

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into by and between TWO VISTA, L.L.C., a Nebraska limited liability company, hereinafter referred to as "Purchaser", and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as the "City."

RECITALS

I. Whereas, Two Vista, L.L.C., a Nebraska limited liability company, is the owner of Lot 126, Irregular Tracts, located in the SW 1/4 of the SE 1/4 of Section 4, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska ("Lot 126").

II. Whereas, City is the owner of Lot 127, Irregular Tracts, located in the SW 1/4 of the SE 1/4 of Section 4, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska ("Lot 127").

III. City has declared a 1.32 acre portion of Lot 127 abutting Lot 126 surplus and approved the sale of said 1.32 acre parcel to Purchaser. The 1.32 acre parcel is hereinafter referred to as the "Property" and is more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference.

IV. Whereas, the Property is part of the Holmes Park Golf Course. The conversion of the Property from its public outdoor recreational land use to private use is subject to the provisions of Section 6(f)(3) of the Land and Water Conservation Fund Act which prohibits such conversion without the approval of the Secretary of Interior and only upon such conditions the Secretary of Interior deems necessary to assure the substitution of other recreational properties of at least equal fair market value and of reasonably equivalent usefulness.

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

1. **Sale of the Property.** City agrees to sell to Purchaser, and Purchaser agrees to purchase from City, the Property for the sum of Three Hundred Eighty-Seven Thousand Two Hundred Seventy-Five and No/100ths Dollars (\$387,275.00), hereinafter referred to as the "Purchase Price."

2. **Payment.** The Purchase Price shall be payable as follows:

- a. Initial Payment. Purchaser shall deliver Two Hundred Forty Thousand and No/100 Dollars (\$240,000.00) (the "Initial Payment"), subject to adjustment and prorations set forth herein, to City at closing in cash or certified funds.
- b. Remaining Balance. One Hundred Forty-Seven Thousand Two Hundred Seventy-Five and No/100 Dollars (\$147,275.00) shall be payable by Purchaser to City by delivery of a promissory note in the form attached

hereto as Exhibit "B" and incorporated herein by this reference (the "Promissory Note") and secured by a deed of trust in the form attached hereto as Exhibit "C" and incorporated herein by this reference (the "Deed of Trust").

3. **Title**. At closing, City will execute and deliver to Purchaser a warranty deed (the "Deed") conveying the Property to Purchaser in fee simple free and clear of all liens, encumbrances, encroachments, and leases except that title shall be taken subject to:

- a. Any restrictive covenants, easements, mineral rights, reservations or other conditions of record;
- b. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of the Property or by making inquiry of persons in possession thereof;
- c. Any discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records; and
- d. Any unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.

4. **Closing Costs**. City shall be obligated to prepare the Deed and to pay Nebraska Documentary Stamp taxes, if any, relating to this transfer. Purchaser shall be obligated to prepare the Real Estate Transfer Statement and the cost, if any, of filing said Deed. Each party shall pay its own attorney fees. Purchaser and City agree to retain a title company as the escrow closing agent ("Title Company") to close this transaction and shall execute the Title Company's agreement upon reasonable request. Purchaser and City agree to equally share the cost for such escrow closing service.

5. **Title Insurance**. Purchaser shall obtain a Commitment for an Owner' Policy of Title Insurance (the "Title Commitment"), pursuant to which the Title Company agrees to issue to Purchaser an American Land Title Association ("ALTA") Owner's Policy of Title Insurance in the full amount of the Purchase Price, showing Purchaser as the proposed insured, describing the Property, and insuring Purchaser's interest in the Property subject only to matters of record on the effective date of the Title Commitment (the "Effective Date"). Written notice of any matter adversely affecting Purchaser's interest in the Property or its title to the Property that is unacceptable to Purchaser in its sole discretion (each, a "Title Defect") shall be delivered to City within ten (10) days of receipt by Purchaser of the Title Commitment. All matters to which Purchaser so objects are referred to in this paragraph as "Non-Permitted Exceptions." All items listed as exceptions in the Title Commitment to which such objection is not made prior to closing shall be deemed "Permitted Exceptions." Upon City's timely receipt of any such objection, City shall have the right, but not the obligation, to cure or remove all Non-Permitted Exceptions within thirty (30) days following receipt of notice thereof, or at closing, for matters involving payment of funds. If City does not cause all of the Non-Permitted Exceptions to be removed or cured within said thirty (30) day cure period, Purchaser shall have the right either (a) to terminate

this Agreement by delivering written notice thereof to City within five (5) days following the expiration of the thirty (30) day cure period, or (b) to elect to purchase the Property subject to the Non-Permitted Exceptions. In the event Purchaser fails to terminate this Agreement within the time period specified in the preceding sentence, all Non-Permitted Exceptions shall be deemed to be Permitted Exceptions, and Purchaser shall be deemed to have elected to purchase the Property subject to the Non-Permitted Exceptions. In the event Purchaser elects to terminate this Agreement pursuant to this paragraph, this Agreement shall be of no further force or effect upon City's timely receipt of such notice of termination, neither Purchaser nor City shall have any further obligation or liability to each other under this Agreement. Purchaser and City shall each pay one-half of the expense of a title insurance policy insuring the Property for the amount of the Purchase Price.

6. **Possession.** City shall deliver possession of the Property to Purchaser at the Date of Closing (as hereinafter defined).

