

LEASE PURCHASE AGREEMENT

between

**BOKF, NATIONAL ASSOCIATION,
Trustee**

and

THE CITY OF LEXINGTON, NEBRASKA

Dated as of _____, 2015

TABLE OF CONTENTS
LEASE PURCHASE AGREEMENT

PAGE

ARTICLE I

DEFINITIONS

Section 1.01.	Definitions	1
Section 1.02.	Rules of Construction	4
Section 1.03.	Execution of Counterparts	5
Section 1.04.	Severability	5
Section 1.05.	Governing Law	5

ARTICLE II

REPRESENTATIONS

Section 2.01.	Representations of the City.....	5
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ARTICLE III

DEMISING OF THE PROPERTY; LEASE TERM

Section 3.01.	Lease of Project	7
Section 3.02.	Lease Term	7
Section 3.03.	Enjoyment of Project	7
Section 3.04.	Inspection	7

ARTICLE IV

RENT

Section 4.01.	Basic Rent.....	8
Section 4.02.	Supplemental Rent.....	8
Section 4.03.	Advances	8
Section 4.04.	Credit Against Basic Rent Payment Obligation.....	8
Section 4.05.	Net Lease	8
Section 4.05.	Obligations Unconditional.....	9
Section 4.07.	Compensation of the Trustee	9
Section 4.08.	Increased Basic Rent	9
Section 4.09.	Obligations Under the Declaration of Trust.....	9

ARTICLE V

ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE PROJECT

Section 5.01.	Acquisition, Construction and Installation	10
Section 5.02.	Payment for Construction of the Improvements and the Personal Property	11
Section 5.03.	Completion of the Project; Excess Funds.....	11
Section 5.04.	Warranties.....	11
Section 5.05.	DISCLAIMER OF WARRANTIES	11
Section 5.06.	Deficiency of Project Fund.....	11

ARTICLE VI

IMPOSITIONS

Section 6.01.	Impositions	12
Section 6.02.	Contest of Impositions.....	12

ARTICLE VII

INSURANCE; INDEMNITY

Section 7.01.	Insurance Required.....	12
Section 7.02.	Enforcement of Contract and Surety Bonds	13
Section 7.03.	Release and Indemnification	14

ARTICLE VIII

COVENANTS OF THE CITY

Section 8.01.	Maintenance and Modification of Project by the City.....	14
Section 8.02.	Tax Covenants	15
Section 8.03.	The City's Continuing Existence.....	15
Section 8.04.	Continuing Disclosure	Error! Bookmark not defined.

ARTICLE IX

CASUALTY AND CONDEMNATION

Section 9.01.	Damage, Destruction and Condemnation.....	16
Section 9.02.	Insufficiency of Net Proceeds.....	17

ARTICLE X

OPTION TO PURCHASE; PARTIAL PREPAYMENT

Section 10.01.	Purchase Option.....	17
Section 10.02.	Partial Prepayment.....	17
Section 10.03.	Determination of Fair Rent and Purchase Price	17
Section 10.04.	Conveyance of Title.....	18

ARTICLE XI
ASSIGNMENT

Section 11.01. Assignment and Subleasing by the City 18

ARTICLE XII
EVENTS OF DEFAULT

Section 12.01. Events of Default Defined 18
Section 12.02. Remedies on Default 19
Section 12.03. No Remedy Exclusive 19

ARTICLE XIII
MISCELLANEOUS

Section 13.01. Notices 20
Section 13.02. Easement and Leasehold 20
Section 13.03. Title to Personal Property 20
Section 13.04. Security Interest 20
Section 13.05. Binding Effect 20
Section 13.06. Amendments, Changes and Modifications 20
Section 13.07. Electronic Transactions 20

Signatures S-21

- Exhibit A-1 – Description of the Personal Property
- Exhibit A-2 – Description of the Real Property
- Exhibit B – Schedule of Basic Rent Payments

LEASE PURCHASE AGREEMENT

This **LEASE PURCHASE AGREEMENT** (the “**Lease**”), dated as of _____, 2015, is entered into between **BOKE, NATIONAL ASSOCIATION**, a national banking corporation organized and existing under the laws of the State of Nebraska, as Trustee (the “**Trustee**”), and **THE CITY OF LEXINGTON, NEBRASKA**, a city of the first 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 License and Easement, dated as of _____, 2015 (the “**License and Easement**”), pursuant to which the City has leased to the Trustee the real property described on **Exhibit A-2**, including any existing improvements thereon (the “**Real Property**”); 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 a portion of the funds to (a) pay the costs of (1) purchasing those items of personal property listed on **Exhibit A-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto (the “**Personal Property**”) pursuant to certain contracts, purchase orders or other written instruments and (2) acquiring, constructing, equipping and furnishing a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant (the “**Improvements**”); the Personal Property, the Improvements and the Real Property are referred to collectively as 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.

“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 4.08**.

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

“Basic Rent Payment Date” means each June 15 and December 15 during the Lease Term, commencing on _____, 20__.

“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 2015 Certificates and any Additional Certificates.

“City” means The City of Lexington, Nebraska, a city of the first 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.

“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 Improvements.

“Contract” means one of any agreements between the City and various parties, if any, providing for the acquisition and installation of various portions of the Personal Property.

“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.

“Costs of the Project” means all reasonable or necessary expenses related or incidental to the acquisition, construction and installation of the Improvements and the Personal Property, 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 accrued interest on the Certificates. Costs of the Project include Costs of Issuance.

“Dated Date” means the date the Series 2015 Certificates are delivered to the Original Purchaser.

“Declaration of Trust” means the Declaration of Trust, dated as of _____, 2015, made by the Trustee, as the same may from time to time be amended or supplemented in accordance with its terms.

“Engineer” means the Director of Public Works of Lexington, Nebraska, or any other engineer or architect hired by the City with respect to the Improvements.

“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 October 1 and ending on September 30.

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

“Improvements” means the acquisition, construction, equipping and furnishing of a new solid waste disposal facilities and equipment for use by the City to replace obsolete solid waste facilities that are no longer serviceable.

“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 B**.

“Lease” means this Lease Purchase Agreement, dated as of _____, 2015, 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 date of the Dated Date and ending on _____, 20____, unless earlier terminated in accordance with the provisions hereof.

“License and Easement” means the License and Easement, dated as of _____, 2015, between the City, as grantor, and the Trustee, as grantee.

“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.

“Original Purchaser” means Ameritas Investment Corp.

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

“Personal Property” means those items of personal property listed on **Exhibit A-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto pursuant to certain contracts, purchase orders or other written instruments.

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

“Project” means the Real Property, the Improvements and the Personal Property.

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

“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.

“Real Property” means the real property described on **Exhibit A-2**.

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

“Rent Payment” means a payment of Rent.

“Series 2015 Certificates” means the Series 2015 Certificates as defined in the Declaration of Trust.

“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 13.06**.

“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 first 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 License and Easement 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 License and Easement and this Lease and has been duly authorized to execute and deliver the License and Easement and this Lease by proper action by its governing body. The License and Easement 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 19-2421, 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 License and Easement 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 License and Easement and this Lease or the power or authority of the City to enter into this Lease or the License and Easement or the validity or enforceability of this Lease or the License and Easement or that, if adversely determined, would adversely affect the transactions contemplated by this Lease or the License and Easement or the interest of the Trustee under this Lease or the License and Easement.

(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 License and Easement 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.

(k) The Basic Rent Payments, together with any additional rent payable hereunder, do not exceed any limitation imposed by law, and the rental payments are not such as may reasonably be expected to require to City to levy taxes in excess of any levy or budget limitation. The City further covenants and agrees that throughout the term of the Lease that it will observe all budget and spending limitations now or hereafter imposed by law in such a manner that a sufficient portion of the City's tax

levy or other money shall be lawfully available to make such Basic Rent Payments and any additional rent due hereunder.

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 on the Dated Date and ends on _____, 20____, 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 B**. A portion of each Basic Rent Payment is paid as, and represents payment of, interest as set forth on **Exhibit B** (such interest to be attributable to the various principal components in accordance with the per annum rates set forth on **Exhibit B**).

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 License and Easement 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 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 Supplemental 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 real property 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 B** 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 PROJECT

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 (1) Construction Agreements providing for the acquisition, construction and installation of the Improvements and (2) Contracts providing for the acquisition and installation of the Personal Property in accordance with the plans and specifications or will construct and install the Improvements and the Personal Property with City employees in accordance with the plans and specifications;

(b) It will cause the acquisition, construction and installation of the Improvements and the Personal Property 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 Improvements and the Personal Property 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 hereby agrees to provide any and all additional amounts required to be paid into the Project Fund in order to effect the payment in full for all costs of construction and acquisition of the Project; 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 Improvements and the Personal Property, 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 Project has not yet been completed or for deposit in the Lease Revenue Fund Account if the Project has been completed.

If the purchase, construction and installation of the Improvements and the Personal Property 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 specified 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 Improvements and the Personal Property. 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 Improvements and the Personal Property that qualify as Costs of Project will be paid from the Project Fund.

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.

Section 5.03. Completion of the Project; Excess Funds. The City shall cause the Project Fund to be expended on the Project. Any amounts remaining in the Project Fund that are not needed to pay any remaining Costs of the Project will be transferred to the Lease Revenue Fund and used to pay Basic Rent.

