

LOAN AGREEMENT
City of Lexington Economic Development Loan Fund
ED Loan # _____

THIS AGREEMENT dated _____, 2014, by and between ORTHMAN INVESTMENTS, L.L.C. (the “Borrower”), and THE CITY OF LEXINGTON, NEBRASKA, (the “Lender”).

WHEREAS, the Lender is authorized to disburse certain funds received from the Economic Development Sales Tax Fund for the purposes and in accordance with requirements set forth in the state statutes and regulations; and

WHEREAS, based upon information furnished by Lender and Borrower, the Lender is satisfied that this loan furthers the purposes specified in the federal statute for the use of ED funds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

PART I: THE LOAN

1.01 The Loan and Rate.

Subject to the terms and conditions of this Agreement and the approval of the Lexington City Council, the Lender agrees to loan the sum of \$500,000.00, to be repaid in annual installments of \$33,333.34, each payment to include interest at 0.0% per annum, the first such payment to be due _____, 2015, and annually thereafter for a period of fifteen years and until the entire balance is paid in full. If the date of payment falls on a Federal Bank Holiday or weekend, the payment shall be made the following business day.

1.02 Purpose of Loan.

The purpose of the loan and grant is to provide working capital for Borrower. The Borrower agrees it will apply the funds received by it under this Agreement in the manner described above.

PART II: REPRESENTATIONS AND WARRANTIES.

The Borrower represents and covenants the following:

2.03 Legally Binding Instruments.

When this Agreement is executed by the Borrower and the Lender, and when the Note is executed and delivered by the Borrower, each such instrument will constitute the legal, valid, and binding obligation of the company in accordance with its terms. Any security agreements and instruments, financing statements, mortgages and other liens on chattel or real estate will constitute legal, valid and binding liens free and clear of all prior liens and encumbrances except as provided for.

2.04 No Legal Suits.

There are no legal actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any court or administrative agency, which, if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.

2.05 No Legal Authorization Needed.

No authorization, consent or approval, or any formal exemption of any Governmental body, regulatory authorities (federal, state or local) or mortgagee, creditor or third party, is or was necessary for the valid execution and delivery by the Borrower of this Agreement.

2.06 Not In Default.

The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

2.07 Taxes Are Paid.

The Borrower has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the Borrower or its personal or real property by any taxing agency, federal, state or local. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state, or local for taxes materially in excess of those already provided for and the Borrower knows of no basis for any such deficiency assessment.

2.08 No Adverse Change.

The Borrower certifies that there has been no adverse or material change since the date of loan application in the financial condition, organization, operation, business prospects, fixed properties, or personnel of the Borrower.

PART III: CONDITIONS OF LENDING.

The obligation of the Lender to make the Loan will be subject to the fulfillment at the time of closing of each of the following conditions:

3.01 Execution and Delivery of Note and Loan Agreement.

The Borrower will have executed and delivered to the Lender this Loan Agreement and the Promissory Note in a form satisfactory to the Lender and its Counsel.

3.02 Approval of Others.

The Borrower will have secured all necessary approvals or consents required with respect to this transaction by any mortgagor, creditor or other party having any financial interest in the Borrower.

3.03 Security.

Lender is aware that Borrower is obtaining this Loan as part of a New Markets Tax Credit transaction as defined in the US Tax Code. As a result, Borrower may not be able to grant Lender a security in any of the Borrower's assets. However, to the extent allowed by the parties to the New Markets Tax Credit transaction. Borrower will execute, in favor of Lender, a Collateral Assignment of Leverage Loan Documents whereby Lender shall have all of Borrower's rights under Borrower's subordinated leverage loan to Orthman Enhanced Investment Fund, L.L.C., which is Borrower's only asset.

PART IV: AFFIRMATIVE COVENANTS OF THE BORROWER.

The Borrower agrees to comply with the following covenants from this date until the Lender has been fully repaid with interest, unless the Lender or its Assigns will otherwise consent in writing.

4.01 Payment of the Loan.

The Borrower agrees to pay punctually the principal and interest in the Note according to the terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of this Agreement.

4.02 Payment of Other Indebtedness.

The Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or at any time owing by the Borrower to the Lender or any other lender.

4.03 Maintain and Insure Property.

The Borrower agrees at all times to maintain the property provided as security for this Loan in such condition and repair that the Lender's security will be adequately protected.