7. **Closing.** City shall deliver the Deed to and possession of the Property to Purchaser on or before January 31, 2014, or such other date as is mutually acceptable to both parties (the "Date of Closing"), and Purchaser will accept such conveyance and deliver to the Initial Payment, Promissory Note, and Deed of Trust in accordance with paragraph 2. Purchaser hereby acknowledges that consummating closing shall constitute acceptance of the Property in its environmental and geotechnical "As Is" condition, except as specifically set forth herein. Upon closing of the Property, Purchaser shall at Purchaser's own expense, promptly file the Deed for recordation in the Office of the Register of Deeds for Lancaster County, Nebraska. Upon closing of the Property, City shall at City's own expense, file the Deed of Trust for recordation in the Office of the Register of Deeds for Lancaster County, Nebraska.

At least five (5) days prior to the Date of Closing, City shall deliver to Purchaser and the Title Company a copy of the proposed Deed which shall be in recordable form and shall convey good and marketable fee simple title to the Property to Purchaser, subject only to this Agreement and other easements, covenants, agreements, and restrictions of record.

On or before the Date of Closing, City shall deliver to the Title Company the following:

- a. The Deed, properly executed and acknowledged;
- b. Any other documents required by this Agreement;
- c. Any other documentation reasonably requested by the Title Company in order to confirm the authority of City to consummate this transaction or to permit the Title Company to issue to Purchaser upon completion of the closing its Owner's Title Insurance Policy, as required herein, in an amount equal to the Purchase Price, subject only to those matters shown on the Title Commitment which were approved or waived by the Purchaser ("Title Policy"); and
- d. Such funds as may be required of City to pay the title insurance premium and other closing costs or charges properly allocable to City.

On or before the closing, Purchaser shall deliver to the Title Company the following:

- a. The Initial Payment;
- b. The Promissory Note;
- c. The Deed of Trust;
- d. A properly executed Real Estate Transfer Statement to be filed with the Deed;
- e. Any other documents required by this Agreement;
- f. Any other documentation reasonably requested by the Title Company to confirm the authority of the Purchaser to consummate this transaction or to permit the Title Company to issue the Title Policy to Purchaser upon completion of the closing; and
- g. Such additional funds as may be required of Purchaser to pay closing costs or charges properly allocable to Purchaser.

After the Title Company has received all of the items to be deposited with it, and when it is in a position to issue the Title Policy reflected by the Title Commitment, the Title Company shall:

- a. Record the Deed;
- b. Record the Deed of Trust;
- c. Record any other instruments executed by the parties or either of them which are contemplated by this Agreement to be placed of record, instructing the Register of Deeds Office to return the same to the beneficiary thereof;
- d. Issue to Purchaser its Title Policy;
- e. Charge Purchaser for the recording cost of the Deed, one-half of the premium for issuing the Title Policy, and for one-half of the closing fee; and
- f. Charge City for one-half of the premium for the issuing of the Title Policy, for one-half of the closing fee, and the documentary stamp tax, if any.

8. **Taxes.** For years 2013 and earlier, the Property has been exempt from Lancaster County real estate taxes. If the parties do not close prior to the end of 2013, taxes for the year of Closing shall be prorated to the Date of Closing and shall be prorated based upon the most

current valuation and the most current tax levy rate, as determined by the Lancaster County Board of Equalization. The parties may mutually agree and elect not to prorate taxes for the year of Closing.

9. **Prorations.** Income, expenses, and liabilities attributable to the Property thereto through the day before the Date of Closing shall be for the account of the City and thereafter for the account of Purchaser.

10. **Real Estate Commission.** Purchaser and City represent that neither have executed any listing agreement or other document with a real estate broker. In the event that any real estate broker claims a commission, finder's fee, or other compensation as a result of this transaction, the party alleged to have entered into an agreement with such a broker shall indemnify and hold the other party harmless from and against any such commission, finder's fee, or other compensation.

11. **City's Representations and Warranties.** City represents and warrants to Purchaser that:

- a. **Organization and Standing.** It is now and on the Date of Closing will be a duly organized municipal corporation validly existing in good standing and qualified to do business in the State of Nebraska;
- b. **Authorization.** All necessary action and consent to duly approve the execution, and performance of this Agreement and the consummation of the transaction contemplated hereby has been taken by City, and this Agreement constitutes a valid and binding agreement of City enforceable in accordance with its terms;
- c. **Compliance with Applicable Laws.** To the best of City's knowledge, information and belief, the Property is now and on the Date of Closing will be in material compliance with applicable laws, ordinances, regulations, rules and orders; and
- d. **Environmental Compliance.** To the best of City's knowledge, the Property is not in violation of any federal, state, or local law, ordinance, or regulation or requirement relating to industrial hygiene or to the environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions. Except as identified in any Phase I Environmental Site Assessment, during the time in which City owned the Property, neither City nor, to the best of City's knowledge, any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively, "Hazardous Materials"). There is no proceeding or inquiry by any governmental authority pending, or to the best of City's knowledge

threatened, with respect to the presence of such Hazardous Materials on the Property or the migration thereof from or to other property. For the purpose of this Agreement, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1807 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws.

12. **Inspections.** On or prior to the Date of Closing, Purchaser retains the right to conduct such inspections of the Property as it deems necessary and advisable including, but not limited to, reviewing the Title Company's commitment to issue the Title Policy. City agrees to deliver to Purchaser any and all documents relating to the condition of the Property that City has in its possession, including, but not limited to, any environmental site assessment. In addition, the parties may obtain a Phase I environmental site assessment, the cost of which shall be paid by Purchaser. Written notice of any condition or circumstance adversely affecting the Property that is unacceptable to Purchaser in its sole discretion (each, a "Property Defect") shall be delivered to City thirty (30) days prior to the Date of Closing, together with a copy of any written evidence received by Purchaser reflecting such Property Defect. City shall have a reasonable period, not exceeding thirty (30) days from receipt of such notice from Purchaser, to cure any Property Defect, and the Date of Closing shall be extended by any such cure period. In the event that City elects not to cure or is unable to cure any Property Defect to the reasonable satisfaction of Purchaser within thirty (30) days following notice of such Property Defect, Purchaser may, in its sole discretion, elect to either (i) terminate this Agreement by delivering written notice to City, in which event neither Purchaser nor City shall have any further obligation or liability to each other under this Agreement; or (ii) waive the requirement that City cure such Property Defect.

13. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to City that:

- a. **Organization and Standing.** Purchaser is a Nebraska limited liability company duly organized, validly existing, and in good standing and qualified to do business in the State of Nebraska;
- b. **Authorization.** By closing, all necessary action to duly approve the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby will have been taken by Purchaser, and this Agreement will constitute a valid and binding agreement of Purchaser enforceable in accordance with its terms; and
- c. **Absence of Restrictions.** The execution, delivery, and performance of this Agreement and the transactions contemplated hereby by Purchaser do not conflict with or result in the termination or breach of any term, condition, or provision of or constitute a default under the articles of organization or

bylaws of Purchaser, or of any contract, lease, agreement, or other instrument or condition by which it is bound.

14. **Conditions Precedent to Purchaser's Obligations.** The obligation of Purchaser to consummate the transactions contemplated hereby is subject to the fulfillment prior to and at the Date of Closing of each of the following conditions:

- a. **Representations and Warranties.** The representations and warranties of City contained in this Agreement shall be true and correct in all material respects at and as of the Date of Closing as though such representations and warranties were made at and as of such time and Purchaser shall have completed its inspections permitted herein with satisfactory results;
- b. **Performance.** City shall have in all material respects performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to and at the Date of Closing;
- c. **Other Governmental Approvals.** City shall have received any and all necessary governmental or regulatory approvals necessary in order to permit City to convey the Property to Purchaser including, but not limited to, approval of the Secretary of Interior (acting through the Regional Director of the National Park Service) pursuant to the provisions of Section 6(f)(3) of the Land and Water Conservation Fund Act.

15. **Default.** Time is agreed to be of the essence. In the event either party fails to comply with any of the terms hereof for a period of fifteen (15) days after written notice to defaulting party from the other party specifying the nature thereof, then the other party may declare a default and seek any remedy at law or in equity without notice or demand, including specific performance.

16. **Remedies.** If any of the events of default set forth in this Agreement shall occur and a defaulting party fails to cure the same within the express time period herein provided, the other party, in addition to any other rights of that party under this Agreement, may at its option and with ten (10) days prior written notice or demand exercise any rights and remedies available at law or equity, including, without limitation, specific performance of this Agreement. No remedy herein is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

17. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the nonassigning party. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

18. **Visitation.** Until the Date of Closing, Purchaser or Purchaser's agents shall have the right to reasonable visitation and inspections of the Property after Purchaser has given reasonable notice to City or their agents and City or their agents have consented. City or their agents will not unreasonably withhold their consent.

19. **Lien Affidavit.** City shall execute on the Date of Closing an affidavit on the Title Company's form which will remove all general exceptions to Purchaser's title insurance policy, whereby City represents that, including without limitation (i) there are no unpaid special assessments levied against the Property as of the Date of Closing, (ii) there are no outstanding unpaid bills for labor, material, or utilities furnished to the Property as of the Date of Closing, (iii) there has been no off-site work taking place in the immediate vicinity such as grading or paving of streets, installation of sewer lines, in the past six (6) months; (iv) City has not received any notice of future improvements which might result in special assessments; and (v) agreeing to indemnify and hold harmless the Purchaser and Title Company against all payments and expenses, including court costs and attorney's fees, if the above representations prove inaccurate in whole or in part.

20. **Severability.** If any noneconomic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

21. **Further Assurances.** Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, of cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

22. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

23. **Construction.** Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

24. **Nonmerger.** All representations and warranties and covenants made herein are intended to survive closing and shall not be merged in the Deed. This Agreement shall not be canceled at closing.

25. **Time of the Essence.** Time is of the essence of this Agreement.

26. **Entire Agreement.** This Agreement contains the entire agreement of the parties. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

27. **Notice and Demands.** Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally to the addresses set forth below:

If to Purchaser: Two Vista, L.L.C.  
One Talent Plus Way  
Lincoln, Nebraska 68506

If to City: Lynn Johnson, Director  
Lincoln Parks & Recreation Department  
2740 "A" Street  
Lincoln, Nebraska 68502

With a copy to: City Attorney  
555 South 10th Street, Suite 300  
Lincoln, Nebraska 68508

28. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

29. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and permitted assigns.

**TWO VISTA, L.L.C.,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Its Member

**CITY OF LINCOLN, NEBRASKA,**  
a municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor

STATE OF NEBRASKA    )  
                                  )ss.  
LANCASTER COUNTY    )

The foregoing Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, Member of Two Vista, L.L.C., a Nebraska limited liability company, on behalf of said company.

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

STATE OF NEBRASKA    )  
                                  )ss.  
LANCASTER COUNTY    )

The foregoing Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

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

## EXHIBIT "A"

That part of Lot 127 I.T., located in the Southwest Quarter of the Southeast Quarter of Section 4, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, more particularly described as follows:

Commencing at the southeast corner of Lot 126 I.T. in said Southwest Quarter, said point being on the north right-of-way line of Pioneers Boulevard; thence westerly on said north right-of-way line, on an assigned bearing of south 89 degrees 48 minutes 43 seconds west, a distance of 100.00 feet, to the point of beginning; thence continuing westerly on said right-of-way line, south 89 degrees 48 minutes 43 seconds west, 479.63 feet; thence northeasterly, north 46 degrees 47 minutes 50 seconds east, 350.70 feet, to a point on the west line of said Lot 126 I.T.; thence southeasterly on said west line, south 43 degrees 12 minutes 10 seconds east, 327.20 feet to the point of beginning.

