in the form of such request attached to the Declaration of Trust as **Exhibit B**.

In making disbursements for Costs of the Project, the Trustee will be entitled to conclusively rely upon each written requisition certificate executed by the Authorized Representative of the City without inquiry or investigation. It is understood that the Trustee will *not* make any inspections of the Project nor any improvements thereon, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise any phase of the construction or installation of the Project. The approval of each requisition certificate by the Authorized Representative of the City will constitute unto the Trustee an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed.

**Section 5.03. Completion Date; Excess Funds.** The Completion Date will be evidenced to Trustee upon receipt by the Trustee of a certificate signed by the Authorized Representative of the City (the "**Completion Certificate**") stating (a) the date on which the Project was substantially completed, (b) that all other facilities necessary in connection with the Project have been purchased, constructed and installed, (c) that the Project and such other facilities have been purchased, constructed, made and installed in accordance with the plans and specifications therefor and in conformance with all applicable zoning, planning, building, environmental and other similar governmental regulations, (d) that, except for Costs of the Project described in clause (e), all Costs of the Project have been paid, and (e) the amounts, if any, to be retained in the Project Fund for the payment of Costs of the Project, if any, not yet due or Costs of the Project whose liability the City is contesting, and amounts that otherwise should be retained and the reasons they should be retained. The Completion Certificate may state that it is given without prejudice to any rights of the City that then exist or may subsequently come into being against third parties. Any amounts remaining in the Project Fund that are not needed to pay any remaining Costs of the Project will be transferred by the Trustee without further authorization to the Lease Revenue Fund.

**Section 5.04. Warranties.** The Trustee hereby assigns to the City for and during the Lease Term, all of its interest in all warranties, guarantees or other contract rights against any architect, contractor, subcontractor or supplier, expressed or implied, issued on or applicable to the Project, and the Trustee hereby authorizes the City to obtain the customary services furnished in connection with such warranties, guarantees or other contract rights at the City's expense. The City's sole remedy for the breach of such warranties, guarantees or other contract rights will be against any architect, contractor, subcontractor or supplier, and not against the Trustee, nor will such matter have any effect whatsoever on the rights of the Trustee with respect to this Lease, including the right to receive full and timely Basic Rent Payments and Supplemental Rent Payments. The City expressly acknowledges that the Trustee does not make nor has it made any representation or warranty whatsoever as to the existence or availability of such warranties, guarantees or other contract rights of the manufacturer or supplier of any portion of the Project.

**Section 5.05. DISCLAIMER OF WARRANTIES.** THE TRUSTEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT WILL THE TRUSTEE BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROJECT OR ANY PART THEREOF.

**Section 5.06. Deficiency of Project Fund.** If the Project Fund is insufficient to pay fully all Costs of the Project and to complete fully the Project lien free, the City will pay, in cash, the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials and services as the same becomes due. The Trustee is not obligated to pay and will not be responsible for any such deficiency, and the City will save the Trustee whole and harmless from any obligation to pay such deficiency. The City's obligation to pay any such deficiency will be limited to its current budgeted appropriations for the Project, and the City will have no obligation to appropriate additional funds therefor and may amend the Project to reduce or eliminate such deficiency.

## ARTICLE VI

### IMPOSITIONS

**Section 6.01. Impositions.** The City will bear, pay and discharge, before the delinquency thereof, as Supplemental Rent, all taxes and assessments, general and special, if any, that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, that if not paid when due would impair the security of the Trustee or encumber the Project (all of the foregoing being herein referred to as "**Impositions**").

**Section 6.02. Contest of Impositions.** The City will have the right, in its own name or in the Trustee's name, to contest the validity or amount of any Imposition that the City is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least ten days before the contested Imposition becomes delinquent and may permit the Imposition so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Trustee notifies the

City that, in the Opinion of Counsel, by nonpayment of any such items the interest of the Trustee in the Project will be endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Trustee with full security against any loss that may result from nonpayment in form satisfactory to the Trustee. The Trustee agrees to cooperate with the City in connection with any and all administrative or judicial proceedings related to Impositions. The City will hold the Trustee whole and harmless from any costs and expenses the Trustee may incur with respect to any Imposition.

## ARTICLE VII

### INSURANCE; INDEMNITY

**Section 7.01. Insurance Required.** The City will, during the Lease Term, cause the Project to be kept continuously insured against such risks customarily insured against for facilities such as the Project and will pay (except as otherwise provided herein), as the same become due, all premiums in respect thereof, such insurance to include the following policies of insurance:

(a) Insurance insuring the Project against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount not less than the Principal Portion of the Certificates then Outstanding and issued by such insurance company or companies authorized to do business in the State as may be selected by the City. The policy or policies of such insurance will name the City and the Trustee as insureds, as their respective interests may appear. All proceeds from such policies of insurance will be applied as provided in **Article IX**. During acquisition, construction and installation of the Project, the City will cause to be provided, insofar as the Project are concerned, the insurance required by subparagraph (b) below in lieu of the insurance required by this **Section 7.01(a)** to the extent appropriate.

(b) To the extent appropriate, during the acquisition, construction and installation of the Project and in lieu of the insurance required in **Section 7.01(a)**, builder's risk-completed value insurance insuring the Project against fire, lightning and all other risks covered by the extended coverage endorsement then in use in the State to the full insurable value of the Project (subject to reasonable loss deductible clauses) issued by such insurance company or companies authorized to do business in the State as may be selected by the City. Such policy or policies of insurance will name the City and the Trustee as insureds, as their respective interests may appear, and all payments received under such policy or policies by the City will be paid over to the Trustee.

(c) Comprehensive general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the City and the Trustee are named as insureds, in an amount not less than \$500,000 combined single limit for bodily injuries and property damage.

(d) Workers' compensation and unemployment coverages to the extent, if any, required by the laws of the State.

(e) Performance and labor and material payment bonds with respect to the Construction Agreements in the full amount of the Construction Agreements from surety companies qualified to do business in the State.

Not less than 15 days prior to the expiration dates of the expiring policies, originals or copies of the policies required by this **Section 7.01** or certificates evidencing such insurance will be delivered by

the City to the Trustee. All policies of such insurance, and all renewals thereof, will contain a provision that such insurance may not be cancelled by the issuer thereof without at least 30 days' written notice to the City and the Trustee. Not less than annually, the City will provide a current certificate evidencing that the City is in compliance with the requirements of this Section to the Trustee.

Nothing in this Lease will be construed as preventing the City from satisfying the insurance requirements herein set forth by using blanket policies of insurance or self-insurance provided each and all of the requirements and specifications of this Lease respecting insurance are complied with.

The City may elect to be self-insured for all or any part of the foregoing requirements of this **Section 7.01** if (i) the City annually obtains a written evaluation with respect to such self-insurance program from an individual or firm selected by the City and acceptable to the Trustee qualified to survey risks and to recommend insurance coverage for entities engaged in operations similar to those of the City and having a favorable reputation for skill and experience in making such surveys and recommendations (an "**Insurance Consultant**"), (ii) the evaluation is to the effect that the self-insurance program is sound, (iii) unless the evaluation states that such reserves are not necessary, the City maintains adequate reserves for the self-insurance program, and (iv) in the case of workers' compensation, adequate reserves created by the City for such self-insurance program are maintained in such amount and manner as are acceptable to the State. The City will pay any fees and expenses of such Insurance Consultant in connection therewith.

**Section 7.02. Enforcement of Contract and Surety Bonds.** In the event of material default of any contractor or subcontractor under a Construction Agreement or any other contract made in connection with the acquisition, construction and installation of the Project, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the City will promptly proceed, either separately or in conjunction with others, to pursue diligently the remedies of the City against the contractor or subcontractor in default and against each surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the City of any amounts theretofore paid by the City not previously reimbursed to the City for correction or remedying of the default that gave rise to the proceedings against the contractor or subcontractor or surety, will be paid to the Trustee for deposit in the Project Fund if received before the Completion Date and, if such funds are received after the Completion Date, for deposit in the Lease Revenue Fund to be used solely for the purpose of paying Basic Rent under this Lease.

**Section 7.03. Release and Indemnification.** To the extent permitted by law, the City will indemnify, protect, hold harmless, save and keep the Trustee harmless from and against any and all liability, obligation, loss, claim, tax (other than income taxes or other taxes on or attributable to Rent Payments, if any, that are received by the Trustee in its individual capacity) and damage whatsoever and all expenses in connection therewith (including, without limitation, attorneys' fees and expenses) that are not caused by the gross negligence or willful misconduct of the Trustee, its agents, directors, attorneys or employees arising out of or as the result of (a) the entering into of the Site Lease, this Lease or the Declaration of Trust, (b) the acquisition, construction and installation of the Project, (c) injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Lease Term, and/or (d) the breach of any covenant by the City herein or any material misrepresentation by the City contained herein; provided that the City will have the right to conduct the Trustee's defense through counsel designated by the City and approved by the Trustee, which approval will not be unreasonably withheld and, provided further, that Trustee will be entitled to retain separate counsel, at the expense of the City, should counsel selected by the City fail to actively and competently pursue a defense. The indemnification arising under this Section will continue in full force

and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease or the Site Lease and the Declaration of Trust for any reason.

## ARTICLE VIII

### COVENANTS OF THE CITY

**Section 8.01. Maintenance and Modification of Project by the City.** The City will at its own expense (a) keep the Project in a safe condition, (b) with respect to the Project, comply with all applicable health and safety standards and all other industrial requirements or restrictions enacted or promulgated by the State, or any political subdivision or agency thereof, or by the government of the United States of America or any agency thereof, and (c) keep the Project in good repair and in good operating condition and make from time to time all necessary repairs thereto and renewals and replacements thereof; provided, however, that the City will have no obligation to operate, maintain, preserve, repair, replace or renew any element or unit of the Project the maintenance, repair, replacement or renewal of which becomes uneconomical to the City because of damage, destruction or obsolescence, or change in economic or business conditions, or change in government standards and regulations. The City will not permit or suffer others to commit a nuisance in or about the Project or itself commit a nuisance in connection with its use or occupancy of the Project. The City will pay all costs and expenses of operation of the Project.

The City may, also at its own expense, make from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes and that do not materially impair the structural strength or effective use, or materially decrease the value, of the Project. All additions, modifications or improvements made by the City pursuant to the authority of this Section will (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be pursued to completion with due diligence and (c) when completed, be deemed a part of the Project.

During the Lease Term, the Project will be used by the City only for the purpose of performing essential governmental or proprietary functions of the City consistent with the permissible scope of the City's authority.

**Section 8.02. Tax Covenants.** The City covenants and agrees that (a) it will comply with the provisions of the Tax Certificate and with all applicable provisions of the Code, including Sections 103 and 141 through 150, necessary to maintain the exclusion from gross income for federal income tax purposes of the Interest Portion of the Basic Rent and (b) it will not use or permit the use of any proceeds of Certificates or any other funds of the City nor take or permit any other action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the Interest Portion of the Basic Rent. The City will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the Interest Portion of the Basic Rent will remain excluded from gross income for federal income tax purposes, to the extent any such actions can be taken by the City.

**Section 8.03. The City's Continuing Existence.** The City will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

**Section 8.04. Continuing Disclosure.** The City hereby covenants and agrees that it will comply and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any

other provision of this Lease, failure of the City to comply with the Continuing Disclosure Agreement will not be considered a default or an Event of Default under this Lease. The Trustee may, however, pursuant to the Declaration of Trust may (and, at the request of the Owners of Certificates of at least 25% aggregate principal amount of Outstanding Certificates and if indemnified to its satisfaction, will) or any Owners of Certificates may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Agreement.

## ARTICLE IX

### CASUALTY AND CONDEMNATION

**Section 9.01. Damage, Destruction and Condemnation.** The City will bear the risk of loss with respect to the Project during the Lease Term. If (a) the Project or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Project or any part thereof will be nonexistent or deficient or taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, the City will cause the Net Proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Project, unless the City has exercised its option to purchase the Trustee's interest in the Project by making payment of the Purchase Price as provided herein. Any balance of the Net Proceeds remaining after such work has been completed will be paid to the City and will be held and appropriated by the City for the exclusive purpose of paying Rent under this Lease.

If the City determines that the repair, restoration, modification or improvement of the Project is not economically feasible or in the best interest of the City, then, in lieu of making such repair, restoration, modification or improvement and if permitted by law, the City will promptly purchase the Trustee's interest in the Project pursuant to **Section 10.01(c)** by paying the Purchase Price. The Net Proceeds will be applied by the City to payment of the Purchase Price. Any balance of the Net Proceeds remaining after paying the Purchase Price will belong to the City.

The City acknowledges the provisions pertaining to eminent domain in **Section 13** of the Site Lease. The Trustee and City agree that the terms of **Section 13** of the Site Lease are and will be incorporated in and made a part of this Lease to the same extent as if set forth in full at this point. This Section will survive the termination of this Lease for any reason.

**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 9.01** and the City has not elected to purchase the Trustee's interest in the Project pursuant to **Section 10.01(c)**, the City will complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if the City makes any payments pursuant to this Section, the City will not be entitled to any reimbursement therefor from the Trustee nor will the City be entitled to any diminution of Rent.

## ARTICLE X

### OPTION TO PURCHASE; PARTIAL PREPAYMENT

**Section 10.01. Purchase Option.** The City will have the option to purchase the Trustee's interest in the Project, upon giving written notice to the Trustee at least 30 days before the date of purchase, at the following times and on the following terms:

(a) On or after \_\_\_\_\_, 201\_\_, upon payment in full of Rent Payments then due hereunder plus a Purchase Price equal to 100% of the remaining Principal Portions of Basic Rent for the Lease Term, plus Interest Portions of Basic Rent accrued to the prepayment date.

(b) Upon deposit of moneys or Government Obligations or both with the Trustee in accordance with **Article X** of the Declaration of Trust in the amount necessary to provide for the Basic Rent Payments until and on, and the Purchase Price calculated as described in (a) above on the Certificates, to the prepayment date, which will be on or after \_\_\_\_\_, 201\_\_.

**Section 10.02. Partial Prepayment.** The City will have the option to prepay the Basic Rent Payments in part, upon giving written notice to the Trustee at least 30 days before the date of such prepayment, at any time on or after March 15, 2013, at the Prepayment Price equal to the Principal Portion of Basic Rent being so prepaid plus the Interest Portion of Basic Rent accrued thereon to such Basic Rent Payment Date.

The Principal Portion of Basic Rent prepaid pursuant to the provisions of this **Section 10.02** will be in integral multiples of \$5,000 and will be credited against such Basic Rent Payments as shall be determined by the City in its sole and absolute discretion. Upon any partial prepayment, the amount of each Interest Portion of Basic Rent coming due thereafter will be reduced by the amount of such Interest Portion attributable to such prepaid Principal Portion determined by applying the annual interest rate corresponding to such prepaid Principal Portion as shown on **Exhibit A**.

**Section 10.03. Determination of Fair Rent and Purchase Price.** The City hereby agrees and determines that the Rent hereunder during the Lease Term represents the fair value of the use of the Project and that the Purchase Price required to exercise the City's option to purchase the Trustee's interest in the Project pursuant to **Section 10.01** represents, as of the end of the Lease Term, the fair Purchase Price of the Project. The City hereby determines that the Rent does not exceed a reasonable amount so as to place the City under an economic practical compulsion to renew this Lease or to exercise its option to purchase the Project hereunder. In making such determinations, the City has given consideration to the Costs of the Project, the uses and purposes for which the Project will be employed by the City, the benefit to the City by reason of the acquisition, construction, equipping, making and installation of the Project and the use and occupancy of the Project pursuant to the terms and provisions of this Lease and the City's option to purchase the Project. The City hereby determines and declares that the acquisition, construction and installation of the Project and the leasing of the Project pursuant to this Lease will result in a Project of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition, construction and installation of the Project were performed by the City other than pursuant to this Lease. The City hereby determines and declares that the Lease Term does not exceed the useful life of the Project.

**Section 10.04. Conveyance of Title.** The Trustee hereby agrees to convey, title to the Project, or an appropriate portion thereof, in consideration of the purchase price as set forth in **Section 10.01**, at the expiration of the Lease Term following full payment of the Rent or provision for payment thereof

having been made in accordance with the provisions of **Article X** of the Declaration of Trust and full payment of all Supplemental Rent.

## **ARTICLE XI**

### **ASSIGNMENT**

**Section 11.01. Assignment and Subleasing by the City.** Except as hereinafter expressly provided, none of the City's right, title and interest in, to and under the Site Lease, this Lease and in the Project may be assigned or encumbered by the City for any reason; except that the City may sublease any one or more parts of the Project if the City obtains an Opinion of Special Tax Counsel that such subleasing will not adversely affect the exclusion of the Interest Portion of the Basic Rent Payments from gross income for purposes of federal income taxation. Any such sublease of all or part of the Project will be subject to the Site Lease, this Lease and the rights of the Trustee in, to and under the Site Lease, this Lease and the Project.

## **ARTICLE XII**

### **EVENTS OF DEFAULT**

**Section 12.01. Events of Default Defined.** Any of the following will constitute an "Event of Default" under this Lease:

(a) Failure by the City to make any deposits required by **Section 4.01** to pay Basic Rent in the Lease Revenue Fund at the time specified herein;

(b) Failure by the City to make any Supplemental Rent Payment when due and the continuance of such failure for ten days after written notice specifying such failure and requesting that it be remedied is given to the City by the Trustee;

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in **Sections 12.01(a)** or **(b)** above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to the City by the Trustee, unless the Trustee will agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected;

(d) Any statement, representation or warranty made by the City in or pursuant to the Site Lease or this Lease or the execution, delivery or performance of either of them proves to have been false, incorrect, misleading or breached in any material respect on the date when made;

(e) Any provision of this Lease or the Site Lease at any time for any reason ceases to be valid and binding on the City, or is declared null and void, or the validity or enforceability thereof is contested by the City or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of the Trustee; or

(f) The City becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian for the City or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian for the City or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed by the City or a substantial part of its property and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement, moratorium or any proceeding under bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or against the State and, if instituted against the City, is consented to or acquiesced in by the City or is not dismissed within 60 days.

Failure of the City fails to comply with the Continuing Disclosure Certificate will not be an Event of Default under this Lease.

**Section 12.02. Remedies on Default.** Whenever any Event of Default exists, the Trustee will have the right, without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to the City, the Trustee may declare all Rent payable by the City hereunder to the end of the Lease Term to be due;

(b) With or without terminating this Lease, the Trustee may take possession of the Project (in which event the City will take all actions necessary to authorize, execute and deliver to the Trustee for the remainder of the Trustee's leasehold term under the Site Lease all documents necessary to vest in the Trustee for the remainder of the Trustee's leasehold term under the Site Lease all of the City's interest in the Project), and sell the Trustee's interest in the Project or lease the Project or, for the account of the City, sublease the Project continuing to hold the City liable for the difference between (i) the Rent payable by the City hereunder for the Lease Term, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of the Trustee in exercising its remedies under this Lease, including without limitation all expenses of taking possession, removing, storing, reconditioning, and selling or leasing or subleasing the Project and all brokerage, auctioneers and attorneys' fees and expenses);

(c) The Trustee may terminate any rights the City may have in any moneys held by the Trustee under the Declaration of Trust; and

(d) The Trustee may take whatever action at law or in equity necessary or desirable to enforce its rights in the Project and under this Lease.

**Section 12.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article it will not be necessary to give any notice, other than such notice as may be required in this Article.

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Notices.** All notices, certificates or other communications to be given or to be served upon any party in connection with this Lease will be given in accordance with **Section 12.03** of the Declaration of Trust.

**Section 13.02. Title to Personal Property.** Title to any portion of the Project that constitutes personal property will vest in the City subject to Trustee's rights under this Lease and the Site Lease; provided that title thereto will thereafter immediately and without any action by the City vest in Trustee and the City will immediately surrender possession thereof to Trustee upon (a) any termination of this Lease without the City exercising its option to purchase pursuant to **Section 10.01** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Trustee pursuant to this Section will occur automatically without the necessity of any deed, bill of sale, certificate of title or other instrument of conveyance. Nevertheless, the City will execute and deliver any such instruments as the Trustee may request to evidence such transfer.

**Section 13.03. Security Interest.** To secure the payment of all of the City's obligations under this Lease, to the extent permitted by law, the Trustee retains a security interest in that portion of the Project consisting of personal property or fixtures and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. The City will execute all additional documents, including financing statements, affidavits, notices and similar instruments that are necessary or appropriate to establish and maintain such security interest. The City hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with any security interest granted hereunder.

**Section 13.04. Binding Effect.** This Lease will inure to the benefit of and will be binding upon the Trustee and the City and their respective successors and assigns.

**Section 13.05. Amendments, Changes and Modifications.** This Lease may not be effectively amended, changed, modified, altered or supplemented except with the written consent of the Trustee and the City and as provided in the Declaration of Trust.

**Section 13.06. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

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

**IN WITNESS WHEREOF**, the Trustee and the City have caused this Lease to be executed in their names by their duly authorized representatives the date first above written.

**UNION BANK AND TRUST COMPANY, Trustee**

(SEAL)

By: \_\_\_\_\_  
Assistant Vice President

ATTEST:

By: \_\_\_\_\_  
Authorized Officer

**THE CITY OF LINCOLN, NEBRASKA**

(SEAL)

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

ATTEST:

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

**ACKNOWLEDGMENT**

**STATE OF NEBRASKA**                    )  
  ) **SS.**  
**COUNTY OF LANCASTER**            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010 by Ralene K. Klostermeyer, Assistant Vice President and Trust Officer of Union Bank and Trust Company a Nebraska banking corporation, on behalf of the corporation.

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

(SEAL)

**STATE OF NEBRASKA**                    )  
  ) **SS.**  
**COUNTY OF LANCASTER**            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010 by Christopher J. Beutler, Mayor of the City of Lincoln, Nebraska.

