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NOV 14 2011 15:19 P 41

Fee amount: 205.50  
FB: 53-30462  
COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/14/2011 15:19:27.00



2011097629

Prepared By And When Recorded Return or Mail To: Nyemaster Goode, P.C., 700 Walnut St., Suite 1600, Des Moines, Iowa 50309, Attention: Anthony A. Longnecker

**FIRST DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS FIRST DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING** (“Deed of Trust”), made as of November 14, 2011, by and between JASPER STONE FINANCIAL PLAZA LLC, a Delaware limited liability company; JASPER STONE FINANCIAL PLAZA II LLC, a Nebraska limited liability company; and JOHN ALFORD INVESTMENTS, LLC, a Nebraska limited liability company (jointly and severally, each a “Grantor” and collectively the “Grantors”) jointly and severally, with the mailing or post office address of Jasper Stone Financial Plaza LLC, 2637 S. 158th Plaza; # 110, Omaha, NE 68130; Jasper Stone Financial Plaza II LLC, 2637 S. 158th Plaza, #110, Omaha, NE 68130; and John Alford Investments, LLC, 22102 Marcy Street, Omaha, NE 68130, and Michael F. Kivett, attorney at law and duly licensed to practice in the state of Nebraska, as Trustee, with the mailing or post office address of 11240 Davenport Street, P.O. Box 540125, Omaha, Nebraska 68154-0125 (“Trustee”), for the benefit of AVIVA LIFE AND ANNUITY COMPANY, an Iowa corporation (“Beneficiary”), with the mailing or post office address of c/o Aviva Investors North America, Inc., Attn: Commercial Mortgage, 215 10<sup>th</sup> Street, Suite 1000, Des Moines, Iowa 50309.

**WITNESSETH:**

**WHEREAS**, Grantor has borrowed from Beneficiary and Beneficiary has loaned to Grantor the sum of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00); and

**WHEREAS**, said indebtedness is evidenced by a Promissory Note dated as of the date hereof in the principal sum of FIVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,800,000.00) (this Promissory Note, together with all extensions, modifications, renewals or refinancing thereof or substitutions therefore shall be collectively herein, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified, extended, renewed, consolidated, restated or replaced, called the “Note”), executed by Grantor and payable to Beneficiary at its office in Des Moines, Iowa, or at such other place as Beneficiary may designate in writing with interest as

therein provided, both principal and interest to be payable periodically in accordance with the terms of the Note and finally maturing on or before the first day of December, 2018.

**NOW, THEREFORE**, each Grantor, for the purpose of securing the payment of all amounts now or hereafter owing under the Note, this Deed of Trust and the other Loan Documents (as defined below) and the faithful performance of all covenants, conditions, stipulations and agreements therein and herein contained, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, IN TRUST, WITH POWER OF SALE, and bargains, sells, conveys, transfers, assigns, sets over, grants a security interest in, and warrants to Trustee, and its successors in trust, for the benefit of Beneficiary, its successors and assigns forever the following property and rights (collectively referred to as the "Mortgaged Premises"):

- A. All of its undivided fractional interests in the following described real property (hereinafter called the "Land"), located in Douglas County, Nebraska to wit:

The real property described in Exhibit "A" attached hereto;

- B. All and singular, the buildings and improvements, situated, constructed, or placed on the Land, and all right, title and interest of Grantor in and to (i) all streets, boulevards, avenues or other public thoroughfares in front of and adjoining the Land, (ii) all easements, licenses and rights of way, or rights of ingress or egress benefiting the Land, (iii) all strips, gores or pieces of land abutting, bounding, adjacent or contiguous to the Land (iv) any land lying in or under the bed of any creek, stream, bayou or river running through, abutting or adjacent to the Land, (v) any riparian, appropriative or other water rights of Grantor appurtenant to the Land and relating to surface or subsurface waters, (vi) all wastewater (sewer) treatment capacity and all water capacity assigned to the Land, (vii) any oil, gas or other minerals or mineral rights relating to the Land or to the surface or subsurface thereof owned by Grantor, (viii) any reversionary rights attributable to the Land;
- C. Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Land or any buildings or improvements belonging or in any way appertaining thereto, or any part thereof;
- D. All the rents, issues, uses, profits, insurance claims and proceeds and condemnation awards now or hereafter belonging or in any way pertaining to: (1) the Land; (2) each and every building and improvement and all of the properties included within the provisions of the foregoing paragraph B; and (3) each and every lease, sublease and agreement described in the foregoing paragraph C and each and every right, title and interest thereunder, from the date of this Deed of Trust until the terms hereof are complied with and fulfilled;

- E. All instruments (including promissory notes), financial assets, documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights, supporting obligations, any other contract rights or rights to the payment of money, and all general intangibles (including, without limitation, payment intangibles, and all recorded data of any kind or nature, regardless of the medium of recording, including, without limitation, all software, writings, plans, specifications and schematics) now or hereafter belonging or in any way pertaining to (1) the Land; (2) each and every building and improvement and all of the properties on the Land; and (3) each and every lease, sublease and agreement described in the foregoing paragraph C and each and every right, title and interest thereunder; and
- F. All machinery, apparatus, equipment, fixtures and articles of personal property of every kind and nature now or hereafter located on the Land or upon or within the buildings and improvements belonging or in any way appertaining to the Land and used or usable in connection with any present or future operation of the Land or any building or improvement now or hereafter located thereon and the fixtures and the equipment which may be located on the Land and now owned or hereafter acquired by Grantor (hereinafter called the "Equipment"), including, but without limiting the generality of the foregoing, any and all furniture, furnishings, partitions, carpeting, drapes, dynamos, screens, awnings, storm windows, floor coverings, stoves, refrigerators, dishwashers, disposal units, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, maintenance equipment, and all heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and air-cooling equipment, gas and electric machinery and all of the right, title and interest of Grantor in and to any Equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Deed of Trust and all additions, accessions, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds of all of the foregoing, all of which shall be construed as fixtures and will conclusively be construed, intended and presumed to be a part of the Land. It is understood and agreed that all Equipment, whether or not permanently affixed to the Land and the buildings and improvements thereon, shall for the purpose of this Deed of Trust be deemed conclusively to be conveyed hereby and, as to all such Equipment, whether personal property or fixtures, or both, a security interest is hereby granted by Grantor and hereby attached thereto, all as provided by the Uniform Commercial Code as adopted, amended and in force in Nebraska.

Together with all and singular other tenements, hereditaments and appurtenances belonging to the aforesaid properties, or any part thereof with the reversions, remainders and benefits and all other revenues, rents, earnings, issues and income and profits arising or to arise out of or to be received or had of and from the properties hereby mortgaged or intended so to be or any part thereof and all the estate, right, title, interest and claims, at law or in equity which Grantor now or may hereafter acquire or be or become entitled to in and to the aforesaid properties and any

and every part thereof. The "Mortgaged Premises" are hereby declared to be subject to the lien of this Deed of Trust as security for the payment of the aforementioned indebtedness.

**SUBJECT TO** (i) liens for ad valorem taxes and special assessments or installments thereof not now delinquent; (ii) building and zoning ordinances and building and use restrictions; (iii) easements of record on the date hereof; (iv) those exceptions shown in the title insurance policy in favor of Beneficiary insuring the lien of this Deed of Trust; and (v) such minor defects, irregularities, encumbrances, easements, and rights of way as normally exist with respect to property similar in character to the Mortgaged Premises which do not individually or in the aggregate materially detract from the value of the Mortgaged Premises or impair the use thereof for the purpose intended (all of the foregoing being herein referred to as "Permitted Encumbrances").

**PROVIDED, HOWEVER,** that if Grantor, its successors or assigns shall pay, or cause to be paid, the principal of the Note and the interest due or to become due thereon, at the times and in the manner mentioned in the Note, and shall keep, perform and observe all the covenants and conditions pursuant to the terms of this Deed of Trust and the Assignment of Leases, Rents and Income dated as of the date hereof encumbering the leases, rents and income of the Mortgaged Premises (herein called the "Assignment") to be kept, performed and observed by it, and shall pay to Beneficiary all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Deed of Trust and the rights hereby granted shall cease, terminate and be void and upon request Trustee or Beneficiary, as appropriate, shall execute a document in recordable form evidencing the satisfaction of this Deed of Trust; otherwise, this Deed of Trust shall be and remain in full force and effect. This Deed of Trust, the Note, the Assignment, and the other documents and instruments evidencing or securing the loan (the "Loan") evidenced by the Note (excluding the certain Environmental Indemnification Agreement dated this same date) are referred to herein collectively as the "Loan Documents."

Grantor covenants and agrees with Beneficiary as follows:

## ARTICLE ONE

### GENERAL COVENANTS

Section 1-1. Payment of Indebtedness. Grantor shall pay when due all amounts at any time owing under the Note secured by this Deed of Trust and shall perform and observe each and every term, covenant and condition contained herein and in the Note.

Section 1-2. Title and Instruments of Further Assurance. Each Grantor represents, warrants, covenants and agrees that it is the lawful owner of an undivided fractional interest in the Mortgaged Premises and that it has good right and lawful authority to mortgage, assign and pledge the same as provided herein; that it has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby its estate or interest in and title to the Mortgaged Premises or any part thereof shall or may be impaired or changed or encumbered in any manner whatsoever except by Permitted Encumbrances; that it does warrant and will defend

the title to its undivided fractional interest in the Mortgaged Premises against all claims and demands whatsoever not specifically excepted herein; and that it will do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance necessary or proper for the carrying out more effectively of the purpose of this Deed of Trust and, without limiting the foregoing, for conveying, mortgaging, assigning and confirming unto Beneficiary all of its undivided fractional interest in of the Mortgaged Premises, or property intended so to be, whether now owned or hereafter acquired, including without limitation the preparation, execution and filing of any documents, such as control agreements, financing statements and continuation statements, deemed advisable by Beneficiary for maintaining its lien on any property included in the Mortgaged Premises.

Section 1-3. First Lien. The lien created by this Deed of Trust is a first and prior lien on the Mortgaged Premises and Grantor will keep its undivided fractional interest in the Mortgaged Premises and the rights, privileges and appurtenances thereto free from all lien claims of every kind whether superior, equal, or inferior to the lien of this Deed of Trust subject only to Permitted Encumbrances and if any such lien be filed, Grantor, within twenty (20) days after such filing shall cause same to be discharged by payment, bonding or otherwise to the satisfaction of Beneficiary. Grantor further agrees to protect and defend the title and possession of its undivided fractional interest in the Mortgaged Premises so that this Deed of Trust shall be and remain a first lien thereon until said debt be fully paid, or if foreclosure shall be had hereunder so that the purchaser at said sale shall acquire good title in fee simple to the Mortgaged Premises free and clear of all liens and encumbrances except the Permitted Encumbrances and other matters expressly allowed in this Deed of Trust or approved in writing by Beneficiary.