**EXHIBIT "B"**

PROMISSORY NOTE

\$147,275.00

\_\_\_\_\_, 201\_\_  
Lincoln, Nebraska

1. BORROWERS' PROMISE TO PAY. FOR VALUE RECEIVED, the undersigned, TWO VISTA, L.L.C., a Nebraska limited liability company (referred to herein as "Borrower"), whose mailing address is One Talent Plus Way, Lincoln, Nebraska 68506, promises to pay to the order of the CITY OF LINCOLN, NEBRASKA, a municipal corporation (referred to herein as "City"), its successors and assigns, whose mailing address is 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508, or at such other place as City may, from time to time, designate to Borrower in writing, in immediately available funds in lawful money of the United States, the principal sum of ONE HUNDRED FORTY-SEVEN THOUSAND TWO HUNDRED SEVENTY-FIVE AND NO/100THS DOLLARS (\$147,275.00) (the "Principal Amount").

2. INTEREST. The Principal Amount outstanding from time to time under this Promissory Note during the term hereof shall bear interest ("Interest") at an annual rate per annum equal to one point nine percent (1.9%).

3. PAYMENTS.

(a) Time and Amount of Payments:

(i) Beginning on \_\_\_\_\_, 201\_\_, annual payments in the amount of Thirty-Six Thousand Eight Hundred Eighteen and 75/100ths Dollars (\$36,818.75) plus all accrued and unpaid Interest shall be due and payable on \_\_\_\_\_, 201\_\_, of each year during the term hereof (each, a "Due Date").

(ii) On \_\_\_\_\_, 201\_\_ (the "Maturity Date"), a final payment shall be due and payable in an amount equal to the remaining unpaid Principal Amount plus all accrued and unpaid Interest on the outstanding Principal Amount through and including such date.

(b) Application of Payments: Any payment received or required to be received hereunder is referred to herein as an "Installment." Each Installment shall be applied (i) first, to any late or other charges incurred by Borrower pursuant to this Promissory Note, (ii) second, to the payment of any Interest accrued and not yet paid, and (iii) finally, the balance shall be applied in reduction of the Principal Amount.

(c) Prepayment: Partial or full prepayment shall be permitted at any time without penalty to Borrower. A partial prepayment shall not extend or postpone the Maturity Date unless

City so agrees in writing. Any partial prepayment shall be identified as such by Borrower in a contemporaneous writing delivered by Borrower to City.

(d) Other Charges: To the extent permitted by Governing Law (as hereinafter defined), Borrower agrees to pay promptly upon demand all expenses, including attorneys' fees and expenses, actually incurred by City in attempting to collect any delinquent Installments. All such expenses shall be and become part of the amounts due hereunder.

4. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an "Event of Default" hereunder:

(a) Failure of Borrower to pay any Installment on the Due Date or the Maturity Date, as the case may be; or

(b) Failure of Borrower to cure any other breach or default of the performance or fulfillment of any of the terms of this Promissory Note within thirty (30) days of written notice thereof from City or, if such breach or default cannot be cured within such thirty-day period with the exercise of all due diligence and Borrower commences to cure the same with all due diligence before the expiration of such thirty-day period, then within such period of time as may be necessary to cure the same with the exercise of all due diligence; or

(c) Failure of Borrower to cure any other breach or default of the performance or fulfillment of any of the terms of the Deed of Trust dated even date herewith executed by Borrower in favor of City within thirty (30) days of written notice thereof from City or, if such breach or default cannot be cured within such thirty-day period with the exercise of all due diligence and Borrower commences to cure the same with all due diligence before the expiration of such thirty-day period, then within such period of time as may be necessary to cure the same with the exercise of all due diligence; or

(d) In the event Borrower shall:

(1) file a voluntary petition in bankruptcy or seek to be adjudicated a bankrupt or insolvent or shall have an order of relief entered with respect to it under any present or future statute, law or regulation relating to bankruptcy, insolvency, reorganization or relief from debtors; or

(2) make any assignment for the benefit of creditors; or

(3) not pay, or admit in writing Borrower's inability to pay, its debts generally as they become due.

5. ACCELERATION. Upon the occurrence of any Event of Default and at any time thereafter until such Event of Default is cured, at the option of City, the Principal Amount then remaining unpaid, together with all accrued and unpaid Interest thereon and any other sums due hereunder, shall immediately become due and payable in full without notice and without demand or presentment.

6. DEFAULT RATE OF INTEREST. Notwithstanding anything herein to the contrary, from and after an Event of Default until such Event of Default is cured, at the option of City, Interest on the outstanding Principal Amount in default and any other amounts due hereunder shall accrue at twelve percent (12%) (the "Default Rate of Interest"). Borrower's payment of the Default Rate of Interest shall not constitute a waiver of any other right or power City may have.

7. WAIVER BY BORROWER OF CERTAIN RIGHTS. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY GOVERNING LAW, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, NOTICE OF DISHONOR, PROTEST, NOTICE OF PROTEST, DEMAND, NOTICE OF EVERY KIND IN CONNECTION HEREWITH AND DILIGENCE IN ENFORCING PAYMENT OR BRINGING SUIT AGAINST ANY PARTY HERETO.