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 Improvements and the Personal Property 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 Improvements and the Personal Property, the City will cause to be provided, insofar as the Improvements and Personal Property

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 Improvements and Personal Property and in lieu of the insurance required in **Section 7.01(a)**, builder's risk-completed value insurance insuring the Improvements and Personal Property 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 Improvements and Personal Property (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 and the Contracts in the full amount of the Construction Agreements and the Contracts 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 60 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 (1) 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**"), (2) the evaluation is to the effect that the self-insurance program is sound, (3) unless the evaluation states that such reserves are not necessary, the City maintains adequate reserves for the self-insurance program, and (4) 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 a Contract or any other contract made in connection with the acquisition, construction and installation of the Improvements or the

Personal Property, 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 completion of the Project and, if such funds are received after completion of the Project, 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 License and Easement, this Lease or the Declaration of Trust, (b) the acquisition, construction and installation of the Improvements and Personal Property, (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 License and Easement 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 Agreement 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.

ARTICLE IX

CASUALTY AND CONDEMNATION

Section 9.01. Damage, Destruction and Condemnation. (a) 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** 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.

(b) 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 this **Article IX**. 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 the License and Easement. 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 this 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 herein. 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 this Lease, including payment of Rent Payments and the applicable Purchase Price. If the City allows this Lease to expire without exercising its option to purchase (whether by failure to exercise its option to extend this Lease for a Renewal Term, failure to exercise its option to purchase at the conclusion of the maximum Lease Term or failure to cure an Event of Default), that action will constitute an irrevocable determination by the City that the Project is not required by it for any public purpose for the term of the License and Easement.

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 herein.

(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 covenants 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 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**, 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 60 days before the date of purchase, at the following times and on the following terms:

(a) On or after the _____ anniversary of the Dated Date, 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 the _____ anniversary of the Dated Date,

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 45 days before the date of such prepayment, at any time on or after the _____ anniversary of the Dated Date, 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 B**.

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 Improvements and Personal Property 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 Improvements and Personal Property 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 Improvements and Personal Property 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 License and Easement, 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 License and Easement, this Lease and the rights of the Trustee in, to and under the License and Easement, 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 90 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 License and Easement 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 License and Easement 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 90 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 90 days.

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 License and Easement all documents necessary to vest in the Trustee for the remainder of the Trustee's leasehold term under the License and Easement 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 (1) the Rent payable by the City hereunder for the Lease Term, and (2) 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. Easement and Leasehold. Until payment in full of all rental obligations hereunder, the Project shall remain the property of the Trustee and shall not become a part of the real estate described on Exhibit A-2 attached hereto. Upon the final payment of all rental obligations under this Lease the Project shall be conveyed to City at the option of the City in accordance with **Article X** of this Lease.

Section 13.03. 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 License and Easement; 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 13.04. 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 13.05. 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 13.06. 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 13.07. 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.

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

BOKF, NATIONAL ASSOCIATION, Trustee

(SEAL)

By: _____
Vice President

ATTEST:

By: _____
Authorized Officer

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by Chad W. Shirk, Vice President of BOKF, National Association, on behalf of the corporation.

Notary Public

(SEAL)

THE CITY OF LEXINGTON, NEBRASKA

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Clerk

STATE OF NEBRASKA)
) SS.
COUNTY OF DAWSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by John Fagot, Mayor of the City of Lexington, Nebraska.

Notary Public

(SEAL)

EXHIBIT A-1

**TO LEASE PURCHASE AGREEMENT DATED AS OF _____, 2015,
BETWEEN BOKF, NATIONAL ASSOCIATION AND THE CITY OF
LEXINGTON, NEBRASKA AND TO DECLARATION OF TRUST DATED AS OF
_____, 2015 BY BOKF, NATIONAL ASSOCIATION.**

THE PERSONAL PROPERTY

Capital improvements including construction, furnishing and equipping a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City's existing wastewater plant.

EXHIBIT A-2

**TO LEASE PURCHASE AGREEMENT DATED AS OF _____, 2015,
BETWEEN BOKF, NATIONAL ASSOCIATION AND THE CITY OF
LEXINGTON, NEBRASKA AND TO DECLARATION OF TRUST DATED AS OF
_____, 2015 BY BOKF, NATIONAL ASSOCIATION.**

THE SITE

[INSERT LEGAL DESCRIPTION]

EXHIBIT B

**TO LEASE PURCHASE AGREEMENT, DATED AS OF _____, 2015,
BETWEEN BOKF, NATIONAL ASSOCIATION AND THE CITY OF
LEXINGTON, NEBRASKA.**

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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DECLARATION OF TRUST

by

**BOKF, National Association
Lincoln, Nebraska**

Dated as of _____, 2015

**\$ _____
Certificates of Participation
Series 2015
Evidencing a Proportionate Interest
in Rent
Payments to be made by
The City of Lexington, Nebraska
Pursuant to a
Lease Purchase Agreement**

**TABLE OF CONTENTS
DECLARATION OF TRUST**

**(This Table of Contents is for convenience of
reference only and is not a part of this Declaration of Trust.)**

	<u>PAGE</u>
Parties	- 1 -
Declaration Clauses	- 1 -

ARTICLE I

DEFINITIONS

Section 1.01. Definitions	- 2 -
Section 1.02. General Rules of Construction	- 5 -
Section 1.03. Execution in Counterparts	- 5 -
Section 1.04. Severability	- 5 -
Section 1.05. Governing Law	- 5 -

ARTICLE II

COVENANT AS TO LICENSE AND EASEMENT AND LEASE

Section 2.01. Covenant as to License and Easement and Lease	- 5 -
---	-------

ARTICLE III

THE CERTIFICATES

Section 3.01. Title and Amount of Certificates	- 6 -
Section 3.02. General Provisions Concerning the Certificates	- 6 -
Section 3.03. Execution of Certificates	- 7 -
Section 3.04. Transfer of Certificates	- 7 -
Section 3.05. Exchange of Certificates	- 7 -
Section 3.06. Registration Books	- 7 -
Section 3.07. Certificates Mutilated, Lost, Destroyed or Stolen	- 8 -
Section 3.08. Series 2015 Certificates	- 8 -
Section 3.09. Additional Certificates	- 9 -
Section 3.10. Book-Entry-Only System	- 10 -
Section 3.11. Successor Securities Depository	- 11 -
Section 3.12. Cancellation and Destruction of Certificates upon Payment	- 11 -

ARTICLE IV

PARTICULAR COVENANTS AND PROVISIONS

Section 4.01. Covenant of Trustee as to Performance of Obligations	- 11 -
Section 4.02. Covenant to Perform Undertakings	- 11 -

ARTICLE V

PREPAYMENT

Section 5.01.	General	- 12 -
Section 5.02.	Prepayment Provisions with Respect to the Series 2015 Certificates	- 12 -
Section 5.03.	Selection of Certificates for Prepayment; Notice to Trustee	- 12 -
Section 5.04.	Partial Prepayment of Certificate	- 12 -
Section 5.05.	Notice of Prepayment	- 12 -
Section 5.06.	Effect of Prepayment	- 13 -

ARTICLE VI

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

Section 6.01.	Establishment of Funds	- 13 -
Section 6.02.	Application of Proceeds of Series 2015 Certificates and Other Moneys	- 13 -
Section 6.03.	Application of Lease Revenues	- 13 -
Section 6.04.	Disbursements from the Project Fund	- 14 -
Section 6.05.	Application of Moneys in the Lease Revenue Fund.....	- 14 -
Section 6.06.	Rebate Fund.....	- 14 -
Section 6.08.	Repayment to the City.	- 14 -
Section 6.08.	Payments Due on Days other than Business Days	- 14 -
Section 6.09.	Nonpresentation of Certificates	- 14 -
Section 6.10.	Separate Accounting of Funds Allocable to each Series of Certificates.....	- 15 -

ARTICLE VII

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

Section 7.01.	Moneys to be Held in Trust	- 15 -
Section 7.02.	Investment of Moneys	- 15 -

ARTICLE VIII

**AMENDMENT OF THE DECLARATION OF TRUST, THE LEASE OR THE
LICENSE AND EASEMENT**

Section 8.01.	Amendments Permitted	- 16 -
Section 8.02.	Effect of Amendments	- 17 -
Section 8.03.	Endorsement of Certificates; Preparation of New Certificates.....	- 17 -
Section 8.04.	Amendment of Particular Certificates	- 17 -
Section 8.05.	Opinion of Counsel.....	- 18 -

ARTICLE IX

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

Section 9.01.	Defaults.....	- 18 -
Section 9.02.	Acceleration.....	- 18 -
Section 9.03.	Other Remedies	- 18 -
Section 9.04.	Rights of Certificate Owners	- 19 -
Section 9.05.	Application of Moneys	- 19 -
Section 9.06.	Remedies Vested in Trustee.....	- 20 -
Section 9.07.	Rights and Remedies of Certificate Owners.....	- 20 -
Section 9.08.	Termination of Proceedings.....	- 21 -
Section 9.09.	Waivers of Defaults	- 21 -
Section 9.10.	Notices of Defaults	- 21 -

ARTICLE X

DEFEASANCE

Section 10.01.	Discharge of Declaration of Trust.....	- 22 -
Section 10.02.	Deposit of Moneys or Securities	- 22 -

ARTICLE XI

THE TRUSTEE

Section 11.01.	Duties, Immunities and Liabilities of Trustee.....	- 23 -
Section 11.02.	Merger or Consolidation.....	- 26 -
Section 11.03.	Liability of Trustee; Indemnity	- 26 -
Section 11.04.	Right of Trustee to Rely on Documents	- 26 -
Section 11.05.	Preservation and Inspection of Documents	- 26 -

ARTICLE XII

MISCELLANEOUS

Section 12.01.	Survival of Provisions	- 27 -
Section 12.02.	No Third Party Beneficiaries.....	- 27 -
Section 12.03.	Notices	- 27 -
Section 12.04.	Waiver of Personal Liability	- 27 -
Section 12.05.	Declaration of Trust Binding Upon Trustee and Successors	- 28 -
Section 12.06.	Electronic Transactions.....	- 28 -
	Signatures	S-1
	Exhibit A – Form of Certificate of Participation	
	Exhibit B – Form of Requisition Certificate for Costs of the Project	
	Exhibit C – Payment Schedule for Series 2015 Certificates	
	Exhibit D-1 - Description of the Personal Property	
	Exhibit D-2 – Description of the Real Property	

DECLARATION OF TRUST

This **DECLARATION OF TRUST** (the “**Declaration of Trust**”), dated as of _____, 2015, is made by **BOKF, National Association, Lincoln, Nebraska**, a national banking corporation organized and existing under the laws of the State of Nebraska, as settlor and trustee (the “**Trustee**”).

