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Lancaster County, NE Assessor/Register of Deeds Office DTRUST

Pages: 33

**RECORDING REQUESTED BY:**

LANDMARK TITLE ASSURANCE AGENCY  
OF ARIZONA LLC

**AND WHEN RECORDED MAIL TO:**

ESCROW NO.: 6177749D

13/24

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

When recorded return to:

Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Attention: Dennis A. Johnson, Esq.

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

MADE BY

RED CAPITAL MANAGEMENT, LLC, a Kansas limited liability company  
as Trustor

to

KEYBANK NATIONAL ASSOCIATION,  
as Trustee

for the benefit of

KEYBANK NATIONAL ASSOCIATION  
as Beneficiary

March 31, 2017

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
**(SouthPointe Pavilions)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of March 31, 2017, by RED CAPITAL MANAGEMENT, LLC, a Kansas limited liability company ("Trustor") whose address is One East Washington Street, Suite 300, Phoenix, AZ 85004, in favor of KEYBANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns, ("Trustee"), whose notice address is 10 West Market Street, 10th Floor, Indianapolis, Indiana 46204, for the benefit of KEYBANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns, whose address is 4910 Tiedeman Rd., 3rd Flr, Mail Code OH-01-51-0311, Brooklyn, Ohio 44144, as agent for the Lenders (as defined in the Loan Agreement hereinafter defined) (KeyBank National Association, in its capacity as agent for the Lenders, being referred to herein as "Beneficiary").

**1. Grant and Secured Obligations.**

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Trustor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY to Trustee IN TRUST, WITH POWER OF SALE AND WITH RIGHT OF ENTRY AND POSSESSION, all estate, right, title and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

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

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

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(d) All existing and future leases (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in

respect of any tenant or occupant of any portion of the Premises or the Improvements), subleases, subtenancies, licenses, occupancy agreements and concessions (“leases”) relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

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

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

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

(h) All of Trustor’s interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserve accounts, impound accounts and any other bank accounts of Trustor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally, and any builder’s or manufacturer’s warranties with respect thereto; together with

(j) All insurance policies and proceeds pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or

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

(k) All of Trustor's rights in and to all Interest Rate Agreements; together with

(l) All of Trustor's rights, title, interests, estate, privileges, benefits and remedies under that certain Development Agreement (SouthPointe Pavilions Reconfiguration) among the City of Lincoln, Nebraska (the "City"), Trustor and Powder Mountain, L.L.C. ("Powder Mountain"), executed by the City on February 25, 2016, Trustor on March 14, 2016 and Powder Mountain on March 15, 2016, as the same has been or may be modified, amended or restated, and that certain Combined Special Permit/Use Permit No. 11H adopted by the City on February 22, 2016 (the "Development Agreement"); together with

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

(n) All accounts, contract rights and rights to payments arising out of the operation of the Premises or the Improvements, including, but not limited to, payments for the operation or use of the Premises or the Improvements, for goods sold or leased on the Premises or the Improvements, for food or beverages sold on the Premises or the Improvements, for any entertainment offered on the Premises or the Improvements, for services rendered, whether or not earned by performance, for the rental, sale or use of any equipment or from vending machines, all payments from any consumer credit/charge card organization, whether or not now or existing or hereinafter credited or owed, and all proceeds of the foregoing, whether cash or non-cash; together with

(o) All "Equipment" as that term is defined in the Nebraska Uniform Commercial Code as presently or hereafter in effect; together with

(p) All "Goods" as that term is defined in the Nebraska Uniform Commercial Code as presently or hereafter in effect; together with

(q) All "Accounts" as that term is defined in the Nebraska Uniform Commercial Code as presently or hereafter in effect; together with

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

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(i) hereof.

1.2 Secured Obligations.

(a) Trustor makes the grant set forth in Section 1.1 hereof, and grants the security interest set forth in Section 3 hereof for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment and performance of all obligations of Trustor under a Loan Agreement bearing even date herewith between Trustor as "Borrower" and KeyBank National Association ("KeyBank"), as agent and as a lender, First Financial Bank, as a lender, and Union Bank & Trust, as a lender, as the same may be amended, restated or modified (such Loan Agreement, as the same may be amended, restated or modified, being referred to herein as the "Loan Agreement"); and

(ii) Payment of all obligations at any time owing under the Notes (as defined in the Loan Agreement) payable by Trustor as maker in the aggregate stated principal amount of Seventy-Four Million Dollars (\$74,000,000) to the order of the Lenders, as the same may be amended, restated, modified, extended or renewed, including increases of principal (such Notes, as the same may be amended, restated, modified, extended or renewed, being referred to herein as the "Notes"); and

(iii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iv) Payment of all sums advanced or expended by Trustor pursuant to Section 5.9 hereof, Section 5.10 hereof and Subsection 6.3(d) hereof; and

(v) Payment and performance of any obligations of Trustor under any Loan Documents which are executed by Trustor; and

(vi) Payment and performance of all obligations of Trustor arising from any Interest Rate Agreements; and

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

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

(ix) Payment of all obligations of Trustor with respect to any letters of credit issued by Beneficiary at the request of Trustor.