8. ACKNOWLEDGMENT OF RECEIPT OF COPY. Borrower acknowledges receipt of a copy of this Promissory Note and affirms that it was completely filled in prior to the execution thereof on behalf of Borrower.

9. MODIFICATION OR WAIVER REQUISITES. No modification of this Promissory Note shall be effective unless in writing, signed by Borrower and City. No waiver of any right or power of City hereunder shall be effective unless in writing, signed by City and delivered to Borrower. No prior or subsequent verbal communications not reduced to writing, executed by the parties, and declared as an integral part hereof are or shall be binding upon Borrower or City.

10. WAIVER BY CITY. City's failure to exercise any right or power upon the occurrence of an Event of Default, or any delay by City in exercising any such right or power, shall not constitute a waiver of such right or power, or of any other right or power in the event of any subsequent occurrence of an Event of Default, whether of the same or different nature.

11. SECURITY. Payment of this Promissory Note is secured by a Deed of Trust executed and delivered by Borrower to City dated as of the date hereof and given for the benefit of City.

12. GOVERNING LAW. This Promissory Note is made under and governed by the laws of, and shall be deemed to have been executed in, the State of Nebraska (the "Governing Law").

13. COMMERCIAL NATURE OF LOAN. Borrower acknowledges that the indebtedness evidenced by this Promissory Note is for business purposes only and is not an extension of consumer credit.

14. PROHIBITION AGAINST USURY. In no event, either before or after the occurrence of an Event of Default, shall the Interest due under this Promissory Note exceed the maximum, lawful, non-usurious interest rate of the State of Nebraska (the "Maximum Rate").

This Promissory Note is hereby expressly limited so that in no event whatsoever, whether by reason of acceleration or otherwise, shall the amount paid, or agreed to be paid to City for the use, forbearance or detention of the sums advanced to Borrower exceed the Maximum Rate. If fulfillment of any provisions hereof, at the time performance of such provision shall be due, shall involve the potential for transcending the Maximum Rate, then ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate, and if from any such circumstance City shall ever receive as Interest an amount which would exceed the Maximum Rate, such excess shall be applied to the reduction of the Principal Amount and not the payment of Interest, or if such excessive Interest exceeds the unpaid balance of the Principal Amount, such excess shall be refunded to Borrower. All sums paid and agreed to be paid to City for use, forbearance or detention of the indebtedness of Borrower shall, to the extent permitted by Governing Law, be amortized, prorated, allocated, and spread through the whole term of such indebtedness so that the actual rate of Interest on account of such indebtedness is uniform throughout the term thereof.

15. SEVERABILITY. In the event any one or more of the provisions contained in this Promissory Note shall for any reason be held to be invalid, illegal or unenforceable in any respect under Governing Law, such invalidity, illegality or unenforceability, at the option of City, shall not affect any other provision of this Promissory Note, but this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the undersigned has caused this Promissory Note to be signed and delivered to City as of the date first above written.

“BORROWER”

**TWO VISTA, L.L.C.,**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Its Member

## EXHIBIT "C"

### DEED OF TRUST

THIS DEED OF TRUST (the "Deed of Trust"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between TWO VISTA, L.L.C., a Nebraska limited liability company ("Trustor"), whose mailing address is One Talent Plus Way, Lincoln, Nebraska 68506, JOCELYN W. GOLDEN ("Trustee"), whose address is 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508, and the CITY OF LINCOLN, NEBRASKA, a municipal corporation (referred to herein as "Beneficiary"), its successors and assigns, whose mailing address is 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508.

### RECITALS

WHEREAS, pursuant to the terms and conditions of the Agreement dated \_\_\_\_\_, 201\_\_, by and between Trustor and Beneficiary (the "Agreement"), Beneficiary has agreed to loan to Trustor in immediately available funds the sum One Hundred Forty-Seven Thousand Two Hundred Seventy-Five and 00/100ths Dollars (\$147,275.00) (the "Principal Amount"), pursuant to the terms and provisions thereof; and

WHEREAS, Trustor has agreed to transfer the Trust Estate (as hereinafter defined) to Trustee in trust to secure the Obligations (as hereinafter defined) in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, including the indebtedness identified above and the trust created herein, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Trustor irrevocably GRANTS, BARGAINS, SELLS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions of this Deed of Trust, the real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property");

TOGETHER WITH the following, whether existing now or hereafter entered into or acquired by Trustor:

(a) all interests, estate or other claims, both in law and in equity, in the Property or any portion thereof;

(b) all easements, rights-of-way, tenements, hereditaments and appurtenances of and to the Property or any portion thereof;

(c) all oil and gas rights and profits, water rights and water stock of Trustor with respect to the Property or any portion thereof;

(d) all right, title and interest of Trustor in and to any land lying within the right-of-way of any street or highway adjoining the Property or any portion thereof;

(e) all right, title and interest of Trustor in and to any and all alleys and strips and gores of land adjacent to or used in connection with the Property or any portion thereof;

(f) all right, title and interest of Trustor in and to any and all buildings, fixtures, improvements, and appurtenances now or hereafter erected on or affixed to the Property or belonging thereto (the "Improvements");

(g) all right, title and interest of Trustor in and to any and all present and future contracts and policies of insurance which insure the Property and the Improvements, or any fixtures or personal property described below, against casualties and other hazards or contingencies, and all monies and proceeds and rights thereto which may be or become payable by virtue of any such insurance contracts or policies; and

(h) any and all awards made for the taking by eminent domain, condemnation, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including, without limitation, any award resulting from a change of grade of streets or for severance damages (all of the foregoing conveyed to Trustee herein collectively referred to as the "Trust Estate").