WITNESSETH:

WHEREAS, The City of Lexington, Nebraska (the “**City**”), and the Trustee have entered into a License and Easement, dated as of _____, 2015 (the “**License and Easement**”), pursuant to which the City has granted a license and easement to the Trustee the real property described on **Exhibit D-2**, including any existing improvements thereon (the “**Real Property**”); and

WHEREAS, concurrently herewith the Trustee and the City have entered into a Lease Purchase Agreement, dated as of _____, 2015 (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 Real Property and the hereinafter defined Improvements and Personal Property and will grant the City an option to purchase the Trustee’s interest in such Improvements and Personal Property; and

WHEREAS, Certificates of Participation substantially in the form of **Exhibit A** (the “**Series 2015 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 2015 Certificates will be used to provide the funds to (a) pay the costs of (1) purchasing those items of personal property listed on **Exhibit D-1** attached hereto, together with all replacements, repairs and additions incorporated therein or affixed thereto (the “**Personal Property**”) pursuant to certain contracts, purchase orders or other written instruments and (2) acquiring, constructing, furnishing and equipping a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant (the “**Improvements**”; the Personal Property, the Improvements and the Real Property are referred to collectively as the “**Project**”) and (2) pay certain costs connected to the execution and delivery of the Certificates; and

WHEREAS, the Trustee is obligated to pay the costs of the Project only from funds available from the sale of the Series 2015 Certificates; and

WHEREAS, the Trustee is making this Declaration of Trust to set forth the terms of the Series 2015 Certificates and Additional Certificates as hereinafter defined and authorized (the Series 2015 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 License and Easement 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 an ordinance or a resolution 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 2015 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 Revenue Fund” means the fund by that name established pursuant to **Section 6.01**.

“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.

“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 a certificate purchase agreement between the City and the Purchaser pursuant to which the Purchaser agrees to purchase the Certificates.

“Purchaser” means Ameritas Investment Corp., as underwriter, the original purchaser of the Series 2015 Certificates.

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

“Record Date” means as of the close of business on the fifteenth immediately preceding the month in which such Payment is due.

“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 2015 Certificates” means the \$_____ aggregate principal amount Certificates of Participation, Series 2015, evidencing a proportionate interest in Rent Payments to be made by The City of Lexington, 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 BOKF, National Association, 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. 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 LICENSE AND EASEMENT AND LEASE

Section 2.01. Covenant as to License and Easement and Lease. The Trustee covenants and agrees that, except in accordance with the terms of this Declaration of Trust, the License and Easement 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 License and Easement 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 2015, Evidencing Proportionate Interests in Rent Payments to be made by The City of Lexington, 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 June 15 and December 15, commencing on _____, 20__.

(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 2015 Certificates. There will be initially prepared, executed and delivered under this Declaration of Trust a series of Certificates in the aggregate principal amount of \$_____, which series of Certificates will be designated "Certificates of Participation, Series 2015, Evidencing a Proportionate Interest in Rent Payments to be Made by The City of Lexington, Nebraska, pursuant to a Lease Purchase Agreement" (the "**Series 2015 Certificates**"). The Series 2015 Certificates will be dated as of date of original delivery, 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 2015 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 License and Easement and the Lease and approving the execution and delivery of the Series 2015 Certificates to the Purchaser.

(b) Original executed counterparts of this Declaration of Trust, the License and Easement, the Lease and the Purchase Document.

(c) An Opinion of Special Tax Counsel as to the validity of the Series 2015 Certificates and the exemption from federal income taxation of the Interest Portion of Basic Rent Payments represented by the Series 2015 Certificates.

(d) 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 2015 Certificates.

When the documents specified above have been filed with the Trustee, and when the Series 2015 Certificates have been executed as required by this Declaration of Trust, the Trustee will deliver the Series 2015 Certificates to or upon the order of the Purchaser, but only upon payment of the purchase price of the Series 2015 Certificates. The net proceeds of the sale of the Series 2015 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 2015 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 2015 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 2015 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 2015 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 2015 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 2015 Certificates. The Series 2015 Certificates are not subject to prepayment prior to maturity.

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 unpaid 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 provided, 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.

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

Section 6.02. Application of Proceeds of Series 2015 Certificates and Other Moneys. The Proceeds of the Series 2015 Certificates will be deposited as follows:

- (a) in the Lease Revenue Fund, any accrued interest with respect to the Series 2015 Certificates;
- (b) in the Project Fund, the remainder of the Proceeds of the Series 2015 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 solely to pay for Costs of the Project, including Costs of Issuance. Payment will be made from moneys in the Project Fund.

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.

(b) The City shall notify the Trustee upon completion of the Project. As soon as practicable following the completion of the Project, any balance remaining in the Project Fund will be transferred and deposited to the Lease Revenue Fund and will be used to pay Basic Rent.

(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 LICENSE AND EASEMENT

Section 8.01. Amendments Permitted.

(a) This Declaration of Trust, the Lease and the License and Easement 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 License and Easement 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 License and Easement 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 License and Easement or the Lease, or in regard to matters or questions arising under this Declaration of Trust, the License and Easement 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 License and Easement 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 which is not cured within 90 days; 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 which is not cured within 90 days; 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 License and Easement, 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 License and Easement, 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 provided, 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 License and Easement and the 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(I)**, 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 License and Easement 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(i)** 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 Lexington, Nebraska
406 E. 7th Street
P.O. Box 70
Lexington, Nebraska 68850
Attention: Finance Director

(c) If to the Trustee: BOKF, National Association
1248 O Street
Suite 732
Lincoln, Nebraska 68508
Attention: Corporate Trust Department

A duplicate copy of each notice, certificate or other communication given hereunder, or pursuant to the Lease or the License and Easement 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.

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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.

BOKF, National Association, Trustee

(SEAL)

By: _____
Vice President

ATTEST:

By: _____
Authorized Officer

EXHIBIT A

**TO DECLARATION OF TRUST, DATED AS OF _____, 2015, EXECUTED BY
BOKF, NATIONAL ASSOCIATION, 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 2015
Evidencing a Proportionate Interest
in Rent Payments to be made by
The City of Lexington, Nebraska
Pursuant to a Lease Purchase Agreement**

<u>Certificate</u> <u>Interest Rate</u>	<u>Payment Date</u>	<u>Date</u>	<u>CUSIP</u>
	_____ 15, 20__	_____, 2015	

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 as of _____, 2015 (the “**Lease**”), between BOKF, National Association, a national banking corporation organized and existing under the laws of the State of Nebraska (the “**Trustee**”), and The City of Lexington, Nebraska, a city of the first 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 as of _____, 2015, 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 Lexington, 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 June 15 and December 15 commencing on _____, 20____, to and including the Certificate Payment Date or the Prepayment Date, whichever is earlier. Such proportionate share of the Basic Rent Payments designated as interest is computed on the principal sum specified above from _____, 2015, 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 as of the close of business on the fifteenth day immediately preceding the month in which such Payment is due (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 2015, Evidencing a Proportionate Interest in Basic Rent Payments to be Made by The City of Lexington, Nebraska, Pursuant to a Lease Purchase Agreement” (the “**Certificates**”) for the purpose of providing funds to pay the costs of (a) acquiring, constructing, equipping and furnishing a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant (the “**Improvements**”), owned and operated by the City, (b) purchasing certain items of personal property, including without limitation, _____ (the “**Personal Property**”) 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 2015 Certificates will not be subject to optional prepayment, as a whole or in part, prior to maturity.

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.

**BOKE, NATIONAL ASSOCIATION,
LINCOLN, NEBRASKA
not in its individual capacity but solely as
Trustee under the Declaration of Trust,
dated as of _____, 2015**

By: _____
Authorized Signatory

ASSIGNMENT

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

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: _____

EXHIBIT B

**TO DECLARATION OF TRUST, DATED AS OF _____, 2015, EXECUTED BY
BOKF, NATIONAL ASSOCIATION, AS TRUSTEE**

FORM OF REQUISITION CERTIFICATE

FOR COSTS OF THE PROJECT

Request No. _____

Date: _____

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

To: BOKF, National Association
1248 O Street
Suite 732
Lincoln, Nebraska 68508
Attention: Corporate Trust Department

Ladies and Gentlemen:

Pursuant to **Section 5.02** of the Lease Purchase Agreement (the “**Lease**”) between BOKF, National Association, (the “**Trustee**”) and The City of Lexington, Nebraska (the “**City**”), and **Section 6.04** of the Declaration of Trust (the “**Declaration of Trust**”), both dated as of _____, 2015, 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 Improvements or Personal Property (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 2015 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 Improvements and Personal Property 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 Projects to be paid from the Series 2015 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 LEXINGTON, NEBRASKA

By: _____
Authorized Representative

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 License and Easement 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 LEXINGTON, NEBRASKA

By: _____
Authorized Representative

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

SCHEDULE OF PAYMENTS REQUESTED

<u>Payee and Address</u>	<u>Amount</u>	<u>Description</u>
--------------------------	---------------	--------------------

EXHIBIT C

**TO DECLARATION OF TRUST, DATED AS OF _____, 2015, EXECUTED BY
BOKF, NATIONAL ASSOCIATION, AS TRUSTEE**

PAYMENT SCHEDULE FOR SERIES 2015 CERTIFICATES

Principal Portion Date (_____ 15)	Principal <u>Amount</u>	Rate of Interest on <u>Interest Portion</u>
--------------------------------------	----------------------------	---

EXHIBIT D-1

TO LEASE PURCHASE AGREEMENT, DATED AS OF _____, 2015, BETWEEN BOKF, NATIONAL ASSOCIATION AND THE CITY OF LEXINGTON, NEBRASKA, AND TO DECLARATION OF TRUST, DATED AS OF _____, 2015 BY BOKF, NATIONAL ASSOCIATION

PERSONAL PROPERTY

Capital improvements including constructing, furnishing and equipping a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City's existing wastewater plant.

