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Fee amount: 136.00  
FB: 68-40328  
COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/01/2014 15:47:19.00



2014093185

Space Above This Line For Recorder's Use

Loan No. 10299

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Kelley Drye & Warren LLP  
200 Kimball Drive  
Parsippany, New Jersey 07054  
Attention: Paul A. Keenan, Esq.

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

by

**168<sup>TH</sup> AND DODGE L.P.,**  
a Nebraska limited partnership

(as trustor)

to

**STEWART TITLE GUARANTY COMPANY**  
having an address at

1603 Farnam St., #219  
Omaha NE 6810

(as trustee)  
for the benefit of

**ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA,**  
a Minnesota corporation

(as beneficiary)

Dated: As of December 1, 2014

Location: Village Pointe Shopping Center  
168th Street & West Dodge Road  
Omaha, Nebraska 68118

CH01\FralM\299878.5 1141658

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Security Instrument") is made as of December 1, 2014 by **168<sup>TH</sup> AND DODGE L.P.**, a Nebraska limited partnership, having an address of c/o RED Development, LLC, One East Washington Street, Suite 300, Phoenix, Arizona 85004 ("Borrower"), as trustor, to **STEWART TITLE GUARANTY COMPANY** ("Trustee"), as trustee, in favor of **ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota corporation, having an address c/o Allianz Real Estate of America LLC, 60 East 42nd Street, Suite 3710, New York, New York 10165 (together with its successors and assigns, "Lender"), as beneficiary.

**RECITALS**

WHEREAS, Borrower and Lender are parties to a Loan Agreement of even date herewith (said Loan Agreement, as modified and supplemented and in effect from time to time, the "Loan Agreement"), which Loan Agreement provides for a loan in the original principal amount of \$95,500,000 (the "Loan") to be made by Lender to Borrower; and

WHEREAS, it is a condition to the obligation of Lender to extend credit to Borrower pursuant to the Loan Agreement that Borrower execute and deliver this Security Instrument.

**GRANT**

NOW, THEREFORE, in consideration of the making of the Loan by Lender to Borrower and the covenants, agreements, representations and warranties set forth in the Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and for the purpose of securing the payment and performance of the following (collectively, the "Loan Obligations"): (a) all principal (including, without limitation, any advance to Borrower now or hereafter made), interest thereon and all other sums due and/or payable, and all obligations owing by Borrower, under any Loan Document and amendments, modifications, extensions, substitutions, exchanges and renewals thereof (each of which shall enjoy the same priority as the advance made on the Closing Date as evidenced by the Note); and (b) all covenants, agreements and other obligations of Borrower under the Loan Documents;

Borrower hereby irrevocably grants, bargains, sells, releases, conveys, warrants, assigns, transfers, mortgages, pledges, sets over and confirms unto Trustee, its successors and assigns, in trust, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, to have and to hold forever for the security and benefit of Lender and its successors and assigns, all of Borrower's right, title and interest in and to the following property, rights, interests and estates, now existing or hereafter coming into existence (the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Property"): (i) all the land located in the County and State identified on Exhibit A attached hereto, as more particularly described on such Exhibit A (the "Land"), (ii) the Accounts, (iii) the Account Collateral, (iv) the Appurtenant Rights, (v) the Contracts, (vi) the Equipment, (vii) the Improvements, (viii) the Instruments, (ix) the Inventory, (x) the General Intangibles, (xi) the Leases, (xii) the Permits (to the fullest extent assignable), (xiii) the Rents, (xiv) the Proceeds, (xv) the Chattel Paper

(including Electronic Chattel Paper and Tangible Chattel Paper), Commercial Tort Claims, Deposit Accounts, Documents, Goods, Investment Property, Letter of Credit Rights, Payment Intangibles and Supporting Obligations (as all such terms in this clause (xv) are defined in the UCC) and (xvi) any and all other rights of Borrower in and to the items set forth in clauses (i) through (xv) above, all whether now owned or hereafter acquired, and all other property which is or hereafter may become subject to a Lien in favor of Lender pursuant to any Loan Document.

TO HAVE AND TO HOLD the Property and all parts thereof unto Trustee, its successors and assigns, for the benefit of Lender, their successors and assigns forever;

PROVIDED, HOWEVER, that these presents are upon the express condition that, if Borrower shall pay or cause to be paid to Lender all sums due Lender with respect to the Loan under the Loan Documents and keep, perform and observe all the covenants and promises in each of the Loan Documents, all without fraud and delay, then this Security Instrument, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, terminate and be void and Lender shall instruct Trustee to effect a full and proper termination, release and reconveyance; otherwise the same shall remain in full force and effect.

TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE 1 DEFINITIONS

Section 1.1 Certain Defined Terms. For all purposes of this Security Instrument, all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement or the Note, as applicable, unless defined herein, and:

“Account Collateral” means the Reserve Accounts, together with all cash, checks, drafts, certificates and instruments, if any, from time to time deposited or held in the Reserve Accounts, all interest, dividends, cash, instruments, investment property and other property from time to time received, receivable or otherwise payable in respect of, or in exchange for, any or all of the foregoing.

“Accounts” means all of Borrower’s “accounts,” as such term is defined in the UCC.

“Appurtenant Rights” means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and, to the extent now or hereafter owned by Borrower, all minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used in connection with, or located on, under or above the Land or any part or parcel thereof, and all “as extracted collateral” (as defined in the UCC), and all ground leases, subleases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof.

“Contracts” means, collectively, (a) all contracts between Borrower and third parties in connection with the management, construction, repair, renovation, use, operation or maintenance

of the Property, in each case as the same may thereafter from time to time be amended or modified; and (b) all warranties, guarantees, and other rights of Borrower or Manager, direct and indirect, against manufacturers, dealers, suppliers, and others in connection with the above contracts and agreements or the work done or to be done and the materials supplied or to be supplied to or for the Property.

“Equipment” means all of Borrower’s “equipment,” as such term is defined in the UCC, and, to the extent not included in such definition, all fixtures, appliances, machinery, “software” (as defined in the UCC), furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired by Borrower, including without limitation, all beds, linens, radios, televisions, carpeting, telephones, cash registers, computers, electronic data-processing or other office equipment, lamps, glassware, restaurant and kitchen equipment, and building equipment, including, without limitation, all heating, lighting, incinerating, waste removal and power equipment, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, washing machines, dryers, stoves, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts, and compressors, materials and supplies, and all other machinery, apparatus, equipment, fixtures and fittings now owned or hereafter acquired by Borrower wherever located, any portion thereof or any appurtenances thereto, together with all additions, replacements, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing.

“General Intangibles” means all of Borrower’s “general intangibles,” as such term is defined in the UCC, and, to the extent not included in such definition, all intangible personal property of Borrower (other than Accounts, Rents, Instruments, Inventory, money and Permits), including, without limitation, choses in action, settlements, judgments, contract rights, rights to performance (including, without limitation, rights under warranties) refunds of real estate taxes and assessments and other rights to payment of money, copyrights, trademarks, trade names, service marks, trade secrets, and patents, the goodwill associated with any of the foregoing, and all applications for any of the foregoing, in each case whether now existing or hereafter in existence.

“Improvements” means all buildings, structures and improvements of every nature whatsoever situated on the Land on the Closing Date or thereafter, including, without limitation, to the extent of Borrower’s right, title or interest therein or thereto, all gas and electric fixtures, radiators, heaters, washing machines, dryers, refrigerators, ovens, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements.

“Instruments” means all of Borrower’s “instruments,” as such term is defined in the UCC, and, to the extent not included in such definition, all instruments, chattel paper, documents or other writings obtained by Borrower from or in connection with the ownership or operation of the Property evidencing a right to the payment of money, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or

hereafter received by Borrower or in which Borrower has or acquires an interest pertaining to the foregoing.

“Inventory” means all of Borrower’s “inventory,” as such term is defined in the UCC.

“Leases” means all leases and other agreements or arrangements affecting the use or occupancy of all or any portion of the Property now in effect or hereafter entered into (including all lettings, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Property), together with any guarantees, supplements, amendments, modifications, extensions and renewals of the same.

“Permits” means all licenses, registrations, permits, allocations, filings, authorizations, approvals and certificates used in connection with the ownership, operation, construction, renovation, use or occupancy of the Property, including, without limitation, building permits, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the ownership, construction, operation, renovation, use or occupancy of the Property.

“Proceeds” means all of Borrower’s “proceeds” as such term is defined in the UCC and, to the extent not included in such definition, all proceeds, whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance Proceeds, Condemnation Proceeds, and proceeds of proceeds), from the Security Interest Property, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Security Interest Property and all income, gain, credit, distributions and similar items from or with respect to the Security Interest Property.

“Rents” means, with respect to the Property, all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), receipts, issues, income, royalties, profits, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any tenant, lessee, licensee or concessionaire under any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time due under the Leases.

“Security Interest Property” has the meaning provided in Article 5.

“UCC” means the Uniform Commercial Code in effect in the jurisdiction in which the Property or any of the Security Interest Property is located, as applicable.

Section 1.2 Interpretation of Defined Terms. Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined. All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

ARTICLE 2  
COVENANTS AND AGREEMENTS OF BORROWER

Section 2.1 Payment of Secured Loan Obligations; Incorporation by Reference. Borrower shall pay when due the principal, interest thereon and all other sums, charges, fees and other Loan Obligations due and/or payable under any Loan Document all as in accordance with the Loan Documents. All of the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 2.2 Duty to Defend; Filing; Re-Filing; Etc.