#### FOR THE PURPOSE OF SECURING:

(a) The payment of the indebtedness evidenced by the Promissory Note of Trustor dated even date herewith in the Principal Amount and payable to the order of Beneficiary (the "Note"), together with Interest (as defined in the Note) and pursuant to the terms and conditions set forth therein, which by this reference are incorporated herein, together with any and all modifications, extensions and renewals thereof; and

(b) The performance of each agreement and covenant of Trustor herein contained or contained in the Note (items (a) and (b) are hereinafter jointly referred to as the "Obligations").

1. DEFINITIONS. Any capitalized term not otherwise defined herein shall have the meaning, if any, ascribed to it in the Note.

2. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF TRUSTOR.  
To protect the security of this Deed of Trust, Trustor hereby makes the following representations and warranties to Beneficiary and covenants and agrees as follows:

(a) Payment or Performance of Obligations. Trustor shall timely pay all Obligations and Trustor shall otherwise fully perform under and comply with the terms and conditions of this Deed of Trust and the Note.

(b) Warranty of Title. Trustor is lawfully seized and possessed of good and marketable title and estate to the Trust Estate and has the right and authority to grant and convey the Trust Estate as herein provided. The Trust Estate is and, until the Trust Estate is reconveyed pursuant to the terms hereof, shall remain, free and clear of all security interests, pledges, mortgages, liens and encumbrances except those for (i) current and non-delinquent taxes or taxes being contested in good faith and by appropriate legal proceedings in a manner which, in the judgment of Beneficiary, will not jeopardize Beneficiary's interest in the Trust Estate, (ii) liens arising in the ordinary course of business for sums not past due or sums being protested in good faith and by appropriate legal proceedings in a manner which, in Beneficiary's judgment, will not jeopardize Beneficiary's interest in the Trust Estate, and (iii) easements, exceptions, reservations, covenants, and rights of way of record as of the date hereof. During the Term (as hereinafter defined) of this Deed of Trust, Trustor shall not sell, convey, transfer or dispose of all or any portion of the Trust Estate without the prior written consent of Beneficiary and will warrant and defend title to and possession of the Trust Estate against all claims and demands.

(c) Maintenance and Compliance With Laws. Until the Trust Estate is reconveyed pursuant to the terms hereof, Trustor shall keep the Trust Estate in good repair and condition and shall not commit waste or permit impairment or deterioration of the Trust Estate, reasonable and normal wear and tear excepted. No improvement on the Trust Estate which materially affects the value of the Trust Estate shall be removed or demolished without the prior written consent of Beneficiary, except to the extent required by Governing Law (as hereinafter defined) or where Trustor replaces the removed or demolished improvement with an improvement of equal or greater value. Trustor shall comply with, and shall not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of, any law, ordinance, regulation, covenant, condition and restriction affecting the Trust Estate, including environmental law. Trustor shall cause to be restored within a reasonable period of time and in a good and workmanlike manner any Improvement which may be damaged or destroyed and cause to be paid, when due, all claims for labor performed and materials furnished therefore and for any alterations thereof.

(d) Taxes, Assessments and Charges.

(i) Until the Trust Estate is reconveyed pursuant to the terms hereof, Trustor shall cause to be paid directly and before delinquent, all real estate and other taxes, assessments and other charges, whether general or special, including, without limitation, all fines, penalties and impositions, and all lawful claims for labor, materials, and supplies, if any, which are assessed or imposed upon all or any part of the Trust Estate, or become due and payable and create, may create, or appear to create a lien or other encumbrance upon all or any part of the Trust Estate; provided that Trustor may protest in good faith and by appropriate legal proceedings, in a manner which will not jeopardize Beneficiary's interest in the Trust Estate. Trustor shall promptly furnish to Beneficiary all notices of amounts due under this paragraph,

and all receipts evidencing payment of such amounts or evidence that Trustor is exempt from payment thereof.

(ii) If at any time after the date hereof there shall be assessed or imposed a tax assessment on the Trust Estate in lieu of or in addition to an amount payable by Trustor pursuant to Section (2)(d)(i) hereof, or a license fee, tax or assessment imposed on Beneficiary or this Deed of Trust and measured by or based in whole or in part upon the amount of the Obligations, then all such taxes, assessments or fees shall also be paid by Trustor as herein provided with respect to the payment of amounts due pursuant to Section (2)(d)(i) hereof. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the Obligations.

(e) Actions Affecting Trust Estate. Trustor, at its own expense, shall appear in and contest vigorously any action or proceeding purporting to adversely affect the Trust Estate or the rights and powers of Beneficiary or Trustee hereunder, and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees to the fullest extent permitted by Governing Law, in any such action or proceeding in which Beneficiary or Trustee may appear.

3. SELF HELP. If any action or proceeding is commenced which materially affects Beneficiary's or Trustee's interest in or the value of the Trust Estate, including, but not limited to, eminent domain proceedings, proceedings involving a decedent, notice of sale by Trustee, a notice of default by Trustee, a mortgage foreclosure action, or if Trustor fails to pay its respective, legally enforceable debts generally as they become due, then Beneficiary, at Beneficiary's option and without notice to or demand upon Trustor and without releasing Trustor from any Obligation, may make such appearances, disburse such sums and take such action as is necessary in Beneficiary's opinion in order to protect Beneficiary's interest in the Trust Estate, including, but not limited to (a) appearance in and prosecution or defense of any legal action or proceeding which affects or may affect the Trust Estate; (b) disbursement of attorneys' fees; (c) payment, purchase, contest or compromise of any encumbrance, charge or lien upon the Trust Estate; (d) entry upon the Trust Estate to make repairs or to otherwise restore or protect the Trust Estate or any part thereof; or (e) declaration of an Event of Default (as hereinafter defined) under this Deed of Trust, and sale or foreclosure hereunder. Any amounts disbursed by Beneficiary pursuant to this Section 3 shall become additional Obligations of Trustor secured by this Deed of Trust. Such amounts shall be payable immediately upon notice from Beneficiary to Trustor requesting payment thereof. Nothing contained in this Section 3 shall obligate the Beneficiary to incur any expense or take any action hereunder.