EXHIBIT D-2

**TO LEASE PURCHASE AGREEMENT, DATED AS OF _____, 2015,
BETWEEN BOKF, NATIONAL ASSOCIATION AND THE CITY OF
LEXINGTON, NEBRASKA AND TO DECLARATION OF TRUST, DATED AS
OF _____, 2015 BY BOKF, NATIONAL ASSOCIATION.**

THE SITE

[INSERT LEGAL DESCRIPTION]

LICENSE AND EASEMENT

The City of Lexington, in the State of Nebraska, (“**Grantor**”) hereby grants a license and easement to BOKF, National Association, Lincoln, Nebraska (“**Grantee**”) with respect to the following described tract of real estate located in Dawson County, Nebraska:

[INSERT LEGAL DESCRIPTION]

for the construction, furnishing and equipping of a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant (the “**Project**”). This license and easement shall include full access and use thereof by Grantee and its licensees and invitees and shall permit all actions necessary or incidental to the construction, operation and maintenance of the Project. All improvements and equipment upon said real estate financed from the proceeds of Grantee’s Certificates of Participation, Series 2015, and by one or more additional series of Grantee’s certificates of participation, are hereby acknowledged to be the separate personal property of the Grantee and shall not become a fixture or in any way a part of the real estate. Contemporaneously herewith, the Grantee and the Grantor will execute a Lease Purchase Agreement dated _____, 2015, (the “**Lease Purchase Agreement**”) whereby the Grantee, as trustee, leases to the Grantor and the Grantor leases from the Grantee the Project all in accordance therewith. The Lease Purchase Agreement includes in Article X thereof the option of the Grantor, upon payment of the specified purchase price, to purchase the Grantee’s interest in the Project. This license and easement shall continue from _____, 2015 until _____, 20____, or until such earlier time as the Lease Purchase Agreement terminates. The Grantor acknowledges the provisions in Section 9.01(b) of the Lease Purchase Agreement with respect to eminent domain and incorporates such provisions herein by this reference.

Grantor hereby covenants and warrants that it has full right, title and authority to grant the license and easement rights herein granted and further covenants and warrants that it will defend such rights in Grantee against the claims of all person whomsoever.

Executed as of this ____ day of _____, 2015.

THE CITY OF LEXINGTON,
IN THE STATE OF NEBRASKA

By: _____
Mayor

ATTEST:

City Clerk

STATE OF NEBRASKA)
)
COUNTY OF DAWSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by John Fagot, Mayor of the City of Lexington, in the State of Nebraska.

(SEAL)

Notary Public

My Commission Expires: _____

TAX COMPLIANCE AGREEMENT

Dated as of _____, 2015

Between

THE CITY OF LEXINGTON, NEBRASKA

and

**BOKF, NATIONAL ASSOCIATION
as Trustee**

\$ _____

**The City of Lexington, Nebraska
Certificates of Participation
Series 2015
Evidencing a Proportionate Interest in
Rent Payments to be made by
The City of Lexington, Nebraska
Pursuant to a Lease Purchase Agreement**

TAX COMPLIANCE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
PARTIES AND RECITALS	1
 <u>ARTICLE I</u> 	
DEFINITIONS	
Section 1.1. Definitions of Words and Terms	2
 <u>ARTICLE II</u> 	
GENERAL REPRESENTATIONS AND COVENANTS	
Section 2.1. Representations and Covenants of the City	6
Section 2.2. Representations and Covenants of the Trustee	9
Section 2.3. Survival of Representations and Covenants	9
 <u>ARTICLE III</u> 	
ARBITRAGE CERTIFICATIONS AND COVENANTS	
Section 3.1. General	10
Section 3.2. Reasonable Expectations	10
Section 3.3. Purpose of Financing	10
Section 3.4. Funds and Accounts	10
Section 3.5. Amount and Use of Certificate Proceeds and Other Money	10
Section 3.6. Multipurpose Issue	11
Section 3.7. No Advance Refunding	11
Section 3.8. No Current Refunding	11
Section 3.9. Project Completion	11
Section 3.10. Sinking Funds	11
Section 3.11. Reserve, Replacement and Pledged Funds	11
Section 3.12. Purpose Investment Yield.....	11
Section 3.13. Purchase Price and Yield.....	11
Section 3.14. Miscellaneous Arbitrage Matters.....	12
Section 3.15. Conclusion.....	12
 <u>ARTICLE IV</u> 	
TAX COMPLIANCE POLICIES AND PROCEDURES	
Section 4.1. General	12
Section 4.2. Record Keeping Responsibilities.....	13
Section 4.3. Temporary Periods/Yield Restriction	14
Section 4.4. Fair Market Value.....	14
Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement	15
Section 4.6. Computation and Payment of Arbitrage Rebate	17
Section 4.7. Successor Rebate Analyst.....	17

Section 4.8.	Filing Requirements	18
Section 4.9.	Survival after Defeasance	18

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1.	Term of Tax Agreement	18
Section 5.2.	Amendments	18
Section 5.3.	Opinion of Special Tax Counsel.....	18
Section 5.4.	Reliance	18
Section 5.5.	Severability	19
Section 5.6.	Benefit of Agreement	19
Section 5.7.	Default; Breach and Enforcement	19
Section 5.8.	Execution in Counterparts	19
Section 5.9.	Governing Law	19
Section 5.10.	Electronic Transactions	19

Signatures.....S-1

Exhibit A - Debt Service Schedule and Proof of Yield

Exhibit B - IRS Form 8038-G

Exhibit C - Description of Property Comprising the Financed Facility

Exhibit D - Form of Annual Compliance Checklist

Exhibit E - Form of Final Written Allocation

* * *

TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the “**Tax Agreement**”), entered into as of _____, 2015, between **THE CITY OF LEXINGTON, NEBRASKA**, a city of the first class and political subdivision duly organized and validly existing under the laws of the State of Nebraska (the “**City**”) and **BOKF, NATIONAL ASSOCIATION**, a national 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 of \$_____ principal amount of Certificates of Participation, Series 2015 (the “**Certificates**”) evidencing proportionate interests in basic rent payments to be made by the City pursuant to a Lease Purchase Agreement dated as of _____, 2015 (the “**Lease**”) between the City, as lessee, and the Trustee, as lessor, under a Declaration of Trust dated _____, 2015 (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. ____ adopted August __, 2015 (the “**Ordinance**”).

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 (as each capitalized term is hereinafter defined) represented by the Certificates will be excluded from gross income for federal income tax purposes.

3. The City 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 Code § 148 relating to arbitrage.

4. The City has adopted a Tax-Exempt Financing Policy and Procedure (the “**Tax Compliance Procedure**”) for the purpose of setting out general procedures for the City to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations. This Tax Certificate is entered into in part, as required by the Tax Compliance Procedure, to set out specific tax compliance procedures applicable to the Certificates.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the City 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 issuance costs of the Certificates. But Available Construction Proceeds do not include Investment earnings on amounts in a reasonably required reserve or replacement fund after the earlier of (A) the second anniversary of the Issue Date or (B) the date the Financed Facility is substantially completed.

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

“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 _____, or another one-year period selected by the City.

“City” means The City of Lexington, 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 City.

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

“Compliance Officer” means the City’s Finance Director, or other person named in the Tax Compliance Procedure.

“Computation Date” means each date on which arbitrage rebate for the Certificates is computed. The City 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 City selects _____, 20__ as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

“Declaration of Trust” means the Trustee’s Declaration of Trust dated as of _____, 2015, as amended and supplemented in accordance with the provisions thereof, under which the Certificates are delivered.

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

“Final Written Allocation” means the written allocation of expenditures of Certificate proceeds to expenditures for the Project, a sample form of which is attached as **Exhibit E**.

“Gross Proceeds” means (a) sale proceeds (any amounts actually or constructively received by the City 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:

- (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 _____, 2015.

“Lease” means the Lease Purchase Agreement dated as of _____, 2015, between the City and the Trustee, as amended and supplemented in accordance with the provisions thereof.

“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 Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary governmental function of the Financed Facility (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 Facility, 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 Facility 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 the Financed Facility 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 Facility, 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 to the effect 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.

“Post-Issuance Tax Requirements” means those requirements imposed on the City related to the use of Certificate proceeds or the Financed Facility, and the investment of Gross Proceeds, that apply after the Issue Date of the Certificates.

“Principal Portion” means the portion of each Basic Rent Payment that represents the payment of principal as provided by the Lease.

“Project” means all of the property being acquired, developed, constructed, renovated, and equipped by the City using Certificate proceeds and other money contributed by the City, and specifically the construction, furnishing and equipping of a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant, as further described on **Exhibit C**.