4.04 Pay All Taxes.

The Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties are attached except that the Borrower will not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate proceedings.

4.05 Provide Financial Information.

The Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted principles of good accounting practice consistently applied in the case of financial transactions.

In addition, the Borrower agrees to deliver to the Lender proof of compliance with job creation requirements.

The Borrower further agrees to provide information, and execute and deliver any and all additional documents and instruments as may be reasonably requested by the Lender, its assigns or counsel, or the Department and its assigns.

The Borrower further agrees to provide written notice to the Lender of any public hearing or meeting before any administrative or other public agency which may, in any manner, affect the real estate securing the loan.

4.06 Right to Inspection.

The Borrower agrees to grant to the Lender and the Department, until the Note has been fully repaid with interest, the right at all reasonable hours to inspect the collateral used to secure the Loan; and the Borrower further agrees to provide the Lender free access to the Borrower's premises for the purpose of such inspection to determine the condition of the real estate.

4.07 Null and Void Covenants.

The Borrower agrees that in the event that any provision of this Loan Agreement or any other instrument executed at closing or the application to any person or circumstances will be declared null and void, invalid, or held for any reason to be unenforceable by a Court of competent jurisdiction, the remainder of such agreement will nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate.

4.8 Expenses and Closing Costs.

The Borrower agrees to pay all fees, expenses and charges with respect to the Loan, or its making or transfer to the Lender in any way connected including, but no limited to, the fees and out-of-pocket expenses of local counsel employed by the Lender, title insurance and survey costs, recording and filing fees, mortgage taxes, documentary stamp, and any other taxes, fees and expenses payable in connection with this transaction and with the enforcement of this Loan Agreement and Note.

4.9 Notice of Default.

The Borrower agrees to give written notice to the Lender of any event, within fifteen (15) days of the event, which constitutes an Event of Default under this Loan Agreement as described in Article VI or that would, with notice or lapse of time or both, constitute an Event of Default under this Loan Agreement.

4.10 Indemnification.

The Borrower agrees to indemnify and save the Lender or its Assigns harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of the Borrower.

4.11 Expenses of Collection or Enforcement.

The Borrower agrees, if at any time the Borrower defaults on any provision of this Loan Agreement, to pay Lender in addition to any other amounts that may be due from the Borrower, an amount equal to the costs and expenses of collection, enforcement or correction or waiver of the default incurred by the Lender or its Assigns in such collection, enforcement, correction or waiver of default.

4.12 Compliance With Law.

Evidence satisfactory to the Lender will be furnished certifying that all improvements and their use comply fully with all applicable zoning and building laws, ordinances and regulations, and all other applicable federal, state and municipal law requirements. The loan will be in all respects legal and will not violate any applicable law or other requirements of any governmental authority.

4.13 Environmental Protection Laws.

Receipt of evidence satisfactory to the Lender of compliance with all applicable environmental protection and land use and development laws, ordinances and regulations of all federal, state and local governmental authorities and agencies having jurisdiction.

PART V: NEGATIVE COVENANTS OF THE BORROWER.

The Borrower covenants and agrees that, from this date until payment in full of the Note, unless the Lender or its Assigns otherwise consent in writing, it will not enter into any agreement or other commitment the performance of which would constitute a breach of any of the covenants contained in this Loan Agreement including, but not limited to the following covenants:

5.01 Change Ownership.

The principals of the Borrower shall not voluntarily make, without the written permission of the Lender and the Department, any material change in the ownership, structure, control, or operation of the Borrower including but not limited to i) merger into or consolidation with any other person, firm or corporation; ii) significant issuance of any shares of its capital stock having ordinary voting power for the election of members of the Board of Directors or other governing body of the Borrower; iii) changing the nature of its business as carried out at the date hereof; (iv) substantial distribution, liquidation or other disposal of the Borrower's assets to the stock holders. Should the Borrower propose any material change in the ownership, structure, control, or operation of the Borrower, the Lender and the Department reserve the right to re-negotiate this Agreement or make the entire unpaid principal of the Note and the accrued interest will immediately be due and payable upon written demand of the Lender and/or the Department or assigns. This provision shall be subject to all requirements of the New Markets Tax Credit program.

PART VI: EVENTS OF DEFAULT.