(a) Borrower will forever defend the title to the Property and the validity and priority of the lien or estate hereof against the claims and demands of all Persons whomsoever.

(b) Borrower shall execute, acknowledge and deliver, from time to time, such further instruments as Trustee or Lender may reasonably require to accomplish the purposes of this Security Instrument. Borrower hereby irrevocably authorizes and appoints Lender as its attorney-in-fact, coupled with an interest, for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Security Instrument.

(c) Borrower shall pay all intangible taxes, recording taxes, filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all other expenses incident to the execution, filing, recording and acknowledgment of this Security Instrument, any security agreement, mortgage, modification or amendment supplemental hereto and any document, instrument and agreement of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of the execution, delivery, filing, registration and recording of the Note, this Security Instrument or any of the other Loan Documents, any security agreement or mortgage or deed of trust modification or amendment supplemental hereto or any document instrument or agreement of further assurance.

(d) Borrower hereby indemnifies and holds Lender harmless from any sales or use tax that may be imposed on Lender by virtue of the Loan other than taxes imposed on the income, stock or assets of Lender.

Section 2.3 No Transfer. Borrower shall not and shall not cause, allow, or permit, and shall prevent from occurring, a Transfer, except as expressly permitted pursuant to the Loan Agreement. In the event of any violation of this Section 2.3, Lender may, at its option, accelerate and declare the outstanding Indebtedness immediately due and payable, without notice or demand, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any Loan Document with respect to any Property or all or any portion of the Security Interest Property.

ARTICLE 3  
ASSIGNMENT OF LEASES AND RENTS

Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in all current and future Leases and Rents, it being intended that this Security Instrument constitute a present, absolute assignment and not an assignment for additional security only. This Article 3 presently gives Lender the right to collect Rents and to apply Rents in partial payment of the Loan Obligations and otherwise in accordance with the Loan Agreement. Borrower intends that the Rents and Leases be absolutely assigned and no longer be, during the term of this Security Instrument, property of Borrower or Borrower's estate, as defined by 11 U.S.C. §541. If any law exists requiring Lender to take actual possession of the Property (or some action equivalent to taking possession of the Property, such as securing the appointment of a receiver) for Lender to "perfect" or "activate" the rights and remedies of Lender as provided herein, Borrower waives the benefit of such law. Such assignment to Lender shall not be construed to bind Lender to perform any covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender, and notwithstanding this Security Instrument, Borrower shall remain liable for any obligations undertaken by Borrower pursuant to any Lease. Subject to the terms of this Article 3 and the Loan Agreement, Lender grants to Borrower a license, revocable as hereinafter provided, to operate and manage the Property and to collect and use the Rents. If an Event of Default occurs (except, for any Event of Default described in Section 8.1(h) of the Loan Agreement, for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license granted to Borrower herein may, at Lender's election, be revoked by Lender, and Lender shall immediately be entitled to possession of all Rents then or thereafter payable (including Rents past due and unpaid) whether or not Lender enters upon or takes control of the Property. Any Rents collected by Borrower from and after the date on which an Event of Default occurred and is continuing shall be held by Borrower in trust for Lender. Borrower hereby grants and assigns to Lender the right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court appointed receiver to collect Rents with or without taking the actual possession of the Property or any equivalent action. Lender may apply any Rents collected after the license granted herein is revoked in Lender's sole and absolute discretion to pay the Loan Obligations in such order and in such manner as Lender shall elect.

ARTICLE 4  
ASSIGNMENT OF CONTRACTS

Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to the Contracts to the maximum extent allowable under all Legal Requirements and to the maximum extent allowable under the terms of each individual Contract, it being intended that this assignment be an absolute assignment from Borrower to Lender and not merely the granting of a security interest. Until the occurrence of an Event of Default, Borrower may retain, use and enjoy the benefits of the Contracts. Upon the occurrence and during the continuance of an Event of Default (other than an Event of Default described in Section 8.1(h) of the Loan Agreement for which the revocation hereinafter described shall be automatic and simultaneous with the occurrence of any such Event of Default), the license

described in the preceding sentence shall, upon Lender's election, be automatically revoked, and Lender may elect to exercise any and all of Lender's rights and remedies hereunder.

