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SUBMITTED <u>TITLECORE TITLE - COMMERCIA</u>

FILED SARPY CO. NE.
INSTRUMENT NUMBER
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Lloyd J. Dowling
REGISTER OF DEEDS



*fThis document prepared by;
After recording return to:*

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One Lincoln Center
Syracuse, NY 13202



**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF
CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING
(Project Commonly Known as "Harrison Heights Senior Village")**

Grantor:	<u>RM9A Holdings, LLC</u>
<input type="checkbox"/> Additional on page _____	
Grantees: Trustee:	<u>Old Republic National Title Insurance Company</u>
Beneficiary:	<u>KeyBank National Association</u>
<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	<u>Lot 4 in Harrison Heights, Sarpy County, Nebraska</u>
<input checked="" type="checkbox"/> Additional on:	<u>EXHIBIT A</u>
Assessor's Tax Parcel ID #:	<u>011591842</u>
Reference Nos. of Documents Released or Assigned:	<u>N/A</u>

NOTICE TO RECORDER: THIS DOCUMENT CONTAINS A FIXTURE FILING AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE FILING.

Notwithstanding the amount of the Note secured hereby, as set forth in Section 1.2(a)(i), the lien of this Deed of Trust shall be limited to principal of Six Million Nine Hundred Thirty One Thousand Eight Hundred Six and 00/100 Dollars (\$6,931,806.00), plus interest and other charges thereon and the amount of any future advances under Section 9.19 of this Deed of Trust.

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "*Deed of Trust*") is made as of April 30, 2014, by RM9A HOLDINGS, LLC, a Delaware limited liability company, ("*Grantor*") whose address is 3949 Forest Parkway, Suite 100, Wheatfield, New York 14120, in favor of OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, and its successors, ("*Trustee*") whose address is c/o TitleCore, LLC, 9140 West Dodge Road, Suite 380, Omaha, Nebraska, for the benefit of KEYBANK NATIONAL ASSOCIATION, its successors and assigns, ("*Beneficiary*") whose address is 127 Public Square, Cleveland, Ohio 44114.

Notice to Borrower: The Note secured by this Deed of Trust may contain provisions for a variable interest rate.

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Grantor hereby irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns to Trustee IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, and with right of entry and possession, all estate, right, title and interest that Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "*Property*");

1.1.1 The real property located in the County of Sarpy, State of Nebraska, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (collectively, the "*Premises*"); together with

1.1.2 All buildings, structures and improvements now located or later to be constructed on the Premises (collectively, the "*Improvements*"); together with

1.1.3 All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances that may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed; together with

1.1.4 All existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, and any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith (collectively, the "*Leases*"); together with

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

1.1.7 All building materials, equipment, work in process and other personal property of any kind, whether stored on the Premises or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

1.1.8 All of Grantor's interest in and to all operating accounts, the Loan funds, whether disbursed or not and any other bank accounts of Grantor; together with

1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally; together with

1.1.10 All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

1.1.11 All of Grantor's right, title and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Grantor from Beneficiary of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an "*Interest Rate Agreement*"), all whether now or hereafter entered into by Grantor with respect to the Loan, including, without limitation, any and all amounts payable to Grantor, any deposit account or accounts with Beneficiary in the name of Grantor for deposit of payments to Grantor in connection with any Interest Rate Agreement or swap transaction, and any and all funds now or hereafter on deposit therein; together with

1.1.12 All of Grantor's rights in (i) all agreements, plans and specifications, Licenses (defined below), and drawings heretofore or hereafter entered into or prepared relating to the construction, ownership, maintenance, operation, management, leasing or use of the Premises or

Improvements, including, without limitation, contracts, commitments, equipment leases, governmental permits, architectural and engineering plans, specifications and drawings, approvals and reports, (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i), (iii) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii) (collectively with the Licenses, the "**Contracts**"); together with

1.1.13 All of Grantor's rights in (i) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements, and (ii) all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Grantor (the "**Licenses**"); together with

1.1.14 All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

1.1.15 All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to below.

1.2 Secured Obligations.

1.2.1 Grantor makes the grant, conveyance, assignment, and transfer set forth above, and grants the security interests set forth below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations at any time owing under a promissory note (the "**Note**") dated as of March 31, 2014, as same may be amended, modified, reissued, restated and extended, payable by Grantor, RM3A Holdings, LLC, RM6A Holdings, LLC and RM14A Holdings, LLC, collectively as maker in the stated principal amount of Twenty Five Million Seven Hundred Thousand and 00/100 Dollars (\$25,700,000.00) to the order of Beneficiary (the "Loan"). **Notwithstanding anything to the contrary contained herein, the lien of this Deed of Trust shall be limited to principal of Six Million Nine Hundred Thirty One Thousand Eight Hundred Six and 00/100 Dollars (\$6,931,806.00), plus accrued interest and other charges thereon and the amount of any future advances under Section 9.19 of this Deed of Trust; and**

(b) Payment and performance of all obligations of Grantor under this Deed of Trust; and

(c) Payment and performance of all obligations of Grantor under a Loan Agreement dated as of March 31, 2014, between Grantor as “Borrower” and Beneficiary as “Lender” (the “*Loan Agreement*”); and

(d) Payment and performance of any obligations of Grantor under any Loan Documents that are executed by Grantor; and

(e) Payment and performance of all obligations of Grantor arising from any Interest Rate Agreements entered into by Borrower in connection with the Loan, including, without limitation, any Cash Settlement Amount or any payments on Early Termination payable by Grantor under any Swap Transaction or Confirmation. Capitalized terms used in this subsection (e) not otherwise defined in this Deed of Trust are defined in the *2006 ISDA Definitions* published by the International Swap Dealers Association, Inc.; and

(f) Payment and performance of all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties’ agreement that the advance or obligation be secured by this Deed of Trust; and

(g) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

1.2.2 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations, the terms and conditions of which are incorporated herein by this reference, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement that permit borrowing, repayment and reborrowing, or that provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Leases and Rents.