The entire unpaid principal of the Note and the accrued interest will become and be immediately due and payable upon the written demand of Lender, except where noted, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (an "Event of Default") occurs and be continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rules or regulation of any administrative or governmental body, provided, however, that such sum will not be then payable if Borrower's payments have been waived, or the time for making the Borrower's payments have been extended by the Lender.

6.01 Non-Payment of Loan.

If the Borrower fails to make payment when due of any installment of principal on the Note or accrued interest and if the default remains unremedied for fifteen (15) days.

6.02 Non-Payment or Other Indebtedness.

If default is made in the payment when due of any installment of principal or of interest on any of Borrower's other indebtedness and if such default will remain unremedied for fifteen (15) days.

6.03 Incorrect Representation or Warranty.

Any representation or warranty contained in, or made in connection with the execution and delivery of, this Loan Agreement or Grant Application or in any provided information proves to be incorrect.

6.04 Default in Covenants.

The Borrower will default in the performance of any other term, covenant or agreement contained in this Loan Agreement, and such default continues unremedied for thirty (30) days after either: 1) it becomes known to an executive officer of the Borrower or 2) written notice has been given to the Borrower by the Lender and the Department.

6.05 Voluntary Insolvency.

If the Borrower becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of its business, or the appointment of a receiver, trustee, or liquidation of a substantial portion of its assets, effects a composition or other arrangement with creditors, or be adjudicated bankrupt, or make voluntary assignment for the benefit of creditors.

6.06 Involuntary Insolvency.

If an involuntary petition is filed against the Borrower under any bankruptcy, insolvency or similar law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the Borrower, or of a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process will be issued against a substantial part of the property of the Borrower, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded, within thirty (30) days after filing or levy.

PART VII: MISCELLANEOUS.

7.01 Waiver of Notice

No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Loan Agreement or of the Note, nor any consent to same will be effective unless it is in writing and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case will entitle the Borrower to any other or further notice or demand in similar or other circumstances.

7.02 Amendments.

The Borrower and the Lender or its Assigns, reserves all rights to amend any provisions of this Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the note provided, unless all such amendments be in writing and executed by the Lender or its Assigns, and the Borrower.

7.03 Notices.

All notices, consents, requests, demands and other communication will be in writing and will be deemed to have been duly given to a party if mailed to the Lender at its address set forth in the grant application, and to the Borrower at the address set forth in the grant application.

7.04 Survival of Representations and Warranties.

All agreements, representations, and warranties made by the Borrowers or any other document or certificate delivered to the Lender in connection with the transactions contemplated by this Loan Agreement will survive the delivery of this Agreement, the Note and the Security Agreements, and will continue in full force and effect so long as the Note is outstanding.

7.05 Successors and Assigns.

This Loan Agreement will be binding upon the Borrower, its Successors, and Assigns. The Borrower may not assign or transfer its rights without prior written consent of the Lender.

7.06 Counterparts.

This Loan Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

7.07 Governing Law.

This Loan Agreement and the Note and Security Agreements and Financing Statements will be deemed contracts made under the laws of the State of Nebraska and for all purposes will be construed in accordance with the laws of this State.

7.08 Article and Section Headings.

Article and Section Headings used in this Agreement for convenience only and will not affect the construction of this Agreement.

IN WITNESS WHEREOF, the parties have each caused this Loan Agreement to be executed on _____, 2014.

The City of Lexington, NE, Lender

Orthman Investments, L.L.C.

By: _____

By: _____

City Manager

Managing Member

PROMISSORY NOTE

ED Loan #_____

\$500,000.00

Lexington, Nebraska

FOR VALUED RECEIVED, the undersigned, ORTHMAN INVESTMENTS, L.L.C. (the "Maker"), promises to pay to the order of The City of Lexington, Nebraska (the "Grantee"), the principal sum of \$500,000.00, according to the terms of a "Loan Agreement" executed concurrently herewith. Said loan shall be due in annual installments of \$33,333.34, each payment to include interest at 0.0% per annum, the first such payment to be due _____, 2015, and annually thereafter for a period of fifteen years and until the entire balance is paid in full.

All payments and any notice to The City of Lexington, Nebraska, will be made at P.O. Box 70, Lexington, NE 68850 or such other address as designated to the "Maker" in writing. Any notice to the "Maker" will be given to the "Maker" at the following address: Orthman Investments, L.L.C., P.O. Box B, Lexington, NE 68850.

Dated _____, 2014.

Orthman Investments, L.L.C.

By: _____
Managing Member