4. EMINENT DOMAIN.

(a) Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding ("Condemnation"), or should Trustor receive any notice or other information regarding any such Condemnation, Trustor shall give immediate notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefore, to the full extent of the Obligations. Trustor and Beneficiary shall be mutually required to appear in and jointly prosecute any Condemnation action or proceedings. Beneficiary and Trustor shall not make any

compromise or settlement without the full consent of the other. All such compensation, awards, damages, rights of action and proceeds awarded (the "Proceeds") are hereby sold, conveyed, transferred, and assigned to Beneficiary to the extent of the outstanding Obligations, and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may reasonably require.

(b) In the event of a Condemnation, Beneficiary shall have the option, in its sole and absolute discretion, to apply all the Proceeds, after deducting therefrom all actual costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees incurred by them in connection with such Condemnation, to any Obligation and in such order as Beneficiary may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Trust Estate upon such conditions as Beneficiary may determine. Such application or release shall not extend or postpone the due date of any payment due under the Note, or cure or waive any Event of Default hereunder. If the Proceeds are applied to the Obligations and exceed the amount of the Obligations and any expenses of Beneficiary described above, the excess shall be paid to Trustor.

## 5. INSURANCE.

(a) Until the Obligations are fully repaid, Trustor shall maintain with insurers admitted to do business in the State of Nebraska and otherwise reasonably acceptable to Beneficiary, insurance with respect to the Trust Estate against loss by fire, theft, lightning, tornado, and other perils and hazards covered by standard extended coverage endorsement in an amount equal to the full replacement value (the "Insurance"). The Insurance policy maintained pursuant to this Deed of Trust and all renewals thereof (the "Policy") shall contain a standard noncontributory mortgagee clause in favor of and in a form acceptable to Beneficiary endorsed as mortgagee and loss payee thereon, and shall provide that there shall be no cancellation or modification thereof with less than thirty (30) days' prior written notification to Beneficiary. All Policies shall also provide that any proceeds thereunder shall be payable notwithstanding (a) any act, failure to act or negligence by any named insured, (b) any foreclosure or other action or proceeding taken by Beneficiary pursuant to this Deed of Trust, or (c) any change in title to or ownership of the Trust Estate. Trustor shall deliver a copy of the Policy to Beneficiary within thirty (30) days of the date hereof and shall deliver a copy of any renewals thereof received by Trustor during the Term hereof immediately upon receipt.

(b) After the occurrence of any casualty to the Trust Estate, Trustor shall give prompt written notice thereof to the insurer and to Beneficiary. Trustor shall immediately file a proof of claim of loss under the Insurance. Trustor shall collect and compromise all claims under the Policy, and shall apply the Insurance proceeds, if any, to the following items in the following order, provided no Event of Default has occurred and is continuing at the time Trustor receives the Insurance proceeds:

(i) to the restoration of the Trust Estate, if Trustor can demonstrate that the Insurance proceeds together with any funds Trustor may contribute are sufficient to repair and restore the Trust Estate to its condition immediately prior to the casualty;

(ii) to the Obligations, in such order as Beneficiary may determine;  
and

(iii) to Trustor.

If an Event of Default has occurred and is continuing at the time Trustor receives the Insurance proceeds, Beneficiary may, at its option, require the Trustor to apply the Insurance proceeds to the foregoing items in whatever order Beneficiary shall see fit. All such Insurance proceeds shall constitute additional security hereunder.

(c) Any application of Insurance proceeds to the Obligations shall not extend or postpone the due date of any payment pursuant to the terms and conditions of the Note, or cure any Event of Default hereunder unless agreed in writing by Beneficiary. If all or any part of the Trust Estate is acquired by Beneficiary under the provisions of this Deed of Trust, Trustor's right to Insurance proceeds resulting from damage to the Trust Estate prior to its acquisition by Beneficiary shall pass to Beneficiary to the extent of the Obligations immediately prior to such acquisition.

(d) Trustor shall not obtain or carry separate insurance which is concurrent in form or contributing in the event of loss with the Insurance, unless Beneficiary is named as mortgagee and loss payee with respect thereto, with losses payable in the same manner as the Insurance. Trustor shall notify Beneficiary at least thirty (30) days prior to obtaining any such separate insurance and shall deliver to Beneficiary the policies or certificates evidencing such separate insurance immediately after they are issued.

(e) Beneficiary shall not be deemed to have incurred any liability or assumed any responsibility for or with respect to the amount of Insurance carried by Trustor, the form or legal sufficiency of the Policy, the solvency of any Insurance companies, or the payment or defense of any lawsuits, as a result of having approved, disapproved of, accepted, prevented, obtained or failed to obtain any Insurance, and Trustor acknowledges that all such liability and responsibility shall remain with Trustor.

6. REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy provided hereunder by this Deed of Trust to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by Governing Law.