2.1 Assignment. Grantor hereby irrevocably, absolutely, presently and unconditionally transfers, sells, assigns, pledges and conveys to Beneficiary all of the right, title and interest of Grantor in and to (a) the Leases; and (b) all issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property, including, without limitation, minimum rents, additional rents, termination payments, bankruptcy claims, forfeited security deposits, damages following default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Grantor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any tenant under the Leases; together with any and all payments made by or on behalf of any tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Grantor may have against any tenant, lessee or licensee under the Leases or against any

other occupant of the Premises or Improvements (some or all collectively, as the context may require, “Rents”). This is a present and absolute assignment of the Leases and Rents, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Grantor a license (“License”) to retain possession of the Leases and collect and retain the Rents as they become due and payable, unless and until the occurrence of an Event of Default (defined below). Upon the occurrence of an Event of Default, the License shall automatically terminate without notice to Grantor, and Beneficiary may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Beneficiary and Grantor agree that the mere recordation of this Deed of Trust entitles Beneficiary immediately to collect and receive Rents upon the occurrence of an Event of Default, as defined in Section 7.2 below, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Grantor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

2.3 Collection and Application of Rents.

2.3.1 Right to Collect; Attorney-in-Fact. Subject to the License granted to Grantor above, Beneficiary has the right, power and authority to collect any and all Rents. Grantor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, to, at such times as Beneficiary in its sole discretion may so choose, (i) demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (ii) give receipts, releases and satisfactions for any and all Rents; (iii) sue either in the name of Grantor or in the name of Beneficiary for any and all Rents; (iv) perform any obligation, covenant or agreement of Grantor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys’ fees; (v) delegate any and all rights and powers given to Beneficiary by this assignment of Leases and Rents; (vi) appear in any bankruptcy, insolvency or reorganization proceeding involving any tenant under the Leases and to collect any award or payment due Grantor pursuant to any such proceeding; and/or (vii) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of this assignment of Leases and Rents. All such actions shall be taken at the expense of Grantor, who agrees to reimburse Beneficiary, upon demand, for all amounts expended, including reasonable attorneys’ fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and shall be secured by this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all awards or payments received by Beneficiary under (vi) of this Section shall be applied to the Secured Obligations in such order as Beneficiary may elect in its sole discretion.

2.3.2 Grantor as Trustee. From and after the occurrence of an Event of Default, Grantor shall be the agent of Beneficiary in collection of the Rents, and any Rents so collected by Grantor shall be held in trust by Grantor for the sole and exclusive benefit of Beneficiary, and Grantor shall, within one (1) business day after receipt of any Rents, pay the same to Beneficiary to be applied by Beneficiary as set forth below for the “Application of Rents and Other Sums.”

2.3.3 Possession of Property Not Required. Beneficiary’s right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as otherwise permitted by this Deed of Trust. In Beneficiary’s sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while

Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Deed of Trust and at law and in equity.

2.3.4 Application of Rents. Beneficiary shall apply all Rents collected by it in the manner provided below for the “Application of Rents and Other Sums.”

2.4 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

2.4.1 Responsible for the control, care, management or repair of the Property;

2.4.2 A “mortgagee in possession” for any purpose;

2.4.3 Responsible for performing any of the obligations of the lessor under any Lease;

2.4.4 Responsible for any waste committed by tenants lessees, licensees or any other parties, any dangerous or defective condition of the Property, or any gross negligence in the management, upkeep, repair or control of the Property;

2.4.5 Responsible for any loss sustained by Grantor resulting from Beneficiary’s failure to let the Premises or Improvements or from any other act or omission of Beneficiary in managing the Property or administering the Leases; or

2.4.6 Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Consent to Payment of Rents Directly to Beneficiary. At any time, Beneficiary may, at its option, notify any tenant or other parties of the existence of this assignment of Leases and Rents. Grantor hereby specifically authorizes, instructs and directs each and every present and future tenant, lessee and licensee of all or any part of the Premises or Improvements to pay all unpaid and future Rents to Beneficiary upon receipt of demand from Beneficiary to so pay the same due to the occurrence of an Event of Default hereunder or under any other Loan Documents, and Grantor hereby agrees that each such present and future tenant, lessee and licensee may rely upon such written demand from Beneficiary to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Beneficiary is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. Grantor hereby waives any right, claim or demand that Grantor may now or hereafter have against any present or future tenant, lessee or licensee by reason of such payment of Rents to Beneficiary, and any such payment shall discharge such tenant’s, lessee’s or licensee’s obligation to make such payment to Grantor.

2.6 Leasing. Grantor shall not accept any deposit or prepayment of Rents under the Leases for any rental period (a) exceeding one (1) month for any commercial Leases and (b) exceeding two (2) months for all residential Leases, in either case, without Beneficiary’s prior written consent. Grantor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Grantor

shall comply with and observe Grantor's obligations as landlord or as tenant, as the case may be, under any Leases. Unless otherwise directed by Beneficiary, any commercial Leases made after the date hereof shall specifically provide that such Leases are subordinate to this Deed of Trust; that the tenant attorns to Beneficiary, such attornment to be effective upon Beneficiary's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Beneficiary may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Grantor shall not request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust. If Grantor becomes aware that any tenant (other than a tenant under a residential Lease) proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Grantor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (b) notify Beneficiary thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

2.7 Further Actions. Grantor shall observe, perform, and discharge duly and punctually all material obligations, terms, covenants, conditions, and warranties to be performed by Grantor pursuant to the Leases. Grantor agrees to execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's judgment to carry out the purposes of this assignment of Leases and Rents, including, without limitation, any consents to this assignment of Leases and Rents. In addition, Grantor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any tenant thereunder, and shall pay on demand all costs and expenses, including, without limitation, attorneys' fees that Beneficiary may incur in connection with Beneficiary's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Beneficiary until repaid by Grantor.