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

(SEAL)

**SCHEDULE 1**

**TO LEASE PURCHASE AGREEMENT DATED [CLOSING DATE], 2010, BETWEEN THE CITY OF LINCOLN, NEBRASKA, AND UNION BANK AND TRUST COMPANY, TO SITE LEASE DATED [CLOSING DATE], 2010, BETWEEN THE CITY OF LINCOLN, NEBRASKA AND UNION BANK AND TRUST COMPANY, TO LEASE PURCHASE AGREEMENT DATED [CLOSING DATE], 2010, BETWEEN UNION BANK AND TRUST COMPANY AND THE CITY OF LINCOLN, NEBRASKA, AND TO DECLARATION OF TRUST DATED [CLOSING DATE], 2010 BY UNION BANK AND TRUST COMPANY.**

**THE PROJECT SITE**

**Lots 4, 5, 6, 7, 8, 9, and 10, Block 4 and Lot 9, Block 7, Union Pacific Addition  
Lincoln, Lancaster County, Nebraska**

**EXHIBIT A**

TO LEASE PURCHASE AGREEMENT DATED [CLOSING DATE], 2010,  
BETWEEN THE CITY OF LINCOLN, NEBRASKA, AND UNION BANK AND  
TRUST COMPANY.

**SCHEDULE OF BASIC RENT PAYMENTS**

<u>Lease Payment Date</u>	<u>Principal Installment Due</u>	<u>Interest Installment Due</u>	<u>Total Amount Due</u>
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<b>TOTAL</b>	<b><u>[\$[Principal Amount].00]</u></b>	<b>\$</b>	<b>\$</b>
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**TAX COMPLIANCE AGREEMENT**

**Dated [Closing Date], 2010**

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**Between**

**THE CITY OF LINCOLN, NEBRASKA**

**and**

**UNION BANK AND TRUST COMPANY**  
**Trustee**

---

**[\$[Principal Amount]**  
**The City of Lincoln Nebraska**  
**Certificates of Participation**  
**Series 2010B**

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**TAX COMPLIANCE AGREEMENT**

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**Exhibit A** - Debt Service Schedule and Proof of Yield

**Exhibit B** - IRS Form 8038-G

**Exhibit C** – Resolution of Official Intent

**Exhibit D** - Description of Property Comprising the Financed Property

## TAX COMPLIANCE AGREEMENT

**THIS TAX COMPLIANCE AGREEMENT** (the “**Tax Agreement**”), dated [Closing Date], 2010, is between **THE CITY OF LINCOLN, NEBRASKA**, a city of the primary class and political subdivision duly organized and validly existing under the laws of the State of Nebraska (the “**Issuer**”) and **UNION BANK AND TRUST COMPANY**, a state banking association duly organized and existing under the laws of the State of Nebraska, as Trustee (the “**Trustee**”);

### RECITALS

1. This Tax Agreement is being executed and delivered in connection with the delivery by the Issuer of \$[Principal Amount] principal amount of Certificates of Participation, Series 2010B (the “**Certificates**”) evidencing proportionate interests in rental payments to be made pursuant to a Lease Purchase Agreement dated [Closing Date], 2010 (the “**Lease**”) between the City, as lessee, and Union Bank and Trust Company, as lessor, under a Declaration of Trust dated [Closing Date], 2010 (the “**Declaration of Trust**”) executed and delivered by the Trustee for the purposes described in this Tax Agreement, the Lease, and the Declaration of Trust. The execution and delivery of the Lease and Certificates and the approval of the Declaration of Trust have been authorized by the City pursuant to Ordinance No. \_\_\_\_\_ passed by the Council on October 4, 2010 and approved by the Mayor on October \_\_\_, 2010.

2. The Internal Revenue Code of 1986, as amended (the “**Code**”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “**Regulations**”), impose certain limitations on the uses and investment of the Certificate proceeds and of certain other money relating to the Certificates and set forth the conditions under which the Interest Portions of Basic Rent Payments represented by the Certificates will be excluded from gross income for federal income tax purposes.

3. The Issuer and the Trustee are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Certificate proceeds and the property financed or refinanced with those proceeds and the Investment of the Certificate proceeds and of certain other related money, in order to establish and maintain the exclusion of the Interest Portions of Basic Rent Payments represented by the Certificates from gross income for federal income tax purposes and to provide guidance for complying with the arbitrate rebate portions of the Code

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer and the Trustee represent, covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Declaration of Trust and the Lease, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150, inclusive, and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

**“Adjusted Gross Proceeds”** means the Gross Proceeds of the Certificates reduced by amounts (a) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (b) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (c) representing grant repayments or sale or Investment proceeds of any purpose Investment.

**“Available Construction Proceeds”** means the sale proceeds of the Certificates, increased by (a) Investment earnings on the sale proceeds, (b) earnings on amounts in a reasonably required reserve or replacement fund allocable to the Certificates but not funded from the Certificates, and (c) earnings on such earnings, reduced by sale proceeds (1) in any reasonably required reserve fund or (2) used to pay execution and delivery costs of the Certificates. However, Available Construction Proceeds do not include Investment earnings on amounts in a reasonably required reserve or replacement fund after the earlier of (i) the second anniversary of the Issue Date or (ii) the date the Financed Property is substantially completed.

**“Basic Rent”** means the basic rent payment required by the Lease, comprised of a Principal Portion and an Interest Portion.

**“Basic Rent Payment”** means a payment of Basic Rent.

**“Bona Fide Debt Service Fund”** means a fund, which may include Certificate proceeds, that (a) is used primarily to achieve a proper matching of revenues with Basic Rent Payments within each Certificate Year; and (b) is depleted at least once each Certificate Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Certificate Year, or (2) one-twelfth of the Basic Rent Payments on the Certificates for the immediately preceding Certificate Year.

**“Certificate”** or **“Certificates”** means any Certificate or Certificates described in the recitals, authenticated and delivered under the Declaration of Trust.

**“Certificate Year”** means each one-year period (or shorter period for the first Certificate Year) ending March 15 or another one-year period selected by the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Computation Date”** means each date on which arbitrage rebate for the Certificates is computed. The Issuer may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than five years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and
- (c) the date the last Certificate is discharged is the final Computation Date.

The Issuer selects \_\_\_\_\_, 2015 as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

**“Declaration of Trust”** means the Declaration of Trust dated [Closing Date], 2010 as originally executed by the Trustee, as amended and supplemented in accordance with its provisions, pursuant to which the Certificates are delivered.

**“Financed Property”** means any of the property financed or refinanced with the proceeds of the Certificates as described on **Exhibit D**.

**“Gross Proceeds”** means (a) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Certificates, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds or other Investment proceeds), (c) any amounts held in a sinking fund for the Certificates, (d) any amounts held in a pledged fund or reserve fund for the Certificates, and (e) any other replacement proceeds. Specifically, Gross Proceeds includes (but is not limited to) amounts held in the following funds and accounts:

Specifically, Gross Proceeds includes (but is not limited to) amounts held in the following funds and accounts:

- (1) Project Fund.
- (2) Lease Revenue Fund.
- (3) Rebate Fund (to the extent funded with sale proceeds or investment proceeds of the Certificates).

**“Guaranteed Investment Contract”** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**“Investment”** means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

**“Interest Portion”** means the portion of each Basic Rent Payment that represents the payment of interest as provided by the Lease.

**“IRS”** means the United States Internal Revenue Service.

**“Issue Date”** means [Closing Date], 2010.

**“Issuer”** means The City of Lincoln, Nebraska and its successors and assigns, or any body, agency or instrumentality of the State of Nebraska succeeding to or charged with the powers, duties and functions of the Issuer.

**“Lease”** means the Lease Purchase Agreement dated [Closing Date], 2010 between the City and the Trustee, as originally executed by the City and Trustee, and amended and supplemented in accordance with the provisions thereof and of the Declaration of Trust.

**“Management Agreement”** means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Property, such as a contract to manage the entire Financed Property or a portion of the Financed Property. Contracts for services that are solely incidental to the primary governmental function of the Financed Property (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

**“Measurement Period”** means, with respect to each item of property financed as part of the Financed Property, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Certificates or (2) the expected economic useful life of the property.

**“Minor Portion”** means the lesser of \$100,000 or 5% of the sale proceeds of the Certificates.

**“Net Proceeds”** means the sale proceeds of the Certificates (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

**“Non-Qualified Use”** means use of Certificate proceeds or the Financed Property in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Certificate proceeds or Financed Property are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Property, will constitute use under Regulations § 1.141-3.

**“Non-Qualified User”** means any person or entity other than a Qualified User.

**“Opinion of Special Tax Counsel”** means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Special Tax Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the Interest Portions of Basic Rent Payments represented by the Certificates from gross income for federal income tax purposes.

**“Owner”** means (a) the registered owner of any Certificate and (b) any Person which (1) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Certificate (including persons holding a Certificate through nominees, depositories or other intermediaries), or (2) is treated as the owner of any Certificate for federal income tax purposes.

**“Person”** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Principal Portion”** means the principal portion of the Basic Rent Payments as provided by the Lease.

**“Project”** means the Financed Property.

**“Qualified Use Agreement”** means any of the following:

(a) A lease or other short-term use by members of the general public who use the Financed Property on a short-term basis in the ordinary course of the Issuer's governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Property under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Property was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Property under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Property was not constructed for a principal purpose of providing the property for use by that person.

**“Qualified User”** means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

**“Reasonable Retainage”** means Gross Proceeds retained by the Issuer for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed (a) for purposes of the 18-month spending test, 5% of net sale proceeds of the Certificates on the date 18 months after the Issue Date, or (b) for purposes of the 2-year spending test, 5% of the Available Construction Proceeds as of the end of the 2-year spending period.

**“Rebate Analyst”** means Chris D. Berens, CPA, P.C., or any successor Rebate Analyst selected pursuant to this Tax Agreement.

**“Regulations”** means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Certificates.

**“Special Tax Counsel”** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Issuer.

**“State”** means the State of Nebraska.

“**Tax Agreement**” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“**Transcript**” means the Transcript of Proceedings relating to the authorization and issuance of the Certificates.

“**Trustee**” means Union Bank and Trust Company, Lincoln, Nebraska, and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as Trustee under the Declaration of Trust

“**Underwriter**” means Ameritas Investment Corp., underwriter of the Certificates.

“**Yield**” means Yield on the Certificates, computed under Regulations § 1.148-4, and Yield on an Investment, computed under Regulations § 1.148-5.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the Issuer.** The Issuer represents and covenants as follows:

(a) **Organization and Authority.** The Issuer (1) is a city of the primary class and political subdivision duly organized and validly existing under the laws of the State, and (2) has lawful power and authority to execute and deliver the Lease, to approve the issuance of the Certificates for the purposes set forth in the Lease, to adopt the Ordinance and to enter into, execute and deliver this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has duly (A) passed the Ordinance and (B) authorized its officers to execute and deliver the Lease and this Tax Agreement.

(b) ***Tax-Exempt Status of Certificates–General Representation and Covenants.*** In order to maintain the exclusion of the Interest Portions of Basic Rent Payments from gross income for federal income tax purposes, the Issuer (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Certificate proceeds, other money held under the Declaration of Trust, or other funds of the Issuer, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Property in a manner that would cause the Lease or any Certificate to become a “private activity bond” as defined in Code § 141.

(c) ***Governmental Obligations–Use of Financed Property.*** Throughout the Measurement Period, all of the Financed Property is expected to be owned by the Issuer or another Qualified User. Throughout the Measurement Period no portion of the Financed Property is expected to be used in a Non-Qualified Use. Throughout the Measurement Period the Issuer will not permit any Non-Qualified Use of the Financed Property without first obtaining an Opinion of Special Tax Counsel.

(d) ***Governmental Obligations–Private Security or Payment.*** As of the Issue Date the Issuer expects that none of the Principal Portion or Interest Portion represented by the Certificates will be (under the terms of the Certificates, the Lease or any underlying arrangement) directly or indirectly:

(1) secured by (A) any interest in property used or to be used for a private business use, or (B) any interest in payments in respect of such property; or

(2) derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of the foregoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The Issuer will not permit any private security or payment with respect to the Lease or the Certificates without first obtaining an Opinion of Special Tax Counsel.

(e) **No Private Loan.** Not more than 5% of the Net Proceeds of the Certificates will be loaned directly or indirectly to any Non-Qualified User.

(f) **Management Agreements.** As of the Issue Date the Issuer has no Management Agreements with Non-Qualified Users. During the Measurement Period the Issuer will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining and delivering to the Trustee an Opinion of Special Tax Counsel.

(g) **Leases.** Except for the Lease, as of the Issue Date the Issuer has not entered into any leases of any portion of the Financed Property other than Qualified Use Agreements. During the Measurement Period, the Issuer will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first delivering to the Trustee an Opinion of Special Tax Counsel.

(h) **Limit on Maturity of Certificates.** A list of the assets included in the Financed Property and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit C**. Based on this computation, the “average maturity” of the Certificates of 4.704 years, as computed by Special Tax Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Property .

(i) **Expenditure of Bond Proceeds.**

(1) **Reimbursement of Expenditures; Official Intent.** On January 11, 2010, the Council of the Issuer adopted a resolution declaring the intent of the Issuer to finance the Financed Property with tax-exempt bonds and to reimburse the Issuer for expenditures made for the Financed Property prior to the issuance of those bonds, which was signed by the Mayor of the Issuer on January 14, 2010. A copy of the resolution is attached to this Tax Agreement as **Exhibit C**. No portion of the Net Proceeds of the Certificates will be used to reimburse an expenditure paid by the Issuer more than 60 days prior to the date the resolution was adopted. The Issuer will evidence each allocation of the proceeds of the Certificates to an expenditure in writing. No reimbursement allocation will be made for an expenditure made more than three years before the date of the reimbursement allocation. In addition no reimbursement allocation will be made more than 18 months following the later of (A) the date of the expenditure or (B) the date the Financed Property was placed in service.

(2) **Final Allocation of Bond Proceeds to Expenditures.** The Issuer understands that, under Regulations § 1.148-6(d), the Issuer is required to account for the allocation of Certificate proceeds to Project expenditures (including expenditures made before and after the Issue Date of the Bonds) within 18 months after the later of (A) the date the expenditure is made,

or (B) the date the Project is placed in service, and in any event not later than the date that is 60 days after the fifth anniversary of the Issue Date or the date the Bonds are retired, if earlier (a “**Final Allocation**”). The Issuer will maintain accurate records of all expenditures made for the Project, including the amount, the date paid, a description of the purpose, and the source of funds (whether Bond proceeds or other money) initially allocated to each Project expenditure. Not later than the time limit set forth above, the Issuer will prepare a Final Allocation, showing the allocation of Bond proceeds and other money to all Project costs and identifying the Financed Property, and will maintain the Final Allocation in its books and records in accordance with **Section 5.8**. The Issuer reserves the right to make modifications to the expected allocation of Bond proceeds and other money for purposes of compliance with the limitations on Non-Qualified Use following completion of the Financed Property in accordance with, and within the time limits prescribed in, the Regulations. In the absence of such subsequent allocation, the Bond proceeds will be deemed allocated as shown on **Exhibit D**.

(j) **Registered Certificates.** The Declaration of Trust requires that all of the Certificates will be delivered and held in registered form within the meaning of Code § 149(a).

(k) **Certificates Not Federally Guaranteed.** The Issuer will not take any action or permit any action to be taken which would cause any Certificates to be “federally guaranteed” within the meaning of Code § 149(b).

(l) **IRS Form 8038-G.** Bond Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the Issuer contained in this Tax Agreement or otherwise provided by the Issuer. Bond Counsel will sign the return as a paid preparer following completion and will then deliver copies to the Issuer for execution and for the Issuer’s records. The Issuer agrees to timely execute and return to Bond Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the “as-filed” copy along with proof of filing will be included as **Exhibit B**.

(m) **Hedge Bonds.** At least 85% of the net sale proceeds of the Certificates will be used to carry out the governmental purpose of the Certificates within three years after the Issue Date, and not more than 50% of the proceeds of the Certificates will be invested in Investments having a substantially guaranteed Yield for four years or more.

(n) **Compliance with Future Tax Requirements.** The Issuer understands that the Code and the Regulations may impose new or different restrictions and requirements on the Issuer in the future. The Issuer will comply with such future restrictions that are necessary to maintain the exclusion of the Interest Portions of Basic Rent Payments from gross income for federal income tax purposes.

(o) **Single Issue: No Other Issues.** The Certificates constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the Issuer (1) are being sold within 15 days of the sale of the Certificates, (2) are being sold under the same plan of financing as the Certificates, and (3) are expected to be paid from substantially the same source of funds as the Certificates (disregarding guarantees from unrelated parties, such as bond insurance).

(p) **Interest Rate Swap.** As of the Issue Date, the Issuer has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Certificates. The Issuer will not enter into any such arrangement in the future without obtaining an Opinion of Special Tax Counsel.

(q) **Guaranteed Investment Contract.** As of the Issue Date of the Certificates, the Issuer does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Certificates. The Issuer will be responsible for complying with **Section 4.2(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

(r) **Bank Qualified Tax-Exempt Obligation.** The Certificates are not “qualified tax-exempt obligations” under Code § 265(b)(3).

(s) **Written Policy and Procedures and Bond Compliance Officer.** The Issuer intends for this Tax Agreement to serve as part of its written policies and procedures for purposes of complying with the federal tax law requirements applicable to the Bonds and to supplement any other formal policies and procedures that the Issuer has established. For this purpose, the Issuer has selected the Finance Director as the “Bond Compliance Officer.” The Bond Compliance Officer will be responsible for working with other Issuer officials, departments and administrators and for consulting with Bond Counsel, other legal counsel and outside experts to the extent necessary to carry out the requirements of federal tax law and this Tax Agreement.

**Section 2.2. Representations and Covenants of the Trustee.** The Trustee represents and covenants to the Issuer as follows:

(a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or opinion of Special Tax Counsel, specifically referencing the Certificates and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the Interest Portions of Basic Rent Payments represented by the Certificates from gross income for federal income tax purposes.

(b) The Trustee, acting on behalf of the Issuer, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide the Trustee with such information as it may request in order to determine all matters relating to (a) the Yield on the Certificates as it relates to any data or conclusions necessary to verify that none of the Certificates or the Lease is an “arbitrage bond” within the meaning of Code § 148, and (b) compliance with arbitrage rebate requirements of Code § 148(f). The Issuer will pay all costs and expenses incurred in connection with supplying the foregoing information.

**Section 2.3. Survival of Representations and Covenants.** All representations, covenants and certifications of the Issuer and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Issuer or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the delivery of the Lease and the Certificates, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Certificates.

**ARTICLE III**

**ARBITRAGE CERTIFICATIONS AND COVENANTS**

**Section 3.1. General.** The purpose of this **Article III** is to certify, under Regulations § 1.148-2(b), the Issuer's expectations as to the sources, uses and investment of Certificate proceeds and other money, in order to support the Issuer's conclusion that the Lease and the Certificates are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Issuer is an officer of the Issuer responsible for delivering the Lease and approving the delivery of the Certificates.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations set forth in this **Article III** are based upon and in reliance upon the Issuer's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Issuer's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Issuer set forth in this Tax Agreement are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Purpose of Financing.** The Certificates are being delivered for the purpose of providing funds to (a) finance a portion of the Financed Property and (b) pay certain costs of delivering the Certificates.

**Section 3.4. Funds and Accounts.** The following funds and accounts have been established under the Declaration of Trust:

- (a) Project Fund.
- (b) Lease Revenue Fund.
- (c) Rebate Fund.

**Section 3.5. Amount and Use of Certificate Proceeds.**

(a) **Amount of Certificate Proceeds.** The total proceeds to be received by the Issuer from the sale of the Certificates will be as follows:

Principal Amount	\$[Principal Amount ]
Underwriting Discount	
Accrued Interest	<u>0.00</u>
Total Proceeds Received by Issuer	\$

(b) **Use of Certificate Proceeds.** The Certificate proceeds are expected to be allocated to expenditures as follows:

(1) The accrued interest on the Certificates, if any, will be deposited in the Project Fund and used to pay Interest Portions of Basic Rent Payments represented by the Certificates.

(2) \$\_\_\_\_\_ will be deposited in the Project Fund, of which \$\_\_\_\_\_ will be used to reimburse the Issuer for costs of the Financed Property paid before the Issue Date, \$\_\_\_\_\_ will be used to pay costs of issuance, and the balance will be used to pay costs of the Financed Property.

**Section 3.6. Multipurpose Issue.** The Issuer is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

**Section 3.7. No Advance Refunding.** No proceeds of the Certificates will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

**Section 3.8. No Current Refunding.** No proceeds of the Certificates will be used to pay principal or interest on any other debt obligation.

**Section 3.9. Project Completion.** The Issuer has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the Net Proceeds of the Certificates on the Financed Property. The completion of the Financed Property and the allocation of the Net Proceeds of the Certificates to expenditures will proceed with due diligence. At least 85% of the Net Proceeds of the Certificates will be allocated to expenditures on the Financed Property within three years after the Issue Date.

**Section 3.10. Sinking Funds.** The Issuer is required to make periodic payments in amounts sufficient to pay the Basic Rent Payments represented by the Certificates. Such payments will be deposited into the Lease Revenue Fund. Except for the Lease Revenue Fund, no sinking fund or other similar fund that is expected to be used to pay Basic Rent Payments has been established or is expected to be established. The Lease Revenue Fund is used primarily to achieve a proper matching of revenues with Basic Rent Payments within each Certificate Year, and the Issuer expects that the Lease Revenue Fund will qualify as a Bona Fide Debt Service Fund.

**Section 3.11. Reserve, Replacement and Pledged Funds.**

(a) ***Debt Service Reserve Fund.*** No reserve or replacement fund has been established for the Certificates.

(b) ***No Other Replacement or Pledged Funds.*** None of the Certificate proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Property and that instead have been or will be used to acquire Investments with a Yield greater than the Yield on the Interest Portions of Basic Rent Payments represented by the Certificates. Except for the Lease Revenue Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of Basic Rent Payments if the Issuer encounters financial difficulty.

**Section 3.12. Purpose Investment Yield.** The proceeds of the Certificates will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

**Section 3.13. Purchase Price and Yield.**

(a) ***Offering Prices.*** In the Underwriter's Closing Certificate, the Underwriter has certified that (1) all of the Certificates have been the subject of an initial offering to the public at prices no higher than those shown on the cover page of the official statement plus accrued interest (the "**Offering Prices**"), and (2) the Underwriter expects that at least 10% of each maturity of the Certificates will be

sold to the public at initial offering prices no higher than said Offering Prices. The aggregate initial offering price of the Certificates is \$\_\_\_\_\_.