Section 1-4. Due on Sale or Encumbrance.

(a) In the event Grantor directly or indirectly sells, conveys, transfers, disposes of, or further encumbers all or any part of the Mortgaged Premises or any interest therein, or in the event any ownership interest in Grantor is directly or indirectly issued, transferred or encumbered, or in the event Grantor or any owner of Grantor agrees so to do, in any case without the written consent of Beneficiary being first obtained (which consent Beneficiary may withhold in its sole and absolute discretion) unless such event is expressly permitted hereby then, at the sole option of Beneficiary, Beneficiary may accelerate the Loan and declare the principal of and the accrued interest of the Note, and including all sums advanced hereunder with interest, to be forthwith due and payable, and thereupon the Note, including both principal and all interest accrued thereon, and including all sums advanced hereunder and interest thereon, shall be and become immediately due and payable without presentment, demand or further notice of any kind. Without limiting the generality of the foregoing, a merger, consolidation, reorganization, entity conversion or other restructuring or transfer by operation of law, whereunder Grantor or, in the case of an ownership interest, the holder of an ownership interest in Grantor, is not the surviving entity as such entity exists on the date hereof, shall be deemed to be a transfer of the Mortgaged Premises or of an ownership interest in Grantor. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Without limiting the generality of the foregoing, there shall be no subordinate financing relating to the Mortgaged Premises except as described below.

(b) Notwithstanding the foregoing, and provided no Event of Default (as hereinafter defined) has occurred and is continuing, with the prior written consent of Beneficiary, which it may withhold in its sole and absolute discretion, one transfer or conveyance by each Grantor of its undivided fractional interest in the Mortgaged Premises to a transferee approved by Beneficiary in its sole and absolute discretion shall be permitted upon (i) execution by the transferee of an assumption agreement satisfactory to Beneficiary; (ii) receipt by Beneficiary of a non-refundable fee equal to one percent (1%) of the applicable Grantor's pro rata liability share of the outstanding amount of the Note at the time of such sale and assumption; (iii) receipt by Beneficiary of an endorsement to Beneficiary's title policy, in form and substance acceptable to Beneficiary; and (iv) receipt by Beneficiary of opinions of counsel, and authorization documents of Grantor and the transferee, satisfactory to Beneficiary. Further, Beneficiary, in its sole and absolute discretion, may require individuals specifically named by Beneficiary to deliver to Beneficiary an Environmental Indemnification Agreement on Beneficiary's standard form. The rights granted to Grantor in this paragraph are personal to each of the the original Grantors, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any transferee. Any such transfer and assumption will not release the original Grantor or any guarantor from any liability to Beneficiary without the written consent of Beneficiary, which consent may be given or withheld in Beneficiary's sole and absolute discretion and may be conditioned upon the execution of new guaranties from the principals of the transferee, execution by the principals of the transferee of Beneficiary's standard Environmental Indemnification Agreement, and such other requirements as Beneficiary may deem appropriate in its discretion.

In the event Beneficiary approves a sale and assumption to a qualified purchaser, as provided above, and further accepts a replacement guarantor or guarantors ("Replacement Guarantors"), the existing guarantors ("Existing Guarantors") obligation under the Note, and the Guaranty and Environmental Indemnification Agreement executed by the Existing Guarantors in connection with this Deed of Trust shall be limited to (a) the obligations created or incurred prior to the date of the approved sale and assumption and (b) the extensions or renewals of interest accruing on, or fees, costs or expenses incurred with respect to such obligations on or after the date of the approved sale or assumption; provided that at the time of the sale or assumption (i) Beneficiary receives and approves of a new Phase I Environmental Report for the Mortgaged Premises which states that no contamination exists on the Mortgaged Premises at the time of the sale and assumption and (ii) Beneficiary receives a new Guaranty and Environmental Indemnification Agreement from the Replacement Guarantors in form and content acceptable to Beneficiary.

(c) Additionally, and notwithstanding the foregoing, Beneficiary will permit the transfer of non-controlling ownership interests in Grantor by holders thereof as of the date hereof to Immediate Family Members (defined below) or to other holders of an interest in Grantor as of the date hereof without a fee, provided that: (i) no Event of Default shall have occurred and be continuing hereunder or under any of the Loan Documents or any separate documents guarantying Grantor's payment and the performance of the Note, (ii) Beneficiary is promptly notified of such proposed transfer and provided with such documentation evidencing the transfer and identity of the transferee as reasonably requested by Beneficiary; (iii) assumption documents, if deemed necessary by the Beneficiary, in a form that is acceptable to

Beneficiary are executed by the transferee; and (iv) Grantor reimburses Beneficiary for all fees and expenses including reasonable attorneys' fees associated with Beneficiary's review and documentation of the transfer. Further, no sales or transfers of any non-controlling ownership interests in Jasper Stone Real Estate Fund LLC shall be restricted or limited by, or constitute an Event of Default under, the Loan Documents nor shall the same require Beneficiary's consent or notice nor be subject to any transfer fee.

(d) Additionally, and notwithstanding the foregoing, any ownership interest in any Grantor may be voluntarily sold, transferred, conveyed or assigned by holders thereof as of the date hereof for estate planning purposes to Immediate Family Members (as defined below) or to a holder of an ownership interest in Grantor as of the date hereof or to entities controlled by such family members or to trusts for their benefit, provided (i) no Event of Default shall have occurred and be continuing hereunder or under any of the Loan Documents or any separate documents guarantying Grantor's payment and the performance of the Loan, (ii) Beneficiary is notified in writing of such proposed transfer and provided with such documentation evidencing the transfer and identity of the transferee as reasonably requested by Beneficiary, and (iii) Grantor reimburses Beneficiary for all fees and expenses including reasonable attorneys' fees associated with Beneficiary's review and documentation of the transfer, whether or not consummated. "Immediate Family Members" shall mean the spouse, siblings, children and grandchildren of each holder of an ownership interest in Grantor, as comprised on the date hereof.

Notwithstanding the provisions set forth above, a transfer of ownership interest in a Grantor (whether controlling or non-controlling) to non Immediate Family Members or an individual or entity not among the members of such Grantor as of the date hereof shall be considered a partial assumption. In such event, the new member must: (i) receive prior approval from Beneficiary, which approval shall be in Beneficiary's sole discretion; (ii) pay an assumption fee equal to one percent (1%) of the applicable Grantor's pro-rata liability share of the outstanding amount due under the Note at the time of such assumption times the percentage of ownership of the Mortgaged Premises being transferred to the new member (for example, if the outstanding principal balance of the Note is \$5,000,000.00 at the time of a proposed transfer of 50% of the ownership interest of a Grantor that owns 50% of the Mortgaged Premises, the assumption fee will be \$12,500.00 determined as follows:  $\$5,000,000.00 \times 1\% \times 50\% \times 50\% = \$12,500.00$ ); (iii) pay all expenses, including attorneys fees incurred by Grantor or Beneficiary in connection with such transfer; and (v) provide a reaffirmation of the obligations under the Guaranties and the Environmental Indemnification Agreement by the Existing Guarantors in form and content acceptable to Beneficiary.

(e) In all events, Beneficiary shall be notified in advance of any proposed transfer, and Grantor shall pay, or reimburse Beneficiary for, all costs and expenses, including attorneys' fees and expenses, associated with Beneficiary's review and documentation of any proposed transfer of the Mortgaged Premises or interests in Grantor, whether or not consummated. In no event shall the number of tenants in common exceed five (5) during the term of the Loan.

(f) Additionally, and notwithstanding the foregoing, provided Beneficiary has been given thirty (30) days advanced notice and the first right to provide Subordinate Financing

(defined below) and Beneficiary within such thirty (30) days period in its business judgment has declined to indicate that it would provide the Subordinate Financing, [to exercise its first right to provide the Subordinate Financing, Lender must only indicate that it will provide the Subordinate Financing within such thirty (30) day period subject to its normal terms and conditions and closing time frames with Lender proceeding in good faith and with due diligence], and provided there is no Event of Default and no event has occurred which with the passage of time or the giving of notice, or both, would be or become an Event of Default, Grantor may encumber the Mortgaged Premises with an additional deed of trust subordinate in every respect to the lien and interest of this Deed of Trust, for the purpose of securing secondary indebtedness to an institutional lender such as a bank or insurance company (the "Subordinate Financing"), provided that at the time of creation of the lien the following conditions have been satisfied as determined in Beneficiary's reasonable discretion:

(i) The total of the outstanding principal balance under the Note and the Subordinate Financing does not exceed seventy percent (70%) of the value of the Mortgaged Premises as established by a then-current MAI appraisal.

(ii) The annualized net operating income (for the purpose of this subparagraph, net operating income shall mean gross cash operating receipts from the Mortgaged Premises less normal and customary operating expenses incurred in the operation, management, and maintenance of the Mortgaged Premises) shall not be less than one hundred thirty percent (130%) of the combined aggregate of the payments due under the Note and the Subordinate Financing debt service payments.

(iii) The subordinate beneficiary, the documentation for the Subordinate Financing, and the form and terms of the Subordinate Financing are satisfactory in all respects to Beneficiary.

(iv) The Subordinate Financing must be upon terms providing for the full amortization thereof within twenty-five (25) years or less.

(v) The beneficiary of the deed of trust securing the Subordinate Financing shall expressly acknowledge the priority of the debt, liens and security interests of this Deed of Trust and agree to provide Beneficiary with written notice of any default under the Subordinate Financing at the same time as such notice is provided to Guarantor.

(vi) If the Subordinate Financing contains a covenant for recourse to the Grantor or guarantors of the Note ("Guarantors"), then Grantor and Guarantors agree that the Note and the Loan Documents shall be amended to also contain a covenant of recourse (the "Springing Guaranty") and shall execute a guaranty agreement satisfactory to Beneficiary. Beneficiary agrees to waive this provision if the Subordinate Financing totals no more than \$500,000.00 in the aggregate. Further, the Springing Guaranty shall automatically terminate upon payment in full of the Subordinate Financing so long as an Event of Default is not



continuing.

Any default under the Subordinate Financing shall at Beneficiary's option constitute an Event of Default under this Deed of Trust and the other Loan Documents. Grantor shall pay any fees, costs or expenses, including reasonable attorneys' fees, incurred by Beneficiary in connection with the Subordinate Financing.