2.8 Rights of Beneficiary. Termination of the License shall be without prejudice to Beneficiary. The rights of Beneficiary under this Section and elsewhere in this Deed of Trust are cumulative and concurrent, may be pursued separately, successively or together, and may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise of any one or more of the rights provided for herein shall not be construed as a waiver of any of the other rights or remedies of Beneficiary, at law or in equity or otherwise, so long as any Secured Obligation remains unsatisfied.

3. Assignment of Contracts.

3.1 Assignment. Grantor hereby irrevocably, absolutely, presently and unconditionally transfers, sells, assigns, pledges and conveys to Beneficiary all of Grantor's right, title and interest in and to all of the Contracts, including, without limitation, those Contracts identified on EXHIBIT B attached hereto. This assignment of Contracts includes (a) the immediate and continuing right to collect and receive all sums that may become due to Grantor or to which Grantor is now or shall hereafter become entitled or may demand or claim arising or issuing from or out of the Contracts, (b) the right of Grantor to cure (and to seek reimbursement for the cost of such cure) any default under the Contracts, (c) the right of Grantor to provide consent or approval under the Contracts, (d) the right of Grantor to enforce any rights and receive any benefits under the Contracts, and (e) any award or other payment that Grantor may

hereafter become entitled to receive with respect to any of the Contracts as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any party to the Contracts. This is an absolute assignment, not an assignment for security only.

3.2 Grant of License. Notwithstanding this assignment of Contracts, unless or until the occurrence of an Event of Default, Grantor shall have a license, revocable immediately upon the occurrence of an Event of Default, to collect and retain all amounts that may become payable to Grantor under the Contracts, and to otherwise exercise all rights of Grantor with respect thereto, subject to the limitations set forth herein and in the other Loan Documents.

3.3 Further Actions. Grantor shall observe, perform, and discharge duly and punctually all material obligations, terms, covenants, conditions, and warranties to be performed by Grantor pursuant to the Contracts. In addition, Grantor agrees to execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's judgment to carry out the purposes of this assignment of Contracts, including, without limitation, any consents to this assignment of Contracts.

3.4 No Modification or Assignment without Beneficiary's Consent. Grantor shall not materially alter, amend, modify or terminate any of the Contracts without the prior written consent of Beneficiary, except for service contracts entered into in the ordinary course of business. In addition, Grantor shall not consent to, suffer or permit any future assignment or transfer of the Contracts by any party without Beneficiary's prior written consent in each instance, except for service contracts entered into in the ordinary course of business.

3.5 Beneficiary's Remedies upon Default. Upon the occurrence of an Event of Default, Grantor's right under Section 3.2 above to collect and retain all amounts that may become payable to Grantor under the Contracts, and otherwise exercise all of the rights of Grantor with respect thereto, shall automatically terminate, and the assignments created by this Section 3 shall become fully enforceable. Beneficiary will have the right, at its sole option, to enforce and to exercise any or all of its rights under this Section and elsewhere in this Deed of Trust and the other Loan Documents.

3.5.1 Upon the occurrence of an Event of Default, and at Beneficiary's sole election, Grantor shall deliver to Beneficiary all of the original Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto. Grantor hereby authorizes and directs the parties named in the Contracts, upon receipt from Beneficiary of written notice to the effect that an Event of Default exists under the Loan Documents, to cooperate fully with Beneficiary and to attribute to Beneficiary all of Grantor's rights, powers, and privileges under the Contracts.

3.5.2 Upon the occurrence of an Event of Default, Beneficiary, at its sole option, and without any notice whatsoever to Grantor, shall have the right and is hereby authorized to: (i) demand, receive, and enforce payment of all amounts that may be or become payable to Grantor under the Contracts; (ii) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (iii) enter into other contracts or agreements, in the name of either Grantor or Beneficiary, with such third parties as Beneficiary may in its discretion select, and upon such terms and conditions as

Beneficiary in its discretion may determine; (iv) compromise amounts due under the Contracts; (v) maintain or dismiss suits with respect to the Contracts; (vi) delegate any and all rights and powers given to Beneficiary by this assignment of Contracts; (vii) perform any obligation, covenant or agreement of Grantor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; (viii) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Grantor pursuant to any such proceeding; and/or (ix) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of this assignment of Contracts. All such actions shall be taken at the expense of Grantor, who agrees to reimburse Beneficiary, upon demand, for all amounts expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and shall be secured by this Deed of Trust.

3.6 No Liability of Beneficiary. Nothing in this Deed of Trust shall obligate Beneficiary to assume any obligations under any Contract or to take any action thereunder or to expend any money or incur any expense or perform or discharge any obligation, duty or liability under any Contract, or to assume any obligation or responsibility for the nonperformance of the provisions thereof by Grantor, unless and until Beneficiary becomes the owner of the Property and affirmatively assumes a particular Contract.

3.7 Instructions to Contracting Parties. This assignment of Contracts constitutes an irrevocable direction to and full authority from Grantor to any other party to any Contract to pay directly to Beneficiary, upon the occurrence and during the continuance of an Event of Default hereunder or under any of the Loan Documents, upon Beneficiary's request, all amounts that may be or become due to Grantor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Grantor to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

3.8 Application of Income. Notwithstanding any other provision of this Deed of Trust, the payments, proceeds and income collected by Beneficiary with respect to the Contracts may be applied, in whatever order Beneficiary in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Grantor.