(b) **Yield.** Based on the Offering Prices, the Yield on the Certificates is \_\_\_\_\_%, as computed by Special Tax Counsel as shown on **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Certificates.

**Section 3.14. Miscellaneous Arbitrage Matters.**

(a) **No Abusive Arbitrage Device.** The Certificates are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) **No Over-Issuance.** The sale proceeds of the Certificates, together with expected investment earnings thereon and other money contributed by the Issuer, do not exceed the cost of the governmental purpose of the Certificates as described above.

**Section 3.15. Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Issuer does not expect that the Certificate proceeds will be used in a manner that would cause the Lease or any Certificate to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

**ARTICLE IV**

**ARBITRAGE INVESTMENT AND REBATE INSTRUCTIONS**

**Section 4.1. Temporary Periods/Yield Restriction.** Except as described below, the Issuer will not invest Gross Proceeds at a Yield greater than the Yield on the Certificates:

(a) **Project Fund.** Certificate proceeds deposited in the Construction Fund (including amounts held for costs of issuance) and Investment earnings on such proceeds may be invested without Yield restriction for three years after the Issue Date. If any unspent proceeds remain in the Construction Fund after three years, such amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Certificates are exempt from the arbitrage rebate requirements of Code § 148.

(b) **Lease Revenue Fund.** To the extent that the Lease Revenue Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(c) **Minor Portion.** In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

## **Section 4.2. Fair Market Value.**

(a) **General.** No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) **Established Securities Market.** Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) **Certificates of Deposit.** The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) **Guaranteed Investment Contracts.** The Issuer will not enter into a Guaranteed Investment Contract without first obtaining an opinion of Bond Counsel.

(e) **Other Investments.** If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Certificates (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

## **Section 4.3. Certain Gross Proceeds Exempt from the Rebate Requirement.**

(a) **General.** A portion of the Gross Proceeds of the Certificates may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Certificates and will not otherwise affect the application of the investment limitations described in **Section 4.1**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.4** applies even if a portion of the Gross Proceeds of the Certificates is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.4**. The Issuer may defer the final rebate Computation Date and the payment of rebate for the Certificates to the extent permitted by Regulations §§ 1.148-7(b)(1) and 1.148-3(e)(2) but only in accordance with specific written instructions provided by the Rebate Analyst.

(b) ***Applicable Spending Exceptions.***

(1) The 2-year spending exception is unavailable for the Certificates because the Issuer does not expect that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the Issuer.

(2) The following optional rebate spending exceptions can apply to the Certificates:

(a) 6-month spending exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c)).

(b) 18-month spending exception (Regulations § 1.148-7(d)).

(3) The Issuer expects to earn approximately \$15,000 in investment earnings on Certificate proceeds in the Project Fund.

(c) ***Special Elections Made with Respect to Spending Exception Elections.*** No special elections are being made in connection with the application of the spending exceptions.

(d) ***Bona Fide Debt Service Fund.*** To the extent that the Lease Revenue Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the fund cannot be taken into account in computing arbitrage rebate (1) with respect to such portion that meets the 6-month or 18-month spending exception, or (2) for a given Bond Year, if the gross earnings on the Lease Revenue Fund for such Bond Year are less than \$100,000. If the average annual Basic Rent Payments does not exceed \$2,500,000, the \$100,000 earnings test may be treated as satisfied in every Bond Year.

(e) ***Documenting Application of Spending Exception.*** At any time prior to the first Computation Date, the Issuer may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the Issuer must continue to comply with **Section 4.4** hereof.

(f) ***General Requirements for Spending Exception.*** The following general requirements apply in determining whether a spending exception is met.

(1) Using Adjusted Gross Proceeds or Available Construction Proceeds to pay Principal Portions of Basic Rent Payments is not taken into account as an expenditure for purposes of meeting any of the spending tests.

(2) The 6-month spending exception generally is met if all Adjusted Gross Proceeds of the Certificates are spent within 6 months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial 6-month period, so long as this amount is spent within 1 year of the Issue Date.

(3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Certificates are spent in accordance with the following schedule:

<b>Time Period After the Issue Date</b>	<b>Minimum Percentage of Adjusted Gross Proceeds Spent</b>
6 months	15%
12 months	60%
18 months (Final)	100%

(4) For purposes of applying the 18-month spending exception only, the failure to satisfy the **final** spending requirement is disregarded if the Issuer uses due diligence to complete the Financed Property and the failure does not exceed the lesser of 3% of the aggregate issue price the Certificates or \$250,000. **No such exception applies for any other spending period.**

(5) For purposes of applying the 18-month spending exception only, the Certificates meet the applicable spending test even if, at the end of the **final** spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months after the Issue Date.

#### **Section 4.4. Computation and Payment of Arbitrage Rebate.**

(a) **Rebate Fund.** The Issuer will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any Investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any Investment loss will be charged to the Rebate Fund.

(b) **Computation of Rebate Amount.** The Issuer will provide the Rebate Analyst Investment reports relating to each fund held by it that contains Gross Proceeds of the Certificates together with copies of Investment reports for any funds containing Gross Proceeds that are held by a party other than the Issuer annually as of the end of each Bond Year and not later than 10 days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Certificates, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Issuer together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the Issuer will, within 55 days after such Computation Date, pay the rebate amount. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount the Issuer will transfer such surplus in the Rebate Fund to the Lease Revenue Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Issuer, any money left in the Rebate Fund will be paid to the Issuer and may be used for any purpose not prohibited by law.

(c) **Rebate Payments.** Within 60 days after each Computation Date, the Issuer will pay to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment

must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center  
Ogden, UT 84201

**Section 4.5. Successor Rebate Analyst.** If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the Issuer desires that a different firm act as the Rebate Analyst, then the Issuer by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will name a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder.

**Section 4.6. Rebate Report Records.** The Issuer will retain copies of each arbitrage rebate report and opinion until 3 years after the final Computation Date.

**Section 4.7. Filing Requirements.** The Issuer will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

**Section 4.8. Survival after Defeasance.** Notwithstanding anything in the Ordinance to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Certificates.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will be effective concurrently with the execution and delivery of the Lease and Certificates and will continue in force and effect until the Basic Rent Payments have been fully paid and the Lease and all such Certificates are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States and the provisions of **Section 5.8** relating to record keeping shall continue in force for the period described therein for records to be retained.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Certificate owners, but only if such amendment is in writing and is accompanied by an Opinion of Special Tax Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause the Interest Portion of any Basic Rent Payment to be included in gross income for federal income tax purposes. No such amendment will become effective until the Issuer and the Trustee receive this Opinion of Special Tax Counsel.

**Section 5.3. Opinion of Special Tax Counsel.** The Issuer and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Special Tax Counsel addressed to

each of them to the effect that the proposed deviation will not adversely affect the exclusion of the Interest Portion of Basic Rent Payments from gross income for federal income tax purposes. The Issuer and the Trustee will comply with any further or different instructions provided in an Opinion of Special Tax Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Lease or the exclusion from gross income of the Interest Portion of Basic Rent Payments.

**Section 5.4. Reliance.** In delivering this Tax Agreement the Issuer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Issuer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Lease and the exclusion from federal gross income of the Interest Portion of Basic Rent Payments.

**Section 5.5. Severability.** If any provision in this Tax Agreement, or in the Lease or in the Certificates is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the Issuer and the Trustee and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the Owners. Nothing in this Tax Agreement or in the Declaration of Trust, the Lease or the Certificates, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the Owners, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

**Section 5.7. Default; Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Owners or the other party or parties to this Tax Agreement pursuant to the terms of the Declaration of Trust, the Lease or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

**Section 5.8. Record Keeping Responsibilities.** The Trustee and the Issuer recognize (a) that investors purchase the Certificates with the expectation that the Interest Portions of Basic Rent Payments is excluded from gross income for federal income tax purposes, (b) that the tax-exempt status of the Interest Portions of Basic Rent Payments depends on the accuracy of the representations and the satisfaction of the covenants contained herein by the Issuer, many of which relate to matters that will occur after the date the Certificates are delivered, and (c) that as part of its ongoing tax-exempt bond audit program the IRS requires that records be created and maintained with respect to the following matters:

- (1) Documentation evidencing expenditure of Certificate proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.
- (2) Documentation evidencing use of the Financed Property by public and private persons (e.g., copies of Management Agreements).
- (3) Documentation evidencing all sources of payment or security for the Certificates.

(4) Documentation pertaining to any Investment of Certificate proceeds (including the purchase and sale of securities, SLGs subscriptions, actual Investment income received from the Investment of proceeds, guaranteed investment contracts, and (if required) rebate calculations).

In addition to the record-keeping duties specifically undertaken by the Trustee, the Issuer has procedures in place or will establish procedures to create and retain these records or to cause these records to be created and retained. Unless otherwise specifically instructed in a written opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Issuer shall retain and maintain these records until three years following the final maturity of (A) the Certificates or (B) any obligation issued to refund the Certificates. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22.

**Section 5.9. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.10. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the State.

**Section 5.11. Electronic Transactions.** The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

*[remainder of page intentionally left blank]*

The parties to this Tax Agreement have caused this Tax Agreement to be duly executed by their duly authorized officers as of the date first stated above.

**THE CITY OF LINCOLN, NEBRASKA**

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

By: \_\_\_\_\_  
Finance Director

The parties to this Tax Agreement have caused this Tax Agreement to be duly executed by their duly authorized officers as of the date first stated above.

**UNION BANK AND TRUST COMPANY, Trustee**

By: \_\_\_\_\_  
Assistant Vice President

**EXHIBIT A**

**DEBT SERVICE SCHEDULE AND PROOF OF YIELD**

**EXHIBIT B**

**IRS FORM 8038-G**

**EXHIBIT C**

**DESCRIPTION OF PROPERTY COMPRISING THE FINANCED PROPERTY**

**GILMORE & BELL, P.C.  
DRAFT #1  
SEPTEMBER 16, 2010**

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**DECLARATION OF TRUST**

by

**UNION BANK AND TRUST COMPANY**

**Dated [Closing Date], 2010**

**[\$[Principal Amount]  
Certificates of Participation  
Series 2010B  
Evidencing a Proportionate Interest  
in Basic Rent  
Payments to be Made by  
The City of Lincoln, Nebraska  
Pursuant to a  
Lease Purchase Agreement**

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## DECLARATION OF TRUST

This **DECLARATION OF TRUST** (the “**Declaration of Trust**”), dated [Closing Date], 2010, is made by **UNION BANK AND TRUST COMPANY**, Lincoln, Nebraska, a state banking corporation organized and existing under the laws of the State of Nebraska, as settlor and trustee (the “**Trustee**”).

### WITNESSETH:

**WHEREAS**, The City of Lincoln, Nebraska (the “**City**”), and the Trustee have entered into a Site Lease dated [Closing Date], 2010 (the “**Site Lease**”), pursuant to which City have leased to the Trustee the real property described on **Schedule 1**, including any existing buildings and facilities thereon (the “**Project Site**”); and

**WHEREAS**, concurrently herewith the Trustee and the City have entered into a Lease Purchase Agreement dated [Closing Date], 2010 (as the same may be amended or supplemented in accordance with its terms from time to time, the “**Lease**”), pursuant to which the Trustee will lease to the City the Project Site and remodel, renovate, equip and furnish such buildings and facilities, together with all replacements, repairs and additions incorporated therein or affixed thereto (collectively, the “**Project**”) and will grant the City an option to purchase the Trustee’s interest in the Project; and

**WHEREAS**, Certificates of Participation substantially in the form of **Exhibit A** (the “**Series 2010B Certificates**”), each such Certificate evidencing a proportionate interest of the registered owner thereof in rights under the Lease, will be executed and delivered hereunder, and the proceeds from the sale of the Series 2010B Certificates will be used to provide the funds to (1) pay the costs of the Project and (2) pay certain costs connected to the execution and delivery of the Series 2010B Certificates; and

**WHEREAS**, the Trustee is obligated to pay the costs of the Project only from funds available from the sale of the Series 2010B Certificates; and

**WHEREAS**, the Trustee is making this Declaration of Trust to set forth the terms of the Series 2010B Certificates and Additional Certificates as hereinafter defined and authorized (the Series 2010B Certificates and the Additional Certificates being hereinafter being referenced collectively as the “**Certificates**”), the security therefor and other provisions respecting the Certificates,

## DECLARATION CLAUSES

**NOW, THEREFORE**, in order to secure the payment of the Principal Portions of Basic Rent Payments, Prepayment Price, and Interest Portions of Basic Rent Payments represented by the Certificates, and to secure the performance and observance of all covenants and conditions therein and herein contained and to declare the terms and conditions upon, and subject to which, the Certificates are intended to be sold, held, secured and enforced, and in consideration of the premises set forth herein and of the purchase and acceptance of the Certificates by the Owners thereof, the Trustee has executed and delivered this Declaration of Trust and does declare that it will hold all of the assets, property and interests received by it under the terms of this Declaration of Trust, the Site Lease and the Lease and all agreements and instruments contemplated hereby or thereby (except for the Rebate Fund and any compensation, indemnification or other amounts that are due directly to the Trustee hereunder or

thereunder, collectively, the “**Trust Estate**”), as trustee, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Certificates, without privilege, priority or distinction as to the lien or otherwise of any of the Certificates over any of the other Certificates;

**PROVIDED, HOWEVER**, that, if the Principal Portions of Basic Rent Payments, Prepayment Price and Interest Portions of Basic Rent Payments represented by the Certificates due or to become due with respect to the Certificates are paid or provision made therefor in accordance with **Article X**, at the times and in the manner mentioned in the Certificates according to the true intent and meaning thereof, and provision has also been made for paying all sums payable under the Lease by the City in accordance with **Article X**, then this Declaration of Trust and the rights hereby granted will cease, determine and be void except as provided in **Article X**;

**THIS DECLARATION OF TRUST FURTHER WITNESSETH**, and it is expressly declared, that all Certificates are to be sold, executed and delivered and all said rights and interests are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Trustee has agreed and covenanted, and does hereby agree and covenant, with the respective Owners of the Certificates as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions.** In addition to words and terms defined in the Lease and elsewhere in this Declaration of Trust, the following words and terms used in this Declaration of Trust will have the following meanings, unless some other meaning is plainly intended:

“**Additional Certificates**” means any Certificates executed and delivered pursuant to **Section 3.09**.

“**Authorized Representative**” means the Mayor or the Finance Director of the City or any other person designated as an Authorized Representative by the Mayor, such designation being approved by the governing body of the City by a resolution or ordinance that is filed with the Trustee.

“**Cede & Co.**” means Cede & Co., as nominee name of The Depository Trust Company, New York, New York, and any successor nominee of the Securities Depository with respect to the Certificates.

“**Certificate Payment**” means the payments to be made to the Owners of the Certificates, whether representing Interest Portion only or Principal Portion and Interest Portion of Basic Rent under the Lease.

“**Certificates**” means the Series 2010B Certificates and any Additional Certificates.

“**Directive**” means an instrument in writing executed in one or more counterparts by the Owners of Certificates, as determined from the records of the Registrar kept pursuant to **Section 3.06**, or their lawful attorneys-in-fact, representing not less than a majority of the aggregate unpaid Principal Portion represented by the then Outstanding Certificates.

“**Event of Default**” means an Event of Default as described in **Section 9.01**.

**“Event of Lease Default”** means an Event of Default under **Section 12.01** of the Lease.

**“Funds”** means, collectively, the funds created and held under this Declaration of Trust and all accounts therein.

**“Investment Securities”** means and includes any of the following securities, if and to the extent the same are permitted by law:

- (a) Government Obligations;
- (b) other obligations issued by or on behalf of agencies or instrumentalities of the United States of America except for the Federal Farm Credit Bank;
- (c) negotiable certificates of deposit, demand deposits and other deposit arrangements, repurchase agreements, and investment agreements issued by banks or trust companies, including without limitation, the Trustee and its affiliates, continuously secured (to the extent not fully insured by the Federal Deposit Insurance Corporation), for the benefit of the Trustee by lodging with a bank or trust company (which may or may not be the bank or trust company issuing such negotiable certificates of deposit, repurchase agreement or investment agreement), as collateral security, securities described in (a) and (b) above having a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit, demand deposits and other deposit arrangements; and
- (d) money market mutual funds rated in the highest rating category by a nationally recognized rating service consisting of Government Obligations or repurchase agreements for Government Obligations.

**“Lease Revenues”** means the Basic Rent Payments, Supplemental Rent Payments and all other amounts due and owing pursuant to or with respect to the Lease, including prepayments, insurance proceeds, condemnation proceeds, and any and all interest, profits or other income derived from the investment thereof in any fund or account established pursuant to this Declaration of Trust.

**“Lease Revenue Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Notice by Mail”** or **“Notice”** of any action or condition **“by Mail”** means a written notice meeting the requirements of this Declaration of Trust mailed by first-class mail to the Owners of specified Certificates, at the addresses shown on the registration books maintained by the Registrar pursuant to **Section 3.06**.

**“Outstanding”** means, as of the date of determination, all Certificates theretofore executed and delivered pursuant to this Declaration of Trust except (a) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation, (b) Certificates for the transfer or exchange of or in lieu of or in substitution for which other Certificates have been executed and delivered by the Trustee pursuant to this Declaration of Trust, (c) Certificates whose payment or prepayment has been provided for in accordance with **Article X**, and (d) Certificates paid or deemed to be paid pursuant to **Article X**.

**“Owner”** of a Certificate means the registered owner of such Certificate as shown on the register kept by the Registrar pursuant to **Section 3.06**.

**“Participants”** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**“Prepayment Date”** means any date set for prepayment of the Principal Portion of Basic Rent represented by Certificates.

**“Prepayment Price”** means, with respect to any Certificate (or portion thereof) the amount specified in **Section 5.02**.

**“Proceeds”** means the aggregate moneys initially paid to the Trustee for each series of the Certificates.

**“Project Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Purchase Document”** means either (a) a certificate purchase agreement between the City and the Purchaser pursuant to which the Purchaser agrees to purchase the Certificates, or (b) an executed official bid form if the Certificates are sold at a public sale and the Purchaser is the successful bidder therefor.

**“Purchaser”** means \_\_\_\_\_, the original purchaser of the Series 2010B Certificates.

**“Rebate Fund”** means the fund by that name established pursuant to **Section 6.01**.

**“Record Date”** means the last day of the month (whether or not a Business Day) prior to the month in which Basic Rent Payment Date occurs.

**“Registrar”** means the Trustee when acting in that capacity, or its successor as Registrar.

**“Representation Letter”** means the Representation Letter from the City to the Securities Depository.

**“Securities Depository”** means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

**“Series 2010B Certificates”** means the \$[Principal Amount] aggregate principal amount Certificates of Participation, Series 2010B, evidencing a proportionate interest in Basic Rent Payments to be made by The City of Lincoln, Nebraska, pursuant to a Lease Purchase Agreement, executed and delivered pursuant to this Declaration of Trust.

**“State”** means the Nebraska.

**“Trust Estate”** means the assets, property and interests held by the Trustee pursuant to this Declaration of Trust and the Lease.

**“Trustee”** means Union Bank and Trust Company, Lincoln, Nebraska, and its successor or successors and their respective assigns.

**Section 1.02. General Rules of Construction.** Words of the masculine gender will be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context will

otherwise indicate, words importing the singular number will include the plural and vice versa, and words importing person will include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint-stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

The words “herein,” “hereby,” “hereunder,” “hereof,” “hereto,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Declaration of Trust and not solely to the particular article, section, paragraph or subparagraph hereof in which such word is used.

Reference herein to a particular article or a particular section, exhibit, schedule or appendix will be construed to be a reference to the specified article or section hereof or exhibit, schedule or appendix hereto unless the context or use clearly indicates another or different meaning or intent.

Whenever an item or items are listed after the word “including,” the listing is not intended to be a listing that excludes items not listed.

The table of contents, captions and headings in this Declaration of Trust are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Declaration of Trust.

**Section 1.03. Execution in Counterparts.** This Declaration of Trust may be executed simultaneously in two or more counterparts, each of which will be deemed to be an original, and all of which together will constitute but one and the same instrument.

**Section 1.04. Severability.** If any provision of this Declaration of Trust will be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution[, charter] or statute or rule of public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Declaration of Trust contained will not affect the remaining portions of this Declaration of Trust, or any part thereof.

**Section 1.05. Date of Declaration of Trust.** The dating of this Declaration of Trust [Closing Date], 2010, is intended as and for the convenient identification of this Declaration of Trust only and is not intended to indicate that this Declaration of Trust was executed and delivered on said date, this Declaration of Trust being executed and delivered and becoming effective simultaneously with the initial execution and delivery of the Certificates.

**Section 1.06. Governing Law.** This Declaration of Trust will be governed by and construed in accordance with the laws of the State.

## ARTICLE II

### COVENANT AS TO SITE LEASE AND LEASE

**Section 2.01. Covenant as to Site Lease and Lease.** The Trustee covenants and agrees that, except in accordance with the terms of this Declaration of Trust, the Site Lease and the Lease, it will not

take any action that would result in the occurrence of an Event of Default and that it will not agree to any abatement, reduction, abrogation, waiver, diminution or other modification in any manner or to any extent whatsoever of the obligations of the City under the Site Lease and the Lease to pay Basic Rent and to meet its other obligations as provided in the Lease.

### ARTICLE III

#### THE CERTIFICATES

**Section 3.01. Title and Amount of Certificates.** No Certificates may be executed and delivered under this Declaration of Trust except in accordance with this Article. The Certificates will be designated “Certificates of Participation, Series 2010A, Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Lincoln, Nebraska, pursuant to a Lease Purchase Agreement,” with such further appropriate particular designation added to or incorporated in such title for the Certificates of any particular series as the Trustee may determine.

**Section 3.02. General Provisions Concerning the Certificates.**

(a) The Certificates and the form of assignment to appear thereon will be in substantially the form set forth in **Exhibit A**, with necessary or appropriate variations, omissions and insertions as permitted or required hereby or by any Supplemental Declaration of Trust.