Section 1-5. Covenants, Representations and Warranties of Grantor. Grantor hereby covenants, represents and warrants to Beneficiary that:

- (a) Grantor (i) is a limited liability company duly organized and validly existing under the laws of the state of its organization; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties make such qualification necessary, including Nebraska; and (iv) is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it.
- (b) The execution, delivery and performance by Grantor of this Deed of Trust, the Note, the Assignment and the other Loan Documents, and the borrowing evidenced by the Note: (i) are within the powers of Grantor; (ii) have been duly authorized by all requisite action; (iii) have received all necessary governmental approval; and (iv) will not violate any provision of law, any order of any court or other agency of government, or the organizational or chartering documents and agreements of Grantor.
- (c) This Deed of Trust, the Note, the Assignment and other Loan Documents constitute the legal, valid and binding obligations of Grantor and other obligors named therein, if any, enforceable in accordance with their respective terms.
- (d) Neither the execution and delivery of this Deed of Trust, the Note or the Assignment, the consummation of the transactions contemplated hereby, or thereby, nor the fulfillment of or compliance with the terms and conditions of this Deed of Trust, the Note or the Assignment, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Grantor is now a party or by which it is bound.
- (e) None of Grantor, any affiliate of Grantor, or any person owning an interest in Grantor or any such affiliate, is or will be an entity or person (i) listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 23, 2001 (the "Executive Order"), (ii) included on the most current list of "Specially Designated Nationals and Blocked Persons" published by the United States Treasury Department's Office of Foreign Assets Control ("OFAC") (which list may be published from time to time in various media including, but not limited to, the OFAC website page, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) which or who

commits, threatens to commit or supports “terrorism,” as that term is defined in the Executive Order, or (iv) affiliated with any entity or person described in clauses (i), (ii) or (iii) above (any and all parties or persons described in clauses (i) through (iv) are herein referred to individually and collectively as a “Prohibited Person”). Grantor covenants and agrees that none of Grantor, any affiliate of Grantor, or any person owning an interest in Grantor or any such affiliate, will (i) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order. Grantor further covenants and agrees to deliver (from time to time) to Beneficiary any such certification or other evidence as may be requested by Beneficiary in its sole and absolute discretion, confirming that (i) Grantor is not a Prohibited Person and (ii) Grantor has not engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

- (f) During the time the Note remains outstanding, Grantor (i) will not engage in any business unrelated to the Mortgaged Premises, (ii) will not have any assets other than those related to the Mortgaged Premises, (iii) will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation or merger, and, except as otherwise expressly permitted by the Loan Documents, will not engage in, seek or consent to any asset sale, transfer of ownership or equity interests, or amendment of its organizational documents (articles of organization or incorporation, certificate of limited partnership, operating agreement or bylaws, as the case may be), (iv) will not fail to correct any known misunderstanding regarding the separate identity of Grantor, (v) will not with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or all or any portion of such entity’s properties; (C) make any assignment for the benefit of such entity’s creditors; or (D) take any action to cause such entity to become insolvent, (vi) will maintain its financial statements, accounting records, and other entity documents separate from any other person or entity, (vii) will maintain its books, records, resolutions and agreements as official records, (viii) has not commingled and will not commingle its funds or assets with those of any other person or entity, (ix) has held and will hold its assets in its own name, (x) will conduct its business in its name, (xi) [Reserved], (xii) will pay its own liabilities out of its own funds and assets, (xiii) will observe all entity formalities, (xiv) has maintained and, except as otherwise expressly permitted or required by the Loan Documents, will maintain an arms-length relationship with its affiliates, (xv) will

have no indebtedness other than as evidenced by the Loan Documents. Subordination Financing and commercially reasonable unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Mortgaged Premises that are paid within sixty (60) days of the date incurred, (xvi) except as expressly permitted or required by the Loan Documents, will not assume or guarantee or become obligated for the debts of any other person or entity or hold out its credit as being available to satisfy the obligations of any other person or entity, except as evidenced by the Loan Documents, (xvii) will not acquire obligations or securities of its owners (members, partners, shareholders), (xviii) will allocate fairly and reasonably shared expenses, including, without limitation, shared office space and use separate stationery, invoices and checks, (xix) will not pledge its assets for the benefit of any other person or entity, (xx) will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity, (xxi) will not make loans to any person or entity, (xxii) will not identify its owners (members, partners, shareholders) or any affiliates of any of them as a division or part of it, (xxiii) except as otherwise expressly permitted or required by the Loan Documents, will not enter into or be a party to, any transaction with its owners (members, partners, shareholders) or its affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arms-length transaction with an unrelated third party, (xxiv) will pay the salaries of its own employees from its own funds, (xxv) will not make distributions from excess cash from operations which leaves the company without necessary cash to cover normal and current liabilities reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, and (xxvi) shall continue (and not dissolve) for so long as a solvent managing member, partner or shareholder exists.

## **ARTICLE TWO**

### **MAINTENANCE, OBLIGATIONS UNDER LEASES, TAXES AND LIENS, INSURANCE AND FINANCIAL REPORTS**

Section 2-1. Maintenance. Grantor will cause the Mortgaged Premises and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will abstain from and not permit the commission of waste in or about the Mortgaged Premises, and will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Premises and the manner of using or operating the same, and with all restrictive covenants, if any, affecting the title to the Mortgaged Premises, or any part thereof. Grantor also will from time to time make all necessary and proper repairs, renewals, replacements, additions and betterments thereto, so that the value and efficient use thereof shall be fully preserved and maintained and so as to comply with all laws and regulations as aforesaid. Grantor will not otherwise make any material modifications to the Mortgaged Premises without the written consent of Beneficiary.

If Beneficiary has reasonable cause to believe that the Mortgaged Premises is not in compliance with applicable laws and regulations (including environmental, health and safety laws and regulations), at the request of Beneficiary, from time to time, Grantor, at its sole cost and expense will furnish Beneficiary with engineering studies and soil tests with respect to the Mortgaged Premises, the form, substance and results of which shall be satisfactory and certified to Beneficiary. If any such engineering studies or soil tests indicate any violation or potential violation, of environmental, health, safety or similar laws or regulations, then Grantor, at its sole cost and expense, will promptly take whatever corrective action is necessary to assure the Mortgaged Premises is in full compliance with law.

Section 2-2. Lease Obligations. Grantor has, concurrently herewith, executed and delivered to Beneficiary the Assignment, wherein and whereby, among other things, Grantor has assigned to Beneficiary all of the rents, issues and profits and any and all leases and the rights of management of the Mortgaged Premises, all as therein more specifically set forth, which Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. Grantor agrees that it will duly perform and observe all of the terms and provisions on the landlord's part to be performed and observed under any and all leases of the Mortgaged Premises and that it will refrain from any action or inaction which would result in the termination by the tenants thereunder of any such leases or in the diminution of the value thereof or of the rents, issues, profits and revenues thereunder. Nothing herein contained shall be deemed to obligate Beneficiary to perform or discharge any obligation, duty or liability of landlord under any lease of the Mortgaged Premises, and Grantor shall and does hereby agree to indemnify and hold Beneficiary harmless from any and all liability, loss or damage which Beneficiary may or might incur under any lease of the Mortgaged Premises or by reason of the Assignment; and any and all such liability, loss or damage incurred by Beneficiary, together with the costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in the defense of any claims or demands therefor (whether successful or not), shall be so much additional indebtedness hereby secured, and Grantor shall reimburse Beneficiary therefor on demand, together with interest at a rate equal to Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law, until paid.

Grantor shall not lease or sublease any portion of the Mortgaged Premises without the prior written consent of Beneficiary, nor will Grantor permit or enter into any sublease, assignment, modification, amendment or termination of any prior approved lease or sublease without the prior written consent of Beneficiary; provided, however, Beneficiary's consent shall not be required with respect to any lease that (i) demises less than 7,500 square, (ii) provides for rent of at least \$17.50 (gross) per square foot and (iii) has a term of less than ten (10) years (all three criteria must be satisfied). Any such required consent of Beneficiary shall not be unreasonably withheld or delayed, and such consent shall be deemed granted if Beneficiary does not provide written notice of its disapproval within ten (10) business days after Beneficiary's receipt of Grantor's request for Beneficiary's consent.

Section 2-3. Taxes, Other Governmental Charges, Liens and Utility Charges. Grantor shall, before any penalty attaches thereto, pay and discharge or cause to be paid and discharged all taxes, assessments, utility charges and other governmental charges imposed upon or against the Mortgaged Premises or upon or against the Note and the indebtedness secured hereby, and

will not suffer to exist any mechanic's, statutory or other lien on the Mortgaged Premises or any part thereof unless consented to by Beneficiary in writing. If Beneficiary is required by legislative enactment or judicial decision to pay any such tax, assessment or charge, then at the option of Beneficiary, the Note and any accrued interest thereon together with any additions to the mortgage debt shall be and become due and payable at the election of Beneficiary upon notice of such election to Grantor; provided, however, said election shall be unavailing and this Deed of Trust and the Note shall be and remain in effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Grantor lawfully pays such tax, assessments or charge to or for Beneficiary. Copies of paid tax and assessment receipts shall be furnished to Beneficiary not less than ten (10) days prior to the delinquent dates.

Nothing in this Section shall require the payment or discharge of any obligation imposed upon Grantor by this Section so long as Grantor, upon first notifying Beneficiary of its intent to do so, shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceeding which permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless Beneficiary shall notify Grantor that, in its opinion, by nonpayment of any such items, the lien of the Deed of Trust as to any part of the Mortgaged Premises will be materially endangered or the Mortgaged Premises, or any part thereof, will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly.

Section 2-4. Insurance.

(a) Grantor shall procure and maintain continuously in effect with respect to the Mortgaged Premises policies of insurance against such risks and in such amounts as are customary for a prudent owner of property comparable to that comprising the Mortgaged Premises. Irrespective of, and without limiting the generality of the foregoing provision, Grantor shall specifically maintain the following insurance coverages:

(i) Direct damage insurance providing "special form" or "other perils" coverage, including but not limited to coverage for the following risks of loss:

- (A) Fire
- (B) Extended Coverage Perils
- (C) Vandalism and Malicious Mischief

on a replacement cost basis in an amount equal to the full insurable value thereof ("full insurable value" shall include the actual replacement cost of all buildings and improvements and the contents therein, without deduction for depreciation, architectural, engineering, legal and administrative fees).

The policies required by this Paragraph (i) shall be either subject to no coinsurance clause or contain an agreed amount clause and may include a deductibility provision not exceeding Ten Thousand Dollars (\$10,000.00).