“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 Facility on a short-term basis in the ordinary course of the City’s governmental purposes.

(b) Agreements with Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Facility 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 Facility 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 Non-Qualified Users to use all or a portion of the Financed Facility 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 Facility 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 Facility 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 Non-Qualified Users to use all or a portion of the Financed Facility 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 Facility 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 City 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 _____, 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 City.

“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.

“Tax Compliance Procedure” means the City’s Tax-Exempt Financing Policy and Procedure, adopted February 24, 2015, as amended and supplemented in accordance with the provisions thereof.

“Tax-Exempt Bond File” means documents and records for the Lease and the Certificates maintained by the Compliance Officer pursuant to the Tax Compliance Procedure.

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

“Trustee” means BOKF, National Association, 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., the 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 City. The City represents and covenants as follows:

(a) **Organization and Authority.** The City (1) is a city of the first 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 passed the Ordinance and 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 City (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 City, 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 Facility 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 Facility.*** Throughout the Measurement Period, all of the Financed Facility is expected to be owned by the City or another Qualified User. Throughout the Measurement Period, no portion of the Financed Facility is expected to be used in a Non-Qualified Use, and the City will not permit any Non-Qualified Use of the Financed Facility without first obtaining an Opinion of Special Tax Counsel.

(d) ***Governmental Obligations–Private Security or Payment.*** The City expects that none of the Basic Rent Payments represented by the Certificates will be (under the terms of the Certificates 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 City) 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 City will not permit any private security or payment with respect to 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 City has no Management Agreements with Non-Qualified Users. During the Measurement Period the City will not enter into or renew any Management Agreement with a Non-Qualified User without first obtaining and delivering to the Trustee an Opinion of Special Tax Counsel.

(g) ***Leases.*** As of the Issue Date the City has not entered into any leases of any portion of the Financed Facility, other than Qualified Use Agreements. During the Measurement Period, the City 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 Facility 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 7.237 years, as

computed by Special Tax Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Facility.

(i) **Reimbursement of Expenditures; Official Intent.** The City does not expect to use Certificate proceeds to reimburse itself for Project expenditures incurred prior to the Issue Date. However, the governing body of the City adopted the Ordinance declaring the intent of the City to finance the Financed Facility with tax-exempt certificates and to reimburse the City for expenditures made for the Financed Facility prior to the issuance of those certificates. The Ordinance is included as part of the Transcript and, if necessary, a list of reimbursement expenditures will be prepared by the City. In any event, no portion of the Net Proceeds of the Certificates will be used to reimburse an expenditure paid by the City more than 60 days prior to the date the resolution was adopted except for expenditures that may be reimbursed as “preliminary expenditures” pursuant to Regulations § 1.150-2(f)(2). The City 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 3 years before the date of the reimbursement allocation. In addition no reimbursement allocation will be made more than 3 years following the later of (1) the date of the expenditure or (2) the date the Financed Facility was placed in service.

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

(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 City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City 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 City (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 City 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 City 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, the City does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Certificates. The City 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 Obligations.** The City designates the Certificates as “qualified tax-exempt obligations” under Code § 265(b)(3), and with respect to this designation certifies as follows:

(1) the City reasonably anticipates that the amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) that will be issued by or on behalf of the City (and all subordinate entities of the City) during the calendar year that the Certificates are issued, including the Certificates, will not exceed \$10,000,000; and

(2) the City (including all subordinate entities of the City) will not issue tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) during the calendar year that the Certificates are issued, including the Certificates, in an aggregate principal amount or aggregate issue price in excess of \$10,000,000, without first obtaining an Opinion of Special Tax Counsel that the designation of the Certificates as “qualified tax-exempt obligations” will not be adversely affected.

Section 2.2. Representations and Covenants of the Trustee. The Trustee represents and covenants to the City 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 City, 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 City 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 City and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the City 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 City's expectations as to the sources, uses and investment of Certificate proceeds and other money, in order to support the City's conclusion that the Lease and the Certificates are not arbitrage bonds. The person executing this Tax Agreement on behalf of the City is an officer of the City 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 City's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the City's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the City set forth in this Tax Agreement are reasonable. The City 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 Project 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 City from the sale of the Certificates will be as follows:

Principal Amount / Issue Price	\$ _____
Underwriting Discount	(_____)
Accrued Interest	_____
Total Proceeds Received by City	\$ _____

(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 Lease Revenue Fund and used to pay Interest Portions of Basic Rent Payments represented by the Certificates.

(2) \$_____ of Certificate proceeds will be deposited in the Project Fund, of which \$_____ will be used to pay costs of delivering the Certificates, and the balance of \$_____, together with \$_____ of other money contributed by the City, will be used to pay or reimburse costs of the Financed Facility.

Section 3.6. Multipurpose Issue. The City 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 City 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 Facility. The completion of the Financed Facility 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 Facility within three years after the Issue Date.

Section 3.10. Sinking Funds. The City 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 City 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 Facility 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 City 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 without 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**.

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 City 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 City, 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 City 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

TAX COMPLIANCE POLICIES AND PROCEDURES

Section 4.1. General.

(a) **Purpose of Article.** The purpose of this **Article IV** is to set forth the policies and procedures governing compliance with the federal income tax requirements that apply after the Certificates are delivered. The City recognizes that the Interest Portion of Basic Rent Payments will remain excludable from gross income for federal income tax purposes only if Post-Issuance Tax Requirements are satisfied after the Issue Date. The City further acknowledges that written evidence substantiating compliance with Post-Issuance Tax Requirements must be retained in order to permit the Certificates to be refinanced with tax-exempt obligations and support the position that the Interest Portion of Basic Rent Payments is excludable from gross income for federal income tax purposes in the event of an audit of the Certificates by the IRS.

(b) **Written Policies and Procedures of the City.** The City intends for the Tax Compliance Procedure, as supplemented by this Tax Certificate, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Certificates and to supplement any other formal policies and procedures related to tax compliance that the City has established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In

the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) **City Responsible for Post-Issuance Tax Requirements.** The City agrees to undertake the Post-Issuance Tax Requirements set forth in this Tax Agreement.

(d) **Compliance Officer.** The Compliance Officer will be responsible for working with other City officials, departments and administrators and for consulting with Special Tax Counsel, other legal counsel and outside experts to the extent necessary to comply with the Post-Issuance Tax Requirements. In addition, the Compliance Officer is responsible for obtaining and delivering to the City and the Trustee any Opinion of Special Tax Counsel required under the provisions of this Tax Agreement.

(e) **Future Action.** The City will take any action that is necessary to cause the Interest Portion of Basis Rent Payments to remain excludable from gross income for federal income tax purposes, including without limitation executing IRS Form 8038-T in connection with the payment of arbitrage rebate, participating in any federal income tax audit of the Certificates or similar proceedings under a “voluntary compliance agreement program” (VCAP) procedure or “remedial action” procedure pursuant to Regulations § 1.141-12.

(f) **Costs of Post-Issuance Tax Requirements.** The City understands that all costs incurred to comply with the Post-Issuance Tax Requirements will be borne by the City, that the Trustee is not required to incur any cost in connection with any action taken related to the Post-Issuance Tax Requirements, and that the Trustee will be entitled to recover from the City all legal and other fees and expenses incurred to comply with the Post-Issuance Tax Requirements pursuant to the provisions of the Declaration of Trust.

Section 4.2. Record Keeping Responsibilities.

(a) **Record Keeping.** The Compliance Officer will maintain the Tax-Exempt Bond File for the Certificates in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in a written Opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Compliance Officer shall retain records related to Post-Issuance Tax Requirements until 3 years following the final maturity of the Certificates or any obligations issued to refund the Certificates. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the City and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the City’s premises.

(b) **Accounting and Allocation of Certificate Proceeds to Expenditures.** The Compliance Officer will account for the investment and expenditure of Certificate proceeds in the level of detail required by the Tax Compliance Procedure. Certificate proceeds and other money contributed by the City are expected to be used as described in **Section 3.5**. The Compliance Officer will maintain accounting records showing the investment and expenditure of these amounts as part of the Tax-Exempt Bond File. The expected allocation of Certificate proceeds to Project expenditures is set forth on **Exhibit C**. The Compliance Officer will cause to be prepared the Final Written Allocation, a sample form of which is

attached as **Exhibit E**, no later than 18 months following the date the Financed Facility is placed in service and no later than 5 years after the Issue Date.

(c) **Annual Compliance Checklist.** Attached as **Exhibit D** is a form of annual compliance checklist for the Financed Facility and the Certificates. The Compliance Officer will finalize the annual compliance checklist in connection with completion of the Project and will cause the annual compliance checklist to be completed as necessary (and at least annually) with respect to each distinct project comprising the Financed Facility. In the event the annual compliance checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Compliance Officer will consult with the City and legal counsel and will take the actions identified in an Opinion of Special Tax Counsel or Section 4.5 of the Tax Compliance Procedure to correct any deficiency.

Section 4.3. Temporary Periods/Yield Restriction. Except as described below, the City will not invest Gross Proceeds at a Yield greater than the Yield on the Certificates:

(a) **Project Fund.** Certificate proceeds deposited in the Project 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 Project Fund after three years, such amounts may continue to be invested without Yield restriction so long as the City 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 4.4. 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 City will not enter into a Guaranteed Investment Contract without first obtaining an opinion of Special Tax 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 4.5. 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 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** 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 Certificates is exempt from rebate, the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**. The City 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.** The following optional rebate spending exceptions can apply to the Certificates:

(1) The City expects that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the City.

(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)).

(C) 2-year spending exception (Code § 148(f)(4)(C) and Regulations § 1.148-7(e)).