## ARTICLE 5 SECURITY AGREEMENT AND FIXTURE FILING

As additional security, Borrower, as debtor, hereby grants to Lender, as secured party, a continuing security interest in the portion of the Property which is or may be subject to the provisions of the UCC which are applicable to secured transactions, and in any property as to which a security interest can be created or perfected, now existing or hereafter coming into existence, and all substitutions, replacements, renewals and additions to and all products and Proceeds of the foregoing (collectively, the "Security Interest Property"). This Security Instrument is intended to be and shall be effective as a security agreement and "fixture filing" under the UCC or other law applicable to the creation of liens on and security interests in personal property and fixtures. As further security for the payment and performance of the Loan Obligations, this Security Instrument shall constitute a financing statement under the UCC with Borrower, as debtor, and Lender, as secured party. To the extent permitted by law, Borrower hereby authorizes Lender to file financing and continuation statements necessary to continue the lien of and security interest evidenced by this Security Instrument with respect to the Security Interest Property (and confirms that Lender is a person entitled to file a record, and that Borrower has authorized all such filings, within the meaning of Section 9-509 of the UCC). Borrower hereby irrevocably authorizes Lender at any time and from time to time to file in any UCC jurisdiction financing statements (including amendments and continuations thereto) that indicate the Security Interest Property as "all assets of the debtor" or words of similar effect. The principal places of business and mailing addresses of Borrower, as debtor, and Lender, as secured party, respectively, are as set forth on page one hereof. Borrower's location, for purposes of Section 9-307 of the UCC, is Borrower's state of formation/incorporation/organization as set forth on page 1 hereof. Information relative to the security interest created hereby may be obtained by application to Lender.

## ARTICLE 6 REMEDIES

Section 6.1 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness and all other Loan Obligations shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right. Borrower hereby expressly waives presentment, demand for payment, notice of protest, notice of dishonor, notice of intent to accelerate the maturity of the Indebtedness and notice of acceleration of the maturity of the Indebtedness. Notwithstanding anything contained to the contrary herein, the Indebtedness shall be accelerated and immediately due and payable, without any election by Lender, upon the occurrence of an Event of Default described in Section 8.1(h) of the Loan Agreement.



## Section 6.2 Default Remedies.

(a) If an Event of Default shall have occurred and be continuing, this Security Instrument may, to the maximum extent permitted by law, be enforced, and Lender, or Trustee in response to Lender's request (which Borrower agrees shall be presumed to have been made), may exercise any right, power or remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or at law or in equity, and, without limiting the generality of the foregoing, Trustee or Lender may, personally or by their agents, to the maximum extent permitted by law:

(i) enter into and take possession of the Property or any part thereof, exclude Borrower and all Persons claiming under Borrower whose claims are junior to this Security Instrument, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Borrower or otherwise as Lender shall deem best, and upon such entry, from time to time at the expense of Borrower and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Lender may reasonably deem proper and, whether or not Lender has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and apply the same to the payment of all expenses that Trustee or Lender may be authorized to make under this Security Instrument, the remainder to be applied to the payment of the Loan Obligations until the same shall have been repaid in full, take possession of all security deposits held with respect to the Property, whether or not Trustee or Lender enters upon or takes control of the Property and regardless of where any such security deposits are deposited or located; if Lender demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(ii) effect new Permits and Contracts; amend, alter, renew, cancel or surrender existing Permits and Contracts; and make concessions to the Governmental Authorities, the contractors, warrantors and others; and

(iii) personally or by agents, with or without entry:

(x) invoke the power of sale and pursuant to the procedures prescribed by law as a result thereof, sell the Property or any part thereof, or cause the Property or any part thereof to be sold at a sale or sales held at such place or places and time or times and upon such notice and otherwise in such manner and in such order as may be required by law, or, in the absence of any such requirements, as Lender may deem appropriate and from time to time adjourn any such sale by announcement at the time and place specified for such sale or for such adjourned sale without further notice, except such as may be required by law;

(y) proceed to protect and enforce Lender's rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Security Instrument (as a mortgage or otherwise) and the sale of the Property or any part thereof under the judgment or decree of a court of competent jurisdiction, or for the enforcement of any other right as Lender shall elect, provided, that in the event of a sale,

by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on, and security interest in, the remaining portion of the Property; or

(z) exercise any or all of the remedies available to a secured party under the UCC, including, without limitation:

(1) either personally or by means of a court appointed receiver, take possession of all or any of the Security Interest Property and exclude therefrom Borrower and all Persons claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Security Interest Property, or any part thereof; if Lender demands or attempts to take possession of the Security Interest Property in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(2) without further notice to or demand upon Borrower (except those otherwise required hereby or by the Loan Agreement), make such payments and do such acts as Trustee or Lender may deem necessary to protect its security interest in the Security Interest Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith, which expenses shall thereafter become part of the Loan Obligations secured by the lien of this Security Instrument;

(3) require Borrower to assemble the Security Interest Property or any portion thereof, at a place designated by Trustee or Lender and reasonably convenient to both parties, and promptly to deliver the Security Interest Property to Lender, or an agent or representative designated by Lender, and its agents and representatives, shall have the right to enter upon the premises and property of Borrower to exercise Lender's rights hereunder;