(ii) Commercial general liability insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Mortgaged Premises or any part thereof, in the maximum amounts required by any of the leases of the Mortgaged Premises, but in no event less than a minimum annual aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00), provided that the requirements of this paragraph (ii) with respect to the amount of insurance may be satisfied by an excess coverage policy.

(iii) Business interruption or loss of rental income insurance in an amount equal to not less than the gross revenue from the Mortgaged Premises for twelve (12) months from the operation and rental of all improvements now or hereafter forming part of the Mortgaged Premises, based upon one hundred percent (100%) occupancy of such improvements naming Beneficiary in a standard mortgagee loss payable clause thereunder.

(iv) Insurance against such other casualties and contingencies as Beneficiary may from time to time require, if such insurance against such other casualties and contingencies is available, all in such manner and for such amounts as may be reasonably satisfactory to Beneficiary.

(b) All insurance provided for in Subsection (a) shall be effective under a valid and enforceable policy or policies issued by an insurer of recognized responsibility approved by Beneficiary (an insurer with a Best Class rating of at least A-/VIII shall be deemed approved).

(c) All policies of insurance required in Subsections (a)(i) and (iii) shall be written in the names of Grantor and Beneficiary as their respective interests may appear. These policies shall provide that the proceeds of such insurance shall be payable to Beneficiary pursuant to a standard mortgagee clause to be attached to each such policy.

(d) Grantor shall deposit with Beneficiary policies evidencing all such insurance, or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. At least seven (7) days prior to the date the premiums on each such policy shall become due and payable, Beneficiary shall be furnished with proof of such payment reasonably satisfactory to it. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel, refuse to renew or materially modify it without giving written notice to Beneficiary at least thirty (30) days before the cancellation, non-renewal or modification becomes effective. Before the expiration of any policy of insurance herein required, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary that the policy has been renewed or replaced by another policy conforming to the provisions of this Article or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Grantor may maintain blanket policies having the coverage required herein, in which event it shall deposit with Beneficiary a certificate or certificates of the respective insurance as to the amount of coverage in force on the Mortgaged Premises.

Section 2-5. Advances. If Grantor shall fail to comply with any of the terms, covenants and conditions herein with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Premises in repair, or any other term, covenant or condition herein contained, Beneficiary may make advances to perform the same and, where necessary, enter the Mortgaged Premises for the purpose of performing any such term, covenant or condition, and without limitation of the foregoing, Beneficiary may procure and place insurance coverage in accordance with the requirements of this Section. Grantor agrees to repay all sums so advanced upon demand, with interest at a rate equal to Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law, until paid. All sums so advanced, with interest, shall be secured hereby in priority to the indebtedness evidenced by the Note, but no such advance shall be deemed to relieve Grantor from any default hereunder. After making any such advance, payments made pursuant to the Note shall be first applied toward reimbursement for any such advance and interest thereon, prior to the application toward accrued interest and principal payments due pursuant to the Note.

Section 2-6. Financial Information. Grantor shall furnish Beneficiary (a) within ninety (90) days after the close of each fiscal year of the operation of the Mortgaged Premises, an annual operating statement of Grantor in form and detail satisfactory to Beneficiary, prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and signed by a Certified Public Accountant acceptable to Beneficiary or supported by affidavit of a principal in the ownership of the Mortgaged Premises; and (b) from time to time such other information in the possession of Grantor or subject to its control, in such detail as Beneficiary may require, as will enable Beneficiary to determine whether Grantor is in compliance with the provisions of the Note and of this Deed of Trust.

Section 2-7. Use of Mortgaged Premises. Grantor shall furnish and keep in force a Certificate of Occupancy, or its equivalent, and comply with all restrictions affecting the Mortgaged Premises and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (whether Federal, State or local), exercising any power of regulation or supervision over Grantor, or any part of the Mortgaged Premises, whether the same be directed to the erection, repair, manner of use or structural alteration of buildings or otherwise. Grantor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof, nor shall Grantor initiate, join in, acquiesce in, or consent to any zoning change or zoning matter affecting the Mortgaged Premises. If under applicable zoning provisions the use of all or any portion of the Mortgaged Premises is or shall become a nonconforming use, Grantor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Beneficiary. Grantor shall not permit or suffer to occur any waste on or to the Mortgaged Premises or to any portion thereof and shall not take any steps whatsoever to convert the Mortgaged Premises, or any portion thereof, to a condominium or cooperative form of management. Grantor will not install or permit to be installed on the Mortgaged Premises any underground storage tank.

Section 2-8. Escrows. Grantor shall pay to Beneficiary, together with and in addition to the monthly payments of principal and interest provided for in the Note (which shall be by

Automated Clearing House if provided for in the Note for installment payments thereunder), an amount reasonably estimated by Beneficiary to be sufficient to pay one twelfth (1/12) of the estimated annual real estate taxes (including other charges against the Mortgaged Premises by governmental or quasi-governmental bodies but excluding special assessments which are to be paid as the same become due and payable) and one-twelfth (1/12) of the annual premiums on insurance required in Section 2-4 hereof to be held by Beneficiary and used to pay said taxes and insurance premiums when same shall fall due; provided that upon the occurrence of an Event of Default, Beneficiary may apply such funds as Beneficiary shall deem appropriate. If at the time that payments are to be made, the funds set aside for payment of either taxes or insurance premiums are insufficient, Grantor shall upon demand pay such additional sums as Beneficiary shall determine to be necessary to cover the required payment. Beneficiary need not segregate such funds. No interest shall be payable to Grantor upon any such payments.

Notwithstanding the foregoing, Beneficiary waives the collection of escrow deposits for insurance for so long as all of the following conditions are complied with:

- (a) no Event of Default (as defined in Section 4-1) has occurred and is continuing;
- (b) the ownership and management of the Mortgaged Premises remain as constituted as of the date hereof;
- (c) Beneficiary has received an ACORD 28 Evidence of Commercial Property Insurance (2003 form) and an ACORD 25 Certificate of Liability Insurance (covering all types of insurance required by Beneficiary) before the expiration date of insurance policies then in force; and
- (d) Beneficiary receives satisfactory evidence of payment of insurance premiums before the expiration date of the policies then in force.

Section 2-9. Environmental Matters.

(a) Definitions. As used herein, the following terms will have the meaning set forth below:

- (i) Environmental Law means and includes any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Mortgaged Premises, including without limitation each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.*; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 *et seq.*; the Toxic Substance Control Act, as amended, 15 U.S.C. sections 2601 *et seq.*; the Clean Air Act, as amended; 42 U.S.C. sections 1857 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.*; the Federal Hazardous Materials Transportation Act, 49 U.S.C. sections 5101 *et seq.*; and the rules, regulations and ordinances of the U.S.



Environmental Protection Agency and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Mortgaged Premises or the use or operation of the Mortgaged Premises.

(ii) Hazardous Substance means and includes: (A) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “pollutants,” “hazardous waste,” or “solid waste” in any Environmental Law; (B) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 C.F.R. § 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and any amendments thereto); (C) those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (D) any material, waste or substance which is any of the following: (1) asbestos; (2) polychlorinated biphenyl; (3) designated or listed as a “hazardous substance” pursuant to sections 307 or 311 of the Clean Water Act (33 U.S.C. sections 1251 *et seq.*); (4) explosive; (5) radioactive; (6) a petroleum product; (7) infectious waste; or (8) mold or mycotoxins. The term “Permitted Hazardous Substance” means commercially sold products otherwise within the definition of the term “Hazardous Substance,” but (a) that are used or disposed of by Grantor or used or sold by tenants of the Mortgaged Premises in the ordinary course of their respective businesses, (b) the presence of which product is not prohibited by applicable Environmental Law, and (c) the use and disposal of which are in all respects in accordance with applicable Environmental Law.

(iii) Enforcement or Remedial Action means any action taken by any person or entity in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law.

(iv) Environmental Liability means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys’ fees and disbursements, resulting from or arising out of the violation or alleged violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.

(v) Release means any release, spill, discharge, leak, disposal or emission.

(b) Representations, Warranties and Covenants. Grantor represents, warrants, covenants and agrees as follows:

(i) Neither Grantor nor, to the best of its knowledge, the Mortgaged Premises or any occupant thereof are in violation of, or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to, any Environmental Law. Grantor shall not cause or permit the Mortgaged Premises to be in violation of, or do anything which would subject the Mortgaged Premises to any remedial obligations under, any Environmental Law, and shall promptly notify Beneficiary in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Grantor shall provide Beneficiary with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Grantor's giving or receiving of same.

(ii) There are no underground storage tanks, radon, asbestos materials, polychlorinated biphenyls or urea formaldehyde insulation present at or installed in the Mortgaged Premises. Grantor covenants and agrees that if any such materials are found to be present at the Mortgaged Premises, Grantor shall remove or remediate the same promptly upon discovery at its sole cost and expense and in accordance with Environmental Law.

(iii) Grantor has taken all customary and appropriate steps necessary to determine and has determined that there has been no Release of any Hazardous Substance (other than Permitted Hazardous Substances) at, upon, under or within the Mortgaged Premises. The use which Grantor or any other occupant of the Mortgaged Premises makes or intends to make of the Mortgaged Premises will not result in Release of any Hazardous Substance (other than Permitted Hazardous Substances) on or to the Mortgaged Premises. During the term of this Deed of Trust, Grantor shall take all customary and appropriate steps necessary to determine whether there has been a Release of any Hazardous Substance on or to the Mortgaged Premises and if Grantor finds a Release has occurred, Grantor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(iv) None of the real property owned and/or occupied by Grantor and located in Nebraska, including without limitation the Mortgaged Premises, has ever been used by the present or previous owners and/or operators or will be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances (other than a Permitted Hazardous Substance).

(v) Grantor has not received any notice of violation, request for information, summons, citation, directive or other communication, written or oral, from any Nebraska department of environmental protection (howsoever

designated) or the United States Environmental Protection Agency concerning any intentional or unintentional act or omission on Grantor's or any occupant's part resulting in the Release of Hazardous Substances into the waters or onto the lands within the jurisdiction of the State of Nebraska or into the waters outside the jurisdiction of the State of resulting in damage to the lands, waters, fish, shellfish, wildlife, biota, air or other resources owned, managed, held in trust or otherwise controlled by or within the jurisdiction of the State of Nebraska.

(vi) The real property owned and/or occupied by Grantor and located in Nebraska, including without limitation the Mortgaged Premises: (a) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (b) does not have any Hazardous Substances present (other than a Permitted Hazardous Substance).

(vii) Grantor will and will cause its tenants to operate the Mortgaged Premises in compliance with all Environmental Laws and will not place or permit to be placed any Hazardous Substances (other than a Permitted Hazardous Substance) on the Mortgaged Premises.