3.9 Rights of Beneficiary. Termination of the license granted under this assignment of Contracts shall be without prejudice to Beneficiary. The rights of Beneficiary under this Section and elsewhere in this Deed of Trust are cumulative and concurrent, may be pursued separately, successively or together, and may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise of any one or more of the rights provided for herein shall not be construed as a waiver of any of the other rights or remedies of Beneficiary, at law or in equity or otherwise, so long as any Secured Obligation remains unsatisfied.

4. Grant of Security Interest.

4.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Leases, Rents and Contracts, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable law to be personal property or fixtures. To the extent that any Property or the Leases, Rents and Contracts may be or be determined to be personal property, Grantor, as debtor, hereby grants Beneficiary and Trustee, as secured parties, a security interest in all such Property and the Leases, Rents and Contracts, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located, covering all such Property and the Leases, Rents and Contracts.

4.2 Financing Statements. Grantor shall pay all fees and costs that Beneficiary may incur in filing one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property or the Leases, Rents or Contracts and in obtaining such record searches as Beneficiary may reasonably require. Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf and authorizes Beneficiary to file one or more financing statements, continuation statements, financing statement amendments, and such other documents as Beneficiary may from time to time require to perfect and continue the perfection of Beneficiary's security interest in any part of the Property. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

5. Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State and county in which the Property is located, as amended or recodified from time to time, covering any Property that now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Grantor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust.

6. Rights and Duties of the Parties.

6.1 Representations and Warranties. Grantor represents, warrants, and covenants that:

6.1.1 Grantor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

6.1.2 Grantor has or will have good title to all Property other than the Premises and Improvements;

6.1.3 Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts, there are no outstanding assignments of the Leases, Rents, or Contracts, Grantor is the absolute owner of the landlord's interest in the Leases, and Grantor has not performed any act or executed any other instrument that might prevent

Beneficiary from enjoying and exercising any of its rights and privileges evidenced by this Deed of Trust with respect to the Leases, Rents, and Contracts;

6.1.4 There are currently no commercial leases of the Property and no Rents have been discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than two (2) months prior to the accrual thereof;

6.1.5 To Borrower's knowledge, no default exists under any of the Contracts by any party and no fact or circumstance exists under any of the or Contracts that, with the lapse of time or giving of notice or both, would constitute a default by any party under such Contracts;

6.1.6 The Leases and Contracts were duly executed, are in full force and effect, and are the valid and binding obligations of Grantor, and, to the knowledge of Grantor, are the valid and binding obligations of the other parties thereto, and are enforceable in accordance with their respective terms;

6.1.7 Grantor has and shall punctually observe and perform all covenants, conditions and agreements in the Leases and Contracts to be performed by Grantor;

6.1.8 This Deed of Trust creates a first and prior lien on the Property;

6.1.9 The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

6.1.10 Grantor owns any Property that is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

6.1.11 Grantor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified below.

6.2 Taxes and Assessments. Grantor shall pay, prior to delinquency, all taxes, levies, charges and assessments against the Property in accordance with the Loan Agreement.

6.3 Performance of Secured Obligations. Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms

6.4 Funds for Taxes, Insurance and Other Charges. In Beneficiary's discretion at any time upon the occurrence of any Event of Default, Beneficiary shall have the right to require Grantor to pay to Beneficiary on the first day of each month, until the Secured Obligations have been paid in full, a sum (herein "Funds") equal to one-twelfth of (a) the yearly water and sewer rates and taxes and assessments that may be levied on the Property and (b) the yearly premium installments for fire and other hazard insurance, rent loss insurance (if applicable) and such other insurance covering the Property as Beneficiary may require, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Beneficiary of a requirement that Grantor pay such Funds may be revoked by Beneficiary, in Beneficiary's sole discretion, at any time upon notice in writing to Grantor. Beneficiary may require Grantor to pay to Beneficiary, in

advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Grantor or the Property that Beneficiary shall reasonably deem necessary to protect Beneficiary's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Beneficiary, at Beneficiary's option, may require Funds for Other Impositions to be paid by Grantor in a lump sum (not exceeding Other Impositions due for a one-year period) or in periodic installments.

The Funds shall be held by Beneficiary and shall be applied to pay such rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as no Event of Default has occurred. Beneficiary shall make no charge for so holding and applying the Funds, analyzing such account or for verifying and compiling said assessments and bills, unless Beneficiary pays Grantor interest, earnings or profits on the Funds and applicable law permits Beneficiary to make such a charge. Unless applicable law requires interest, earnings or profits on the Funds to be paid, Beneficiary shall not be required to pay Grantor any interest, earnings or profits on the Funds. Beneficiary shall give to Grantor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to such Funds was made. The Funds are pledged as additional security for the Secured Obligations and shall be subject to the right of set off.

If the amount of the Funds held by Beneficiary at the time of the annual accounting thereof shall exceed the amount deemed necessary by Beneficiary to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Beneficiary (in its sole discretion) may either (i) return the amount of the excess to Grantor or (ii) apply a part or all of such excess at such time or times as it may elect to the Secured Obligations. If, at any time, the amount of the Funds held by Beneficiary shall be less than the amount deemed necessary by Beneficiary to pay water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as such payments become due, Grantor shall, on demand, pay such deficiency. Upon the occurrence of an Event of Default, Beneficiary may apply, in any amount and in any order as Beneficiary shall determine in Beneficiary's sole discretion, any Funds held by Beneficiary at the time of application (A) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions that are now or shall hereafter become due; or (B) as a credit against sums secured by this Mortgage. Upon release of this Mortgage and payment in full of the Secured Obligations, Beneficiary shall promptly refund to Grantor any Funds held by Beneficiary.