(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.

(e) **Documenting Application of Spending Exception.** At any time prior to the first Computation Date, the City may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the City 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 are spent in accordance with the following schedule:

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

(4) The 2-year spending exception generally is met if all Available Construction Proceeds are spent in accordance with the following schedule:

Time Period After the Issue Date	Minimum Percentage of Available Construction Proceeds Spent
6 months	10%
12 months	45%
18 months	75%
24 months (Final)	100%

(5) For purposes of applying the 18-month and 2-year spending exceptions only, the failure to satisfy the **final** spending requirement is disregarded if the City uses due diligence to complete the Financed Facility and the failure does not exceed the lesser of 3% of the aggregate issue price the Certificates or \$250,000.

(6) For purposes of applying the 18-month and 2-year spending exceptions 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 in the case of the 18-month exception or 3 years after the Issue Date in the case of the 2-year spending exception.

Section 4.6. Computation and Payment of Arbitrage Rebate.

(a) **Rebate Fund.** The Trustee 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 City 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 City annually as of the end of each Certificate 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 City 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 City 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 City 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 City, any money left in the Rebate Fund will be paid to the City and may be used for any purpose not prohibited by law.

(c) **Rebate Payments.** Within 60 days after each Computation Date, the City 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 4.7. Successor Rebate Analyst. If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the City desires that a different firm act as the Rebate Analyst, then the City 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 4.8. Filing Requirements. The City 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 Special Tax Counsel.

Section 4.9. Survival after Defeasance. Notwithstanding anything in the Ordinance, the Declaration of Trust or the Lease 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 **Section 4.6** 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 4.2** 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 City and the Trustee receive this Opinion of Special Tax Counsel.

Section 5.3. Opinion of Special Tax Counsel. The City 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 City 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 City and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the City 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 City 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. 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 5.9. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State.

Section 5.10. 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 LEXINGTON, 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.

BOKE, NATIONAL ASSOCIATION, Trustee

By: _____
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 FACILITY

The Certificates are being issued to pay a portion of the costs of the Project, which consists of constructing, furnishing and equipping a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City's existing wastewater plant. The total estimated cost of the Project is \$_____, of which approximately \$_____ will be funded by the Certificates and \$_____ will be funded from amounts contributed by the City. The average, reasonably expected economic life of the Project, as of the placed-in-service date is expected to be approximately ___ years.

EXHIBIT D

FORM OF ANNUAL COMPLIANCE CHECKLIST

ANNUAL FINANCED FACILITY COMPLIANCE CHECKLIST

Part I (*Complete Prior to Giving to Reporting Party*)

Asset description ("Asset"):	_____
Aggregate cost of Asset:	_____
Name of tax-exempt obligations ("Obligations") financing Asset:	Certificates of Participation (City of Lexington, Nebraska), Series 2015
Percentage of Asset financed by Obligations:	_____
Issue Date of Obligations:	_____, 2015
Placed in service date of Asset:	_____
End of measurement period:	_____
Name of person completing checklist:	_____
Title:	_____
Email address:	_____
Telephone number:	_____
Period covered by request ("Annual Period"):	January 1, 20__ to December 31, 20__

You have been identified as the person who is primarily responsible for the management and day-to-day operation of the Asset identified above. We have determined that all or a portion of the Asset was financed with tax-exempt obligations. Because the Asset was financed with tax-exempt obligations there are a number of rules restricting how the Asset can be used. Generally, these rules limit the use of the Asset by entities other than another Tax-Exempt Organization. Please return your completed questionnaire as soon as possible, but in all events no later than January 15, 20__.

If you have any questions please contact Mike Rogers at (402)-991-9450.

Part II (Completed by Reporting Party)

Item	Question	Response
<p>1 Ownership</p>	<p>Was the Asset owned by the City during the entire Annual Period?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If No: Was the Asset (or any portion of the Asset) sold or otherwise disposed of solely because it was determined that the property was inadequate, obsolete or worn out?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If No: What is the legal name of the New Owner?</p>	
	<p>Date New Owner acquired the Asset:</p>	
	<p>Is the New Owner a state or local government (a "Qualified User")?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>

<p>2 Leases</p>	<p>During the Annual Period, was any part of the Asset leased at any time pursuant to an agreement for more than 50 days by another nonaffiliated corporation, association, firm, or other entity? (<i>Do Not Include Qualified Use Agreements – See Item 3.</i>)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If Yes: What is the legal name of the Tenant?</p>	
	<p>Is the Tenant a Qualified User?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>
	<p>Attach a copy of the lease if not previously provided in a prior report and Opinion of Counsel.</p>	
	<p>List approximate percentage of Asset leased by Tenant (<i>e.g.</i>, 30% of the square feet in the building).</p>	

<p>3 Management or Service Agreements</p>	<p>During the Annual Period, has the management of all or any part of the operations of the Asset been assumed by or transferred to another entity?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If Yes: Attach a copy of the agreement(s) and Opinion of Counsel.</p>	

<p>4 Other Use</p>	<p>Was any other agreement entered into with an individual or entity (other than a Qualified User) that grants special legal rights to the Asset?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If Yes: Attach a copy of the agreement(s).</p>	

<p>5 Continuing Disclosure Filings</p>	<p>Did the City timely file its annual report (including audited financial statements and any other financial information and operating data required for the Certificates) with the MSRB on EMMA?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If No, file the appropriate failure to file notice required for the Certificates with the MSRB on EMMA. In addition, contact Counsel and file the deficient material with the MSRB on EMMA and include a description of the reason for the delay in the Tax-Exempt Bond File.</p>	

<p>6 Material Event Filings</p>	<p>Did any of the following events occur with respect to the Certificates?</p> <ul style="list-style-type: none"> • principal and interest payment delinquencies; • non-payment related defaults, if material; • unscheduled draws on debt service reserves reflecting financial difficulties; • unscheduled draws on credit enhancements reflecting financial difficulties; • substitution of credit or liquidity providers, or their failure to perform; • adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates; • modifications to rights of Certificate holders, if material; • bond calls, if material, and tender offers; • defeasances; • release, substitution or sale of property securing repayment of the Certificates, if material; • rating changes; • bankruptcy, insolvency, receivership or similar event of the obligated person; • the consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and • appointment of a successor or additional trustee or the change of name of the trustee, if material. 	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If “Yes,” was Counsel contacted and notice of the material event filed with the MSRB on EMMA?</p> <p>If No, contact Counsel immediately and prepare and file any required notice with the MRSB on EMMA.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Signature, Name and Title of Person Completing Questionnaire:

Printed Name: _____
Title: _____
Date Completed: _____

EXHIBIT E

FORM OF FINAL WRITTEN ALLOCATION

THE CITY OF LEXINGTON, NEBRASKA

**\$ _____
CERTIFICATES OF PARTICIPATION
SERIES 2015**

Final Written Allocation

The undersigned is the _____ of The City of Lexington, Nebraska (the “**City**”) and in that capacity is authorized to execute federal income tax returns required to be filed by the City and to make certain elections and designations regarding federal income tax matters on behalf of the City. This allocation of the proceeds of the above-captioned certificates of participation (the “**Certificates**”) is necessary for the City to satisfy ongoing reporting and compliance requirements relating to the Certificates under federal income tax laws.

Purpose. This document, together with the schedules and records referred to below, is intended to memorialize allocations of Certificate proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the “**Code**”). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the City or, if later, the date any distinct portion of the “project” was “placed in service” (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Certificates.

Background. The Certificates were delivered on _____, 2015 under a Declaration of Trust dated _____, 2015, (the “**Declaration of Trust**”), executed and delivered by BOKF, National Association, as trustee (the “**Trustee**”). The Certificates evidence proportionate interests in basic rent payments to be made by the City pursuant to a Lease Purchase Agreement dated _____, 2015, between the City, as lessee, and the Trustee, as lessor. The Certificates were delivered in order to provide a portion of the funds necessary to construct, furnish and equip a support facility to include administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, and a water quality testing facility at the City’s existing wastewater plant.

Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs. Certain Project costs were paid from sale and investment proceeds of the Certificates, and the remaining Project costs have been or will be paid from other amounts contributed by the City, as shown on **Exhibit A** to this Final Written Allocation.

Identification of Financed Assets. The portions of the Project financed from Certificate proceeds (*i.e.*, the “**Financed Facility**” referenced in the Tax Compliance Agreement for the Certificates) are listed on page 1 of **Exhibit B** to this Final Written Allocation.

Identification and Timing of Expenditures for Arbitrage Purposes. For purposes of complying with the arbitrage rules under Code § 148, the City allocates Certificate proceeds to the various expenditures described in the invoices, requisitions or other substantiation attached as **Exhibit B** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the City for an amount previously paid or incurred. Amounts received from the sale of the

Certificates and retained as underwriter's discount are allocated to that purpose and spent on the Issue Date.

Placed In Service. Various components of the Project were "placed in service" on the dates set out on **Exhibit B** to this Final Written Allocation. For this purpose, assets are considered to be "placed in service" as of the date on which, based on all the facts and circumstances: (1) the construction and equipping of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (2) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The City reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

CITY OF LEXINGTON, NEBRASKA

By: _____
Title: _____

Dated: _____

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

Date of Review: _____

\$ _____
**CERTIFICATES OF PARTICIPATION
THE CITY OF LEXINGTON, NEBRASKA
SERIES 2015**

_____, 2015

CERTIFICATE PURCHASE AGREEMENT

The City of Lexington, Nebraska
406 East 7th Street
Lexington, Nebraska 68850

BOKF, National Association
1248 O Street
Suite 732
Lincoln, Nebraska 68508
Attention: Corporate Trust Department

Ladies and Gentlemen:

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Certificate Purchase Agreement, the undersigned, Ameritas Investment Corp., Lincoln, Nebraska (the **“Purchaser”**), hereby offers to purchase \$_____ principal amount of Certificates of Participation, Series 2015 (the **“Certificates”**), to be executed and delivered by BOKF, National Association, (the **“Trustee”**), at the direction of City of Lexington, Nebraska (the **“City”**), under and pursuant to a Declaration of Trust, dated as of _____, 2015 (the **“Declaration of Trust”**), executed by the Trustee.