(b) The Certificates will be fully registered Certificates without coupons transferable to subsequent owners only on the books kept by the Registrar pursuant to **Section 3.06** as hereinafter provided. Each Certificate will be in the denomination of \$5,000 or any integral multiple thereof.

(c) Each of the Certificates will represent the Interest Portion and Principal Portion of Basic Rent payable with respect thereto and will be on a parity with the other Certificates as to the entire Trust Estate.

(d) The Certificates will be numbered from R-1 upward, will be dated and the Principal Portion will be payable, subject to prior prepayment upon the terms and conditions hereinafter set forth, and will represent Interest Portions of Basic Rent calculated at certain rates as set forth in this Declaration of Trust or any Supplemental Declaration of Trust authorizing such series of Certificates.

(e) The Interest Portion of the Basic Rent represented by each Certificate will be payable from the date thereof or the most recent date to which said Interest Portion has been paid. The Interest Portion of the Basic Rent represented by the Certificates will be paid on each \_\_\_\_\_ and \_\_\_\_\_, commencing on \_\_\_\_\_, 2011.

(f) Payment of the Interest Portion of the Basic Rent represented by any Certificates will be made to the person appearing on the registration books of the Registrar as the Owner thereof on the Record Date, such Interest Portion to be paid to such Owner by check or draft drawn on the Trustee and mailed to such Owner’s address as it appears on the registration books of the Registrar on the Record Date or in the case of such Interest Portion to (1) the Securities Depository or (2) any Owner of \$5,000 or more in aggregate principal amount of Certificates, by electronic transfer to such Owner upon written notice given to the Trustee by such Owner not less than 15 days prior to the Record Date for such Interest Portion, containing the electronic transfer instructions including the bank (which will be in the continental United States), ABA routing number and account name and number to which such Owner wishes to have such transfer directed.

(g) The Interest Portion of the Basic Rent represented by any Certificates will be computed with respect to such Certificates on the basis of a 360-day year of twelve 30-day months.

(h) The Principal Portion of the Basic Rent or Prepayment Price represented by the Certificates will be payable (whether at maturity or upon prepayment or acceleration) by check or draft to the Owners of such Certificates upon presentation and surrender of such Certificates at the designated corporate trust office of the Trustee.

(i) Payment of Certificate Payments or the Prepayment Price of Certificates will be made in such coin or currency of the United States of America as, at the time of payment, will be legal tender for public and private debts.

**Section 3.03. Execution of Certificates.** The Certificates will be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee.

**Section 3.04. Transfer of Certificates.** Any Certificate may be transferred upon the books required to be kept pursuant to the provisions of **Section 3.06**, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Certificate for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Trustee. The Trustee or the Securities Depository may also require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer. In the event any Owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Internal Revenue Code, such amount may be deducted by the Trustee from amounts otherwise payable to such Owner hereunder or under the Certificates.

**Section 3.05. Exchange of Certificates.** Certificates may be exchanged at the designated corporate trust office of the Trustee for a like aggregate principal amount of Certificates of the same maturity, interest rate and tenor. The Trustee will require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. No exchange of any Certificate will be required of the Trustee after such Certificate has been called for prepayment.

**Section 3.06. Registration Books.** The Registrar will keep or cause to be kept at its designated corporate trust office, books for the registration and transfer of the Certificates, which will at all reasonable times be open to inspection by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Registrar, and, upon presentation for such purpose, the Registrar will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Certificates as hereinbefore provided.

The person in whose name any Certificate is registered on the registration books maintained by the Registrar on the Record Date will be deemed the Owner thereof for all purposes hereof, and payment of or on account of the Interest Portions and Principal Portions of Basic Rent, represented by such Certificate will be made only to or upon the order in writing of such registered owner, which payments will be valid and effectual to satisfy and discharge the liability under the Lease as represented by such Certificate to the extent of the sum or sums so paid.

**Section 3.07. Certificates Mutilated, Lost, Destroyed or Stolen.** If any Certificate has become mutilated, the Trustee, at the expense of the Owner of said Certificate, will execute and deliver a new Certificate of like tenor, maturity, interest rate and number in exchange and substitution for the Certificate so mutilated (except that such number may be preceded by a distinguishing prefix), but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee will be canceled by it and periodically destroyed in accordance with then applicable record retention requirements. If any Certificate has been lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory to the Trustee and indemnity of the Trustee and the City satisfactory to the Trustee has been given, the Trustee, at the expense of the Owner of the Certificate, will execute and deliver a new Certificate of like tenor, maturity, interest rate, and number as the Trustee determines in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Certificate executed and delivered under this Section and of the expenses that may be incurred by the Trustee under this Section. Any Certificate executed and delivered under this Section in lieu of any Certificate alleged to be lost, destroyed or stolen will be equally and proportionately entitled to the benefits of this Declaration of Trust with all other Certificates secured by this Declaration of Trust. The Trustee will not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates that may be Outstanding hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate will be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Certificate for a Certificate that has been mutilated, lost, destroyed or stolen and that has matured, is about to mature or has been selected for prepayment, the Trustee may make payment of such Certificate.

**Section 3.08. Series 2010B Certificates.** There will be initially prepared, executed and delivered under this Declaration of Trust a series of Certificates in the aggregate principal amount of \$[Principal Amount], which series of Certificates will be designated “Certificates of Participation, Series 2010B, Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Lincoln, Nebraska, pursuant to a Lease Purchase Agreement” (the “**Series 2010B Certificates**”). The Series 2010B Certificates will be dated [Closing Date], 2010, and will be payable on the dates, in the principal amounts (subject to prepayment as described in **Section 5.02**), and with the Interest Portions accruing at the rates set forth on **Exhibit C**.

Prior to or simultaneously with the execution of and delivery of the Series 2010B Certificates by the Trustee the following documents will be filed with the Trustee:

- (a) A copy, certified by the Clerk, of the resolution or ordinance adopted by the governing body of the City authorizing the execution of the Site Lease and the Lease and approving the execution and delivery of the Series 2010B Certificates to the Purchaser.
- (b) Original executed counterparts of this Declaration of Trust, the Site Lease, the Lease and the Purchase Document.
- (c) An Opinion of Special Tax Counsel as to the validity of the Series 2010B Certificates and the exemption from federal income taxation of the Interest Portion of Basic Rent Payments represented by the Series 2010B Certificates.
- (d) Evidence of the insurance required by **Article VII** of the Lease.

(e) An Opinion of Counsel stating that the Series 2010B Certificates are exempt from registration under the Securities Act of 1933, as amended and this Declaration of Trust is exempt from qualification under the Trust Indenture Act of 1939, as amended.

(f) Such other certificates, statements, receipts, opinions and documents required by this Declaration of Trust or the Lease, or as the Trustee may reasonably require for the delivery of the Series 2010B Certificates.

When the documents specified above have been filed with the Trustee, and when the Series 2010B Certificates have been executed as required by this Declaration of Trust, the Trustee will deliver the Series 2010B Certificates to or upon the order of the Purchaser, but only upon payment of the purchase price of the Series 2010B Certificates. The net proceeds of the sale of the Series 2010B Certificates, including accrued interest and premium, if any, paid over to the Trustee will be deposited and applied as provided in **Article VI**.

### **Section 3.09. Additional Certificates.**

(a) Upon the execution and delivery of a Supplemental Lease that provides for an increase in the amount of Basic Rent payable under the Lease and so long as no Event of Default exists, Additional Certificates evidencing the right of the Owners thereof to receive the Principal Portion and the Interest Portion of such additional Basic Rent may be executed and delivered under and equally and ratably secured by this Declaration of Trust on a parity with the Series 2010B Certificates and any other Additional Certificates, at any time and from time to time, upon compliance with the conditions provided in this Section, for the purpose of providing funds to pay all or any part of the cost of (1) repairing, replacing or restoring the Project, (2) improving, upgrading or modifying the Project, (3) additional improvements to the Project or the acquisition of additional real property to be included in the Project or the acquisition, purchase, construction or equipping of additions to or expansions of or remodeling or modification of the Project, and (4) refunding any or all of the Certificates.

(b) Before any Additional Certificates may be executed and delivered under the provisions of this Section, the City will (1) adopt an ordinance or resolution authorizing the execution and delivery of such Additional Certificates, fixing the amount and terms thereof and describing the Certificates to be refunded, if any, (2) consent in writing to the Trustee's execution of a Supplemental Declaration of Trust for the purpose of executing and delivering such Additional Certificates, and (3) authorize the Trustee to enter into an amendment to the Lease with the City to provide for Basic Rent Payments at least sufficient to pay the Principal Portion or Prepayment Price and Interest Portion of the Certificates then to be Outstanding (including the Additional Certificates to be executed and delivered) as the same become due, and for such other matters as are appropriate because of the execution and delivery of the Additional Certificates proposed to be delivered.

(c) Such Additional Certificates will have the same designation as the Series 2010B Certificates, except for an identifying series letter or date. The Principal Portion and the Interest Portion of Basic Rent represented by such Additional Certificates will be payable on the dates, in the amounts and (with respect to such Interest Portion) at the rates as may be provided by the Supplemental Declaration of Trust authorizing such Additional Certificates. **Exhibit C** will be amended by such Supplemental Declaration of Trust to reflect separately the Principal Portion of Basic Rent allocable to each series of Certificates. Such Additional Certificates will be on a parity with and will be entitled to the same benefit and security of this Declaration of Trust as the Series 2010B Certificates and any other Additional Certificates.

(d) The Additional Certificates will be executed substantially in the form and manner as provided in this Article, but prior to or simultaneously with the delivery of such Certificates by the Trustee, the following items will be on file with the Trustee:

(1) A copy, certified by the Clerk of the City, of the ordinance or resolution passed by the governing body of the City authorizing such Supplemental Lease and authorizing the execution and delivery of the Additional Certificates, fixing the amount and terms thereof and describing the Certificates to be refunded, if any.

(2) An original executed counterpart of the Supplemental Declaration of Trust authorizing such Additional Certificates.

(3) An original executed counterpart of the Supplemental Lease.

(4) An original executed counterpart of a Purchase Document relating to the Additional Certificates.

(5) An Opinion of Special Tax Counsel to the effect that the execution and delivery of such Additional Certificates will not result in the Interest Portion of Basic Rent evidenced by any Certificates then Outstanding becoming includable in gross income of the Owners thereof for federal income tax purposes.

(6) Such other certificates, statements, receipts, opinions and documents required by this Declaration of Trust or the Lease or as the Trustee may reasonably require for the delivery of the Additional Certificates.

(e) When the documents mentioned in **Section 309(d)** have been filed with the Trustee, and when such Additional Certificates have been executed and registered as required by this Declaration of Trust, the Trustee will deliver such Additional Certificates to or upon the order of the purchaser named in the Purchase Document relating to such Additional Certificates, but only upon payment of the purchase price of such Additional Certificates as specified in the Purchase Document relating to such Additional Certificates. The Proceeds of Additional Certificates, including accrued interest, if any, paid to the Trustee will be deposited, as follows or as provided in the Supplemental Declaration of Trust:

(1) all accrued interest, if any, paid by the purchasers of the Additional Certificates into the Lease Revenue Fund;

(2) an amount equal to the amount required to fund any reserve requirement related to the Additional Certificates into the reserve fund, if any, for such Additional Certificates; and

(3) the remaining Proceeds from any Additional Certificates, as provided in the Supplemental Declaration of Trust relating to such Additional Certificates.

**Section 3.10. Book-Entry-Only System.** The Certificates will initially be registered on the Certificate register maintained by the Trustee in the name of Cede & Co., and Beneficial Owners will not receive certificates representing their respective interests in the Certificates, except in the event the Replacement Certificates as provided below. It is anticipated that during the term of the Certificates, the Securities Depository will make book-entry transfers among the Participants and receive and transmit notices with respect to and payments representing the Principal Portion of Basic Rent and the Interest Portion of Basic Rent with respect to the Certificates until and unless the Trustee executes and delivers Replacement Certificates to the Beneficial Owners as described below.

The Trustee agrees to give the various written notices to the Securities Depository in accordance with the Blanket Letter of Representations of the Securities Depository, delivered to the Securities Depository in connection with the original execution and delivery of the Certificates.

If the Securities Depository determines to discontinue providing its services with respect to the Certificates and the City cannot obtain a qualified successor Securities Depository, or if Participants holding a majority position in the Series 2010B Certificates determine not to use the book-entry system of the Securities Depository, the Trustee will execute and deliver one or more certificates (the “**Replacement Certificates**”) to the Participants in principal amounts and maturities corresponding to the identifiable Beneficial Owners’ interests in the Certificates, with such adjustments as the Trustee may find necessary or appropriate as to accrued interest and previous calls for prepayment. In such event, all references to the Securities Depository herein will relate to the period of time when at least one Certificate is registered in the name of the Securities Depository or its nominee. Upon the issuance of Replacement Certificates, all references herein to obligations imposed upon or to be performed by the Securities Depository will be deemed to be imposed upon and performed by the Trustee, to the extent applicable, with respect to such Replacement Certificates. The Trustee may rely on information from the Securities Depository and its Participants as to the names and addresses of and principal amounts held by the Beneficial Owners of the Series 2010B Certificates. The cost of printing Replacement Certificates will be paid by the City.

**Section 3.11. Successor Securities Depository.** In the event the Securities Depository resigns, is unable to properly discharge its responsibilities or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation, the Trustee, with the written consent of the City, may appoint a successor Securities Depository, provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository will be a securities depository that is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation. Upon the appointment of a successor Securities Depository, the former Securities Depository will surrender the Certificates, together with assignments duly executed in accordance with **Section 3.04**, to the Trustee for transfer to the successor Securities Depository, and the Trustee will cause the execution and delivery of the Certificates to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 3.12. Cancellation and Destruction of Certificates upon Payment.**

(a) All Certificates that have been paid or prepaid or that the Trustee has purchased or that have otherwise been surrendered to the Trustee under this Declaration of Trust, either at or before maturity, if not exchanged pursuant to **Section 3.05**, will be canceled by the Trustee immediately upon the payment, prepayment or purchase of such Certificates and the surrender thereof to the Trustee.

(b) All Certificates canceled under any of the provisions of this Declaration of Trust will be destroyed by the Trustee in accordance with then applicable record retention requirements.

## ARTICLE IV

### PARTICULAR COVENANTS AND PROVISIONS

**Section 4.01. Covenant of Trustee as to Performance of Obligations.** The Trustee covenants that it will promptly remit to the Owner of each Certificate its interest in each installment of Basic Rent to

the extent received by the Trustee, at the places, on the dates and in the manner provided herein and in the Certificates.

**Section 4.02. Covenant to Perform Undertakings.** The Trustee covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Declaration of Trust, in any and every Certificate executed and delivered hereunder and in all proceedings of the Trustee pertaining thereto. The Trustee covenants that it is duly authorized to execute and deliver the Certificates and to enter into this Declaration of Trust and to perform its obligations hereunder.

## ARTICLE V

### PREPAYMENT

**Section 5.01. General.** The Certificates are subject to prepayment pursuant to this Article and any Supplemental Declaration of Trust to the extent that prepayments of Basic Rent are required, allowed or provided for under the Lease.

**Section 5.02. Prepayment Provisions with Respect to the Series 2010B Certificates.** The Series 2010B Certificates that evidence Principal Portions of Basic Rent payable to Certificate Owners on or after \_\_\_\_\_, 201\_\_ will be subject to optional prepayment, as a whole or in part, on or after \_\_\_\_\_, 201\_\_, at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented by the Series 2010B Certificates being prepaid, plus the Interest Portion of Basic Rent accrued to the Prepayment Date, from amounts paid by the City upon the exercise of its option to purchase the Trustee's interest in the Project or partially prepay Basic Rent Payments pursuant to the terms of the Lease.

**Section 5.03. Selection of Certificates for Prepayment; Notice to Trustee.** If less than all of the Outstanding Certificates are called for optional prepayment, Certificates will be prepaid in such order of stated payment dates as is determined by the City. Within a stated payment date the Trustee will select the Certificates or any given portion thereof to be prepaid in such equitable manner as the Trustee determines in principal amounts of \$5,000 or integral multiples thereof. In case of any optional prepayment, at the election of the City, the City will, at least 45 days prior to the Prepayment Date (unless a shorter notice will be satisfactory to the Trustee), give written notice to the Trustee directing the Trustee to call Certificates for prepayment and give notice of prepayment and specifying the Prepayment Date, the series, the principal amount and maturities of Certificates to be called for prepayment, the applicable prepayment price and the provision or provisions of this Declaration of Trust pursuant to which such Certificates are to be called for prepayment.

**Section 5.04. Partial Prepayment of Certificate.** Upon surrender of any Certificate prepaid in part only, the Trustee will execute and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of the same series and maturity, equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered.

**Section 5.05. Notice of Prepayment.** Unless otherwise provided herein, notice of prepayment will be given by the Trustee, not more than 60 days and not less than 30 days prior to the Prepayment Date, to the City and the Owner of each Certificate affected at the address shown on the registration books of the Registrar on the date such notice is mailed. Each notice of prepayment will state (a) the Prepayment Date, (b) the place of prepayment, (c) the Prepayment Price, (d) if less than all, the identification of the Certificates to be prepaid, and (e) if a Certificate is being prepaid in part, the portion

thereof being prepaid. Such notice will also state that the Interest Portion of the Basic Rent represented by the Certificates designated for prepayment will cease to accrue from and after such Prepayment Date and that on said date the Prepayment Price will become due and payable on each of said Certificates. The failure of the Owner of any Certificate to be so prepaid to receive notice of prepayment mailed as herein provided or any defect therein will not affect or invalidate the validity of any proceedings for the prepayment of such Certificate.

The Trustee is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards will not affect or invalidate the prepayment of any Certificate to be prepaid.

The Trustee, as long as a book-entry system is used for the Certificates, will send notices of prepayment only to the Securities Depository, as the Owner of the Certificates. Any failure of the Securities Depository to advise any of the Participants, or of any participant or any nominee to notify any Beneficial Owner of the Certificates, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Certificates called for prepayment.

**Section 5.06. Effect of Prepayment.** Notice of prepayment having been duly given as aforesaid, and upon funds for payment of the Prepayment Price of such Certificates (or portions thereof) being held by the Trustee, on the Prepayment Date designated in such notice, the Certificates (or portions thereof) so called for prepayment will become due and payable at the Prepayment Price specified in such notice and the Interest Portion of Basic Rent represented by the Certificates so called for prepayment will cease to accrue, said Certificates (or portions thereof) will cease to be entitled to any benefit or security under this Declaration of Trust and the Owners of such Certificates will have no rights in respect thereof except to receive payment of the Prepayment Price.

All Certificates prepaid pursuant to the provisions of this Article will be cancelled upon surrender thereof and destroyed by the Trustee pursuant to **Section 3.12**.

## ARTICLE VI

### DELIVERY OF CERTIFICATES; FUNDS; APPLICATION OF PROCEEDS AND OTHER MONEYS

**Section 6.01. Establishment of Funds.** There are hereby established the following funds and accounts:

- (a) Project Fund.
- (b) Lease Revenue Fund.
- (c) Rebate Fund.

All funds and accounts established pursuant to this Article will be held by the Trustee in trust, except for the Rebate Fund, for the benefit of the Certificate Owners. The money in all of the funds and the accounts will be applied as hereinafter provided.

**Section 6.02. Application of Proceeds of Series 2010B Certificates and Other Moneys.** The Proceeds of the Series 2010B Certificates will be deposited as follows:

- (a) in the Lease Revenue Fund, any accrued interest with respect to the Series 2010B Certificates;

(b) in the Project Fund, the remainder of the Proceeds of the Series 2010B Certificates.

**Section 6.03. Application of Lease Revenues.** Lease Revenues will be deposited, as received pursuant to the Lease, as follows:

- (a) Basic Rent will be deposited to the Lease Revenue Fund.
- (b) Optional prepayments of the Principal Portion of Basic Rent (in amounts equal to the applicable Prepayment Price) will be deposited to the Lease Revenue Fund.
- (c) Payments of Supplemental Rent pursuant to **Section 4.02** of the Lease will be applied as provided in **Section 4.02** of the Lease.

Undesignated payments of Rent that are insufficient to discharge the full amount then due will be applied first to the Interest Portion of Basic Rent, next to the Principal Portion of Basic Rent and finally to Supplemental Rent.

**Section 6.04. Disbursements from the Project Fund.**

(a) Money in the Project Fund will be used to pay for Costs of the Project, including Costs of Issuance. Payment will be made from moneys in the Project Fund upon receipt by the Trustee of a requisition certificate therefor signed by an Authorized Representative of the City and, except for requisitions for Costs of Issuance, an architect, engineer or contractor (which architect, engineer or contractor will not be an employee of the City), which requisition certificate will contain the statements, representations and certificates set forth in the form thereof attached hereto as **Exhibit B** and will be otherwise substantially in such form.

In making disbursements for Costs of the Project, the Trustee will be entitled to conclusively rely upon each written requisition certificate executed by the Authorized Representative of the City and, if required, by an architect, engineer or contractor, without inquiry or investigation. It is understood that the Trustee will *not* make any inspections of the Project, make any provision to obtain completion bonds, mechanic's or materialmen's lien releases or otherwise supervise any phase of the construction or furnishing of the Project. The approval of each requisition certificate by the Authorized Representative of the City will constitute unto the Trustee an irrevocable determination that all conditions precedent to the payment of the specified amounts from the Project Fund have been completed. The Trustee will make disbursements to pay Costs of the Project for which any such request is made within five Business Days of the receipt of a properly executed certificate with all necessary supporting information.

(b) The Completion Date of the Project and the payment of all Costs of the Project (other than Costs of the Project for which sufficient amounts are retained in the Project Fund) will be evidenced by the filing with the Trustee of the Completion Certificate pursuant to **Section 5.03** of the Lease. As soon as practicable following the receipt by the Trustee of the Completion Certificate, any balance remaining in the Project Fund will be transferred and deposited without further authorization as provided in **Section 5.03** of the Lease.