6.5 Use of Property. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Grantor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent. Grantor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime.

6.6 Liens, Charges and Encumbrances. Grantor shall pay all water and sewer rates, rents, taxes, assessments, premiums, charges and impositions, attributable to the Property. Grantor shall immediately discharge any lien on the Property that Beneficiary has not consented to in writing or that is not otherwise permitted in accordance with the terms of the Loan Agreement (a "*Permitted Encumbrance*"). If a mechanic's lien is filed against the Property, Grantor shall promptly notify Beneficiary and, at Beneficiary's request, shall, at Grantor's option, either (i) escrow with Beneficiary or, with the consent of Beneficiary, deposit in a court of competent jurisdiction a sum of money equal to one and one half times the amount of the lien, or (ii) provide a bond against the lien in such amount and in such manner as to discharge the lien as an encumbrance against the Property. Without Beneficiary's prior

written consent, Grantor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless Grantor is then diligently contesting the same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence.

6.7 Insurance. Grantor shall maintain insurance as required by the Loan Agreement.

6.8 Condemnation. Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Grantor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Grantor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Grantor, to commence, appear in and prosecute, in Beneficiary's, Grantor's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Beneficiary.

With the consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion, Grantor may apply such awards, payments, proceeds or damages, after the deduction of Beneficiary's expenses incurred in the collection of such amounts, to restoration or repair of the Property. Otherwise such sums so received shall be applied to payment of the Secured Obligations. Grantor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Beneficiary may reasonably require

6.9 Preservation and Maintenance of Property. Grantor (a) shall not commit intentional, physical waste or permit material impairment or material deterioration of the Property (ordinary wear and tear excluded); (b) shall not abandon the Property; (c) shall, unless Beneficiary withholds insurance proceeds as security for or application to the Secured Obligations, restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair unless the improvements constituting the Property are (i) totally destroyed, (ii) insurance has been maintained thereon as required by this Mortgage, and (iii) Beneficiary applies the proceeds of such insurance to payment of the Secured Obligations; (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair (ordinary wear and tear excepted) and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Grantor when necessary to keep such items in good repair; (e) shall comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, including, without limitation, the Americans with Disabilities Act, as it may be amended from time to time; and (f) shall give notice in writing to Beneficiary, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Beneficiary, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Beneficiary. Unless required by applicable law or unless Beneficiary has otherwise consented in writing, Grantor shall not remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture (other than trade fixtures), equipment, machinery or

appliance in or on the Property owned by Grantor and used or intended to be used in connection with the Property.

6.10 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Deed of Trust:

6.10.1 Release any person liable for payment of any Secured Obligation;

6.10.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

6.10.3 Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

6.10.4 Alter, substitute or release any property securing the Secured Obligations;

6.10.5 Consent to the making of any plat or map of the Property or any part of it;

6.10.6 Join in granting any easement or creating any restriction affecting the Property;

6.10.7 Join in any subordination or other agreement affecting this Deed of Trust or the lien of it;

6.10.8 Apply any other security for the Secured Obligations held by Beneficiary; or

6.10.9 Release the Property or any part of it.

6.11 Protection of Beneficiary's Security.

6.11.1 If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Beneficiary therein, including, but not limited to, eminent domain, insolvency, enforcement of local laws, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect Beneficiary's interests, including, but not limited to, (a) disbursement of attorneys' fees; (b) entry upon the Property to remedy any failure of Grantor to perform hereunder; and (c) procurement of satisfactory insurance.

6.11.2 Any amounts disbursed by Beneficiary pursuant to this Section, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Deed of Trust. Unless Grantor and Beneficiary agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate as defined in the Note. Grantor hereby covenants and agrees that Beneficiary shall be

subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder.

6.11.3 The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of the right of Beneficiary to accelerate the maturity of any of the Secured Obligations secured by this Deed of Trust. Beneficiary's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of the Loan Agreement shall not operate to cure or waive any default in payment of sums secured by this Deed of Trust.

6.12 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Grantor under this Deed of Trust and the other Loan Documents have been received, or as otherwise provided in the Loan Agreement (including Section 8.20 thereof), Beneficiary shall request that Trustee reconvey this Deed of Trust and release the lien created thereby, and shall release all notes and instruments evidencing the Secured Obligations. Grantor shall pay any costs of preparation and recordation of such reconveyance and releases.

6.13 Compensation, Exculpation, Indemnification.

6.13.1 Grantor agrees to pay or reimburse all of Beneficiary's and Trustee's costs and expenses payable to parties other than Beneficiary or Trustee which may be incurred in rendering services to Beneficiary or Trustee in connection with the enforcement of Beneficiary's rights and remedies under this Deed of Trust, including, without limitation, rights with respect to the Leases, Rents, and Contracts, and including Beneficiary's providing the release set forth above. Grantor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances that may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under this Deed of Trust, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined below) and any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one Foreclosure Sale, Grantor shall pay all costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses that may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature mentioned in this Section, and such expenses and fees as may be incurred

in the protection of the Property, maintenance of the lien of this Deed of Trust, and administration of the Leases and Contracts, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

6.13.2 Neither Beneficiary nor Trustee shall be directly or indirectly liable to Grantor or any other person as a consequence of any of the following:

(a) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(b) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Deed of Trust; or

(c) Any loss sustained by Grantor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

6.13.3 Grantor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses that they may suffer or incur:

(a) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(b) Arising out of or resulting from the assignment of Leases and Rents as set forth above, including, without limitation, claims or demands for security deposits from tenants deposited with Grantor, and from and against any and all claims and demands whatsoever that may be asserted against Beneficiary to satisfy any obligations of the landlord under the Leases;