Inasmuch as this purchase and sale represents a negotiated transaction, the City acknowledges and agrees that: (i) the transaction contemplated by this Certificate Purchase Agreement is an arm’s length, commercial transaction between the City and the Purchaser in which the Purchaser is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the City; (ii) the Purchaser has not assumed any advisory or fiduciary responsibility to the City with respect to the transaction contemplated hereby and the discussions, s and procedures leading thereto (irrespective of whether the Purchaser has provided other services or is currently providing other services to the City on other matters); (iii) the Purchaser is acting solely in its capacity as purchaser for its own account, (iv) the only obligations the Purchaser has to the City with respect to the transaction contemplated hereby expressly are set forth in this Certificate Purchase Agreement; and (v) the City has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

The City, as grantor, and the Trustee, as grantee, shall enter into a License and Easement, dated as of _____, 2015 (the **“License and Easement”**), pursuant to which the City will grant to the trustee a

license and easement with respect to certain real property on which administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, a water quality testing facility at the City's existing wastewater plant and related facilities owned and operated by the City (the "**Real Property**") are to be located. The Trustee, as lessor, and the City, as lessee, shall enter into a Lease Purchase Agreement, dated as of _____, 2015 (the "**Lease**"), pursuant to which the Trustee will lease to the City the Real Property together with certain improvements to such administrative offices, a shop (garage) area to house tools and equipment supplies and space for performing needed maintenance on equipment, a water quality testing facility at the City's existing wastewater plant and related facilities, all as set forth in the Lease (the "**Project**"), with an option to purchase the Trustee's interest in the Project. The execution and delivery of the License and Easement and the Lease by the City, and the delivery of the Certificates by the Trustee, was authorized by Ordinance No. 2364 (the "**Ordinance**"), adopted by the Council and approved by the Mayor on August 11, 2015. *Capitalized terms used herein shall have the meanings set forth in the Declaration of Trust and in the Lease unless some other meaning is plainly indicated.*

1. Purchase of Certificates; Public Offering. Upon the terms and conditions and upon the basis of the respective representations, warranties and covenants hereinafter set forth, the Purchaser hereby agrees to purchase from the City, and the City hereby agrees to sell to the Purchaser at the Closing Time (hereinafter defined), all (but not less than all) of the Certificates at a purchase price of \$_____ (which is equal to the principal amount of the Certificates, less an underwriting discount of \$_____). The Certificates shall be executed and delivered under and secured as provided in the Declaration of Trust, and the Certificates shall have the maturities and interest rates and be subject to redemption as set forth in the Declaration of Trust and the Official Statement.

The Purchaser intends to make an initial bona fide public offering of all of the Certificates at the prices set forth in **Schedule 1** attached hereto; provided, however, that the Purchaser may subsequently change such offering price or prices. The Purchaser agrees to notify the City of such changes, if such changes occur prior to Closing, but failure to so notify shall not invalidate such changes. The Purchaser may offer and sell the Certificates to certain dealers (including dealers depositing Certificates into investment trusts) at prices lower than the public offering prices.

2. Offering Circular. The City hereby agrees to deliver to the Purchaser, within seven business days after the date hereof, the Offering Circular, dated the date hereof, relating to the Certificates (which, together with the cover page, and all exhibits, appendices, maps, pictures, diagrams, reports and statements included therein or attached thereto and any amendments and supplements that may be authorized for use with respect to the Certificates are herein called the "**Offering Circular**") in such quantity that the Purchaser may request to enable the Purchaser to provide the Offering Circular to potential customers and to comply with any rules of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission. The City hereby deems the information contained in the Preliminary Offering Circular dated August 5, 2015 (the "**Preliminary Offering Circular**") regarding the City, to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1) of the Securities and Exchange Commission, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings and other terms of the Certificates depending on such matters.

The City consents to the use by the Purchaser of the Preliminary Offering Circular (subject to the right of the City to withdraw such consent for cause by written notice to the Purchaser) prior to the date upon which the Offering Circular is executed and available for distribution, in connection with the proposed offering of the Certificates.

3. City's Representations and Warranties. The City hereby represents and warrants to the Purchaser and the Trustee that:

(a) The City is and will be at Closing a city of the first class and political subdivision, created and existing under the laws of the State of Nebraska. The City is authorized pursuant to laws of the State of Nebraska to lease the Real Property to the Trustee pursuant to the License and Easement and to lease the Project from the Trustee pursuant to the Lease.

(b) The City has full power and authority to enter into the transactions contemplated by this Certificate Purchase Agreement and any and all other agreements relating thereto.

(c) The information contained in the Offering Circular with respect to the City and its use of the proceeds of the Certificates is and, as of the date of Closing, will be correct in all material respects and does not, and at the Closing, will not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(d) The City has duly authorized by all necessary action to be taken by the City (1) the passage and approval of the Ordinance; (2) the execution, delivery and performance of this Certificate Purchase Agreement; (3) the execution, delivery and performance of the License and Easement, the Lease, and a Federal Tax Agreement (the "**Tax Agreement**") dated as of the date of delivery of the Certificates (collectively, the "**City Documents**"); (4) the approval of the Declaration of Trust and the Offering Circular (hereinafter defined); (5) the execution and performance of any and all such other agreements and documents as may be required to be executed, delivered and performed by the City in order to carry out, give effect to and consummate the transactions contemplated by the Ordinance, the City Documents and this Certificate Purchase Agreement; and (6) the carrying out, giving effect to and consummation of the transactions contemplated by the Ordinance, the City Documents and this Certificate Purchase Agreement.

(e) The City Documents and this Certificate Purchase Agreement, when executed and delivered by the City, will be the legal, valid and binding obligations of the City enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the City and further subject to the availability of equitable remedies.

(f) Except as may be set forth in the Offering Circular, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body, pending or, to the knowledge of the City, threatened against the City wherein an unfavorable decision, ruling or finding would materially adversely affect (i) the transactions contemplated hereby or by the Offering Circular, (ii) the validity or enforceability in accordance with their respective terms of the City Documents or any agreement or instrument to which the City is a party, used or contemplated for use in the consummation of the transactions contemplated hereby or by the Offering Circular, (iii) the tax-exempt status of the Interest Component of the Basic Rent Payments to be distributed to Certificate owners, or (iv) the existence or powers of the City.

(g) The execution and delivery by the City of the City Documents and the other documents contemplated hereby and by the Offering Circular to be executed and delivered by the City, and compliance with the provisions thereof, and the approval of the use of the Offering Circular do not conflict with or constitute on the part of the City a breach of or a default under any existing law, court or

administrative regulation, decree, order, agreement, indenture, mortgage, lease, note or other obligation or instrument to which the City is subject, or by which it may be bound.

(h) The financial statements of the City for the fiscal year ended September 30, 2014, audited by Contryman Associates, P.C., Lexington, Nebraska, except as noted therein, present fairly and accurately the financial condition of the City as of the date indicated and the results of its operations for the period specified, and such financial statements are prepared in accordance with the accounting principles described in the notes to the financial statements consistently applied in all material respects for the period involved.

(i) The City has not, since September 30, 2014, incurred any material liabilities and there has been no material adverse change in the condition of the City, financial or otherwise, other than as set forth in the Offering Circular.

(j) Any certificate signed by an authorized official of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to the Purchaser as to the statements made therein.

(k) The City agrees to reasonably cooperate with the Purchaser in any endeavor to qualify the Certificates for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States as the Purchaser may request; provided, however, that the City shall not be required with respect to the offer or sale of the Certificates, or otherwise, to file written consent to suit or to file written consent to service of process in any jurisdiction. The City consents to the use of drafts of the Preliminary Offering Circular, the Preliminary Offering Circular and drafts of the Offering Circular prior to the availability of the Offering Circular, by the Purchaser in obtaining such qualifications, subject to the right of the City to withdraw such consent for cause by written notice to the Purchaser. The Purchaser shall pay all expenses and costs (including registration and filing fees and legal fees of Special Tax Counsel) incurred in connection therewith.

4. Closing. Prior to or at 12:00 noon, Omaha, Nebraska time, on _____, 2015, or at such other time or such other date as shall have been mutually agreed upon by the City and the Purchaser (the "**Closing Time**"), the City will deliver, or cause to be delivered, to the Purchaser, the Certificates, in definitive form duly executed and authenticated by the Trustee, together with the other documents hereinafter mentioned; and the Purchaser will accept such delivery and pay the purchase price of the Certificates by electronic transfer of the Purchase Price in immediately available funds to the Trustee, for the benefit of the City, or such other mutually agreeable arrangement. Such payment and delivery is herein called the "**Closing**." The Certificates will be delivered in denominations as set forth in the Declaration of Trust as definitive Certificates in fully registered form, and in such amounts as the Purchaser may request not less than two business days prior to the Closing, and will be made available for checking and packaging by the Purchaser at such place as the Purchaser and the Trustee shall agree not less than 24 hours prior to the Closing.

It is anticipated that CUSIP identification numbers will be printed on the Certificates, but neither the failure to print such numbers on any Certificate nor any error in the printing of such numbers shall constitute cause for a failure or refusal by the Purchaser to accept delivery of and pay for any Certificates.