(4) sell, lease or otherwise dispose of the Security Interest Property, with or without having the Security Interest Property at the place of sale, and upon such terms and in such manner as Lender may determine (and Lender may be a purchaser at any such sale, provided, however, that Trustee, at the request and direction of Lender, may dispose of the Security Interest Property in accordance with Lender's rights and remedies in respect of the Property pursuant to the provisions of this Security Instrument in lieu of proceeding under the UCC); and

(5) unless the Security Interest Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender, as the case may be, shall give Borrower at least ten (10) days prior notice of the time and place of any sale of the Security Interest Property or other intended disposition thereof, which notice Borrower agrees is commercially reasonable.

(b) If an Event of Default shall have occurred, Lender, to the maximum extent permitted by law, shall be entitled, as a matter of right, to the appointment of a receiver of the Property, without notice or demand, and without regard to the adequacy of the security for the

Loan Obligations or the solvency of Borrower. Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

(c) In any sale under any provision of this Security Instrument or pursuant to any judgment or decree of court, the Property, to the maximum extent permitted by law, may be sold in one or more parcels or as an entirety and in such order as Lender may elect, without regard to the right of Borrower or any Person claiming under Borrower to the marshalling of assets. The purchaser at any such sale shall take title to the Property or the part thereof so sold free and discharged of the estate of Borrower therein, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Upon the completion of any such sale by virtue of this Section 6.2(c), Trustee or Lender, as the case may be, shall execute and deliver to the purchaser an appropriate instrument that shall effectively transfer all of Borrower's estate, right, title, interest, property, claim and demand in and to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of Lender, for such purpose, and as may be designated in such request. Any sale or sales made under or by virtue of this Security Instrument, to the extent not prohibited by law, shall operate to divest all the estate, right, title, interest, property, claim and demand whatsoever, whether at law or in equity, of Borrower in, to and under the Property, or any portions thereof so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all Persons claiming or who may claim the same, or any part thereof, by, through or under Borrower. The powers and agency herein granted are coupled with an interest and are irrevocable.

(d) All rights of action under any Loan Document may be enforced by Trustee or Lender without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

### Section 6.3 Application of Proceeds.

(a) All proceeds of any repayment of or recoveries on the Loan shall be applied to repay the Indebtedness in such order and in such manner as Lender shall elect in Lender's discretion.

(b) No sale or other disposition of all or any part of the Property pursuant to this Section 6.3 shall be deemed to relieve Borrower of its obligations under any Loan Document except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Loan Obligations, Borrower shall remain liable for any deficiency subject to Section 8.11.

(c) Upon any sale made under the powers of sale herein granted and conferred, the receipt given by Lender (or Trustee) will be sufficient discharge to the purchaser or purchasers at

any sale for the purchase money, and such purchaser or purchasers and their heirs, devisees, personal representatives, successors and assigns thereof will not, after paying such purchase money and receiving such receipt of Lender, be obligated to see to the application thereof or be in any way answerable for any loss, misapplication or non-application thereof.

Section 6.4 Right to Sue. Trustee and Lender shall each have the right from time to time to sue for any sums required to be paid by Borrower under the terms of this Security Instrument as the same become due, without regard to whether or not the entire Loan Obligations shall be, or have become, due and without prejudice to the right of Lender thereafter to bring any action or proceeding of foreclosure or any other action upon the occurrence of any Event of Default existing at the time such earlier action was commenced.

Section 6.5 Powers of Lender. Lender may at any time or from time to time renew or extend (and direct Trustee to renew or extend) this Security Instrument or (with the agreement of Borrower) alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof or thereof, in whole or in part, and may release or reconvey, or cause Trustee to release or reconvey, any portion of the Property or any other security, and grant such extensions and indulgences in relation to the Loan Obligations, or release any Person liable therefor as Lender may determine without the consent of any junior lienor or encumbrancer, without any obligation to give notice of any kind thereto, without in any manner affecting the priority of the lien and estate of this Security Instrument on or in any part of the Property, and without affecting the liability of any other Person liable for any of the Loan Obligations.

Section 6.6 Remedies Cumulative.

(a) No right or remedy herein conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Security Instrument, or under applicable law, whether now or hereafter existing; the failure of Trustee or Lender to insist at any time upon the strict observance or performance of any of the provisions of this Security Instrument or to exercise any right or remedy provided for herein or under applicable law, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

(b) To the maximum extent permitted by law, Trustee and Lender shall each be entitled to enforce payment and performance of any of the obligations of Borrower and to exercise all rights and powers under this Security Instrument or under any Loan Document or any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise; neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the right of either Trustee or Lender to realize upon or enforce any other security now or hereafter held by Trustee or Lender, it being stipulated that Trustee and Lender shall be entitled to enforce this Security Instrument and any other security now or hereafter held by Trustee or Lender in such order and manner as Lender, in its discretion, may determine; every power or remedy given by any Loan Documents to Trustee or Lender, or to which Trustee or Lender is otherwise entitled, may be exercised, concurrently or independently,

from time to time and as often as may be deemed expedient by Lender, and Trustee or Lender may pursue inconsistent remedies.