(c) Arising out of or resulting from the assignment of Contracts as set forth above, including, without limitation, the exercise or enforcement of any of the rights of Beneficiary thereunder, except for any claims resulting from the gross negligence, willful misconduct or bad faith of Beneficiary;

(d) Because of any failure of Grantor to perform any of its obligations, except for any claims resulting from the gross negligence, willful misconduct or bad faith of Beneficiary; or

(e) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

Such indemnity shall include, without limitation, all costs, expenses and attorneys' fees incurred by Beneficiary in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Beneficiary until repaid by Grantor, and shall be immediately due and payable to Beneficiary by Grantor upon demand and shall be secured by this Deed of Trust. This agreement by Grantor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

6.13.4 Grantor shall satisfy all obligations to pay money arising under this Deed of Trust and the other Loan Documents immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

6.14 Defense and Notice of Claims and Actions. At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Grantor shall give Beneficiary prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

6.15 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

6.16 Notice of Change. Grantor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Grantor's name, business structure and/or state of organization. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Grantor's place of business or chief executive office if Grantor has more than one place of business.

6.17 Transfers. Other than in connection with a Permitted Transfer or a Permitted Encumbrance, Grantor shall not (a) voluntarily or involuntarily sell, lease (other than residential Leases in the ordinary course of business), exchange, assign, convey, transfer (other than easements and other encumbrances that do not have a material adverse effect on the use or value of the Property) or otherwise dispose of all or any portion of the Property (or any interest therein, legal or equitable), or all or any of the ownership interest in Grantor except as permitted in the Loan Agreement, or (b) convey to any Person, other than Beneficiary, a security interest in the Property or any part thereof or voluntarily or involuntarily permit or suffer the Property to be further encumbered.

6.18 Property Condition Reports.

(a) Beneficiary and its authorized representatives shall be provided access to the Premises and Improvements during the term of the Loan, upon reasonable prior notice at any time during normal business hours, for the purpose of inspecting the Premises and Improvements to determine, in the reasonable opinion of Beneficiary or Beneficiary's representatives, whether any necessary repair and replacement work: (i) has been deferred or is otherwise required so that the Project is at all times in a state of repair that is not materially worse than it was on the date hereof, or (ii) needs immediate attention in order to ensure the safety of those present on the Premises and/or Improvements. If, in connection with any inspection of the Premises and Improvements, Beneficiary determines that the condition of the Premises and/or Improvements has deteriorated since the date hereof, Beneficiary may obtain, at Grantor's expense, a new Property Condition Report for the Premises and Improvements. Beneficiary's right to obtain a Property Condition Report shall be in addition to any other rights available to Beneficiary under this Mortgage or the Loan Agreement in connection with any such deterioration.

(b) Beneficiary may require, in its discretion or upon the occurrence of any Event of Default, that Grantor deposit Two Hundred and 00/100 Dollars (\$200.00) per unit of the Improvements into a reserve account with Beneficiary, which amounts shall be used to pay costs incurred for capital improvements and/or repair work at the Premises and/or Improvements during the term of the Loan approved by Beneficiary (the "Replacement Reserve"). Thereafter, upon the written request of Beneficiary, and for so long thereafter as Beneficiary may require in order to perform the applicable repairs or capital improvements, Grantor shall deposit into the Replacement Reserve any other amounts required by Grantor to perform capital improvements and repairs to the Premises and/or Improvements suggested or recommended by any updated property condition report obtained by Beneficiary at Grantor's sole cost and expense. Notwithstanding anything to the contrary contained herein, in no event shall Beneficiary require that more than Three Hundred Twenty Five Thousand and 00/100 Dollars (\$325,000.00) be deposited into the Replacement Reserve during the term of the Loan.

7. Accelerating Transfers, Default and Remedies.

7.1 Accelerating Transfers.

7.1.1 "*Accelerating Transfer*" means any Transfer not expressly permitted under the Loan Agreement.

7.1.2 Grantor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Grantor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Grantor agrees that Grantor shall not make any Accelerating Transfer unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and the transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary, in its sole discretion, may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by this Deed of Trust and any of the other Loan Documents.

7.2 Events of Default. Grantor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (each an “*Event of Default*” and some or all, collectively, “*Events of Default*”).

7.2.1 The occurrence of an Event of Default under the Loan Agreement.

If Grantor fails to perform or to observe any covenant or agreement contained in this Deed of Trust or in any other of the Loan Documents, and such failure remains unremedied for thirty (30) days after the Beneficiary gives written notice thereof to Grantor.

7.2.2 If Grantor shall abandon any of the Property or shall sell, lease, convey or transfer (or contract to sell, lease, convey or transfer) all or any part of the Property without first obtaining Beneficiary’s written consent, except in connection with a Permitted Transfer or Permitted Encumbrance or as otherwise permitted under Section 6.17 hereof.

7.2.3 If Grantor shall assign any part of the rents or profits of the Property other than to Beneficiary without first obtaining Beneficiary’s written consent or, by the cancellation, surrender or modification of any existing lease, other than a residential lease (or in any other manner) the security for the payment of the Secured Obligations shall be in any manner impaired.

7.3 Remedies. If any Event of Default shall occur, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

7.3.1 Acceleration. Declare any or all of the Secured Obligations to be immediately due and payable whereupon all unpaid principal, interest and fees in respect of such Obligations, together with all of Beneficiary’s costs, expenses and attorneys’ fees related thereto, under the terms of the Loan Documents or otherwise, shall be immediately due and payable.

7.3.2 Additional Advances. Terminate any commitment to make any additional advances under the Loan.

7.3.3 Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Grantor or anyone claiming by, under or through Grantor, and without regard for the solvency or insolvency of Grantor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Leases, Rents and Contracts, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Grantor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property.