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

## 2. Assignment of Rents.

2.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally GRANTS, BARGAINS, SELLS, ASSIGNS, and CONVEYS to Beneficiary all rents (including any payments received pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Premises or the Improvements and all claims as creditor in connection with any of the foregoing), leases, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 hereof, shall exist and be continuing. If an Event of Default has occurred and is continuing after applicable cure periods, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents. Subject to the License granted to Trustor under Section 2.2 hereof, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney in fact to perform any and all of the following acts, if and at the times, when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or

(c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary and Trustor agree that the mere recordation of the assignment granted, herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.2 hereof, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Subsection 6.3(e) hereof. In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 6.6 hereof. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

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

- (a) A "mortgagee in possession" or "beneficiary in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Except in the event of Beneficiary's negligence committed on site, liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Leasing. Trustor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Beneficiary's prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

### 3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Deed of Trust to create a lien upon and security interest in the Property, and an absolute assignment of the Rents, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that



any Property or Rents may be or be determined to be personal property, Trustor as debtor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER to Beneficiary and Trustee as secured parties a lien upon and security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents.

3.2 Financing Statements. Trustor hereby authorizes Beneficiary to file one or more financing statements and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property or Rents. As provided in Section 5.9 hereof and Section 5.10 hereof, Trustor shall pay all reasonable fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as its true and lawful attorney in fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

#### 4. Fixture Filing.

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

#### 5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents and warrants that:

- (a) Trustor lawfully possesses and holds fee simple title to all of the Premises and the Improvements;
- (b) Trustor has or will have good title to all Property other than the Premises and Improvements;
- (c) Trustor has the full power, right and authority to encumber the Property and assign the Rents;
- (d) This Deed of Trust creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Trustor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

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

5.2 Taxes and Assessments. Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, in accordance with the Loan Agreement.

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

5.4 Liens, Charges and Encumbrances. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing in accordance with the terms of the Loan Agreement.

5.5 Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the provisions of Article 16 of the Loan Agreement shall govern.

5.6 Maintenance and Preservation of Property.

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance, which consent shall not be unreasonably withheld or delayed

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under Article 16 of the Loan Agreement.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including, without limitation, the Americans with Disabilities Act; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property.

Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Agreement.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

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

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property;

(g) Join in any, subordination or other agreement affecting this Deed of Trust or the lien of it; or

(h) Release the Property or any part of it.

5.8 Reconveyance and Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Trustor under Section 5.9 hereof and Section 5.10 hereof and the other Loan Documents have been received, the Trustee shall, upon written request by the Beneficiary, deliver to the Trustor, or Trustor's successor in interest or representative, a reconveyance in recordable form duly executed by the Trustee thereby reconveying this Deed of Trust. The reconveyance may designate the grantee of such reconveyance as a person or persons entitled thereto. In addition, Beneficiary shall release all notes and instruments evidencing the Secured Obligations. Trustor shall pay any reasonable costs of preparation and recordation of such reconveyance and releases.

5.9 Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay reasonable fees as may be charged by Beneficiary for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 hereof. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3 hereof, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) hereof) and any cost of evidence of title. If Beneficiary and/or Trustee chooses to dispose of Property through more than one Foreclosure Sale, Trustor shall pay all reasonable costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Notes, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, 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 such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute each suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature of this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney (including costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Notes, the other Loan Documents or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(b) None of Beneficiary, any Lender or Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

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

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

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

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

(c) EXCEPT AS TO BENEFICIARY'S OR ANY LENDER'S NEGLIGENCE COMMITTED ON THE PROPERTY, TRUSTOR AGREES TO INDEMNIFY BENEFICIARY, EACH LENDER AND TRUSTEE AGAINST AND HOLD THEM HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES WHICH THEY (INDIVIDUALLY OR COLLECTIVELY) MAY SUFFER OR INCUR:

(i) IN PERFORMING ANY ACT REQUIRED OR PERMITTED BY THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS OR BY LAW;

(ii) BECAUSE OF ANY FAILURE OF TRUSTOR TO PERFORM ANY OF ITS OBLIGATIONS; OR

(iii) BECAUSE OF ANY ALLEGED OBLIGATION OF OR UNDERTAKING BY BENEFICIARY AND/OR TRUSTEE AND/OR ANY LENDER TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN ANY DOCUMENT RELATING TO THE PROPERTY OTHER THAN THE LOAN DOCUMENTS.