Section 6.7 Waiver of Stay, Extension, Moratorium Laws; Equity of Redemption. To the maximum extent permitted by law, Borrower shall not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any applicable present or future stay, extension or moratorium law, that may affect observance or performance of the provisions of this Security Instrument; nor claim, take or insist upon any benefit or advantage of any present or future law providing for the valuation or appraisal of the Property or any portion thereof prior to any sale or sales thereof that may be made under or by virtue of Section 6.2; and Borrower, to the maximum extent permitted by law, hereby waives all benefit or advantage of any such law or laws. Borrower, for itself and all who may claim under it, hereby waives, to the maximum extent permitted by law, any and all rights and equities of redemption from sale under the power of sale created hereunder or from sale under any foreclosure of this Security Instrument and (if an Event of Default shall have occurred) all notice or notices of seizure, and all right to have the Property marshalled upon any foreclosure hereof. Neither Trustee nor Lender shall be obligated to pursue or exhaust their rights or remedies as against any other part of the Property, and Borrower hereby waives any right or claim of right to have Trustee or Lender proceed in any particular order.

Section 6.8 No Assumption by Lender. Except as otherwise expressly set forth in any Loan Document, Lender will not be deemed in any manner to have assumed any liabilities or obligations relating to the Property or any portion thereof. Borrower agrees that the exercise by Lender of one or more of its rights and remedies under this Security Instrument shall in no way be deemed or construed to make Lender a mortgagee-in-possession.

Section 6.9 Waiver of Homestead. Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Loan Obligations, or any part thereof.

Section 6.10 Discontinuance of Proceedings. If either Trustee or Lender shall have proceeded to enforce any right, power or remedy under this Security Instrument by foreclosure, power of sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Borrower, Trustee and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Trustee and Lender shall continue as if no such proceedings had occurred.

## ARTICLE 7 TRUSTEE

Section 7.1 Successor Trustee. Trustee may resign in writing addressed to Lender or be removed at any time with or without cause by an instrument in writing duly executed by Lender and recorded in the office of the county recorder where the Land is situated. In case of the death, resignation or removal of Trustee, a successor Trustee may be appointed by Lender without other formality than an appointment and designation in writing unless otherwise required

by applicable law. Such appointment and designation will be full evidence of the right and authority to make the same and of all facts therein recited, and upon the making of any such appointment and designation, this Security Instrument will vest in the named successor trustee all the right, title and interest of Trustee in the Property, and said successor will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee; provided, however, that Lender may at its option, appoint and designate several successor trustees, and in such manner, appoint and designate a different successor trustee for each county wherein a portion of the Property is located, as described in such written appointment and designation, and upon the making of any such appointment and designation, this Security Instrument will vest in each such named successor trustee all of the right, title and interest of Trustee in that portion of the Property ascribed to such named successor trustee, and each such named successor trustee will thereupon succeed to all the rights, powers, privileges, immunities and duties hereby conferred upon Trustee in that portion of the Property ascribed to such named successor trustee. All references herein to Trustee will be deemed to refer to the trustee or trustees from time to time acting hereunder.

Section 7.2 Trustee's Powers. At any time, or from time to time without liability therefor and without notice, upon written request of Lender and presentation of this Security Instrument and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Security Instrument upon the remainder of the Property, Trustee may (a) reconvey any part of the Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 7.3 Full Reconveyance by Trustee. To the extent Trustee's signature is necessary on any full reconveyance of this Security Instrument then, upon written request of Lender stating that all sums secured hereby have been paid and upon surrender of this Security Instrument and the Note to Trustee for cancellation and retention (or disposal in accordance with applicable law) and upon payment by Borrower of Trustee's fees, Trustee shall reconvey to Borrower, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto".

Section 7.4 Trustee's Fees. No fees or expenses shall become payable to Trustee under this Security Instrument other than those reasonable fees and expenses incurred by Trustee in connection with the reconveyance of the Property pursuant to Section 7.3, or the exercise by Trustee of any remedy permitted to it hereunder, under the Loan Agreement or under any of the other Loan Documents or at law or in equity. Borrower shall pay all such reasonable fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the foregoing and all such costs, fees and expenses shall be secured by this Security Instrument.