7.3.4 Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any

and all other things in connection with those actions that Beneficiary may, in its sole discretion, consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing any unfinished construction and/or contracting for and making repairs, replacements and alterations to the Improvements and to the fixtures, equipment and personal property located in or on the Improvements or used in any way in the operation, use and occupancy of the Premises or Improvements. If Beneficiary so requests, Grantor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Grantor hereby irrevocably constitutes and appoints Beneficiary as Grantor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments.

7.3.5 Cure; Protection of Security. Beneficiary may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things that it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Grantor's or the then owner's Books and Records; appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien that in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among the parties to this Deed of Trust; entering into, enforcing, modifying or canceling Leases on such terms and conditions as Beneficiary may consider appropriate; evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary from any tenants; employing necessary managers and other employees to administer the Leases and Contracts; purchasing fuel and providing utilities; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; purchasing and paying for such additional furniture and equipment as in the sole subjective judgment of Beneficiary may be necessary to maintain a proper rental income from the Property; otherwise caring for and incurring expenses to protect any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section shall be secured by this Deed of Trust.

7.3.6 Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

7.3.7 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose this Deed of Trust by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

- a. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Grantor such Notice of Default and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Grantor,

after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash or cash equivalent payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Trustee or Beneficiary, may purchase at such sale and Grantor hereby covenants to warrant and defend the title of such purchaser or purchasers.

b. As may be permitted by law, all proceeds of sale shall be applied by Trustee and Beneficiary as provided below. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against Grantor.

7.3.8 Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law, including judicially in the manner of foreclosure of mortgages. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any judicial or non-judicial foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited against the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default, Trustee or Beneficiary may also, at any time after the filing of a complaint to foreclose this Deed of Trust or commencement of the non-judicial foreclosure proceedings, request appointment of a receiver of the Property by the court in which such complaint is filed or by separate suit filed by Beneficiary, and Grantor hereby consents to such appointment.

7.3.8 Other Remedies. In addition to, but not in lieu of, any other rights and remedies hereunder, Beneficiary shall have the right to institute suit and obtain a protective or mandatory injunction against Grantor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Beneficiary may exercise all rights and remedies contained in this instrument (including, without limitation, all rights and remedies with respect to the assignments of Leases and Contracts) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Grantor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Grantor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto that may become effective from time to time after the date hereof.

7.3.9 Sale of Personal Property. Beneficiary and/or Trustee, as required by applicable law, shall have the discretionary right to cause some or all of the Property that

constitutes personal property to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(a) For purposes of this power of sale, Beneficiary and/or Trustee, as required by applicable law, may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or Trustee, as required by applicable law, may dispose of any personal property in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(b) In connection with any sale or other disposition of such Property, Grantor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Grantor not later than thirty (30) days prior to such sale. Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

7.3.10 Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, as required by applicable law, may:

(a) Designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and

(b) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial or non-judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "*Foreclosure Sale*," and any two or more, "*Foreclosure Sales*").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

7.4 Credit Bids. At any Foreclosure Sale, any person, including Grantor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of

paying cash for such Property, Beneficiary may settle for the purchase price by crediting the sales price of the Property against the following obligations:

7.4.1 First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to pay or reimburse Beneficiary and Trustee under this Deed of Trust or any of the other Loan Documents; and

7.4.2 Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

7.5 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner, unless application in a different manner is required by applicable law:

7.5.1 First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust or any of the other Loan Documents;

7.5.2 Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust that then remain unpaid;

7.5.3 Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

7.5.4 Fourth, to remit the remainder, if any, to the person or persons entitled to it.

7.6 Application of Rents and Other Sums. Except as otherwise set forth in this Deed of Trust, Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale that Beneficiary may receive or collect under this Deed of Trust, in the following manner:

7.6.1 First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver, including, without limitation, amounts expended for management, management fees for any management agent, repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums, attorneys' fees, and such other expenses as Beneficiary incurs in connection with the operation of the Property;

7.6.2 Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

7.6.3 Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds, including, without limitation, Rents, that it does not actually receive.

8. The Trustee.

8.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys, (iii) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, and Trustee shall not be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for rendering Trustee's services hereunder. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses that may be incurred by Trustee in the performance of Trustee's duties.

8.2 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

8.3 Successor Trustees. Trustee may resign by giving notice of resignation in writing to Beneficiary. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, prefers to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees in succession) who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation or other legal entity and such appointment is executed on its behalf by any officer, manager, member, or partner of such entity, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer, manager, or partner of the entity. Grantor hereby ratifies and confirms any and all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or

applicable law. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of their duties, rights, and obligations hereunder.

8.4 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or any substitute trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

8.5 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of the substitute trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

8.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

9. Miscellaneous Provisions.

9.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor that apply to this Deed of Trust and to the Property.

9.2 No Waiver or Cure.

9.2.1 Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Grantor. Consent by Beneficiary to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

9.2.2 If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of

Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(a) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

(b) Beneficiary exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

(c) Beneficiary exercises any of its rights under the assignment of Contracts or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

(d) Beneficiary takes any action to preserve its security hereunder or cure any default of Beneficiary under the Leases or Contracts.

(e) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust.

(f) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under this Deed of Trust.

(g) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(h) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

9.3 Powers of Beneficiary.

9.3.1 If Beneficiary performs any act that it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Grantor shall not be released or changed if Beneficiary grants any successor in interest to Grantor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Grantor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

9.3.2 Beneficiary may take any of the actions permitted under this Deed of Trust regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the

Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

9.3.3 From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

9.4 Assignment. All rights of Beneficiary hereunder shall inure to the benefit of its successors and assigns, and all obligations of Grantor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Beneficiary in, to and under this Deed of Trust shall pass to and may be exercised by any assignee of such rights of Beneficiary. Grantor hereby agrees that if Beneficiary gives notice to Grantor of an assignment of said rights, upon such notice, the liability of Grantor to the assignee of Beneficiary shall be immediate and absolute. Grantor will not set up any claim against Beneficiary or any intervening assignee as a defense, counterclaim or setoff to any action brought by Beneficiary or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents or Contracts.