5. Events Permitting Purchaser To Terminate. The Purchaser shall have the right to cancel its obligations to purchase the Certificates if between the date hereof and the date of the Closing, (a)(i) legislation shall be enacted or be actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has

been referred for consideration, or (ii) a decision by a Federal court of the United States or the United States Tax Court shall be rendered, or a ruling or regulation by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made with respect to the Federal tax status of the Certificates, or (iii) other action or events shall have occurred or transpired, any of the foregoing of which has the purpose or effect, directly or indirectly, of adversely affecting the Federal income tax consequences of any of the transactions contemplated in connection herewith, or materially adversely affects the market for the Certificates or the ability of the Purchaser to enforce contracts for the sale of the Certificates at the contemplated offering price, or (b) there shall exist any fact or any event shall have occurred which either (i) makes untrue or incorrect any statement of a material fact or material information contained in the Offering Circular as then amended or supplemented or (ii) is not reflected in the Offering Circular as then amended or supplemented but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect or (c) there shall have occurred any outbreak or escalation of hostilities or any national or international calamity or crisis, including a financial crisis, the effect of which on the financial markets of the United States being such as would materially adversely affect the market for the Certificates or the ability of the Purchaser to enforce contracts for the sale of the Certificates at the contemplated offering prices, or (d) there shall be in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium shall have been declared by Federal, Nebraska or New York authorities, the effect of which on the financial markets of the United States is such as would materially adversely affect the market for the Certificates or the ability of the Purchaser to enforce contracts for the sale of the Certificates at the contemplated offering prices, or (e) there shall have occurred since September 30, 2014, any material adverse change in the affairs of the City from that reflected in the financial statements or other information concerning the City contained in the Offering Circular not otherwise disclosed in the Offering Circular, or (f) legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States shall be rendered, or a ruling or regulation by the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, the effect of which is that the Certificates are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended, and as then in effect, or the Securities Exchange Act of 1934, as amended, and as then in effect, or (g) a stop order, ruling or regulation by the Securities and Exchange Commission shall be issued or made, the effect of which is that the issuance, offering or sale of the Certificates, as contemplated herein or in the Preliminary Offering Circular or the Offering Circular, is in violation of any provision of the Securities Act of 1933, as amended, and as then in effect, the Securities Exchange Act of 1934, as amended, and as then in effect, or the Trust Indenture Act of 1939, as amended, and as then in effect, or (h) the Offering Circular is approved and delivered in accordance with **Section 2** above.

The City shall have the right to terminate this Certificate Purchase Agreement if the Certificates are not purchased by the Purchaser for any reason on or prior to the Closing Time.

6. Conditions to Closing. The obligations hereunder of each party hereto shall be subject (a) to the performance by the other party of its obligations to be performed hereunder at and prior to the Closing Time, (b) to the accuracy in all material respects of the representations and warranties herein of the other party as of the date hereof and as of the Closing Time, and (c) to the following conditions, including the delivery by the appropriate party or parties hereto or other entities of such documents as are enumerated herein:

(i) At the Closing Time,

(A) The Certificates and the Offering Circular shall have been duly authorized, executed and delivered in the form heretofore approved by the Purchaser with only such changes therein as shall be mutually agreed upon by the City, the Purchaser and the Trustee;

(B) The proceeds of the sale of the Certificates shall have been deposited and applied as described in the Declaration of Trust;

(C) The City shall have duly adopted and there shall be in full force and effect such Ordinances as, in the opinion of Special Tax Counsel, shall be necessary in connection with the transactions contemplated hereby; and

(D) The Project description and scope shall be as described in the Offering Circular.

(ii) At the Closing Time, the Purchaser and the City shall receive:

(A) The approving opinion of Special Tax Counsel, dated the date of Closing, addressed to the City, the Trustee and the Purchaser, in form and substance satisfactory to the Purchaser.

(B) A certified copy of the Ordinance authorizing or approving, as appropriate, the execution and delivery of the Offering Circular, this Certificate Purchase Agreement, the City Documents, and the Certificates, together with certificates dated the Closing Date to the effect that such Ordinance has not been modified, amended or repealed.

(C) A certificate of the City, dated the date of Closing, signed by an official of the City, in form and substance satisfactory to the Purchaser.

(D) Evidence satisfactory to the Purchaser that an IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) will be completed and timely filed with the IRS.

(E) Such additional certificates and other documents as the Purchaser or Special Tax Counsel may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Declaration of Trust, the Lease and the Offering Circular, all such certificates and other documents to be satisfactory in form and substance to the Purchaser and Special Tax Counsel.

Unless performance is waived by the party or parties for whose benefit a condition or obligation is intended, if any person shall be unable to satisfy the above conditions to the obligations of any party to this Certificate Purchase Agreement, or if the obligations hereunder of any party shall be terminated for any reason permitted by this Certificate Purchase Agreement and unless otherwise waived, this Certificate Purchase Agreement shall terminate and neither the Purchaser nor the City shall be under further obligation hereunder; except that the Purchaser's obligations to pay expenses, as provided in **Section 9** hereof, shall continue in full force and effect.

7. Conditions To City's Obligations. The obligations of the City hereunder are subject to the performance by the Purchaser of its obligations hereunder.

8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements of the City and the Purchaser, respectively, shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of any other party and shall survive the Closing.

9. Expenses. Whether or not the Certificates are sold by the City to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), the Purchaser shall be under no obligation to pay any expenses incident to the performance of the obligations of the City hereunder. If the Certificates are sold by the City to the Purchaser, all expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Certificates (including, without limitation, the fees and disbursements of Gilmore & Bell, P.C., Special Tax Counsel and the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Certificates) shall be paid by the City out of the proceeds of the Certificates; if the Certificates are not sold by the City to the Purchaser (unless such sale be prevented at the Closing Time by the Purchaser's default), all such expenses and costs shall be paid by the City. The Purchaser shall pay from its underwriting fee all closing and registration fees (e.g. DTC), the costs of printing the preliminary Offering Circular and the final Offering Circular, and all of the Purchaser's out-of-pocket expenses.

10. Amendments to Offering Circular. If, after the date of this Certificate Purchase Agreement and until the earlier of (a) ninety (90) days after the "end of the underwriting period" (as defined in Rule 15c2-12) or (b) the time when the Offering Circular is available to any person from the Municipal Securities Rulemaking Board, but in no case less than twenty-five (25) days following the end of the underwriting period, an event relating to or affecting the City shall occur as a result of which it is necessary, in the opinion of Special Tax Counsel or the Purchaser, to amend or supplement the Offering Circular in order to make the Offering Circular not misleading in the light of the circumstances then existing, the City will forthwith prepare and furnish to the Purchaser a reasonable number of copies of an amendment of or supplement to the Offering Circular (in form and substance satisfactory to the Purchaser) which will amend or supplement the Offering Circular so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements not misleading. The expenses of preparing such amendment or supplement shall be borne by the City. Thereafter, all references to and representations regarding the Offering Circular contained herein shall refer to or regard the Offering Circular as so amended or supplemented. For the purpose of this Section the City will furnish to the Purchaser such information with respect to the City as the Purchaser may from time to time reasonably request.

11. Third Party Beneficiary. The City agrees that the Purchaser is and shall be a third party beneficiary of any and all representations and warranties made by the City in the City Documents, to the same effect as if the City had made such representations and warranties to the Purchaser in this Certificate Purchase Agreement.

12. Notices. Any notice or other communication to be given to the City under this Certificate Purchase Agreement may be given by delivering the same in writing at its address set forth above, and any notice or other communications to be given to the Purchaser under this Certificate Purchase Agreement may be given by delivering the same in writing to the Purchaser at the following addresses:

Ameritas Investment Corp.
5900 "O" Street
Lincoln, Nebraska 68510
Attention: Marc Munford

13. Successors. This Certificate Purchase Agreement is made for the benefit of the City, the Trustee and the Purchaser (including the successors or assigns of the Trustee and the Purchaser) and no other person including any purchaser of the Certificates shall acquire or have any rights hereunder or by virtue hereof.

14. Governing Law. This Certificate Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

15. Effectiveness. This Certificate Purchase Agreement shall become effective upon your acceptance hereof.

16. Counterparts. This Certificate Purchase Agreement may be executed in any number of counterparts, each of which so executed and delivered shall constitute an original and all together shall constitute but one and the same instrument.

17. Captions. The captions or headings in this Certificate Purchase Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Certificate Purchase Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Certificate Purchase Agreement, all as of the day and year first above mentioned.

Very truly yours,

AMERITAS INVESTMENT CORP.

By: _____
Vice President

Accepted and agreed to as of
the date first above written.

CITY OF LEXINGTON, NEBRASKA

By: _____
Mayor

By: _____
City Manager

BOKF, National Association, Trustee

By: _____
Vice President

SCHEDULE 1

\$ _____

**CITY OF LEXINGTON, NEBRASKA
CERTIFICATES OF PARTICIPATION
SERIES 2015**

MATURITY & PRICING SCHEDULE

[INSERT DEBT SERVICE SCHEDULE]

Interest Payment Date:

Interest is payable semiannually on June 15 and December 15 of each year commencing December 15, 2015.

Purchase Price:

The Certificates shall be delivered to the Purchaser, as initial purchaser, upon receipt of \$ _____, (equal to the par amount of the Certificates, less underwriter's discount of \$ _____) plus accrued interest thereon to the date of delivery of the Certificates.

Dated Date:

The Certificates shall be dated _____, 2015.

Optional Redemption:

The Certificates are not subject to optional redemption prior to maturity.