(c) In the event of the acceleration of all of the Certificates pursuant to **Section 9.02**, any moneys then remaining in the Project Fund will be transferred and deposited to the credit of the Lease Revenue Fund and will be used to pay Basic Rent.

**Section 6.05. Application of Moneys in the Lease Revenue Fund.** Except as otherwise provided herein, all amounts in the Lease Revenue Fund will be used and withdrawn by the Trustee solely to pay Basic Rent represented by the Certificates when due and payable or on a Prepayment Date.

**Section 6.06. Rebate Fund.** Moneys will be deposited in and disbursed from the Rebate Fund in accordance with written instructions from the City to the Trustee, prepared in accordance with the provisions of the Tax Compliance Agreement.]

**Section 6.07. Repayment to the City.** After payment in full of all Rent Payments through the maximum Lease Term or the earlier purchase of the Trustee's interest in the Project pursuant to **Section 10.01** of the Lease, all amounts remaining in the Lease Revenue Fund will be paid to the City.

**Section 6.08. Payments Due on Days other than Business Days.** In any case where the date of maturity of Principal Portions of Basic Rent Payments, Prepayment Price or Interest Portions of Basic Rent Payments represented by the Certificates or the date fixed for prepayment of any Certificates is not a Business Day, then payment of Principal Portions of Basic Rent Payments, Prepayment Price or Interest Portions of Basic Rent Payments represented by the Certificates need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest will accrue for the period after such date.

**Section 6.09. Nonpresentment of Certificates.** If any Certificate will not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Certificate have been made available to the Trustee, all liability of the Trustee and the City to the Owner thereof for the payment of such Certificate will forthwith cease, determine and be completely discharged, and thereupon it will be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Certificate, who will thereafter be restricted exclusively to such fund or funds for any claim of whatever nature under this Declaration of Trust or on, or with respect to, said Certificate. If any Certificate will not be presented for payment within one year following the date when such Certificate becomes due, whether by maturity or otherwise, the Trustee will repay, without liability for interest thereon, to the City the funds theretofore held by the Trustee for payment of such Certificate, and such Certificate will, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the City, and the Owner thereof will be entitled to look only to the City for payment, and then only to the extent of the amount so repaid, and the City will not be liable for any interest thereon and will not be regarded as a trustee of such money.

**Section 6.10. Separate Accounting of Funds Allocable to each Series of Certificates.** The Trustee will maintain separate accounts for funds and securities attributable to each series of Certificates in the Funds held by the Trustee hereunder so that the calculations for each series of Certificates can be made separately for such series. Any transfer of funds or securities or earnings thereon from one fund or account to another will be made to the appropriate account or subaccount of the same series of Certificates to which such funds or securities are attributed. If, at any time, a payment is made to any such fund that is less than the amount due and payable to such fund, the amount payable will be credited *pro rata* to each such separate account within such fund, based on the amount owed to each such account.

## ARTICLE VII

### DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

**Section 7.01. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for account of the Funds under this Declaration of Trust will be held by the Trustee in trust and will be applied only in accordance with this Declaration of Trust and the Lease and (except for the Rebate Fund) until used or applied as herein provided, will constitute part of the Trust Estate and will not be subject to any lien other than the lien of this Declaration of Trust. The Trustee will not be under any liability for interest on any moneys received hereunder except as provided herein.

**Section 7.02. Investment of Moneys.** Money held in the Funds will, subject to the requirements of the Tax Compliance Agreement and as hereinafter provided, be invested and reinvested by the Trustee, pursuant to written direction of the City, signed by an Authorized Representative of the City, in Investment Securities that mature or are subject to redemption by the owner prior to the date such funds will be needed. In the absence of such instructions, the Trustee is authorized to invest money in Investment Securities described in subparagraph (d) of the definition of Investment Securities in **Section 1.01**. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments, provided that any such fees will not exceed the interest income on the investment.

The Trustee will sell and reduce to cash a sufficient amount of such Investment Securities held by the Trustee in any fund hereunder whenever the cash balance in such Fund is insufficient for the purpose of such Fund. Any such Investment Securities will be held by or under the control of the Trustee and will be deemed at all times a part of the Fund or account in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities will be credited to such Fund or account, and any loss resulting from such Investment Securities will be charged to such Fund or account.

For purposes of determining the amount in any Fund or account, the value of any investments will be computed at the market value thereof (excluding accrued interest), the purchase price thereof (excluding accrued interest) or principal amount, whichever is lower.

The Trustee may, in making or disposing of any investment permitted by this **Section 7.02**, deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or dealing as principal for its own account.

## ARTICLE VIII

### AMENDMENT OF THE DECLARATION OF TRUST, THE LEASE OR THE SITE LEASE

**Section 8.01. Amendments Permitted.**

(a) This Declaration of Trust, the Lease and the Site Lease and the rights and obligations of the City and of the Owners of the Certificates and of the Trustee may be modified or amended from time to time and at any time by an amendment or supplement hereto or thereto that the parties hereto or thereto may enter into when the written consent of the Trustee and the City, if not a party hereto or thereto, and

the Owners of a majority in aggregate Principal Portion of Basic Rent Payments represented by the Certificates then Outstanding has been filed with the Trustee. No such modification or amendment will (1) extend the stated maturity of any Certificate, or reduce the amount of principal represented thereby, or extend the time of payment or reduce the amount of any Prepayment Price provided in this Declaration of Trust for the payment of any Certificate, or reduce the rate of interest with respect thereto, or extend the time of payment of interest with respect thereto without the consent of the Owner of each Certificate so affected, (2) reduce the specified percentage of Certificates the consent of the Owners of which is required to effect any such modification or amendment or, except in connection with the delivery of any Additional Certificates, permit the creation of any lien on money in the Project Fund or the Lease Revenue Fund or deprive the Owners of the trust created by this Declaration of Trust with respect to the moneys in the Project Fund or the Lease Revenue Fund or (3) create a preference or priority of any Certificate or Certificates over any other Certificate or Certificates without the consent of the Owners of all of the Certificates then Outstanding. Promptly after the execution by the Trustee of any amendment pursuant to this **Section 8.01(a)**, the Trustee will give Notice by Mail, setting forth in general terms the substance of such amendment to the Owners at the addresses listed on the registration books kept by the Trustee pursuant to **Section 3.06**. Any failure to give such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amendment.

(b) Notwithstanding **Section 8.01(a)**, this Declaration of Trust, the Lease or the Site Lease and the rights and obligations of the City, of the Trustee and of the Owners of the Certificates may also be modified or amended from time to time and at any time by an agreement that the parties hereto or thereto may enter into without the consent of any Certificate Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Trustee in this Declaration of Trust, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Certificates (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the City; provided, however, that no such covenant, agreement, pledge, assignment or surrender will in the sole judgment of the Trustee materially adversely affect the interests of the Trustee or the Owners of the Certificates;

(2) to add to the covenants and agreements of the City in the Site Lease or the Lease, other covenants and agreements thereafter to be observed or to surrender any right or power therein reserved to or conferred upon the Trustee or the City; provided, however, that no such covenant, agreement or surrender will in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(3) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Declaration of Trust, the Site Lease or the Lease, or in regard to matters or questions arising under this Declaration of Trust, the Site Lease or the Lease as the Trustee and the City may deem necessary or desirable and not inconsistent with said agreements, or as may be requested by the City or the Trustee and that will not, in any such case in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(4) to modify, amend or supplement this Declaration of Trust in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and that will not in the sole judgment of the Trustee materially adversely affect the interests of the Owners of the Certificates;

(5) to provide for any additional procedures, covenants or agreements necessary to maintain the exclusion of the Interest Portion of Basic Rent from gross income for purposes of federal income taxation;

(6) to provide for the execution and delivery of Additional Certificates; or

(7) to make any other change that in the sole judgment of the Trustee does not have a materially adverse effect on the rights of the Certificate Owners.

**Section 8.02. Effect of Amendments.** Upon the execution of any amendments hereto, pursuant to this **Article VIII**, this Declaration of Trust will be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Declaration of Trust of the Trustee and all Owners of Certificates Outstanding will thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment will be deemed to be part of the terms and conditions of this Declaration of Trust for any and all purposes.

**Section 8.03. Endorsement of Certificates; Preparation of New Certificates.** Certificates delivered after the execution of any amendment pursuant to this **Article VIII** may, and if the Trustee so determines will, bear a notation by endorsement or otherwise in form determined by the Trustee as to any modification or amendment provided for in such amendment. In that case, upon presentation of a Certificate for such purpose at the designated corporate trust office of the Trustee, a suitable notation will be made on such Certificate. If the amendment so provides, new Certificates so modified as to conform, in the opinion of the Trustee, to any modification or amendment contained in such amendment, will be prepared and executed by the Trustee, and upon demand of the Owners of any Certificates then Outstanding will be exchanged at the designated corporate trust office of the Trustee, without cost to any Certificate Owner, for Certificates then Outstanding, upon surrender for cancellation of such Certificates in equal aggregate principal amounts of the same maturity, interest rate and tenor.

**Section 8.04. Amendment of Particular Certificates.** The provisions of this Article will not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that due notation thereof is made on such Certificates.

**Section 8.05. Opinion of Counsel.** Anything to the contrary in this **Article VIII** notwithstanding, before the Trustee or the City consents to any modification or amendment of this Declaration of Trust, the Site Lease or the Lease, an Opinion of Special Tax Counsel to the effect that such amendment (a) is permitted by this Declaration of Trust and the instrument modified or amended (if other than this Declaration of Trust), (b) complies with their terms, (c) will, upon execution and delivery thereof, be valid and binding upon the City in accordance with the terms of the instrument modified or amended, and (c) will not adversely affect the exclusion from gross income for purposes of federal income taxation of the Interest Portion of Basic Rent Payments represented by the Certificates will be delivered to the Trustee. In any instance in which the Trustee may be required to determine that a modification or amendment will not materially adversely affect the interest of the Owners of the Certificates, prior to consenting to such modification or amendment, the Trustee will be entitled to require that there be delivered to it an Opinion of Counsel to the effect that no such materially adverse affect would result from such modification or amendment. The Trustee will be fully protected and will incur no liability in relying upon such Opinion of Counsel in making such determination.

## ARTICLE IX

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND OWNERS OF CERTIFICATES

**Section 9.01. Defaults.** The occurrence of any of the following events, subject to the provisions of **Section 9.09**, is hereby defined as an “**Event of Default:**”

- (a) Default in the due and punctual payment of any Interest Portion of Basic Rent represented by a Certificate; or
- (b) Default in the due and punctual payment of the Principal Portion of Basic Rent represented by a Certificate, whether at the stated payment date thereof or the Prepayment Date set therefor in accordance with the terms hereof; or
- (c) Any Event of Lease Default.

**Section 9.02. Acceleration.** Upon the occurrence of an Event of Default, the Trustee may, and upon receipt of a Directive will, by notice in writing delivered to the City, declare the Principal Portion and Interest Portion of Basic Rent represented by all Certificates Outstanding to the end of the then current Fiscal Year immediately due and payable.

**Section 9.03. Other Remedies.** Upon the occurrence of an Event of Lease Default, the Trustee may exercise any remedies available under the Lease and, to the extent consistent therewith, may sell, lease or manage any portion of the Project or Trustee’s interest in the Project and apply the net proceeds thereof in accordance with **Section 9.05** and, whether or not it has done so, may pursue any other remedy available to it under the Lease or at law or in equity.

No remedy by the terms of this Declaration of Trust conferred upon or reserved to the Trustee or to the Certificate Owners is intended to be exclusive of any other remedy, but each and every such remedy will be cumulative and will be in addition to any other remedy given to the Trustee or to the Certificate Owners hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default hereunder whether by the Trustee or by the Certificate Owners will extend to or will affect any subsequent default or will impair any rights or remedies consequent thereon.

**Section 9.04. Rights of Certificate Owners.** If an Event of Default has occurred and is continuing and if instructed to do so by a Directive and if indemnified as provided in **Sections 9.07** and **11.01(m)**, the Trustee will be obligated to exercise such one or more of the rights and the remedies conferred by this Article as the Trustee, upon the advice of counsel, deems to be in the interests of the Certificate Owners; provided that such Directive will not be otherwise than in accordance with the provisions of law and of this Declaration of Trust, and provided further that the Trustee will have the right to decline to follow any such Directive if the Trustee in good faith determines that the proceedings so directed would involve it in personal liability.

Any other provision herein to the contrary notwithstanding, the Owners of not less than a majority in aggregate principal amount of Certificates then Outstanding will have the right, at any time,

by a Directive, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of this Declaration of Trust, or for the appointment of a receiver or any other proceedings hereunder; provided that such Directive will not be otherwise than in accordance with the provisions of law and of this Declaration of Trust, and provided, further, that the Trustee has been indemnified as provided in **Sections 9.07** and **11.01(m)** and will have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability.

**Section 9.05. Application of Moneys.** All money received by the Trustee pursuant to any right given or action taken under the provisions of this Article will, after payment of the costs and expenses of the proceedings resulting in the collection of such money and of the expenses, liabilities and advances (including, without limitation, attorneys' fees and expenses) incurred or made by the Trustee, be deposited into the Lease Revenue Fund and all money in the Lease Revenue Fund will be applied as follows:

(a) unless the Principal Portions of Basic Rent represented by all the Certificates have become or have been declared due and payable, all such moneys will be applied:

FIRST - To the payment to the persons entitled thereto of the Interest Portions of Basic Rent represented by the Certificates in the order of the maturity of the installments of such interest and, to the payment ratably, according to the amount due on such installments, to the persons entitled thereto, without any discrimination or privilege; and

SECOND - To the payment to the persons entitled thereto of the unpaid Principal Portions of Basic Rent represented by any Certificates that have become due (other than Principal Portions of Basic Rent represented by Certificates with respect to the payment of which moneys are held pursuant to the provisions of this Declaration of Trust) in the order of such due dates, with interest from the respective dates upon which they become due and, if the amount available will not be sufficient to pay in full the Principal Portions of Basic Rent represented by Certificates due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified respecting the Certificates.

(b) If the Principal Portions of Basic Rent represented by all Certificates have become due or have been declared due and payable, all such moneys will be applied to the payment of the Principal Portions and the Interest Portions of the Basic Rent then due and unpaid upon the Certificates without preference or priority of principal over the interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Certificate over any other Certificate, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified respecting the certificates.

(c) If the Principal Portions of the Basic Rent represented by all Certificates have been declared due and payable and if such declaration will thereafter have been rescinded and annulled under the provisions of this Article then subject to the provisions of **Section 9.05(b)** in the event that the Principal Portions of Basic Rent represented by all the Certificates will later become due or be declared due and payable, the moneys will be applied in accordance with the provisions of **Section 9.05(a)**.

Whenever money is to be applied pursuant to the provision of this **Section 9.05**, such money will be applied at such times, and from time to time, as the Trustee will determine, having due regard to the amount of such money available for the application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee will apply such funds, it will fix the date (which will be a Basic Rent Payment Date unless it deems another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal paid on such dates will cease to accrue. The Trustee will give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and will not be required to make payment to the Owner of any Certificate until such Certificate is presented to the Trustee for appropriate endorsement or for cancellation if paid in full.

Whenever the Principal Portion and the Interest Portion of all Certificates have been paid under the provisions of this Section, all expenses and charges of the Trustee (including, without limitation, attorneys' fees and expenses) have been paid and any other obligations under the Lease have been paid in full, any balance remaining in the Funds will be paid to the City.

**Section 9.06. Remedies Vested in Trustee.** All remedies and rights of action (including the right to file proof of claims) under this Declaration of Trust or under any of the Certificates may be enforced by the Trustee without the possession of any of the Certificates or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee will be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of the Certificates. Any recovery of judgment or other amounts will be for the equal benefit of the Owners of the Outstanding Certificates.

**Section 9.07. Rights and Remedies of Certificate Owners.** No Owner of any Certificates will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Site Lease, the Lease or this Declaration of Trust, for the execution of any trust thereof, for the appointment of a receiver or to enforce any other remedy thereunder or hereunder, unless (a) an Event of Default has occurred; (b) the Owners have given a Directive to the Trustee and have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) such Certificate Owners have provided to the Trustee indemnification satisfactory to the Trustee; and (d) the Trustee thereafter fails or refuses to exercise the powers hereinbefore granted or to institute such action suit or proceedings in its, his, her or their name or names. Such notification, request and indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and the trusts of this Declaration of Trust and to any action or cause of action for the enforcement of this Declaration of Trust or for the appointment of a receiver or for any other right or remedy hereunder. No one or more Owners of the Certificates will have any right in any manner whatsoever to affect, to disturb or to prejudice the lien of this Declaration of Trust by its, his, her or their action or to enforce any right or remedy hereunder except in the manner herein provided and all proceedings at law or in equity will be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Certificates then Outstanding. Nothing in this Declaration of Trust contained will, however, affect or impair the right of any Certificate Owner to enforce the payment of the Principal Portion of and the Interest Portion of the Basic Rent represented by any Certificate at and after the maturity or earlier Mandatory Prepayment thereof.

**Section 9.08. Termination of Proceedings.** If the Trustee has proceeded to enforce any right or remedy under the Site Lease, the Lease or this Declaration of Trust by the appointment of a receiver, by entry or otherwise and such proceedings have been discontinued or abandoned for any reason or have been determined adversely, then and in every such case, the City, the Owners and the Trustee will be restored to their former respective positions and rights thereunder and hereunder and all rights remedies and powers of the Trustee will continue as if no such proceeding had been taken.

**Section 9.09. Waivers of Defaults.** The Trustee will waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of (a) a majority in aggregate principal amount of all Certificates then Outstanding with respect to which a default in the payment of Principal Portion of Basic Rent represented thereby exists; or (b) a majority in aggregate principal amount of all Certificates then Outstanding in the case of any other default; provided, however, that there will not be waived (1) any Event of Default respecting the payment of the Principal Portion of Basic Rent represented by any Certificate at its maturity date, or (2) any Event of Default respecting the payment of the Interest Portion of Basic Rent represented by any Certificate, unless prior to such waiver or rescission, all arrears of principal and interest when due, as the case may be, and all fees, charges and expenses of the Trustee in connection with such default, including, without limitation, attorneys' fees and expenses, have been paid or provided for and, in case any such waiver or rescission or in case any proceeding(s) taken by the Trustee on account of any such default have been discontinued or abandoned or determined adversely, then and in every such case the Trustee, the City and the Certificate Owners will be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission will extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10. Notices of Defaults.** Within 30 days after the occurrence of any default hereunder of which the Trustee is required to take notice or if notice of default has been given as provided in **Section 11.01(f)**, the Trustee will give written notice thereof to the City and Notice by Mail to the Owners of all Certificates then Outstanding (unless such default has been cured or waived; provided, however, that, except in the case of a default in the payment of the Principal Portion or Interest Portion of Basic Rent Payments represented thereby, the Trustee will be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of such Owners). For the purpose of this Section, the term “**default**” means any event that is an “Event of Default” as defined in **Section 9.01**.

## **ARTICLE X**

### **DEFEASANCE**

#### **Section 10.01. Discharge of Declaration of Trust.**

(a) When (1) the obligations of the City under the Lease have been satisfied in connection with the exercise by the City of its option to purchase the Project in accordance with **Article X** of the Lease by the irrevocable deposit in escrow of money or Government Obligations (maturing as to principal and interest in such amounts and at such times as are necessary to make any required payments without reinvestment of any earnings thereon) or both moneys and Government Obligations, and (2) the City has delivered to the Trustee, (A) an Opinion of Counsel to the effect that the conditions for such discharge contained herein and in **Section 10.02** have been satisfied or irrevocably provided for and (B) an accountant's certificate verifying the sufficiency of money or Government Obligations or both so deposited for the payment of the Principal Portion and Interest Portion of the Certificates and any applicable Prepayment Price to be paid with respect to the Certificates and (3) the City has deposited sufficient moneys to pay the fees, charges and expenses of the Trustee (or has made provision satisfactory to the Trustee for their payment), thereupon the obligations created by this Declaration of Trust will cease, determine and become void except for the right of the Certificate Owners and the obligation of the Trustee to apply such money and Government Obligations to the payment of the Certificates as herein set forth; provided, however, that all provisions hereof relating to the compensation or indemnification of the Trustee will survive the satisfaction and discharge of this Declaration of Trust.

(b) After all amounts owing to the Certificate Owners have been paid hereunder and under the Lease, the Trustee will turn over to the City any surplus in the Lease Revenue Fund and all balances remaining in any other funds or accounts other than moneys and Government Obligations held for the payment of the Certificates at maturity or on prepayment, which money and Government Obligations will continue to be held by the Trustee in trust for the benefit of the Certificate Owners and will be applied by the Trustee to the payment, when due, of the Principal Portions, Prepayment Price or Interest Portions of Basic Rent represented by the Certificates.

**Section 10.02. Deposit of Moneys or Securities.** If money or Government Obligations as hereinabove provided, are deposited with and held by the Trustee or other commercial bank or trust company, the Trustee or other commercial bank or trust company will within 30 days after such Government Obligations have been deposited with it give Notice by Mail, to the Owners at the addresses listed on the registration books kept by the Registrar pursuant to **Section 3.06**, setting forth (a) the maturity date or Prepayment Date, as the case may be, of the Certificates, (b) a description of the money and/or Government Obligations, if any, so held by it, and (c) that this Declaration of Trust has been released in accordance with the provisions of this **Section 10.02**. Whenever in this Declaration of Trust or the Lease it is provided or permitted that there be deposited with or held in trust by the Trustee or other commercial bank or trust company moneys or Government Obligations in the necessary amount to pay or prepay any Certificates, the money or Government Obligations so to be deposited or held may include money or Government Obligations held by the Trustee in the Funds established pursuant to this Declaration of Trust (exclusive of the Project Fund and the Rebate Fund) the principal of and interest on which when due together with any money held by the Trustee for such purpose will provide money sufficient to pay the Principal Portions and Interest Portions of the Basic Rent represented by the Certificates as same becomes due, except that, in the case of Certificates that are to be prepaid prior to maturity and in respect of which irrevocable notice of such prepayment have been given as in **Article V** provided or irrevocable provision satisfactory to the Trustee has been made for the giving of such notice, the amount to be deposited or held will be the Prepayment Price with respect to such Certificates and all unpaid interest to the Prepayment Date.