7. EVENTS OF DEFAULT. Any of the following shall be deemed an Event of Default hereunder:

(a) That date which is thirty (30) days after notice of the breach by Trustor of any term, covenant, agreement, condition, provision, representation or warranty set forth in this Deed of Trust, provided such breach is not corrected within such thirty (30) day period, or, if such breach or default cannot be cured within such thirty-day period with the exercise of all due diligence and Trustor commences to cure the same with all due diligence before the expiration of such thirty-day period, within such period of time as may be necessary to cure the same with the exercise of all due diligence; or

(b) That date which is thirty (30) days after notice of the breach by Trustor of any term, covenant, agreement, condition, provision, representation or warranty set forth in the Note, provided such breach is not corrected within such thirty (30) day period, or, if such breach or default cannot be cured within such thirty-day period with the exercise of all due diligence and Trustor commences to cure the same with all due diligence before the expiration of such thirty-day period, within such period of time as may be necessary to cure the same with the exercise of all due diligence.

8. ACCELERATION UPON DEFAULT; REMEDIES. In the event of the occurrence of any Event of Default, Beneficiary at his option may declare any or all Obligations to be due and payable and the same shall thereupon become immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Beneficiary may, at its sole and exclusive option:

(a) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or to specifically enforce any of the covenants hereof;

(b) Demand that Trustee exercise the power of sale granted herein; or

(c) Exercise any and all rights provided for in the Note or by Governing Law upon the occurrence of an Event of Default.

9. FORECLOSURE BY POWER OF SALE. Should Beneficiary elect to demand that Trustee exercise the power of sale herein contained, Trustee shall commence to sell the Trust Estate, apply the proceeds therefrom, and otherwise enforce the power of sale in accordance with the terms of the Nebraska Trust Deeds Act or by successor statute in effect at such time (the "Act").

10. APPOINTMENT OF A RECEIVER. In the event of any Event of Default, Beneficiary, without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate.

11. APPOINTMENT OF SUCCESSOR TRUSTEE. Beneficiary may, from time to time, in the manner provided by the Act, substitute a successor or successors to the Trustee named herein or acting hereunder.

12. INSPECTIONS. Trustor shall permit Beneficiary to enter upon any part of the Trust Estate, upon reasonable notice, for the purpose of inspecting the same.

13. FORBEARANCE BY BENEFICIARY OR TRUSTEE NOT A WAIVER. Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by Governing Law, shall not be a waiver of or preclude the exercise of any such right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any Event of Default under this Deed of Trust shall not be deemed to be a waiver of any other or similar Events of Default.

14. RECONVEYANCE BY TRUSTEE. This Deed of Trust shall continue in full force and effect from the date hereof until the Trust Estate is reconveyed as provided herein (the 'Term'). Upon written request of Beneficiary stating that all Obligations have been paid, and upon surrender of this Deed of Trust to Beneficiary for cancellation and retention, and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder in the manner provided by the Act. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any such reconveyance may be described as "the person or persons legally entitled thereto." Trustor shall pay any recordation costs relating to such reconveyance.

15. DUTIES AND OBLIGATIONS OF TRUSTEE.

(a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and of the Act. Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein and in the Act, and no implied covenants or obligations shall be imposed upon Trustee.

(b) No provision of this Deed of Trust shall require Trustee to expend or risk his or her own funds, or otherwise incur any financial obligation in the performance of any of his or her duties hereunder, or in the exercise of any of his or her right or powers, if he or she shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured.

(c) Trustee shall not be liable for any action taken in good faith and reasonably believed to be authorized or within the discretion, rights and powers conferred by this Deed of Trust and the Act.

16. NOTICES. Except for any notices, demands, requests or other communications required under Governing Law to be given in another manner, whenever Beneficiary, Trustor or Trustee gives or serves any notice (including, without limitation, notices of default and notices of sale), demands, requests or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and personally delivered or deposited with a reputable overnight carrier or mailed by first class U. S. mail, postage prepaid, and addressed to the address set forth at the beginning of this Deed of Trust. Such notice shall be effective immediately upon personal delivery, or twenty four (24) hours after deposit with an overnight carrier, or seventy two (72) hours after deposit in the U. S. mail, in the manner set

forth above. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

17. REQUEST FOR NOTICE. Trustor hereby requests that a copy of any notice of default, and a copy of any notice of sale thereunder, be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

18. GOVERNING LAW; WAIVERS; AMENDMENTS. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Nebraska (the "Governing Law"). This instrument can be waived, changed, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of any such waiver, change, discharge or termination is sought.

19. SUCCESSORS AND ASSIGNS. Beneficiary may assign its rights hereunder by notice to Trustee and Trustor. Trustor may not assign its rights and obligations hereunder by contract, operation of law, or otherwise without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion. This Deed of Trust, and all terms, conditions and obligations herein, shall apply and inure to the benefit of and bind Trustor, Trustee, and Beneficiary, and their respective heirs, legatees, devisees, personal representatives, successors-in-interest and permitted assigns. The term "Beneficiary" shall mean the owner(s) and holder(s) of the Obligations, whether or not named as Beneficiary herein.

20. SEVERABILITY. In the event any one or more of the provisions contained in this Deed of Trust shall be for any reason held to be invalid, illegal or unenforceable under Governing Law by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Obligations or the Trust Estate, all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied first to the full payment of that portion of the Obligations which is not secured or not fully secured by the lien of this Deed of Trust.

21. NUMBER AND GENDER. Whenever used herein, the singular number shall include the plural, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date and year first above written.

“TRUSTOR”

TWO VISTA, L.L.C.,  
a Nebraska limited liability company

By: \_\_\_\_\_  
Its Member

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, Member of Two Vista, L.L.C., a Nebraska limited liability company, on behalf of the company.

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