9.5 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

9.6 Joint and Several Liability. If Grantor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Grantor's obligations under this Deed of Trust.

9.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

9.8 Interpretation.

9.8.1 Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

9.8.2 The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

9.8.3 No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

9.9 Intentionally Omitted.

9.10 Waiver of Statutory Rights. To the extent permitted by law, Grantor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Grantor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Grantor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

9.11 Severability. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

9.12 Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), upon receipt, or upon refusal of receipt by the addressee; (c) if by Federal Express or other reliable overnight courier service upon receipt, or upon refusal of receipt by the addressee,; or (d) if by confirmed fax transmission on the day of transmission so long as a copy is sent on the same day by overnight courier, to the addresses set forth below:

Grantor: RM9A Holdings, LLC
3949 Forest Parkway
Wheatfield, New York 14120
Attention: Anton M. Karoglan, Executive Vice President, Finance & Investment
and Kenneth M. Franasiak
Facsimile: (886) 923-7588

With a copy to: Calamar Enterprises, Inc.
3949 Forest Parkway
Wheatfield, New York 14120
Attention: Jennie Muscarella, Esq.
Facsimile: (716) 693-3590

and

MK CHC Holdings LLC
c/o Mount Kellett Capital Management LP
623 Fifth Avenue, 18th Floor
New York, New York 10022
Attention: Andrew M. Axelrod

Facsimile: (212) 588-6180

and

Cleary, Gottlieb, Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attention: Donald S. Stern
Facsimile: (212) 225-3999

Trustee: Old Republic National Title Insurance Company
c/o TitleCore, LLC
9140 West Dodge Road, Suite 380
Omaha, Nebraska 68114
Attention: Nick Henderson
Facsimile: (402) 691-9970

Beneficiary: KeyBank National Association
66 S. Pearl Street
Albany, New York 12207
Attention: W. Edward Carroll, Assistant Vice President
Facsimile: (518) 257-8572

With a copy to: KeyBank Real Estate Capital
50 Fountain Plaza, 17th Floor
Buffalo, New York 14202
Attention: David A. Pyc, Senior Vice President
Facsimile: (716) 846-4405

and

Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13202
Attention: Peter J. Hogan, Esq.
Facsimile: (315) 218-8445

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Grantor hereby requests that a copy of any notice of default and that any notice of sale hereunder be mailed to Grantor at the address set forth for Grantor in this Deed of Trust.

9.13 Beneficiary's Lien for Service Charge and Expenses. At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary in accordance with the Loan Documents not to exceed the maximum amount secured hereby.

9.14 Interest Rate Agreements. For purposes hereof, all obligations of Grantor to Beneficiary under all Interest Rate Agreements entered into in connection with the Loan and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Grantor secured hereby.

9.15 WAIVER OF TRIAL BY JURY. GRANTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF GRANTOR OR BENEFICIARY. GRANTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. GRANTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

9.16 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

9.17 UCC Financing Statements. Grantor hereby authorizes Beneficiary to file UCC financing statements to perfect Beneficiary's security interest in any part of the Property. In addition, Grantor agrees to sign any and all other documents that Beneficiary deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property.

9.18 Reserves/Impounds. All sums deposited with Beneficiary in any Impound Account (as defined in the Loan Agreement) or in any completion/repair or other reserve of any kind required to be established pursuant to the terms of the Loan Agreement are hereby pledged as additional security for the Secured Obligations.

9.19 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Bank may, but shall not be obligated to, make under this Deed of Trust, the Loan Documents or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed Six Million Nine Hundred Thirty One Thousand Eight Hundred Six and 00/100 Dollars (\$6,931,806.00), plus interest and other charges thereon, and any disbursements made for the enforcement of this Deed of Trust and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Lender pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Deed of Trust shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.


9.20 Applicable Law. The creation, perfection and enforcement of the lien of this Deed of Trust shall be governed by the laws of the state in which the Property is located. Subject to the foregoing, in all other respects, this Deed of Trust shall be governed by the substantive laws of the State of New York.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

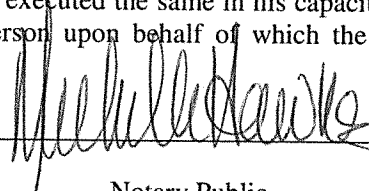
GRANTOR:

RM9A HOLDINGS, LLC, a Delaware limited liability company

By 
Name: Kenneth M. Franasiak
Title: Authorized Signatory

STATE OF NEW YORK)
)SS:
COUNTY OF ERIE)

On the 29 day of April in the year 2014, before me, the undersigned, personally appeared KENNETH M. FRANASIAK, the Authorized Signatory of RM9A Holdings, LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed this instrument..



Notary Public

MICHELLE HAWKINS
Notary Public, State Of New York
Reg. 01HA6087820
Qualified In Erie County
My Commission Expires February 24, 2015

EXHIBIT A

DESCRIPTION OF PREMISES

Lot 4 in Harrison Heights, an addition to the City of LaVista, as surveyed, platted and recorded, in Sarpy County, Nebraska;

Together with non-exclusive easement rights appurtenant thereto for storm sewer, ingress and egress as established by the Plat and Dedication of Harrison Heights recorded December 30, 2009, as Instrument No. 2009-40933 of the Records of Sarpy County, Nebraska.