## **ARTICLE XI**

### **THE TRUSTEE**

#### **Section 11.01. Duties, Immunities and Liabilities of Trustee.**

(a) The Trustee will, prior to an Event of Default, and after the curing of all Events of Default that may have occurred, perform only such duties as are specifically set forth in this Declaration of Trust. The Trustee will have no implied duties. The permissive right or power to take any action may not be construed as a duty to take action under any circumstances, and the Trustee will not be liable except in the event of its gross negligence or willful misconduct. The Trustee will, during the existence of any Event of Default, exercise such of the rights and powers vested in it by this Declaration of Trust, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee will not be obligated to risk its own funds in the administration of the Trust Estate. Notwithstanding any provision herein to the contrary, the Trustee need not take any action under this Declaration of Trust that may involve it in any expense or liability until indemnified to its satisfaction for any expense or liability, including liability related to environmental contamination, it reasonably believes it may incur.

(c) The Trustee is not responsible for any recitals contained in this Declaration of Trust or in the Certificates, or for the recording, filing, rerecording or refiling of this Declaration of Trust or security agreements (excluding the continuation of Uniform Commercial Code financing statements) in connection therewith, or for insuring the Project or for collecting any insurance moneys or for the sufficiency of the security for the Certificates. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Declaration of Trust or of the Certificates. The Trustee will not be accountable for the use or application by the City of any of the Certificates or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Declaration of Trust or the Lease.

(d) The Trustee will not be required to give any bond or surety or report to any court despite any statute, custom or rule to the contrary.

(e) The Trustee may execute any of the duties under this Declaration of Trust by or through agents, attorneys, trustees or receivers and the Trustee will not be responsible for any misconduct or negligence on the part of any agent, attorney, trustee or receiver appointed with due care by it hereunder.

(f) The Trustee will not be required to take notice or be deemed to have notice of any default, Event of Default or other fact or event under this Declaration of Trust other than the City's failure to pay Basic Rental Payments required by **Section 4.01** of the Lease, unless the Trustee is specifically notified in writing of the default or Event of Default, fact or event by the City or the Owners of not less than 25% of the unpaid Principal Portion of Basic Rental Payments represented by the Certificates then Outstanding.

(g) The Trustee may consult legal counsel, may conclusively rely on the opinion or advice of such legal counsel and will not be liable for any act or omission taken or suffered pursuant to the opinion or advice of such counsel. The fees and expenses of the counsel will be deemed to be a proper expense of the Trustee.

(h) Unless specifically required by the terms of this Declaration of Trust, the Trustee need not take notice of or enforce any other document or relationship, including any contract, settlement, arrangement, plan, assignment, pledge, release, decree or the like, other than the Lease, but its duties will be solely as set out in this Declaration of Trust.

(i) The Trustee may be removed at any time by a Directive. The Trustee will give written notice of any removal pursuant to this **Section 11.01(i)** to the City. The Trustee will resign at any time the Trustee ceases to be eligible in accordance with **Section 11.01(l)**, or becomes incapable of acting, or is adjudged as bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the property or affairs of the Trustee for the purpose of rehabilitation, conservation or liquidation, and thereupon a successor Trustee will be appointed by a Directive.

(j) The Trustee may at any time resign by giving written notice of such resignation to the City and by giving the Certificate Owners Notice by Mail of such resignation at the addresses listed on the registration books kept by the Registrar pursuant to **Section 3.06**. Upon receiving such notice of resignation, a successor Trustee will be appointed by a Directive.

(k) Any removal or resignation of the Trustee and appointment of a successor Trustee will become effective only upon acceptance of appointment by the successor Trustee. If no successor Trustee has been appointed and has accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Certificate Owner (on behalf of himself and all other Certificate Owners) may petition any court of competent jurisdiction for the appointment of a successor

Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Declaration of Trust will signify its acceptance of such appointment by executing and delivering to the City and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, will become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee held by it as security for the Certificates, including its interest in the Site Lease and Lease, with like effect as if originally named Trustee herein and the duties and obligations of the predecessor Trustee hereunder will thereafter cease and terminate; but, nevertheless at the request of the City or the request of the successor Trustee, such predecessor Trustee will execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be requested for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Declaration of Trust and will pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the predecessor or the successor Trustee, the City will execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such money, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this **Section 11.01(k)**, such successor Trustee will cause Notice by Mail to all Owners of such acceptance.

(l) Any Trustee appointed under the provisions of this **Section 11.01** in succession to the Trustee will be a state or national trust company or bank having the powers of a trust company and being duly authorized to execute trust powers having a designated corporate trust office in the State, in good standing in the State, having a combined capital and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision and examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company will be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee will cease to be eligible in accordance with the provisions of this **Section 11.01(l)**, the Trustee will resign immediately in the manner and with the effect specified in this **Section 11.01**.

(m) Notwithstanding anything elsewhere in this Declaration of Trust, the Lease or the Site Lease contained, before taking any action under this Declaration of Trust (except with respect to acceleration of the Certificates and payment of the Certificates upon such acceleration or any payments of the Certificates when due), the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all reasonable fees, costs and expenses (including, without limitation, attorneys' fees and expenses) to which it may be put and to protect it against all liability that it may incur in or by reason of such action, including without limitation liability in connection with environmental contamination, and the cleanup thereof, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

(n) The Trustee may elect not to proceed in accordance with the directions of the Owners of the Certificates without incurring any liability to the Certificate Owners if in the opinion of the Trustee such direction may result in environmental or other liability to the Trustee, in its individual capacity, for which the Trustee has not received indemnity from the Certificate Owners, and the Trustee may rely upon an Opinion of Counsel addressed to the Trustee in determining whether any action directed by Certificate Owners may result in such liability.

(o) The Trustee may inform the Certificate Owners of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and, in such event no

fiduciary duty exists that imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not received indemnity pursuant to this Declaration of Trust.

(p) Notwithstanding any other provision of this Declaration of Trust to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee will be interpreted to include any action of the Trustee whether it is deemed to be in its capacity as Trustee, Registrar or Paying Agent.

(q) The Trustee will not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Section 7.02**.

(r) The Trustee will not be responsible for the use of any Certificates executed and delivered hereunder.

(s) Any action taken by the Trustee pursuant to and in accordance with this Declaration of Trust upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent is the Owner of any Certificate will be conclusive and binding upon all future Owners of the same Certificate and upon Certificates delivered in exchange therefor or upon transfer or in place thereof.

(t) The Trustee will have the right, but will not be required, to demand, in respect of the execution of any Certificate, the withdrawal of any moneys, the release of any property, or any action whatsoever within the purview of this Declaration of Trust, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee as are deemed desirable for the purpose of establishing the right of the City to any such action.

(u) The Trustee may become the owner of Certificates with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Certificate Owners, whether or not such committee will represent the Owners of a majority in principal amount of the Certificates then Outstanding.

**Section 11.02. Merger or Consolidation.** Any entity into which the Trustee may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion or consolidation to which it will be a party or any entity to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company will be eligible under **Section 11.01(l)** will be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**Section 11.03. Liability of Trustee; Indemnity.** The Trustee will not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct.

Before taking any action under this Declaration of Trust (except with respect to acceleration of the Certificates and payment of the Certificates upon such acceleration or any payments of the Certificates when due), the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all reasonable fees, costs and expenses to which it may be put and to protect it against all liability, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct by reason of any action so taken.

**Section 11.04. Right of Trustee to Rely on Documents.** The Trustee will be protected in acting upon any notice, resolution, ordinance, request, consent, order, certificate, report, opinion, Directive or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the City, with regard to legal questions, and the opinion or advice of such counsel will be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Declaration of Trust the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or omitting or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a statement signed by the Authorized Representative, and such statement will be full warrant to the Trustee for any action taken, omitted or suffered in good faith under the provisions of this Declaration of Trust in reliance upon such statement, and, prior to the occurrence of a default of which the Trustee has been notified as provided in **Section 11.01(f)** or of which by said section it is deemed to have notice, the Trustee will also be at liberty to accept a similar statement to the effect that any particular dealing, transaction or action is necessary or expedient, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

**Section 11.05. Preservation and Inspection of Documents.** All documents received by the Trustee under the provisions of this Declaration of Trust will be retained in its possession until six months after payment in full of all Certificates and the discharge of this Declaration of Trust and will be subject at all reasonable times to the inspection of the City and any Certificate Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.01. Survival of Provisions.** The obligations of the Trustee with respect to matters arising before the termination of this Declaration of Trust (including any indemnification obligations and any obligation to pay additional interest) will survive the termination of this Declaration of Trust.

**Section 12.02. No Third Party Beneficiaries.** No persons other than the City, the Trustee, the Owners of Certificates and the successors and assigns of such persons, will have any rights whatsoever under this Declaration of Trust.

**Section 12.03. Notices.** It will be sufficient service of any notice, request, complaint, demand or other paper required by this Declaration of Trust or the Lease to be given or filed with the Trustee or the City if the same will be duly mailed by registered or certified mail with postage prepaid (except as indicated in (a) below) addressed as follows, provided that any of the foregoing given to the Trustee will be effective only upon receipt:

(a) To the Owners of the Certificates if the same will be duly mailed by first class mail, postage prepaid, addressed to each of the Owners of Certificates at the time Outstanding at their addresses as shown by the register maintained pursuant to **Section 3.06**.

- (b) If to the City: The City of Lincoln, Nebraska  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508  
Attention: Finance Director
- (c) If to the Trustee: Union Bank and Trust Company  
6811 South 27<sup>th</sup> Street  
Lincoln, Nebraska 68512  
Attention: Corporate Trust Department

A duplicate copy of each notice, certificate or other communication given hereunder, or pursuant to the Lease or the Site Lease to any of the parties mentioned in this **Section 12.03** will be given to all other parties mentioned herein (other than the Owners of the Certificates unless a copy is required to be furnished to them by other provisions of this Declaration of Trust). The Trustee or the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications will be sent to it.

**Section 12.04. Waiver of Personal Liability.**

(a) All obligations or liabilities under this Declaration of Trust on the part of the Trustee are solely obligations or liabilities of the Trustee in its capacity hereunder as a corporate trustee of the Trust Estate. To the extent permitted by law, the City hereby releases each and every director, officer, agent, attorney or employee of the Trustee from any personal or individual liability under this Declaration of Trust. No director, officer, agent, attorney or employee of the Trustee will at any time or under any circumstances be individually or personally liable under this Declaration of Trust for anything done or omitted to be done by the Trustee hereunder.

(b) All obligations or liabilities under this Declaration of Trust on the part of the City are solely obligations or liabilities of the City as a political subdivision. To the extent permitted by law, the Trustee hereby releases each and every official, member, employee or agent of the City from any personal or individual liability under this Declaration of Trust. No official, member, employee or agent of the City will at any time or under any circumstances be individually or personally liable under this Declaration of Trust for anything done or omitted to be done by the City hereunder.

**Section 12.05. Declaration of Trust Binding Upon Trustee and Successors.** This Declaration of Trust will inure to the benefit of and will be binding upon the Trustee and its successors and assigns, subject to the limitations contained herein.

**Section 12.06. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

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

**IN WITNESS WHEREOF**, the Trustee, has caused this Declaration of Trust to be executed by its duly authorized corporate officers, all as of the day and year indicated above.

**UNION BANK AND TRUST COMPANY**, Trustee

(SEAL)

By: \_\_\_\_\_  
Assistant Vice President

ATTEST:

By: \_\_\_\_\_  
Authorized Officer

## **SCHEDULE 1**

**TO SITE LEASE DATED [CLOSING DATE], 2010, BETWEEN THE CITY OF LINCOLN, NEBRASKA AND UNION BANK AND TRUST COMPANY, TO LEASE PURCHASE AGREEMENT DATED [CLOSING DATE], 2010, BETWEEN UNION BANK AND TRUST COMPANY AND THE CITY OF LINCOLN, NEBRASKA, AND TO DECLARATION OF TRUST DATED [CLOSING DATE], 2010 BY UNION BANK AND TRUST COMPANY.**

### **THE PROJECT SITE**

**Lots 4, 5, 6, 7, 8, 9, and 10, Block 4 and Lot 9, Block 7, Union Pacific Addition  
Lincoln, Lancaster County, Nebraska**

**EXHIBIT A**

**TO DECLARATION OF TRUST DATED [Closing Date], 2010, EXECUTED BY UNION BANK AND TRUST COMPANY, AS TRUSTEE**

**FORM OF CERTIFICATE OF PARTICIPATION**

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the Trustee or its agent for registration of transfer, exchange or payment, and any certificate delivered is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co., or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

NUMBER R-\_\_

\$ \_\_\_\_\_

**CERTIFICATES OF PARTICIPATION  
SERIES 2010B**

**Evidencing a Proportionate Interest  
in Basic Rent Payments to be Made by the  
The City of Lincoln, Nebraska  
Pursuant to a Lease Purchase Agreement**

<u>Interest Rate</u>	<u>Payment Date</u>	<u>Certificate Date</u>	<u>CUSIP</u>
	_____, 20__	[Closing Date], 2010	

**Registered Owner: CEDE & CO.**

**Principal Amount:**

**THIS IS TO CERTIFY** that the registered owner identified above of this Certificate of Participation (the “**Certificate**”) is the owner of the proportionate interest hereinafter stated in that certain Lease Purchase Agreement dated [Closing Date], 2010 (the “**Lease**”), between Union Bank and Trust Company, a state banking corporation organized and existing under the laws of the State of Nebraska (the “**Trustee**”), and The City of Lincoln, Nebraska, a city of the primary class (the “**City**”), including payments of Basic Rent to be made thereunder (the “**Basic Rent Payments**”). The City is authorized to enter into the Lease pursuant to applicable laws, including the constitution and statutes of the State of Nebraska and Ordinance No. \_\_\_\_\_ of the City. This Certificate is subject to the Declaration of Trust, dated [Closing Date], 2010, by the Trustee, as amended or supplemented from time to time (the “**Declaration of Trust**”), which is on file at the designated corporate trust office of the Trustee located in Lincoln, Nebraska. Capitalized terms used herein and not otherwise defined have the meanings assigned to such terms in the Declaration of Trust.

**THE REGISTERED OWNER** of this Certificate is entitled to receive, subject to the terms of the Lease and the Declaration of Trust, on the payment date specified above (the "Certificate Payment Date"), or if selected for prepayment, on the Prepayment Date, the principal sum specified above, representing a portion of the Basic Rent Payment designated as principal coming due on the Certificate Payment Date, and to receive the registered Owner's proportionate share of Basic Rent Payments designated as interest on \_\_\_\_\_ and \_\_\_\_\_, commencing on \_\_\_\_\_, 2011, to and including the Certificate Payment Date or the Prepayment Date, whichever is earlier. Said proportionate share of the Basic Rent Payments designated as interest is computed on the principal sum specified above from [Closing Date], 2010, or the most recent date to which such interest has been paid, at the interest rate specified above on the basis of a 360-day year of twelve 30-day months.

**SUCH AMOUNTS** are payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts. The amounts representing principal or prepayment price are payable by check or draft at the designated corporate trust office of the Registrar upon the presentation and surrender of this Certificate; the amounts representing interest are payable to the person in whose name this Certificate is registered in the register maintained by the Trustee at the close of business on the last day (whether or not a Business Day) of the calendar month next preceding each interest payment date (a "**Record Date**") by check or draft mailed to such registered Owner at his address as it appears in said register or in the case of an amount representing interest to be paid to any registered Owner of Certificates representing an aggregate amount of principal of \$5,000 or more, by electronic transfer to such registered Owner upon written notice give to the Trustee by such registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which will be in the continental United States), ABA routing number and account number to which such registered Owner wishes to have such transfer directed.

This Certificate is one of a duly authorized series of certificates of participation designated "Certificates of Participation, Series 2010B, Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Lincoln, Nebraska, Pursuant to a Lease Purchase Agreement" (the "**Certificates**") for the purpose of providing funds to pay the costs of (a) acquiring certain real property and the buildings and facilities located thereon, (b) remodeling, renovating, equipping and furnishing such buildings and facilities (collectively, the "**Project**"), and (c) paying certain costs connected to the execution and delivery of the Certificates. This Certificate has been executed by the Trustee pursuant to and is governed by the terms of the Declaration of Trust. Copies of the Lease and the Declaration of Trust are on file at the office of the City and at the designated corporate trust office of the Trustee, and reference to the Lease and the Declaration of Trust and any and all amendments and supplements thereto is made for a description of the pledges and covenants of the City securing the Basic Rent Payments, the nature, extent and manner of enforcement of such pledges and covenants and the rights and the terms and conditions upon which the Certificates are delivered thereunder.

The Declaration of Trust permits certain amendments or supplements to the Declaration of Trust and the Lease not prejudicial to the Certificate Owners to be made without the consent of or notice to the Certificate Owners, certain other amendments or supplements thereto to be made with the consent of the Owners of not less than a majority in aggregate principal amount of the Certificates then Outstanding and other amendments or supplements thereto to be made only with the consent of all Certificate Owners.

If certain conditions are met, the Lease may be amended without the consent of or notice to the Certificate Owners to increase the amount of Basic Rent payable by the City, and additional certificates of participation evidencing interests in such increased Basic Rent may be executed and delivered under the Declaration of Trust. Such certificates of participation would be on a parity with the Certificates.

The Series 2010B Certificates that evidence Principal Portions of Basic Rent payable to Certificate Owners on or after \_\_\_\_\_, 201\_\_, will be subject to optional prepayment, as a whole or in part, on or after \_\_\_\_\_, 201\_\_, at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented by the Certificates being prepaid, plus the Interest Portion of Basic Rent accrued to the Prepayment Date, from amounts paid by the City upon the exercise of its option to purchase the Trustee's interest in the Project or partially prepay Basic Rent Payments pursuant to the terms of the Lease.

The Term Certificates will be subject to prepayment at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented by the Certificates being prepaid plus the Interest Portion of Basic Rent accrued to the Prepayment Date, at the times and in the amounts set forth in the Declaration of Trust.

In the event any of the Certificates are to be prepaid, notice thereof identifying the Certificates to be prepaid will be given by first class mail, postage prepaid, mailed not more than 60 days and not less than 30 days prior to the Prepayment Date to each registered Owner of Certificates to be prepaid. The failure of the registered Owner of any Certificate to be so prepaid to receive notice of prepayment mailed as herein provided will not affect or invalidate the prepayment of such Certificate. All Certificates for which notice of prepayment is given will cease to bear interest on the specified Prepayment Date, provided moneys or certain securities for their prepayment are on deposit at the place of payment at that time, will cease to be entitled to any benefit or security under the Declaration of Trust and will no longer be deemed to be outstanding under the Declaration of Trust.

This Certificate will be transferable upon the Certificate register, which will be kept for that purpose at the designated corporate trust office of the Trustee, upon surrender and cancellation of this Certificate together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner of his, her or its duly authorized attorney and upon payment of the charges provided in the Declaration of Trust. Upon such transfer a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount will be delivered to the transferee. The Trustee may treat the registered Owner hereof as the absolute Owner hereof for all purposes, and the Trustee will not be affected by any notice to the contrary.

The Certificates are being delivered by means of a book-entry system with no physical distribution of certificates to be made except as provided in the Declaration of Trust. One Certificate with respect to each Certificate Payment Date, registered in the nominee name of the Securities Depository, is being delivered. The book-entry system will evidence positions held in the Certificates by the Securities Depository's participants, beneficial Ownership of the Certificates in authorized denominations being evidenced in the records of such participants. Transfers of Ownership will be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Trustee will recognize the Securities Depository nominee, while the registered Owner of this Certificate, as the Owner of this Certificate for all purposes, including (a) payments of the Principal Portions of Basic Rent and the Interest Portion of Basic Rent, (b) notices and (c) voting. Transfers of the Principal Portion and Interest Portion of Basic Rent to participants of the Securities Depository, and transfers of Principal Portion and Interest Portion of Basic Rent to beneficial Owners of the Certificates by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial Owners. The Trustee will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Certificate, notwithstanding the provision hereinabove contained, payments on this Certificate will be made in accordance with existing arrangements among the City, the Trustee and the Securities Depository.

EXCEPT AS OTHERWISE PROVIDED IN THE DECLARATION OF TRUST, THIS GLOBAL CERTIFICATE MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

The Certificates may be delivered in the form of fully registered Certificates in the denomination of \$5,000 or any integral multiple thereof, subject to certain limitations and as otherwise provided in the Declaration of Trust. The Certificates, upon surrender thereof at the designated corporate trust office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the registered Owner of his, her or its duly authorized attorney in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates of any authorized denomination of the same maturity. No service charge will be made for any transfer or exchange of Certificates, but the Trustee may require payment of any tax or governmental charge in connection therewith.

**THE TRUSTEE** has no obligation or liability to the registered Owners of the Certificates to make payments of principal or interest with respect to the Certificates. The Trustee's sole obligations are to administer, for the benefit of the registered Owners thereof, the various funds and accounts established under the Declaration of Trust.

**THE City** has certified, recited and declared that all acts, conditions and things required by the constitution and statutes of the State of Nebraska and the Lease to exist, to have happened and to have been performed precedent to the delivery of the Lease, exist, have happened and have been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the Trustee has caused this Certificate to be executed by an authorized signatory the date set forth above.