(viii) No lien has been attached to or threatened to be imposed upon any revenue from the Mortgaged Premises, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Grantor nor any other party has been, is or will be involved in operations at the Mortgaged Premises which could lead to the imposition of Environmental Liability on Grantor, or on any subsequent or former owner of the Mortgaged Premises, or the creation of an environmental lien on the Mortgaged Premises. In the event that any such lien is filed, Grantor shall, within (30) days from the date that Grantor is given notice of such lien (or within such shorter period of time as is appropriate in the event that the State of Nebraska or the United States has commenced steps to have the Mortgaged Premises sold), either: (A) pay the claim and remove the lien from the Mortgaged Premises; or (B) furnish a cash deposit, bond or other security satisfactory in form and substance to Beneficiary in an amount sufficient to discharge the claim out of which the lien arises.

(ix) In the event that Grantor shall cause or permit to exist a Release of Hazardous Substances into the waters or onto the lands within the jurisdiction of the State of Nebraska, or into the waters outside the jurisdiction of the State of Nebraska resulting in damage to the lands, waters, fish, shellfish, wildlife, biota, air or other resources owned, managed, held in trust or otherwise controlled by or within the jurisdiction of the State of Nebraska, without having obtained a permit issued by the appropriate governmental authorities, Grantor shall promptly clean up such Release in accordance with the provisions of all Environmental Laws.

(c) Right to Inspect and Cure. Beneficiary shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as

Beneficiary shall deem necessary or advisable from time to time at the sole cost and expense of Grantor; provided, however, that Grantor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (i) no Event of Default exists, and (ii) Beneficiary has no cause to believe in its sole judgment that there has been a Release or threatened Release of Hazardous Substances at the Mortgaged Premises or that Grantor or the Mortgaged Premises is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Grantor as aforesaid, shall be added to the indebtedness secured hereby and shall be secured by this Deed of Trust. Grantor shall, and shall cause each tenant of the Mortgaged Premises to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Mortgaged Premises. In the event that Grantor fails to comply with any Environmental Law, Beneficiary may, in addition to any of its other remedies under this Deed of Trust, cause the Mortgaged Premises to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Deed of Trust in accordance with the provisions of Article Five hereof.

(d) Indemnification. Grantor shall protect, indemnify, defend, and hold harmless Beneficiary and its shareholders, directors, officers, employees, agents, successors and assigns from and against any and all loss, injury, damage, cost, expense and liability (including without limitation reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to (i) the installation, use, generation, manufacture, production, storage, Release, threatened Release, discharge, disposal or presence of a Hazardous Substance on, under or about the Mortgaged Premises, or (ii) the presence of any underground storage tank on, under or about the Mortgaged Premises, or (iii) any Environmental Liability; including without limitation: (A) all consequential damages; (B) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Premises; and (C) the preparation and implementation of any closure, remedial or other required plans. The foregoing agreement to indemnify, defend and hold harmless Beneficiary expressly includes, but is not limited to, any losses, liabilities, damages, injuries, costs, expenses and claims suffered or incurred by Beneficiary upon or subsequent to Beneficiary becoming owner of the Mortgaged Premises through foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise, excepting only such losses, liabilities, damages, injuries, costs, expenses and claims which are caused by or arise out of actions taken by Beneficiary, or by those contracting with Beneficiary, subsequent to Beneficiary taking possession or becoming owner of the Mortgaged Premises. The indemnity evidenced hereby shall survive the satisfaction, release or extinguishment of the lien of this Deed of Trust, including without limitation any extinguishment of the lien of this Deed of Trust by foreclosure or deed in lieu thereof.

(e) Remediation. If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably desirable (in the case of an operation and maintenance program or similar monitoring or preventative programs) or necessary, both as determined by an independent environmental consultant selected by Beneficiary under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air,

soil, groundwater, or surface water at, on, about, under or within the Mortgaged Premises or any portion thereof, Grantor shall within thirty (30) days after written demand by Beneficiary for the performance (or within such shorter time as may be required under applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work to the extent required by law. All Remedial Work shall be performed by contractors approved in advance by Beneficiary (which approval in each case shall not be unreasonably withheld or delayed) and under the supervision of a consulting engineer approved in advance by Beneficiary (which approval in each case shall not be unreasonably withheld or delayed). All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Beneficiary's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Grantor. If Grantor shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, Beneficiary may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Beneficiary's counsel), shall be paid by Grantor to Beneficiary forthwith after demand and shall be a part of the indebtedness secured hereby.

(f) Survival. All warranties and representations above shall be deemed to be continuing and shall remain true and correct in all material respects until all of the indebtedness secured hereby has been paid in full and any limitations period expires. Grantor's covenants above shall survive any exercise of any remedy by Beneficiary hereunder or under any other instrument or document now or hereafter evidencing or securing the said indebtedness, including foreclosure of this Deed of Trust (or deed in lieu thereof), even if, as a part of such foreclosure or deed in lieu of foreclosure, the said indebtedness is satisfied in full and/or this Deed of Trust shall have been released.

### **ARTICLE THREE**

#### **DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 3-1. Application of Insurance Proceeds. All proceeds of insurance maintained pursuant to Subsections (a)(i) and (iii) of Section 2-4 hereof shall be paid to Beneficiary and shall be applied first to the payment of all costs and expenses incurred by Beneficiary in obtaining such proceeds and, second, at the option of Beneficiary, either: (a) to the reduction of the indebtedness hereby secured (without any otherwise applicable prepayment premium); or (b) to the restoration or repair of the Mortgaged Premises, without affecting the lien of this Deed of Trust or the obligations of Grantor hereunder. Beneficiary is authorized at its option to compromise and settle all loss claims on said policies. Any such application to the reduction of the indebtedness hereby secured shall not reduce or postpone the monthly payments otherwise required pursuant to the Note. No interest shall be payable to Grantor on the insurance proceeds while held by Beneficiary.

Section 3-2. Application of Condemnation Award. Should any of the Mortgaged Premises be taken by exercise of the power of eminent domain, any award or consideration for

the property so taken shall be paid over to Beneficiary and shall be applied first to the payment of all costs and expenses incurred by Beneficiary in obtaining such award or consideration and, second, at the option of Beneficiary, either: (a) to the reduction of the indebtedness hereby secured (without any otherwise applicable prepayment premium); or (b) to the restoration or repair of the Mortgaged Premises, without affecting the lien of this Deed of Trust or the obligations of Grantor hereunder. Beneficiary is authorized at its option to compromise and settle all awards or consideration for the property so taken. Any such awards, if applied to the reduction of indebtedness, shall not reduce or postpone the monthly payments otherwise required pursuant to the Note. No interest shall be payable to Grantor on any award while held by Beneficiary.

Section 3-3. Beneficiary to Make Proceeds Available. Notwithstanding the provisions of Sections 3-1 and 3-2 above, in the event of insured damage to the Mortgaged Premises or in the event of a taking by eminent domain of only a portion of the Mortgaged Premises, and provided that: (a) the portion remaining can with restoration or repair continue to be operated for the purposes utilized immediately prior to such damage or taking, (b) the appraised value of the Mortgaged Premises after such restoration or repair shall not have been reduced from the appraised value as of the date hereof, (c) no Event of Default exists hereunder, and (d) the leases require Grantor to restore or repair the Mortgaged Premises and the leases remain in full force and effect and the tenants thereunder certify to Beneficiary their intention to remain in possession of the leased premises without any reduction in rental payments (other than temporary abatements during the period of restoration and repair); Beneficiary agrees to make the insurance proceeds or condemnation awards available for such restoration and repair, except for proceeds payable pursuant to Section 2-4(a)(iii). Beneficiary may, at its option, hold such proceeds or awards in escrow (subject to the following paragraph) until the required restoration and repair has been satisfactorily completed, and all costs and expenses incurred by Beneficiary in administering the same, including without limitation any costs of inspection, shall be paid or reimbursed by Grantor. No interest shall be payable to Grantor with respect to any such escrow.

In the event insurance proceeds or condemnation awards are made available for restoration in accordance with the foregoing, such proceeds shall be made available, from time to time, upon Beneficiary being furnished with such information, documents, instruments and certificates as Beneficiary may require, including, but not limited to, satisfactory evidence of the estimated cost of completion of the repair or restoration of the Mortgaged Premises, such architect's certificates, waivers of lien, contractor's sworn statements and other evidence of cost and of payments, including, at the option of Beneficiary, insurance against mechanics' liens and/or a performance bond or bonds in form satisfactory to Beneficiary, with premium fully prepaid, under the terms of which Beneficiary shall be either the sole or dual obligee, and which shall be written with such surety company or companies as may be satisfactory to Beneficiary, and all plans and specifications for such rebuilding or restoration which shall be subject to approval by Beneficiary. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds, plus additional funds deposited by Grantor remaining in the hands of Beneficiary shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

## ARTICLE FOUR

### DEFAULT PROVISIONS AND REMEDIES OF BENEFICIARY

Section 4-1. Events of Default. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by Grantor to pay when due (including any applicable grace period) any amounts required to be paid hereunder (including without limitation real estate taxes and escrow payments) or under the Note at the time specified herein or therein; or

(b) an event as to which Beneficiary elects to accelerate the Loan as provided for in Section 1-4 above ("Due on Sale or Encumbrance") or failure by Grantor to observe and perform the covenants, conditions and agreements set forth in Section 2-4 above ("Insurance"); or

(c) failure by Grantor to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Deed of Trust or the Note other than as referred to in (a) and (b) above, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to Grantor by Beneficiary unless Beneficiary shall agree in writing to an extension of such time prior to its expiration; or

(d) any representation or warranty made in writing by or on behalf of Grantor in this Deed of Trust or the other Loan Documents, any financial statement, certificate, or report furnished in order to induce Beneficiary to make the loan secured by this Deed of Trust, shall prove to have been false or incorrect in any material respect, or materially misleading as of the time such representation or warranty was made; or

(e) Grantor shall:

(i) admit in writing its inability to pay its debts generally as they become due; or

(ii) file a petition in bankruptcy to be adjudicated a voluntary bankrupt or file a similar petition under any insolvency act, or

(iii) make an assignment for the benefit of its creditors, or

(iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(f) Grantor shall file a petition or answer seeking reorganization or arrangement of Grantor under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(g) Grantor shall, on a petition in bankruptcy filed against it, be adjudicated a bankrupt or if a court of competent jurisdiction shall enter an order or decree appointing without the consent of Grantor a receiver or trustee of Grantor or of the whole or substantially all of its property, or approving a petition filed against it seeking reorganization or arrangement of Grantor under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof, and such adjudication, order or decree shall not be vacated or set aside or stayed within ninety (90) days from the date of the entry thereof; or

(h) any Borrower (as defined in the Note) who is a natural person dies or any Borrower that is an entity dissolves or otherwise ceases to exist; or

(i) a guarantor of any of the obligations secured by this Deed of Trust shall repudiate such guarantor's obligations; or any such individual guarantor shall die, or any such entity guarantor shall dissolve or otherwise cease to exist, unless within sixty (60) days after such death, or prior to such dissolution or cessation, a substitute guarantor satisfactory to Beneficiary shall become liable to Beneficiary by executing a guaranty agreement satisfactory to Beneficiary; or

(j) an event of default has occurred under any of the Loan Documents and the period for cure thereof, if any, has elapsed without cure; or

(k) the filing of a petition to a court or commencement of any other action for partition of the Mortgaged Premises; or

(l) if Grantor shall be in default of, or in violation of, beyond any applicable grace period, any conditions, covenants or restrictions that benefit or burden the Mortgaged Premises.