Section 7.5 Indemnity. Borrower shall indemnify Trustee against all claims, actions, liabilities, judgments, costs, attorneys' fees or other charges of whatsoever kind or nature made against or incurred by Trustee, and arising out of the performance by Trustee of the duties of

Trustee hereunder, other than those arising solely due to Trustee's gross negligence or willful misconduct.

## ARTICLE 8 MISCELLANEOUS

Section 8.1 Reconveyance by Lender. Upon payment in full of the Loan Obligations or a complete defeasance with respect to the Property which complies with the Loan Agreement (if the Loan Agreement provides for defeasance), Lender (and Trustee, to the extent required by law to effect a full and proper termination, release and reconveyance) shall release the lien of this Security Instrument, or upon the request of Borrower, and at Borrower's expense, assign this Security Instrument without recourse to Borrower's designee, or to the Person or Persons legally entitled thereto, by an instrument duly acknowledged in proper form for recording.

Section 8.2 Notices. All notices, demands, consents, requests or other communications that are permitted or required to be given by any party to the other hereunder shall be in writing and given in the manner specified in Section 12.6 of the Loan Agreement.

Section 8.3 Amendments; Waivers; Etc. This Security Instrument cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in proper form for recording, signed by Borrower and Lender.

Section 8.4 Successors and Assigns. This Security Instrument applies to, inures to the benefit of and binds Borrower and Lender and each of their respective successors and assigns, and shall run with the Land.

Section 8.5 Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties hereto and are not a part of this Security Instrument.

Section 8.6 Severability. If any term or provision of this Security Instrument or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Security Instrument shall be valid and enforceable to the maximum extent permitted by law. If any portion of the Loan Obligations shall for any reason not be secured by a valid and enforceable lien upon any part of the Property, then any payments made in respect of the Loan Obligations (whether voluntary or under foreclosure or other enforcement action or procedure or otherwise) shall, for purposes of this Security Instrument (except to the extent otherwise required by applicable law) be deemed to be made (a) first, in respect of the portion of the Loan Obligations not secured by the lien of this Security Instrument, (b) second, in respect of the portion of the Loan Obligations secured by the lien of this Security Instrument, but which lien is on less than all of the Property, and (c) last, to the portion of the Loan Obligations secured by the lien of this Security Instrument, and which lien is on all of the Property.

Section 8.7 Applicable Law. This Security Instrument shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Section 8.8 Limitation of Interest. This Security Instrument is subject to the limitations on the payment of interest set forth in Section 8 of the Note.

Section 8.9 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under all Loan Documents.

Section 8.10 WAIVER OF JURY TRIAL. BORROWER, TRUSTEE AND LENDER HEREBY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS SECURITY INSTRUMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BORROWER, TRUSTEE AND/OR LENDER WITH RESPECT TO ANY LOAN DOCUMENT OR THE EXERCISE OF ANY PARTY'S RIGHTS AND REMEDIES UNDER THIS SECURITY INSTRUMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH OF BORROWER, TRUSTEE AND LENDER AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS SECURITY INSTRUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER, TRUSTEE AND LENDER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT TO LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER, TRUSTEE AND/OR LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

Section 8.11 Exculpation. This Security Instrument and the obligations of Borrower hereunder are and shall be subject to and limited by the exculpation provisions of Section 17 of the Note.

Section 8.12 Exhibits. The information set forth on the cover, heading and recitals hereof, and the Exhibits attached hereto, are hereby incorporated herein as a part of this Security Instrument with the same effect as if set forth in the body hereof.

## ARTICLE 9 STATE-SPECIFIC PROVISIONS

Section 9.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 9 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 9 shall control and be binding.

Section 9.2 Lender's Remedies. Upon the occurrence of any Event of Default, Lender may take such action in accordance with applicable Legal Requirements, without notice or demand (except as may be required by applicable Legal Requirements), as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without



limitation, the following actions, each subject to and in accordance with applicable Legal Requirements:

- (i) declare the entire Loan to be immediately due and payable;
- (ii) institute proceedings to foreclose this Security Instrument, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Loan then due and payable, subject to the continuing lien of this Security Instrument for the balance of the Loan not then due;
- (iv) enforce the power of sale herein granted in accordance with the Nebraska Trust Deeds Act, Neb. Rev. Stat. Sections 76-1001 to 76-1018, as now or hereafter amended;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or the other Loan Documents;
- (vi) to the extent not prohibited by law, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument;
- (vii) to the extent not prohibited by law, apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Loan or the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Loan;
- (viii) enforce Lender's interest in the Leases and Rents and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, and thereupon Lender may: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Property and every part thereof; and (E) apply the receipts from the Property to the payment of the Loan, after deducting therefrom all expenses (including reasonable attorney fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, assessments, Insurance Premiums and Other Charges in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; or

(ix) pursue such other rights and remedies as may then be available at law and in equity. To the extent permitted presently or in the future by laws of the state in which the Land and Improvements are located, Lender may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial foreclosure of this Security Instrument or the complete or partial sale of the Property under a power of sale which power is hereby granted to Trustee. In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on the remaining portion of the Property.