**UNION BANK AND TRUST COMPANY,  
not in its individual capacity but solely as  
Trustee under the Declaration of Trust  
dated [Closing Date], 2010**

By: \_\_\_\_\_  
Authorized Signatory

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**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

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Please Print or Typewrite Name, Address and  
Employee Identification Number or Social Security Number of Transferee

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ Attorney to transfer the within Certificate on the register kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

\_\_\_\_\_  
(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15) or such other similar rule as Trustee may deem applicable)

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

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**EXHIBIT B**

**TO DECLARATION OF TRUST DATED [CLOSING DATE], 2010, EXECUTED  
BY UNION BANK AND TRUST COMPANY, AS TRUSTEE**

**FORM OF REQUISITION CERTIFICATE  
FOR COSTS OF THE PROJECT**

Request No. \_\_\_\_\_

Date: \_\_\_\_\_

**WRITTEN REQUEST FOR DISBURSEMENT FOR  
COSTS OF THE PROJECT**

To: Union Bank and Trust Company  
6811 South 27<sup>th</sup> Street  
Lincoln, Nebraska 68512  
Attention: Corporate Trust Department

Ladies and Gentlemen:

Pursuant to **Section 5.02** of the Lease Purchase Agreement (the “**Lease**”) between Union Bank and Trust Company (the “**Trustee**”) and The City of Lincoln, Nebraska (the “**City**”), and **Section 6.04** of the Declaration of Trust (the “**Declaration of Trust**”), both dated [Closing Date], 2010, the City hereby requests payment in accordance with this request and said sections of the Lease and the Declaration of Trust, and the City hereby states and certifies that (a) all terms of this request are used with the meanings used in the Lease and the Declaration of Trust, (b) the names of the persons, firms or corporations, if any, to whom the payments requested hereby are due, the amounts to be paid are as set forth on **Attachment I** hereto, (c) the amount hereby requested has been paid or is justly due and is hereby requested to be paid to contractors, subcontractors, materialmen, engineers, architects or other persons (which may include the City) (whose names and addresses are stated on **Attachment I** hereto) who have performed necessary and appropriate work or furnished necessary and appropriate materials in the acquisition, construction and installation of the Project (a brief description of such work and materials and the several amounts so paid or due being set forth on **Attachment I** hereto), (d) no part of the several amounts paid or due, as stated in this certificate has been, is being or will be made the basis for the withdrawal of any moneys in any previous, pending or subsequently filed certificate, (e) the amount remaining to be paid from the Project Fund to pay the remaining Costs of the Project to be paid from the Series 2010B Certificates (as defined in the Declaration of Trust), together with other moneys set aside by the City to pay Costs of the Project, will, after payment of the amounts requested, be sufficient to pay the cost of completing the Project in accordance with an estimate of cost of work not yet completed, it being understood that no moneys in the Project Fund may be disbursed to pay Costs of the Project unless after such expenditure the remaining moneys remaining in the Project Fund, together with any other funds available and committed by the City, are sufficient to pay such remaining Costs of the Project s to be paid from the Series 2010B Certificates (as defined in the Declaration of Trust), (f) this certificate contains no request for payment on account of any retained percentage that the City is at the date of such certificate entitled to retain, (g) there has not been filed with or served upon the City any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the respective amounts stated in said certificate that has not been released or will not be released simultaneously with the payment of such obligation, and (h) for the purpose of assuring proper direction and credit of payment, invoices, statements, vouchers or bills for the amounts requested, except as to any retainage, related to amounts specified in this certificate are attached hereto.

**THE CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
Authorized Representative

[\_\_\_\_\_  
(Architect)]

Pursuant to **Section 5.02** of the Lease and **Section 6.04** of the Declaration of Trust, the City hereby states and certifies that (a) each of the City's representations contained in the Lease or the Site Lease is true, correct and not misleading as though made as of the date hereof, and (b) no event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an Event of default.

**THE CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
Authorized Representative

[The following certification should be signed in lieu of the Architect's signature above if the foregoing request is for payment of Costs of Issuance.]

The foregoing request is for the payment of Costs of Issuance.

By: \_\_\_\_\_  
Authorized Representative

**ATTACHMENT I  
TO WRITTEN REQUEST FOR DISBURSEMENT FROM  
THE CITY OF LINCOLN, NEBRASKA  
PROJECT FUND**

**SCHEDULE OF PAYMENTS REQUESTED**

<u>Payee and Address</u>	<u>Amount</u>	<u>Description</u>
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**EXHIBIT C**

**TO DECLARATION OF TRUST DATED [CLOSING DATE], 2010, EXECUTED  
BY UNION BANK AND TRUST COMPANY, AS TRUSTEE**

**PAYMENT SCHEDULE FOR SERIES 2010B CERTIFICATES**

<u>Principal Amount</u>	<u>Maturity ( )</u>	<u>Interest Rate</u>
,000	2011	
,000	2012	
,000	2013	
,000	2014	
,000	2015	
,000	2016	
,000	2017	
,000	2018	
,000	2019	
,000	2020	
,000	2021	
,000	2022	
,000	2023	
,000	2024	
,000	2025	

**GILMORE & BELL, P.C.**  
**DRAFT #1**  
**SEPTEMBER 16, 2010**

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances may this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor may there be any sale of these securities in any jurisdictions in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2010**

**NEW ISSUE  
BOOK-ENTRY ONLY  
NOT BANK QUALIFIED**

**RATING: Moody's "\_\_\_\_"  
See "RATING"**

*In the opinion of Special Tax Counsel, under existing law and assuming continued compliance with certain requirements of the Internal Revenue Code of 1986, as amended, the Interest Portion of Basic Rent Payments paid by the City and distributed to the registered owners of the Series 2010B Certificates (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal and Nebraska income tax purposes, except as described herein, is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The Series 2010B Certificates have not been designated a "qualified tax-exempt obligations within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. See "TAX MATTERS."*

**OFFICIAL STATEMENT  
\$[Principal Amount]\*  
CERTIFICATES OF PARTICIPATION  
SERIES 2010B  
Evidencing Proportionate Interests of the Owners  
Thereof in Basic Rent Payments to be Made by  
THE CITY OF LINCOLN, NEBRASKA**

**as Lessee pursuant to a Lease Purchase Agreement with Union Bank and Trust Company, as Lessor**

**Dated: date of delivery**

**Due: \_\_\_\_\_, as shown below**

The Series 2010B Certificates will be executed and delivered in fully registered form in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository for the Series 2010B Certificates. Purchases of the Series 2010B Certificates will be made in book-entry form, in the denomination of \$5,000 or any integral multiple thereof as described above. Purchasers will not receive certificates representing their interests in Series 2010B Certificate purchases. So long as Cede & Co. is the registered owner of the Series 2010B Certificates, as nominee of DTC, references herein to the Registered Owners shall mean Cede & Co. and shall not mean the Beneficial Owners (herein defined) of the Series 2010B Certificates. Interest Portions of Basic Rent represented by the Series 2010B Certificates are payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, to and including the date of maturity or prepayment, whichever is earlier, commencing on \_\_\_\_\_, 2011.

The Series 2010B Certificates evidence the ownership of proportionate interests in, and rights to receive payments under, a Lease Purchase Agreement dated [Closing Date], 2010 (the "Lease"), between Union Bank and Trust Company, a state banking corporation (the "Trustee"), as lessor, and The City of Lincoln, Nebraska (the "City"), as lessee. The Series 2010B Certificates are executed and delivered pursuant to a Declaration of Trust dated [Closing Date], 2010, made by the Trustee. Neither the Series 2010B Certificates nor the Basic Rent Payments are obligations of the Trustee, and the Trustee does not have any obligations under or with respect to the Series 2010B Certificates or the Basic Rent Payments.

The Series 2010B Certificates are subject to optional prepayment prior to maturity as described herein. See "THE SERIES 2010B CERTIFICATES OF PARTICIPATION - Prepayment."

The Series 2010B Certificates constitute interests in Basic Rent Payments to be made by the City. The Basic Rent Payments are payable from the City's General Fund, which includes the City's sales tax revenue and ad valorem taxes levied by the City against all taxable property in the City. See "NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION."

<u>Maturity</u> <u>(March 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP</u> <u>Number</u> <u>(534266)</u>
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*The Series 2010B Certificates are offered when, as and if executed and delivered by the Trustee, subject to the approval of their validity by Gilmore & Bell, P.C., Special Tax Counsel, as described herein. Certain legal matters will be passed upon for the City by John Hendry, City Attorney. It is expected that the Series 2010B Certificates in definitive form will be available for delivery at The Depository Trust Company in New York, New York, on or about [Closing Date], 2010.*

**[UNDERWRITER]**

The date of this Official Statement is \_\_\_\_\_, 2010.

\*Preliminary, subject to change.

**THE CITY OF LINCOLN, NEBRASKA**

555 South 10th Street  
Lincoln, Nebraska 68508  
(402) 441-7412

**MAYOR**

Christopher Beutler

**CITY COUNCIL**

John Spatz (Chair)

Jon Camp  
Jonathan Cook  
Adam Hornung

Eugene Carroll  
Doug Emery  
Jayne Snyder

**DEPARTMENT HEADS**

Don Herz ..... Finance Director  
Rodney Confer ..... City Attorney  
Marvin Krout ..... Planning Director  
Lynn Johnson ..... Parks and Recreation Director  
Kevin Wailes ..... LES Administrator and CEO  
David Landis ..... Urban Development Director  
Pat Leach ..... Library Director  
Greg MacLean ..... Public Works and Utilities Director  
Bruce Dart ..... Health Director  
Mark Koller ..... Personnel Director  
Thomas Casady ..... Police Chief  
Niles Ford ..... Fire Chief  
Chuck Zimmerman ..... Interim Director, Building and Safety

Peggy Tharnish, City Controller

**SPECIAL TAX COUNSEL**

Gilmore & Bell, P.C.  
Lincoln, Nebraska

**LESSOR AND TRUSTEE**

Union Bank and Trust Company  
Lincoln, Nebraska

**UNDERWRITER**

**FINANCIAL ADVISOR**

Ameritas Investment Corp.  
Lincoln, Nebraska

## **REGARDING USE OF THIS OFFICIAL STATEMENT**

**No dealer, broker, sales representative or other person has been authorized by the City or the Underwriter to give any information or to make any representations with respect to the Series 2010B Certificates other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Series 2010B Certificates by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been furnished by the City and other sources which are believed to be reliable, but such information is not guaranteed as to accuracy or completeness, and is not to be construed as a representation, by the Underwriter. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date hereof.**

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**IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2010B CERTIFICATES AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

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**THE SERIES 2010B CERTIFICATES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY STATE SECURITIES OR "BLUE SKY" LAWS. THE SERIES 2010B CERTIFICATES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION.**

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## OFFICIAL STATEMENT

\$[Principal Amount]\*  
**CERTIFICATES OF PARTICIPATION**  
**SERIES 2010B**  
**Evidencing Proportionate Interests of the Owners**  
**Thereof in Basic Rent Payments to be Made by**  
**THE CITY OF LINCOLN, NEBRASKA**  
**as Lessee pursuant to a Lease Purchase Agreement with**  
**Union Bank and Trust Company, as lessor**

### INTRODUCTION

*This introduction is only a brief description and summary of certain information contained in this Official Statement and is qualified in its entirety by reference to more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement.*

#### **Purpose of the Official Statement**

This Official Statement, including the cover page and the appendices hereto (the **“Official Statement”**), is provided to furnish information with respect to the sale and delivery of certificates of participation in the aggregate principal amount of \$[Principal Amount]\* (the **“Series 2010B Certificates”**), representing the proportionate interests of the owners thereof (the **“Certificate Owners”**) in basic rent payments (the **“Basic Rent Payments”**) to be made by The City of Lincoln, Nebraska (the **“City”**), as the rental payments and purchase price of the interest of Union Bank and Trust Company, a state banking corporation, as lessor (the **“Trustee”**), in the hereinafter defined Improvements, pursuant to a Lease Purchase Agreement, dated [Closing Date], 2010 (the **“Lease”**), entered into between the Trustee and the City, as lessee. In connection with the execution and delivery of the Lease, the City, as lessors, and the Trustee will enter into a Site Lease dated the date of delivery (the **“Site Lease”**) pursuant to which the Trustee will acquire an interest in the real property on which the Project (hereinafter defined) will be located. See **“THE PROJECT.”**

#### **The City**

The City is a city of the primary class and political subdivision organized and existing under the laws of the State of Nebraska. The City is located in the geographic center of Lancaster County, Nebraska, and is the state capital, as well as the county seat. See **“APPENDIX A: THE CITY”** and **“APPENDIX B: FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED AUGUST 31, 2009, TOGETHER WITH AUDITOR’S REPORT THEREON.”**

#### **Plan of Financing**

The proceeds received from the sale of the Series 2010B Certificates will be used to (a) acquire the real property located at 901 West Bond Street and 949 West Bond Street in the City and the buildings and facilities located thereon, (b) remodel, renovate, equip and furnish such buildings and facilities (collectively,

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\* Preliminary, subject to change.

the “**Project**”), and (c) pay certain costs related to the execution and delivery of the Series 2010B Certificates.

Pursuant to the terms and conditions of the Lease and the Declaration of Trust, the Trustee and the City have agreed that the Trustee will pay, from proceeds of the sale of the Series 2010B Certificates, the cost of the Project.

The Series 2010B Certificates are payable solely from the Basic Rent Payments to be paid by the City under the Lease and, to the extent received by the Trustee, net proceeds of certain insurance policies, condemnation awards or proceeds from the liquidation of interests in the Project.

### **The Financing Documents**

The Trustee will lease the Improvements, with the option to purchase, to the City pursuant to the Lease. The Lease will provide, among other things, for a term that commences on the date of delivery ([Closing Date], 2010) of the Certificates, and ends on \_\_\_\_\_, 2025, the date of the final maturity of the Certificates. The City is authorized to enter into the Lease pursuant to Ordinance No. \_\_\_\_\_ passed by the Council on October 4, 2010 and approved by the Mayor on October \_\_\_\_, 2010 (the “**Ordinance**”).

The Series 2010B Certificates are being executed and delivered pursuant to a Declaration of Trust dated the date of delivery (the “**Declaration of Trust**”), made by the Trustee. Neither the Certificates nor the Basic Rent Payments are obligations of the Trustee, and the Trustee has no liability or obligation under or with respect to the Certificates or the Basic Rent Payments.

Under the Declaration of Trust, the Trustee will hold all of its estate, right, title and interest in the Lease for the benefit of the Certificate Owners.

### **Financial Statements**

The audited financial statements of the City for Fiscal Year ended August 31, 2009, are included in *Appendix B* hereto. The financial statements in *Appendix B* have been audited by BKD, LLP, Lincoln, Nebraska, independent auditors, whose report thereon is also included in *Appendix B* hereto.

### **Continuing Disclosure**

The City agrees in a Continuing Disclosure Certificate, dated the date of delivery (the “**Disclosure Certificate**”), to provide certain annual financial information and operating data relating to the City by not later than May 1 of each year (the “**Annual Report**”), commencing May 1, 2011, and to provide notices of the occurrence of certain enumerated events, if deemed by the City to be material. See **CONTINUING DISCLOSURE.**”

### **Definitions and Descriptions; Inspection of Documents**

Certain capitalized terms used in this Official Statement and not otherwise defined herein shall have the meanings given to such terms in **APPENDIX C: “DEFINITIONS AND SUMMARIES OF CERTAIN PRINCIPAL DOCUMENTS.”** Summaries of the Site Lease, the Lease and the Declaration of Trust are also included in *Appendix C*. Such descriptions do not purport to be comprehensive or definitive. All references herein to the Site Lease, the Lease and the Declaration of Trust are qualified in their entirety by reference to such documents, copies of which may be viewed at the principal corporate office of the City’s Financial Advisor, Ameritas Investment Corp., 5900 “O” Street, Lincoln, Nebraska, Nebraska 68510, or will be provided by the Financial Advisor to any prospective purchaser requesting the

same, upon payment by such prospective purchaser of the cost of complying with such request. All references to the Series 2010B Certificates are qualified in their entirety by the definitive terms thereof and the information with respect thereto included in the Site Lease, the Lease and the Declaration of Trust. Information concerning the City has been supplied by the City, and has not been verified by the Trustee, and the Trustee makes no representation or warranty, express or implied, as to the accuracy or completeness of such information.

## ***THE SERIES 2010B CERTIFICATES OF PARTICIPATION***

### **General Provisions**

The Series 2010 Certificates are dated the date of delivery thereof , and will mature on \_\_\_\_\_, in the amounts and in the years stated on the cover page hereof unless prepaid prior thereto.

### **Payment of Basic Rent and Prepayment Price**

The Series 2010b Certificates will be delivered in the denomination of \$5,000 each or any integral multiple thereof in book-entry form. Purchases of the Series 2010B Certificates will be made in book-entry only form in the denomination of \$5,000 or any integral multiple thereof. Purchasers of the Series 2010B Certificates will not receive certificates representing their interests in the Series 2010B Certificates purchased. Each Series 2010B Certificate represents a proportionate interest in the Principal Portions and Interest Portions of the Basic Rent Payments to be paid by the City to the Trustee for the benefit of the Series 2010B Certificate Owners. Principal Portions of Basic Rent will be payable on \_\_\_\_\_ of each year beginning \_\_\_\_\_, 2011. Interest Portions of Basic Rent shall be payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, beginning on \_\_\_\_\_, 2011, to and including the date of maturity or prepayment, whichever is earlier. Under the Declaration of Trust, the Trustee is designated as the initial paying agent for the Series 2010B Certificates.

While the Series 2010B Certificates remain in book-entry form, payments to Beneficial Owners (defined herein) are governed by the rules of DTC as described in **“BOOK-ENTRY ONLY SYSTEM.”** In the event that DTC ceases to act as securities depository for the Series 2010B Certificates, payment may be made as described below. Under the Declaration of Trust, the Trustee is designated as the initial paying agent for the Series 2010 Certificates.

Interest Portions of Basic Rent represented by the Series 2010B Certificates shall be payable by check or draft of the Trustee mailed to the Series 2010B Certificate Owners at the address of each Series 2010B Certificate Owner shown on the registration books maintained by the Trustee as of the close of business on the last day of the month next preceding the month in which each Interest Payment Date occurs (the **“Record Date”**), or at the written request of any Owner of Series 2010B Certificates in the aggregate Principal Portion of at least \$500,000, by electronic transfer to the bank for credit to the ABA routing number and account number filed with the Trustee no later than 15 days prior to the record date.

The Principal Portion of the Basic Rent or Prepayment Price represented by the Series 2010B Certificates will be payable (whether at maturity or upon prepayment or acceleration) by check or draft to the Owners of such Series 2010B Certificates upon presentation and surrender of such Series 2010B Certificates at the designated corporate trust office of the Trustee.

## Transfer and Exchange

While the Series 2010B Certificates remain in book-entry form, transfers of ownership by Beneficial Owners may be made as described under “**BOOK-ENTRY ONLY SYSTEM.**” In the event that DTC ceases to act as securities depository for the Series 2010B Certificates, transfers may be effected as described below.

Books for the registration and transfer of the Series 2010B Certificates are to be kept by the Trustee, as registrar. Upon surrender for transfer of any Series 2010B Certificate at the principal payment office of the Trustee and satisfaction of the conditions and restrictions of such transfer, the Trustee is to execute and deliver in the name of the transferee a new Series 2010B Certificate of the same maturity or maturities, interest rate and tenor as the Series 2010B Certificates surrendered. Series 2010B Certificates may be exchanged at the principal payment office of the Trustee for an equal aggregate principal amount of Series 2010B Certificates of the same maturity or maturities, interest rate and tenor as the Series 2010B Certificate surrendered. All Series 2010B Certificates presented for transfer or exchange must be accompanied by a written instrument of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the Owner or by his attorney duly authorized in writing.

The Trustee is not required to transfer or exchange any Series 2010B Certificate after such Series 2010B Certificate has been called for prepayment.

The person in whose name any Series 2010B Certificate is registered is deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either the Principal Portion or the Interest Portion of the Basic Rent Payments represented by any Series 2010B Certificate will be made only to or upon the written order of the registered owner thereof or his legal representative.

The Series 2010B Certificates are payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debt. Series 2010B Certificates may be transferred at the principal payment office of the Trustee. Series 2010B Certificates may be exchanged for Series 2010B Certificates of the same maturity of other authorized denominations in accordance with the terms of the Declaration of Trust. For every such exchange or transfer of Series 2010B Certificates, the Trustee shall make a charge to the Series 2010B Certificate Owner sufficient to reimburse it for any tax, fee or other governmental charges required to be paid with respect to such exchange or transfer.

## Prepayment

**Mandatory Prepayment**\*. The Series 2010B Certificates with a stated maturity date of \_\_\_\_\_, 202\_\_ (the “**Term Certificates**”), are subject to mandatory prepayment on \_\_\_\_\_, 20\_\_, and on each March 15 thereafter to and including \_\_\_\_\_, 202\_\_, at a Prepayment Price equal to 100% of the Principal Portion of Basic Rent represented thereby plus the Interest Portion of Basic Rent accrued thereon to the Prepayment Date, as follows:

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\* Preliminary, subject to change.

**Prepayment Date**

**Principal  
Amount**

The remaining \$\_\_\_\_\_ principal portion of Series 2010B Certificates maturing on \_\_\_\_\_, 202\_\_, will be paid at their stated maturity.

**Optional Prepayment.** The Series 2010B Certificates maturing on \_\_\_\_\_, 201\_\_, and thereafter are subject to optional prepayment, as a whole or in part, at any time on or after \_\_\_\_\_, 201\_\_, at the prepayment price of 100% of the Principal Portion of Basic Rent being prepaid set forth below, plus Interest Portions of Basic Rent accrued to the prepayment date.

**Notice of Prepayment.** Unless otherwise provided in the Declaration of Trust, notice of prepayment shall be given by the Trustee, not less than 30 days nor more than 60 days prior to the prepayment date, to the City and the Owner of each Series 2010B Certificate affected at the address shown on the registration books of the Registrar on the date such notice is mailed. Each notice of prepayment shall state the prepayment date, the place of prepayment, the prepayment price and, if less than all, the numbers of the Series 2010B Certificates to be prepaid. Such notice shall also state that the Interest Portion of the Basic Rent represented by the Series 2010B Certificates designated for prepayment shall cease to accrue from and after such prepayment date and that on said date the prepayment price will become due and payable on each of said Series 2010B Certificates.