Section 4-2. Acceleration. Upon the occurrence of an Event of Default, Beneficiary may declare the principal of and the accrued interest of the Note, and including all sums advanced hereunder with interest, to be forthwith due and payable, and thereupon the Note, including both principal and all interest accrued thereon, and including all sums advanced hereunder and interest thereon, shall be and become immediately due and payable without presentment, demand or further notice of any kind.

Section 4-3. Remedies of Beneficiary. Upon the occurrence and continuance of an Event of Default, or in case the principal of the Note shall have become due and payable, whether by lapse of time or by acceleration, then and in every such case Beneficiary may proceed to protect and enforce its right by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in the Assignment, or the Note, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Deed of Trust, or for the enforcement of any other appropriate legal or equitable remedy, including, but not limited to, exercising all rights and remedies available under Neb. Rev. Stat. 52-1701 et. seq.

In case of any sale of the Mortgaged Premises pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, Beneficiary, its successors or assigns, may become the purchaser, and for the purpose of making



settlement for or payment of the purchase price, shall be entitled to turn in and use the Note and any claims for interest matured and unpaid thereon, together with additions to the mortgage debt, if any, in order that such sums may be credited as paid on the purchase price.

Each and every power or remedy herein specifically given shall be in addition to every other power or remedy, existing or implied, given now or hereafter existing at law or in equity, and each and every power and remedy herein specifically given or otherwise so existing may be exercised from time to time and as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission of Beneficiary in the exercise of any right or power accruing hereunder shall impair any such right or power or be construed to be a waiver of any default or acquiescence therein.

Section 4-4. Appointment of Receiver or Fiscal Agent. After the happening of any Event of Default and during its continuance or upon the commencement of any non-judicial or judicial proceedings to exercise the power of sale or foreclose this Deed of Trust or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of Beneficiary, Beneficiary shall be entitled, as a matter of right, if it shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the mortgage indebtedness, forthwith either before or after declaring the unpaid principal of the Note to be due and payable, to the appointment of a receiver or receivers or a fiscal agent or fiscal agents.

Section 4-5. Proceeds of Sale. In any suit to foreclose the lien of this Deed of Trust, there shall be allowed and included in the decree for sale, to be paid out of the rents or the proceeds of such sale:

(a) all principal and interest remaining unpaid on the Note and secured hereby with interest at Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law from the date due until paid;

(b) all late charges, if any, and all other items advanced or paid by Beneficiary pursuant to this Deed of Trust, with interest at Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law from the date of advancement until paid; and

(c) all court costs, attorney's fees, appraiser's fees, environmental audits, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantee policies, Torrens certificates and similar data with respect to title which Beneficiary may deem necessary. All such expenses shall become additional indebtedness secured hereby and immediately due and payable, with interest at Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law, when paid or incurred by Beneficiary in connection with any proceeding, including probate and bankruptcy proceedings, to which Beneficiary shall be a party, either as plaintiff, claimant or defendant, by reason of this Deed of Trust or any indebtedness

hereby secured or in connection with preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose, whether or not actually commenced.

The proceeds of any foreclosure sale shall be distributed and applied to the items described in (a), (b) and (c) of this Section, inversely to the order of their listing unless otherwise required by law.

Section 4-6. Waiver of Events of Default; Forbearance. Beneficiary may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of principal. No forbearance by Beneficiary in the exercise of any right or remedy hereunder shall affect the ability of Beneficiary to thereafter exercise any such right or remedy.

Section 4-7. Waiver of Extension, Marshalling; Other. Grantor hereby waives to the full extent lawfully allowed the benefit of any appraisal, homestead, moratorium, stay and extension laws now or hereafter in force. Grantor hereby further waives any rights available with respect to marshalling of assets so as to require the separate sales of any portion of the Mortgaged Premises, or as to require Beneficiary to exhaust its remedies against a specific portion of the Mortgaged Premises before proceeding against any other, and does hereby expressly consent to and authorize the sale of the Mortgaged Premises as a single unit or parcel. To the maximum extent permitted by law, Grantor irrevocably and unconditionally WAIVES and RELEASES any present or future rights (a) of reinstatement or redemption, (b) that may exempt the Mortgaged Premises from any civil process, (c) to appraisal or valuation of the Mortgaged Premises, (d) to extension of time for payment, (e) that may subject Beneficiary's exercise of its remedies to the administration of any decedent's estate or to any partition or liquidation action, (f) to any homestead and exemption rights provided by the Constitution and laws of the United States and of Nebraska, (g) to notice of acceleration or notice of intent to accelerate (other than as expressly stated herein), and (h) that in any way would delay or defeat the right of Beneficiary to cause the sale of the Mortgaged Premises for the purpose of satisfying the obligations secured hereby. Grantor agrees that the price paid at a lawful foreclosure sale, whether by Beneficiary or by a third party, and whether paid through cancellation of all or a portion of the Note or in cash, may be used to establish the value of the Mortgaged Premises.

Section 4-8. Foreclosure; Power of Sale; Expense of Litigation.

(i) When the indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, Beneficiary shall have the right to foreclose the lien hereof for such indebtedness or part thereof in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Premises secured by the Deed of Trust may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon Trustee hereunder. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable attorneys' fees, appraiser's fees, 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 the title as Beneficiary may deem reasonably

necessary either to prosecute such action to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Mortgaged Premises and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorneys employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Mortgaged Premises, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Grantor, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Deed of Trust.

(ii) In the event that the Mortgaged Premises is sold pursuant to the power of sale conferred upon Trustee hereunder, Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Premises. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Grantor, shall sell the Mortgaged Premises, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Premises by public announcement at the time and place of sale, and from time to time thereafter, as permitted pursuant to the provisions of the Nebraska Trust Deeds Act, may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value and without notice. Any person, including Grantor, Trustee or Beneficiary, may purchase at such sale. Trustee shall apply the proceeds of Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent (5%) of the indebtedness unpaid at the time of recording the notice of default, second, to the payment of the indebtedness evidenced by the Note and secured by this Deed of Trust, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

(iii) Grantor agrees, for itself and any and all persons or concerns claiming by, through or under Grantor, that if it, or any one or more of them, shall hold possession of the Mortgaged Premises, or any part thereof, subsequent to foreclosure hereunder, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the Mortgaged Premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

(iv) Request for Notices: Grantor requests that copies of any notice of default and notice of sale hereunder be provided to Grantor at its address set forth in this instrument.

Section 4-9. Costs of Collection. If the Note is placed in the hands of an attorney for collection by suit or otherwise, or to enforce its collection, or to protect the security for its payment, Grantor immediately and without demand, will pay all costs of collection and litigation together with reasonable attorneys' fees. In the event of a judgment on the Note, Grantor agrees to pay to Beneficiary on demand all costs and expenses incurred by Beneficiary in satisfying such judgment, including without limitation, reasonable fees and expenses of Beneficiary's counsel, including taxes and post judgment insurance. It being expressly understood that such agreement by Grantor to pay the aforesaid post-judgment costs and expenses of Beneficiary is absolute and unconditional and (i) shall survive (and not merge into) the entry of a judgment for amounts owing hereunder and (ii) shall not be limited regardless of whether the Note or other obligation of Grantor or a guarantor, as applicable, is secured or unsecured, and regardless of whether Beneficiary exercises any available rights or remedies against any collateral pledged as security for the Note and shall not be limited or extinguished by merger of the Note, Deed of Trust or other loan documents into a judgment of foreclosure or other judgment of a court of competent jurisdiction, and shall remain in full force and effect post judgment and shall continue in full force and effect with regard to any subsequent proceedings in a court of competent jurisdiction including but not limited to bankruptcy court and shall remain in full force and effect after collection of such foreclosure or other judgment until such fees and costs are paid in full. Such fees or costs shall be added to Beneficiary's lien on the Mortgaged Premises that shall also survive post foreclosure or other judgment and post collection of said judgment.

## ARTICLE FIVE

### BENEFICIARY AND TRUSTEE

Section 5-1. Right of Beneficiary to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon any part of the Mortgaged Premises or any insurance premium with respect thereto is not paid, to the extent, if any, that the same is legally payable, Beneficiary may pay such tax, assessment, governmental charge or premium, without prejudice, however, to any rights of Beneficiary hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate equal to Twelve percent (12%) per annum or, if less, the highest legal rate permitted under applicable law, until paid, shall be repaid to Beneficiary upon demand and shall become so much additional indebtedness secured by this Deed of Trust, and the same shall be given a preference in payment over principal of or interest on the Note, but Beneficiary shall be under no obligation to make any such payment.

Section 5-2. Reimbursement of Beneficiary. If any action or proceeding be commenced (except an action to foreclose this Deed of Trust), to which action or proceeding Beneficiary is made a party, or in which it becomes necessary, in Beneficiary's reasonable opinion, to defend or uphold the lien of this Deed of Trust, or to protect the Mortgaged Premises or any part thereof, all reasonable sums paid by Beneficiary to establish or defend the rights and lien of this Deed of Trust or to protect the Mortgaged Premises or any part thereof (including reasonable attorneys' fees, and costs and allowances) and whether suit be brought or not, shall be paid, upon demand, to Beneficiary by Grantor, together with interest at a rate equal to Twelve percent (12%) per

annum or, if less, the highest legal rate permitted under applicable law, until paid. Any such sum or sums and the interest thereon shall be secured hereby in priority to the indebtedness evidenced by the Note.