(b) If the Property is sold pursuant to the power of sale conferred upon Trustee hereunder, Trustee shall cause to be filed of record a written notice of default and election to sell the Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Borrower, shall sell the Property, either as a whole or in separate parcels, and in such order as it or Lender may determine, at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the proceeding postponement. Trustee shall deliver to such purchaser Trustee's deed conveying any of the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Borrower, Trustee or Lender, may purchase at such sale.

(c) Any sale or sales made under or by virtue of this Security Instrument, whether made under the power of sale herein or granted or under or by virtue of judicial proceedings or any judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

(d) Upon any sale made under or by virtue of this Security Instrument, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or any judgment or decree of foreclosure and sale, Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Loan the net sales price after deducting therefrom, to the extent allowed by applicable law, the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument. Trustee shall apply the proceeds of any Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred (such Trustee's fees not to exceed one and one-half percent (1.5%) of the outstanding principal amount of the Loan as of the sale date); second, to the payment of the Loan, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

(e) No recovery of any judgment by Lender and no levy of an execution under any judgment upon the Property or upon any other property of Borrower shall affect in any manner or to any extent the lien of this Security Instrument upon the Property or any part thereof, or any liens, rights, powers or remedies of Lender hereunder, but such liens, rights, powers and remedies of Lender shall continue unimpaired as before.

(f) Borrower agrees, for itself and any and all persons claiming by, through or under Borrower, that if one or more of Borrower or any such persons shall hold possession of the Property, or any part thereof, subsequent to the Trustee's or judicial sale hereunder, it, of the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at either such sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the Land and Improvements, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(g) Lender may release, regardless of consideration and without the necessity for any notice to or a consent by any person or entity, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by this Security Instrument or the other Loan Documents or their stature as a first and prior lien and security interests in and to the Property. For payment of the Loan, Lender may resort to any security in such order and manner as Lender may elect.

(h) Lender shall have all rights, remedies and recourses granted in this Security Instrument and the other Loan Documents or available at law or equity (including the Uniform Commercial Code), which rights: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower or others obligated under the Note, this Security Instrument and the other Loan Documents, or against the Property, or against any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefore shall arise and exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive. No enforcement of any rights, remedies or recourse under the Note, this Security Instrument and the other Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default. The remedies provided for in this Security Instrument may be exercised in any order.

Section 9.3 Request for Notice. Borrower requests that a copy of any notice of default and any notice of sale in accordance with the Nebraska Trust Deeds Act be mailed to Borrower at Borrower's address set forth in the first paragraph of this Security Instrument.

NOTICE: A loan agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise,

undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

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IN WITNESS WHEREOF, this Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing has been duly executed by Borrower as of the day and year first above written.

**BORROWER:**

168<sup>TH</sup> AND DODGE L.P., a Nebraska limited partnership

By: RED Development of West Dodge, LLC, a Missouri limited liability company, its sole General Partner and Manager

By: RED Village Pointe, LLC, a Missouri limited liability company, its Manager

By: RED Consolidated Holdings, LLC, a Delaware limited liability company, its Managing Member

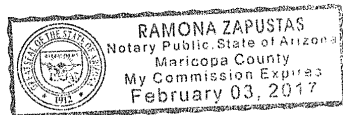
By: [Signature]  
Steven M. Maun, President

**ACKNOWLEDGEMENT**

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me on this 24 day of November 2014, by Steven M. Maun, as President of RED Consolidated Holdings, LLC, acting as the Managing Member of RED Village Pointe, LLC, which in turn is acting as the Manager of RED Development of West Dodge, LLC, which in turn is acting as the sole General Partner and Manager of 168TH AND DODGE L.P., a Nebraska limited partnership.



[Signature]  
Notary Public, State of Arizona

My Commission Expires: 2.3.17

[Signature page and Acknowledgment to Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing]

Exhibit A

**DESCRIPTION OF PROPERTY**

**68-40328**

Lots 2, 4, 5 and 8, and Outlots A and B, in VILLAGE POINTE, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, EXCEPT that part of Lot 2, Village Pointe, as described in the Plat and Dedication for Street Purposes recorded September 12, 2008, as Instrument No. 2008090053 of the Records of Douglas County, Nebraska;

AND

**68-40329**

Lots 1, 2 and 3, in VILLAGE POINTE REPLAT ONE, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska;

AND

**68-40344**

Lot 3, in VILLAGE POINTE REPLAT TWO, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.