So long as the book-entry only system is used for the Series 2010B Certificates, the Trustee will give any notice of prepayment or any other notices required to be given to owners only to DTC. Any failure of DTC to advise any DTC Participant or of any DTC Participant to notify the Beneficial Owner, of any such notice and its content or effect will not affect the validity of the prepayment of the Series 2010B Certificates so called for prepayment. Beneficial Owners may desire to make arrangements with a DTC Participant so that all notices of prepayment or other communications to DTC which affect such Beneficial Owners, including notification of all interest payments, will be forwarded in writing by such DTC Participant. See **“BOOK-ENTRY ONLY SYSTEM.”**

The Trustee is also directed to comply with any mandatory or voluntary standards then in effect for processing prepayments of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the prepayment of any Series 2010 Certificate to be prepaid.

**Effect of Prepayment.** Notice of prepayment having been duly given as provided, and funds sufficient for payment of the prepayment price of such Series 2010B Certificates being held by the Trustee, on the prepayment date designated in such notice, the Series 2010B Certificates so called for prepayment shall become due and payable at the prepayment price specified in such notice and the Interest Portion of Basic Rent represented by the Series 2010B Certificates so called for prepayment shall cease to accrue, said Series 2010B Certificates shall cease to be entitled to any benefit or security under the Declaration of Trust and the Owners of such Series 2010B Certificates shall have no rights in respect thereof except to receive payment of the prepayment price.

## **Book-Entry Only System**

**General.** The Depository Trust Company (“**DTC**”), New York, New York, will act as securities depository for the Certificates. The ownership of one fully registered Certificate for each maturity, as set forth on the cover of this Official Statement, each in the aggregate principal amount of such maturity, will be registered in the name of Cede & Co., as the nominee for DTC. Ownership interests in the Certificates will be available to purchasers only through a book-entry system maintained by DTC (the “**Book-Entry System**”). A description of DTC, the Book-Entry System and definitions of initially capitalized terms used herein are found in **APPENDIX D: “BOOK-ENTRY SYSTEM”** to this Official Statement.

**Risk Factors.** Beneficial Owners of the Certificates may experience some delay in their receipt of distributions of the principal or redemption price of and interest on the Certificates because such distributions will be forwarded by the Registrar to DTC, credited by DTC to its Direct Participants, and then credited to the accounts of the Beneficial Owners either directly or indirectly through Indirect Participants.

Because transactions in the Certificates can only be effected through DTC, DTC Participants and certain banks, the ability of a Beneficial Owner to pledge Certificates to persons or entities that do not participate in the Book-Entry System, or otherwise to take actions in respect of such Certificates, may be limited due to the lack of physical certificates. Beneficial Owners will not be recognized by the Registrar as registered owners for purposes of the Ordinance, and Beneficial Owners will be permitted to exercise the rights of registered owners only indirectly through DTC and DTC Participants.

## **SECURITY AND SOURCES OF PAYMENT FOR THE CERTIFICATES**

The City has contracted in the Lease to pay the Rental Payments from which the Distributions will be made, which Rental Payments are general obligations of the City payable from the City’s General Fund, and are not subject to annual appropriation by the Council. The City’s General Fund includes sales tax revenue together with ad valorem taxes which the City is authorized to levy, subject to certain budget and levy limitations, in amounts sufficient to make the Rental Payments. In the Lease, the City has covenanted that the Rental Payments and any additional rent payable under the Lease do not exceed any limitation imposed by law, and that the Rental Payments are not such as may reasonably be expected to require the City to levy taxes in excess of any levy or budget limitation. The City shall continue to be responsible to raise funds to pay and to take all actions required to provide funds to make the Rental Payments required in the Lease from any power and source lawfully available. The City has further covenanted and agreed that throughout the term of the Lease it will observe all budget and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of its tax levy or other money shall be lawfully available to pay the Rental Payments and any additional rent due under the Lease. Any property taxes levied by the City to make Rental Payments are subject to the budget and levy limitations described under “**NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION.**”

## **NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION**

In recent years, the Nebraska Legislature (the “**Legislature**”) has enacted and amended legislation intended to reduce the level of property taxation and political subdivision expenditures in the State of Nebraska (the “**State**”). The two statutory sections of principal importance are Section 13-519, Reissue Revised Statutes of Nebraska, as amended (as enacted and amended from time to time, “**Section 13-519**”), which provides for an overall limitation on general fund budget expenditures for all governmental units within the State, and Section 77-3442, Reissue Revised Statutes of Nebraska, as amended (as

enacted and amended from time to time, “**Section 77-3442**”), which reduces the rate of taxation for general property taxes authorized for all governmental units within the State.

Section 13-519 provides that for all fiscal years beginning on or after July 1, 1998, no governmental unit (including the City) may adopt a budget containing a total of budgeted restricted funds more than the last prior year’s total of budgeted restricted funds plus allowable growth, plus a basic allowable growth percentage (initially 2½% until adjusted by the Legislature). Restricted funds generally include property taxes, excluding any amounts refunded to taxpayers, payments in lieu of property taxes, local option sales taxes, state aid, transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, and any excess tax collections returned to the county by a governmental unit as a result of overpayment due to clerical error or mistake. Allowable growth includes the percentage increase in taxable valuation in excess of the base limitation established under Section 77-3446, Reissue Revised Statutes of Nebraska, as amended, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property and any increase in valuation due to annexation and any personal property valuation over the prior year. Such budget limitations may be exceeded by up to an additional 1% upon the affirmative vote of at least 75% of the governing body of the governmental unit, and larger increases are permitted with the approval of a majority of legal voters voting on the issue of such increase at a special election held for such purposes.

Under Section 77-3442, the rates for levying property taxes are limited for each type of governmental unit in the State. The rate for cities is no more than 45¢ per \$100 of taxable valuation plus an additional 5¢ per \$100 of taxable valuation may be levied to provide financing for a city’s share of revenue required under an agreement executed pursuant to the Interlocal Cooperation Act, Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended, or the Joint Public Agency Act, Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended. A political subdivision may exceed the levy limitations provided in Section 77-3442 or a final levy allocation determination as provided in Section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters. The limitations of Section 13-519 do not apply to restricted funds pledged to retire bonded indebtedness, and the limitations of Section 77-3442 do not apply to property taxes levied for bonded indebtedness approved according to law and secured by a levy on property. The City’s total levy (excluding bond levy) for the current fiscal year is \$0.\_\_\_\_\_ which is expected to produce \$\_\_\_\_\_ in collected taxes.

### **ADDITIONAL CERTIFICATES**

The Trustee may, at any time upon compliance with certain terms and conditions set forth in the Declaration of Trust, deliver Additional Certificates for any purpose specified in the Declaration of Trust. Any Additional Certificates will be equally and ratably secured by the Declaration of Trust on a parity with the Certificates. Concurrently with the delivery of any such Additional Certificates, the Trustee and the City shall deliver an amendment to the Lease obligating the City to make payments of principal thereof and interest thereon in amounts and at times sufficient to provide for the timely payment of principal of and interest on such Additional Certificates. See **APPENDIX C: DEFINITIONS AND SUMMARIES OF CERTAIN PRINCIPAL DOCUMENTS - DECLARATION OF TRUST - Additional Certificates.**”

## ***THE TRUSTEE***

The Trustee is not liable for the payment of Basic Rent Payments, and the Owners have no right to look to the Trustee for any payments of the Certificates or for any other payments other than from funds held under the Declaration of Trust.

## **RISK FACTORS**

### **Inability to Liquidate**

The enforceability of the Certificates and the Lease is subject to applicable bankruptcy laws, equitable principles affecting the enforcement of creditors rights generally and liens securing such rights, and the police powers of the State and its political subdivisions. The Improvements are appropriate for use only as part of a street lighting system and a stormwater management and park system. Because of such limited use, and the delays inherent in obtaining the remedies involving such property, a potential purchaser of the Certificates should not anticipate that remedies could be accomplished rapidly, if at all. Any delays in the ability of the Trustee to exercise its remedies under the Lease or the Declaration of Trust may result in the payment of the Certificates or nonpayment of the Certificates after expenditures of any amount on deposit in the Reserve Fund.

### **Effects on the Tax Exemption of the Certificates Upon a Termination**

Special Tax Counsel expresses no opinion with respect to the applicability of the registration requirements of the Securities Act of 1933, to any Certificates in the event of a termination of the Lease by reason of an Event of Default. If the Lease is terminated by reason of such event, there is no assurance that the Certificates may be transferred by an Owner thereof without compliance with the registration provisions of the Securities Act of 1933, as amended, or the availability of an exemption therefrom.

Special Tax Counsel expresses no opinion as to the treatment for federal income tax purposes of any moneys received by a Registered Owner of the Certificates other than payments by the City made pursuant to the Lease, upon an Event of Default. There is no assurance that such moneys received by the Registered Owners of the Certificates in such event will be excludable from gross income for federal income tax purposes.

## **THE PROJECT**

### **Description of the Project**

**[TO BE PROVIDED]**

## **ESTIMATED SOURCES AND USES OF FUNDS**

The sources and application of funds in connection with the execution of the Series 2010 Certificates, exclusive of accrued interest, are estimated, based upon certain assumptions regarding the investment of such funds, as follows:

**Sources of Funds:**

Certificate Proceeds \$  
[Plus/Minus]: Net Original Issue [Premium/Discount]

Total Sources of Funds

**Applications of Funds:**

Project Costs  
Costs of Issuance\*

Total Applications of Funds

\*Includes underwriter’s discount, legal fees, printing expenses and other miscellaneous expenses.

***SCHEDULE OF LEASE PAYMENTS***

The following table sets forth the scheduled amortization of the Series 2010 Certificates:

<b><u>Fiscal Year</u></b> <b><u>Ending August 31</u></b>	<b><u>Principal</u></b> <b><u>Portion</u></b>	<b><u>Interest</u></b> <b><u>Portion</u></b>	<b><u>Total</u></b>
2011			
2012			
2013			
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2020			
2023			
2024			
2025			

TOTAL

**SUMMARY OF THE LEGAL DOCUMENTS**

Attached hereto as *Appendix C* are summaries of certain provisions of the Site Lease, the Lease and the Declaration of Trust as well as certain defined terms used therein. The summaries do not purport to be complete, and reference is made to the full text of the Site Lease, the Lease and the Declaration of Trust, respectively, for a complete recital of their terms, as well as a complete recital of the defined terms used therein. Copies of all documents relating to the Series 2010B Certificates can be obtained from the

Trustee upon payment by such prospective purchaser requesting the same, upon payment by such prospective purchaser of the cost of complying with such request.

## CONTINUING DISCLOSURE

The City has determined that no financial or operating data concerning the Trustee is material to an evaluation of the offering of the Series 2010B Certificates or to any decision to purchase, hold or sell the Series 2010B Certificates, and the City will not provide any such information. The City has no responsibility to any person with respect to the provision of any information about the Trustee.

The City is executing and delivering the Disclosure Certificate for the benefit of the Owners and Beneficial Owners of the Series 2010B Certificates and in order to assist the Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission (the “**Rule**”). The City is the only “obligated person” with responsibility for continuing disclosure.

### Annual Reports

Pursuant to the Disclosure Certificate, the City shall, not later than **May 1** of each year, commencing with May 1, 2011, provide to the Municipal Securities Rulemaking District (“**MSRB**”) the following financial information and operating data (the “**Annual Report**”):

(a) The audited financial statements of the City for the prior fiscal year, prepared in accordance with generally accepted accounting principles. If audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement relating to the Certificates, and the audited financial statements shall be filed in the same manner as the Annual Report promptly after they become available.

(b) Updates as of the end of the fiscal year of such financial and operating data as the City customarily prepares of the type included in **Appendix B** of this Official Statement in substantially the same format contained in this Official Statement.

### Material Event Notices

Pursuant to the Disclosure Certificate, the City also shall give notice of the occurrence of any of the following events with respect to the Certificates, if material (“**Material Events**”):

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Certificates;
- (7) modifications to rights of Owners;
- (8) optional, contingent or unscheduled calls of the Certificates;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Certificates; or
- (11) rating changes.

If the City determines that a Material Event has occurred, the City shall promptly file a notice of such occurrence with the MSRB.

The City may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under the Disclosure Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent. The dissemination agent shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to the Disclosure Certificate.

Notwithstanding any other provision of the Disclosure Certificate, the City may amend the Disclosure Certificate and any provision of the Disclosure Certificate may be waived, provided Special Tax Counsel or other counsel experienced in federal securities law matters provides the City with its opinion that the undertaking of the City, as so amended or after giving effect to such waiver, is in compliance with the Rule and all current amendments thereto and interpretations thereof that are applicable to the Disclosure Certificate.

In the event of a failure of the City to comply with any provision of the Disclosure Certificate, any Owner or Beneficial Owner of the Certificates may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City to comply with its obligations under the Disclosure Certificate. A default under the Disclosure Certificate shall not be deemed an Event of Default under the Lease Agreement or the Declaration of Trust, and the sole remedy under the Disclosure Certificate in the event of any failure of the City to comply with the Disclosure Certificate shall be an action to compel performance.

#### **Electronic Municipal Market Access System (EMMA)**

All Annual Reports and notices of Material Events required to be filed by the City or the dissemination agent pursuant to the Disclosure Certificate must be submitted to the MSRB through the MSRB's Electronic Municipal Market Access system ("**EMMA**"). EMMA is an internet-based, online portal for free investor access to municipal bond information, including offering documents, material event notices, real-time municipal securities trade prices and MSRB education resources, available at [www.emma.msrb.org](http://www.emma.msrb.org). Nothing contained on EMMA relating to the City or the Certificates is incorporated by reference in this Official Statement.

#### **RATING**

Moody's Investors Service has assigned the Certificates the rating of "\_\_\_." Such rating reflects only the views of such organization, and an explanation of the significance of such rating may be obtained from Moody's Investors Service, 7 World Trade Center, 350 Greenwich Street, 23<sup>rd</sup> Floor, New York, New York 10007, telephone (212) 553-0300.

Generally, a rating agency bases its rating on such information and materials and investigations, studies and assumptions furnished to and obtained and made by the rating agency. The debt rating is not a recommendation to purchase, sell or hold a security, inasmuch as it does not comment as to market price or suitability for a particular investor. There is no assurance that the above rating will remain for any given period of time or that it may not be lowered, suspended or withdrawn entirely by such rating agency if it deems circumstances are appropriate. Any downward change in, suspension or withdrawal of such rating may have an adverse effect on the market price of the Certificates.

## LITIGATION

The Transcript of Proceedings will contain a certificate of non-litigation dated as of the closing and executed by the City to the effect that there is no controversy, suit or proceeding of any kind pending or, to the knowledge of the City, threatened wherein or whereby any question is raised, or may be raised, questioning, disputing or affecting in any way the legal organization of the City, or the legality of any official act shown to have been done regarding the execution and delivery of the Lease or the Series 2010 Certificates or the constitutionality or validity of the obligation represented by the Series 2010 Certificates or the means provided for the Basic Rent Payments under the Lease.

## TAX MATTERS

### Opinion of Bond Counsel

**Federal Tax Exemption.** In the opinion of Gilmore & Bell, P.C., Special Tax Counsel, under existing law, the Interest Portion of Basic Rent Payments paid by the City and distributed to the registered owners of the Series 2010B Certificates (including any original issue discount properly allocable to an owner thereof) is excludable from gross income for federal and Nebraska income tax purposes. The Interest Portion of Basic Rent Payments is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, but is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations. The opinions set forth in this paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the “Code”), that must be satisfied subsequent to the execution of the Series 2010B Certificates in order that said Interest Portion of Basic Rent be, or continue to be, excludable from gross income for federal and Nebraska income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of said Interest Portion of Basic Rent represented by the Series 2010B Certificates in gross income for federal and Nebraska income tax purposes retroactive to the date of the initial delivery of the Series 2010B Certificates. The Series 2010B Certificates have not been designated as “qualified tax-exempt obligations” for purposes of Section 265(b) of the Code.

**Original Issue Discount.** In the opinion of Special Tax Counsel, under existing law, the original issue discount in the selling price of each Series 2010B Certificate purchased in the original offering at a price less than the par amount thereof, to the extent properly allocable to each owner of such Series 2010 Certificate, is excludable from gross income for federal income tax purposes with respect to such owner. The original issue discount is the excess of the stated payment price at maturity of such Series 2010B Certificate over the initial offering price to the public (excluding underwriters and intermediaries) at which price a substantial amount of the Series 2010B Certificates were sold. Under Section 1288 of the Code, original issue discount on tax-exempt obligations accrues on a compound basis. The amount of original issue discount that accrues to an owner during any accrual period generally equals (a) the issue price of such Series 2010B Certificate plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (b) the yield to maturity on such Series 2010B Certificate (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (c) any Interest Portion of Basic Rent Payments payable to the owner of such Series 2010B Certificate during such accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner’s tax basis in such Series 2010B Certificate. Owners of any Series 2010B Certificates purchased at an original issue discount should consult with their individual tax advisors regarding the determination and treatment of original issue discount for federal income tax purposes and the state and local consequences of owning such Series 2010B Certificates.

**Original Issue Premium.** An amount equal to the excess of the purchase price of a Series 2010B Certificate over its stated redemption price at maturity constitutes premium on such Series 2010B Certificate. An owner of a Series 2010B Certificate must amortize any premium over such Series 2010B Certificate's term using constant yield principles, based on the Series 2010B Certificate's yield to maturity. As premium is amortized, the owner's basis in such Series 2010B Certificate and the amount of tax-exempt interest received will be reduced by the amount of amortizable premium properly allocation to such owner. This will result in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Series 2010B Certificate prior to its maturity. Even though the purchaser's basis is reduced, no federal income tax deduction is allowed. Owners of Series 2010B Certificates purchased at a premium, whether at the time of initial issuance or subsequent thereto, should consult with their individual tax advisors with respect to the determination and treatment of premium for federal income tax purposes and with respect to state and local tax consequences of owning such Series 2010B Certificates.

**No Other Opinions.** Special Tax Counsel expresses no opinion regarding other federal or State tax consequences arising with respect to the Series 2010B Certificates.

### **Other Tax Consequences**

Prospective purchasers of the Series 2010B Certificates should be aware that ownership of the Series 2010B Certificates may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with "excess net passive income," foreign corporations subject to the branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Series 2010B Certificates. Special Tax Counsel expresses no opinion regarding these tax consequences. Purchasers of Series 2010B Certificates should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Series 2010B Certificates, including the possible application of state, local, foreign and other tax laws.

## **LEGAL MATTERS**

All legal matters incident to the authorization, execution and delivery of the Series 2010B Certificates are subject to the approval of legality by Special Tax Counsel. Special Tax Counsel has participated in the preparation of this Official Statement but the factual and financial information appearing herein has been supplied or reviewed by the City, its officials and counsel. Certain legal matters will be passed upon for the City by its counsel, Rodney C. Confer, City Attorney, Lincoln, Nebraska.

## **ADDITIONAL INFORMATION**

Additional information with respect to the City and the Series 2010B Certificates may be obtained upon request from the City.

Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact. No representation is made that any of such statements will be realized. This Official Statement is not to be construed as a contract or agreement between the City and Series 2010B Certificate Owners.

This Official Statement has been approved by the City and is submitted only in connection with the sale of the Series 2010B Certificates and may not be reproduced or used in whole or in part for any other purpose.

**APPENDIX A**

**THE CITY OF LINCOLN, NEBRASKA**

**APPENDIX B**

**FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR  
ENDED AUGUST 31, 2009, TOGETHER WITH AUDITORS' REPORT THEREON**

**APPENDIX C**

**DEFINITIONS AND SUMMARIES  
OF CERTAIN PRINCIPAL DOCUMENTS**

**APPENDIX D**

**BOOK-ENTRY SYSTEM**

## BOOK-ENTRY SYSTEM

The Series 2010B Certificates are available in book-entry form and beneficial ownership interests therein may be purchased in the principal amount of \$5,000 or any integral multiple thereof. Purchasers of the Series 2010B Certificates will not receive certificates representing their interests in the Series 2010B Certificates.

**The following information concerning The Depository Trust Company (“DTC”), New York, New York and DTC’s book-entry system has been obtained from sources the City believes to be reliable. However, the City takes no responsibility as to the accuracy or completeness thereof and neither the Indirect Participants nor the Beneficial Owners should rely on the following information with respect to such matters, but should instead confirm the same with DTC or the Direct Participants, as the case may be. There can be no assurance that DTC will abide by its procedures or that such procedures will not be changed from time to time.**

DTC will act as securities depository for the Series 2010B Certificates. The Series 2010B Certificates will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered certificate will be issued for each maturity of the Series 2010B Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“**Direct Participants**”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“**DTCC**”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (“**NSCC**,” “**FICC**,” and “**EMCC**,” also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“**Indirect Participants**”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Series 2010B Certificates under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2010B Certificates on DTC’s records. The ownership interest of each actual purchaser of each Series 2010B Certificate (“**Beneficial Owner**”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction.

Transfers of ownership interests in the Series 2010B Certificates are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2010B Certificates, except in the event that use of the book-entry system for the Series 2010B Certificates is discontinued.

To facilitate subsequent transfers, all Series 2010B Certificates deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2010B Certificates with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2010B Certificates; DTC's records reflect only the identity of the Direct Participants to whose accounts such Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2010B Certificates may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2010B Certificates, such as redemptions, tenders, defaults, and proposed amendments to the Series 2010B Certificate documents. For example, Beneficial Owners of the Series 2010B Certificates may wish to ascertain that the nominee holding the Series 2010B Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2010B Certificates within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2010B Certificates unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the City as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2010B Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payment of principal or redemption price of and interest on the Series 2010B Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the City or the Registrar, on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, its nominee, the Registrar, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal or redemption price of and interest on the Certificates to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City or the Registrar. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2010B Certificates at any time by giving reasonable notice to the City or the Registrar. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2010B Certificates are required to be printed and delivered.

The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2010B Certificates will be printed, registered in the name of DTC's partnership nominee, Cede & Co. (or such other name as may be requested by an authorized representative of DTC), and delivered to DTC (or a successor securities depository), to be held by it as securities depository for Direct Participants. If, however, the system of book-entry transfers has been discontinued and a Direct Participant has elected to withdraw its Series 2010B Certificates from DTC (or such successor securities depository), Series 2010B Certificates may be delivered to Beneficial Owners upon compliance with DTC's withdrawal procedures then in effect.

**APPENDIX E**

**FORM OF OPINION OF  
SPECIAL TAX COUNSEL**