Section 5-3. Release of Mortgaged Premises. Beneficiary shall have the right at any time, and from time to time, at its discretion to release from the lien of this Deed of Trust all or any part of the Mortgaged Premises without in any way prejudicing its rights with respect to all of the Mortgaged Premises not so released.

Section 5-4. Substitute Trustee. If, for any reason, Beneficiary prefers to appoint a substitute Trustee hereunder, Beneficiary may, from time to time, by written instrument, appoint one or more substitute Trustees, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by anyone acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority.

Section 5-5. Indemnification of Trustee. Except for willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by Trustee in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. Grantor hereby indemnifies Trustee against all liability and expenses that Trustee may incur in the performance of Trustee's duties hereunder.

Section 5-6. Reconveyance Upon Payment and Discharge of Grantor's Obligations. Upon written request of Beneficiary stating all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Mortgaged Premises then held hereunder. The recitals and such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

## ARTICLE SIX

### SECURITY AGREEMENT

Section 6-1. Security Agreement and Financing Statement Under Uniform Commercial Code. Grantor, being a debtor as that term is used in the Uniform Commercial Code of the State of Nebraska as in effect from time to time (herein called the "Code"), as security for payment of the Note, hereby grants a security interest in any part of the Mortgaged Premises other than real estate (all for the purposes of this Article called "Collateral"), including any proceeds generated therefrom (although such coverage shall not be interpreted to mean that Beneficiary consents to the sale of any of the Collateral), to Beneficiary (being the secured party as that term is used in the Code) and hereby authorizes Beneficiary to file financing statements covering the Collateral. This Deed of Trust constitutes a security agreement and a financing statement, including a

fixture financing statement, under the Code. All of the terms, provisions, conditions and agreements contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Premises; and the following provisions of this Article shall not limit the generality or applicability of any other provision of this Deed of Trust but shall be in addition thereto.

Section 6-2. Defined Terms. The terms and provisions contained in this Article shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

Section 6-3. Grantor's Representations and Warranties. Grantor represents that: '

(a) It has rights in, or the power to transfer, the Collateral, and the Collateral is subject to no liens, charges or encumbrances other than the lien hereof.

(b) As of the date of this Deed of Trust, no other party has a perfected interest in any of the Collateral.

(c) It is an organization, being a limited liability company organized under the laws of the State of its organization.

(d) Its chief executive office and principal place of business is located at Jasper Stone Financial Plaza LLC, 2637 S. 158th Plaza; # 110, Omaha, NE 68130; Jasper Stone Financial Plaza II LLC, 2637 S. 158th Plaza, #110, Omaha, NE 68130; and John Alford Investments, LLC, 22102 Marcy Street, Omaha, NE 68130.

(e) Grantor's organizational number is: Jasper Stone Financial Plaza LLC – 4661244; Jasper Stone Financial Plaza II LLC – 10115075; John Alford Investments, LLC - 10123392.

Section 6-4. Grantor's Obligations. Grantor agrees that until its obligations hereunder are paid in full:

(a) It shall not change its legal name, its type of organization or its state of organization, and shall not merge or consolidate with any other person or entity without at least thirty (30) days prior written notice to Beneficiary.

(b) It shall not pledge, mortgage or create, or suffer to exist a security interest in the Collateral in favor of any person other than Beneficiary.

(c) It shall keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon.

(d) It shall use the Collateral solely for business purposes, being installed upon the Mortgaged Premises for Grantor's own use or as the equipment and furnishings furnished by Grantor, as landlord, to tenants of the Mortgaged Premises.

(e) It shall keep the Collateral at the Land and shall not remove, sell, assign or transfer it therefrom, nor allow a third party to do so, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole and absolute discretion, unless disposed of in the ordinary course of business and replaced with items of comparable utility and/or quality and value free and clear of all liens or title retention devices except purchase money security interests. The Collateral may be affixed to such real estate but will not be affixed to any other real estate.

(f) It will, on its own initiative, or as Beneficiary may from time to time reasonably request, and at its own cost and expense, take all steps necessary and appropriate to establish and maintain Beneficiary's perfected security interest in the Collateral subject to no adverse liens or encumbrances, including, but not limited to, furnishing to Beneficiary additional information, delivering possession of the Collateral to Beneficiary, executing and delivering to Beneficiary financing statements and other documents in a form satisfactory to Beneficiary, placing a legend that is acceptable to Beneficiary on all chattel paper created by Grantor indicating that Beneficiary has a security interest in the chattel paper and assisting Beneficiary in obtaining executed copies of any and all documents required of third parties. Beneficiary is authorized to file a financing statement with respect to the Collateral.

Section 6-5. Right of Inspection. At any and all reasonable times, Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Collateral fully to ensure compliance with this Mortgage.

Section 6-6. Remedies.

(a) Upon an Event of Default hereunder and at any time thereafter (such default not having previously been cured), Beneficiary at its option may declare the indebtedness hereby secured immediately due and payable, and thereupon Beneficiary shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Grantor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the condition stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Grantor's right of redemption in satisfaction of Grantor's obligations, as provided in the Code. Beneficiary, without removal, may render the Collateral unusable and dispose of the Collateral on the Mortgaged Premises. Beneficiary may require Grantor to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary which is reasonably convenient to both parties. Beneficiary will give Grantor at least ten (10) days notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Grantor hereinabove set forth and at least ten (10) days before the time of the sale or disposition. Beneficiary may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is

the subject of widely distributed standard price quotations, Beneficiary may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Mortgaged Premises, the Collateral and real estate to be sold as one lot if Beneficiary so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, shall be applied in satisfaction of the indebtedness hereby secured. Beneficiary will account to Grantor for any surplus realized on such disposition.

(b) The remedies of Beneficiary hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Beneficiary, including having the Collateral deemed part of the realty upon and foreclosure thereof so long as any part of the indebtedness hereby secured remains unsatisfied.

Section 6-7. Fixture Filing. This Deed of Trust creates a security interest in goods which are or are to become fixtures related to the real estate described in Exhibit A, shall be effective as a fixture filing and is to be filed in the real estate records.

## ARTICLE SEVEN

### MISCELLANEOUS

Section 7-1. Additions to the Mortgaged Premises. In the event any additional improvements, Equipment, or property not herein specifically identified shall be or in the future become a part of the Mortgaged Premises by location or installation on the Mortgaged Premises or otherwise, then this Deed of Trust shall immediately attach to and constitute a lien or security interest against such additional items without further act or deed of Grantor.

Section 7-2. Future Advances; Additional Notes. This Deed of Trust shall secure future advances made at the option of Beneficiary, and Grantor may also issue additional notes (the "Additional Notes") from time to time in order to evidence additional indebtedness of Grantor to Beneficiary. The Additional Notes shall be equally and proportionately secured by the lien of this Deed of Trust with the Note, without preference, priority or distinction as to lien or otherwise, notwithstanding the date of issuance thereof. From and after the issuance of any Additional Notes, the term Note shall be deemed to include the Additional Notes in respect to all matters of benefits and security under and in the enforcement of this Deed of Trust. Provided, however, at no time shall the principal amount of indebtedness secured by this Deed of Trust, not including sums advanced to protect the security, exceed the total sum of \$5,800,000.00.

Section 7-3. No Waiver of Prepayment Premium. Upon the acceleration of the maturity of the indebtedness as herein provided, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Grantor, or by anyone on behalf of Grantor, shall constitute an evasion of the prepayment terms of said Note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent



permitted by law, will therefore include the additional payment required under the prepayment privilege, if any, contained in said Note or, if at that time there be no prepayment privilege, then such payment will, to the extent permitted by law, include an additional payment of twelve percent (12%) of the then principal balance.

Section 7-4. Supplements or Amendments. This Deed of Trust may not be supplemented or amended except by written agreement between Beneficiary and Grantor.

Section 7-5. Successors and Assigns. All provisions hereof shall inure to and bind the respective successors, and assigns of the parties hereto. The word Grantor shall include all persons claiming under or through Grantor and all persons liable for the payment of indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Deed of Trust. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

Section 7-6. Notices. All notices, demands, consents or requests which are either required or desired to be given or furnished hereunder (a "Notice") shall be in writing and shall be deemed to have been properly given if either delivered personally or by overnight commercial courier or sent by United States registered or certified mail, postage prepaid, return receipt requested, to the address of the parties hereinabove set out. Such Notice shall be effective upon receipt or refusal if by personal delivery, the first Business Day (a day other than a Saturday, Sunday or holiday on which national banks are authorized to be closed) after the deposit of such Notice with an overnight courier service by the time deadline for next Business Day delivery if by commercial courier, and upon the earliest of receipt or refusal (which shall include a failure to respond to notification of delivery by the U.S. Postal Service) or five (5) Business Days following mailing if sent by U.S. Postal Service mail. By Notice complying with the foregoing, each party may from time to time change the address to be subsequently applicable to it for the purpose of the foregoing.

Section 7-7. Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 7-8. Choice of Law. This Deed of Trust shall be construed and enforced according to and governed by the laws of Nebraska (excluding conflicts of laws rules) and applicable federal law.

Section 7-9. Captions. All captions and headings in this Deed of Trust are included for convenience or reference only and shall in no respect constitute a part of the terms hereof nor describe, define or in any manner limit the scope of this Deed of Trust, any interest granted hereby or any term or provision hereof.

Section 7-10. Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be deemed an original (except an original will be required for recording), but all of which when taken together shall constitute but one and the same instrument. Executed copies of the signature pages of this Deed of Trust sent by facsimile or

transmitted electronically in either Tagged Image Format (“TIFF”) or Portable Document Format (“PDF”) shall be treated as originals, fully binding and with full legal force and effect, and the parties waive any rights they may have to object to such treatment. Any party delivering an executed counterpart of this Deed of Trust by facsimile, TIFF or PDF also shall deliver a manually executed counterpart of this Deed of Trust, but the failure to deliver a manually executed counterpart should not affect the validity, enforceability, and binding effect of this Deed of Trust. The pages of any counterpart of this Deed of Trust containing any party’s signature or the acknowledgement of such party’s signature hereto may be detached therefrom without impairing the effect of the signature or acknowledgement provided such pages are attached to any other counterpart identical thereto except having additional pages containing the signatures or acknowledgements thereof of other parties.

Section 7-11. Further Assurances. Grantor will, from time to time, upon ten (10) business days’ prior written request from Beneficiary, make, execute, acknowledge and deliver to Beneficiary such supplemental mortgages, certificates and other documents, as may be necessary for better assuring and confirming unto Beneficiary any of the Mortgaged Premises, or for more particularly identifying and describing the Mortgaged Premises, or to preserve or protect the priority of the lien of this Deed of Trust, and generally do and perform such other acts and things and execute and deliver such other instruments and documents as may reasonably be deemed necessary or advisable by Beneficiary to carry out the intentions of this Deed of Trust.

Section 7-12. Discrete Mortgaged Premises. Grantor shall not by act or omission permit any building or other improvement on any premises not subject to the lien of this Deed of Trust to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Grantor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Grantor shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Grantor which would result in a violation of any of the provisions of this paragraph shall be void.

Section 7-13. Certificates. Grantor and Beneficiary each will, from time to time, upon ten (10) business days’ prior written request by the other party, execute, acknowledge and deliver to the requesting party, a certificate signed by an appropriate officer, stating that this Deed of Trust is unmodified and in full force and effect (or, if there have been modifications, that this Deed of Trust is in full force and effect as modified and setting forth such modifications) and stating the principal amount secured hereby and the interest accrued to date on such principal amount. Such estoppel certificate from Beneficiary shall also state either that, to the actual knowledge of the signer of such certificate and based on no independent investigation, no Event of Default or occurrence which with the passage of time or the giving of notice would be or become an Event of Default exists hereunder or, if any Event of Default or such occurrence shall exist hereunder, specify such Event of Default or such occurrence of which Beneficiary has actual knowledge. The estoppel certificate from Grantor shall also state to the best knowledge of Grantor whether any offsets or defenses to the indebtedness exist and if so shall identify them.

Section 7-14. Usury Savings. All agreements between Grantor and Beneficiary (including, without limitation, those contained in this Deed of Trust and the Note) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Beneficiary exceed the highest lawful rate of interest permissible under the laws of the State of Nebraska. If, from any circumstances whatsoever, fulfillment of any provision hereof or the Note or any other documents securing the indebtedness at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of Nebraska; and if for any reason whatsoever Beneficiary shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the principal indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

Section 7-15. Regulation U. Grantor covenants and agrees that it shall constitute an Event of Default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation U of the Board of Governors of the Federal Reserve System (12 CFR Part 221) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

Section 7-16. Waiver of Co-Tenancy Rights. Grantor, and each party comprising Grantor, hereby waives all of their respective co-tenancy rights provided at law or in equity for tenants in common between, among or against each other, including, without limitation, any right to partition the Mortgaged Premises.

Section 7-17. ERISA. Grantor hereby represents, warrants and agrees that as of the date hereof, none of the investors in or owners of Grantor is an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 as amended, a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986 as amended, nor an entity the assets of which are deemed to include plan assets pursuant to Department of Labor regulation Section 2510.3-101 (the "Plan Asset Regulation"). Grantor further represents, warrants and agrees that at all times during the term of the Note, Grantor shall satisfy an exception to the Plan Asset Regulation, such that the assets of Grantor shall not be deemed to include plan assets. If at any time during the entire term of the Note any of the investors in or owners of Grantor shall include a plan or entity described in the first sentence of this Section, Grantor shall as soon as reasonably possible following an investment by such a plan or entity, provide Beneficiary with an opinion of counsel reasonably satisfactory to Beneficiary indicating that the assets of Grantor are not deemed to include plan assets pursuant to the Plan Asset Regulation. In lieu of such an opinion, Beneficiary may in its sole discretion accept such other assurances from Grantor as are necessary to satisfy Beneficiary in its sole discretion that the assets of Grantor are not deemed to include plan assets pursuant to the Plan Asset Regulation. Grantor understands that the representations and warranties herein are a material inducement to Beneficiary in the making of the loan evidenced by the Note, without which Beneficiary would have been unwilling to

proceed with the closing of the loan.

Section 7-18. Certain Disclosures. Beneficiary (and its mortgage servicer and their respective assigns) shall have the right to disclose in confidence such financial information regarding Grantor, any guarantor or the Mortgaged Premises as may be necessary (i) to complete any sale or attempted sale of the Note or participations in the loan (or any transfer of the mortgage servicing thereof) evidenced by the Note and the Loan Documents, (ii) to service the Note or (iii) to furnish information concerning the payment status of the Note to the holder or beneficial owner thereof, including, without limitation, all Loan Documents, financial statements, projections, internal memoranda, audits, reports, payment history, appraisals and any and all other information and documentation in Beneficiary's files (and such servicer's files) relating to Grantor, any guarantor and the Mortgaged Premises. This authorization shall be irrevocable in favor of Beneficiary (and its mortgage servicer and their respective assigns), and Grantor and any guarantor waive any claims that they may have against Beneficiary, its mortgage servicer and their respective assigns or the party receiving information from Beneficiary pursuant hereto regarding disclosure of information in such files and further waive any alleged damages which they may suffer as a result of such disclosure.

Section 7-19. Grantor agrees and acknowledges that this Deed of Trust contains the power of sale which creates substantially different rights and obligations for Grantor from those contained in a mortgage in case of an Event of Default or breach of any obligation hereunder.

Section 7-20. Integration. This Deed of Trust is intended by the parties hereto to be the final, complete and exclusive expression of the agreement between them with respect to the matters set forth herein. This Deed of Trust supersedes any and all prior oral or written agreements relating to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no oral agreements between the parties. No modification, rescission, waiver, release or amendment of any provision of this Deed of Trust shall be made, except by a written agreement signed by the parties hereto.

Section 7-21. No Merger. It being the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Mortgaged Premises, it is hereby understood and agreed that should Beneficiary acquire an additional or other interests in or to the Mortgaged Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an express statement to that effect in appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title, toward the end that this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title. Further, it is not the intention of the parties that any obligation of Grantor to pay or to reimburse Beneficiary for costs and expenses, including attorneys' fees and costs, be merged in any foreclosure judgment or the conclusion of any other enforcement action, and all such obligations shall survive the entry of any foreclosure judgment or the conclusion of any other enforcement action.

Section 7-22. Construction. Each of the parties hereto has been represented by counsel and the terms of this Deed of Trust have been fully negotiated. This Deed of Trust shall not be

construed more strongly against any party regardless of which party may be considered to have been more responsible for its preparation.

**Section 7-23. Waiver.** THE PARTIES HERETO, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS DEED OF TRUST, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.

**CREDIT AGREEMENT.** A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

Grantor acknowledges receipt of a copy of this instrument at the time of the execution thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

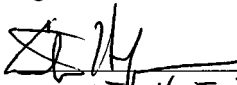
**IN WITNESS WHEREOF**, Grantor has duly executed this Deed of Trust on the date stated in the acknowledgement set forth below, to be effective as of the day and year first above written.

**Grantor:**

JASPER STONE FINANCIAL PLAZA LLC, a Delaware limited liability company

By: Jasper Stone Properties III LLC, a Delaware limited liability company, its Manager

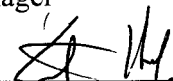
By: Jasper Stone Partners LLC, a Delaware limited liability company, its Manager

By:   
Name: CURT HOFER  
Title: Manager

JASPER STONE FINANCIAL PLAZA II LLC, a Nebraska limited liability company

By: Jasper Stone Properties III LLC, a Delaware limited liability company, its Manager

By: Jasper Stone Partners LLC, a Delaware limited liability company, its Manager

By:   
Name: CURT HOFER  
Title: Manager

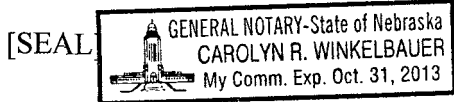
[SIGNATURE PAGE TO DEED OF TRUST]

JOHN ALFORD INVESTMENTS, LLC, a  
Nebraska limited liability company

By: [Signature]  
Name: John Alford  
Title: member

STATE OF NEBRASKA )  
 ) SS:  
COUNTY OF DOUGLAS )

On this 11<sup>th</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Curt Hbler, Manager of Jasper Stone Partners, LLC, a Delaware limited liability company, the manager of Jasper Stone Properties III LLC, a Delaware limited liability company, the manager of Jasper Stone Financial Plaza LLC, a Delaware limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the limited liability company.

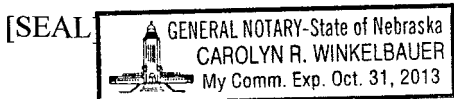


[Signature]  
Notary Public

My commission expires: Oct. 31, 2013

STATE OF NEBRASKA )  
 ) SS:  
COUNTY OF DOUGLAS )

On this 11<sup>th</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Curt Hbler, Manager of Jasper Stone Partners, LLC, a Delaware limited liability company, the manager of Jasper Stone Properties III LLC, a Delaware limited liability company, the manager of Jasper Stone Financial Plaza II LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Manager on behalf of the limited liability company.



[Signature]  
Notary Public

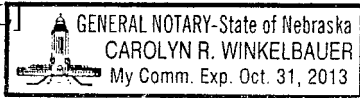
My commission expires: Oct. 31, 2013

[CONTINUATION OF SIGNATURE PAGE TO DEED OF TRUST]

STATE OF NEBRASKA    )  
                                          ) SS:  
COUNTY OF DOUGLAS    )

On this 11<sup>m</sup> day of November, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared John Alford, Member of John Alford Investments, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as Member on behalf of the limited liability company.

[SEAL]



[Signature]  
Notary Public

My commission expires: Oct. 31, 2013

[CONTINUATION OF SIGNATURE PAGE TO DEED OF TRUST]



**Exhibit "A"**

**Legal Description**

Real property in the City of Omaha, County of Douglas, State of Nebraska, described as follows:

Parcel 1:

Lot 1, Pierson's Subdivision Replat 2, an Addition to the City of Omaha, in Douglas County, Nebraska, EXCEPT that part conveyed to the City of Omaha by Warranty Deed filed March 2, 2002 in Book 2204 at Page 221 described as follows: Beginning at the Southwest corner of said Lot 1; thence Easterly along the Southerly line of said Lot 1, a distance of 327.70 feet; thence Northerly along the Easterly line of said Lot 1, a distance of 3.0 feet; thence Westerly, along a line 3.0 feet Northerly of, perpendicular measurement and parallel to, the Southerly line of said Lot 1, a distance of 306.7 feet; thence Northwesterly a distance of 35.1 feet to a point on the Westerly line of said Lot 1; thence Southerly, along the Easterly line of said Lot 1, a distance of 31.0 feet to the point of beginning.

Parcel 2:

Non-exclusive easements as contained in that certain Roadway and Parking Easement and Covenants Agreement filed January 18, 1980 in Book 627 at Page 622, Miscellaneous Records, Douglas County, Nebraska.

Parcel 3:

Non-exclusive easements as contained in that certain Roadway and Parking Easement and Covenants Agreement filed January 18, 1980 in Book 627 at Page 633, Miscellaneous Records, Douglas County, Nebraska.