This agreement by Trustor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust for a period of one (1) year; provided, however, such one (1) year limitation shall not apply to any claim asserted by Beneficiary or Trustee hereunder against Trustor in writing prior to the expiration of such one (1) year period.

(d) Trustor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Notes, and shall bear interest from the date the obligation arises at the Default Rate.

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

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

5.12 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary and Lenders have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary or any Lender, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. None of Beneficiary or any Lender or their agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Beneficiary shall give Trustor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section 5.12. Beneficiary shall indemnify and hold Trustor harmless from any claims that arise from the gross negligence or willful misconduct of Trustor, or its agents or representatives, from any such entry upon the Property.

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

5.14 Development Agreement. Trustor shall at all times diligently enforce its rights in, under and to the Development Agreement, unless otherwise agreed to by Beneficiary in writing, and shall, at Trustor's sole cost and expense, appear in and defend Beneficiary and the Lenders in any action or proceeding in any way connected with the Development Agreement, and shall pay all reasonable costs and expenses, including, without limitation, attorneys' fees, which Beneficiary and the Lenders may incur in connection with Beneficiary's and the Lenders'

appearance, voluntarily or otherwise, in any such action or proceeding in any way connected with the Development Agreement. Trustor further hereby covenants and represents to Beneficiary that (a) Trustor has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated or otherwise encumbered the Development Agreement, or its right, title or interest therein, (b) Trustor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in the Development Agreement, and (c) Trustor is not in default under the Development Agreement, and to the best knowledge of Trustor, no other party to the Development Agreement is in default thereunder except as disclosed in writing to Beneficiary.

## **6. Accelerating Transfers, Default and Remedies.**

### **6.1 Accelerating Transfers.**

(a) “Accelerating Transfer” means any Transfer not expressly permitted under Article 17 of the Loan Agreement.

(b) Trustor acknowledges that Lenders are making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary’s reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary’s express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

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

(a) An “Event of Default” (as defined in Article 19 of the Loan Agreement);  
or

(b) An Accelerating Transfer occurs without the prior written consent of Beneficiary; or

(c) Any other “Event of Default” occurs under the Loan Agreement or any other Loan Document.

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

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Beneficiary shall, as a matter of right, without regard for the solvency or insolvency of Trustor or the then value of the Property or any other collateral for the Secured Obligations, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property under subsection (c) below.

(c) Entry/Collection. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary, including collecting any rents; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(d) Cure; Protection of Security, Waste. Beneficiary may cure any breach or default of Trustor in accordance with the terms of the Loan Agreement, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing



counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Subsection 6.3(d) shall be secured by this Deed of Trust.

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

(f) Foreclosure-Power of Sale. Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of the Nebraska Trust Deeds Act. The Trustee shall, acting in the execution of this Deed of Trust after notice of default has been recorded in the office of Register of Deeds of Lancaster County, Nebraska, mail a copy of any notice of default and a copy of any notice of sale to each person or entity who or which is a party hereto at the address set out in Section 8.12 of this Deed of Trust and a copy of any notice of default and a copy of any notice of sale shall be mailed to any person or entity who or which has requested notice of default pursuant to the Nebraska Trust Deeds Act. If and to the extent the Nebraska Trust Deeds Act is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Nebraska real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Nebraska real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Nebraska real property under powers of sale conferred by deeds of trust.

(ii) Requirements for Bidders and Bids. At any time during the bidding, the Trustee may require a bidding party: (i) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable); (ii) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale; and (iii) to establish such other criteria for the bidding, the bidders, the delivery of the bid proceeds to the Trustee, and the order of the bid process as the Trustee may determine which are not inconsistent with this Deed of Trust and applicable laws. If Beneficiary bids, Beneficiary's agreement to credit the Indebtedness shall be deemed cash to the extent of such agreed credit. In the event the Trustee requires a cash bid and cash is not delivered within the time

frame specified by the Trustee, or if no time frame is so specified, within a reasonable time after conclusion of the bidding process.

(iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Indebtedness, Beneficiary may, at Beneficiary's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Indebtedness may be made hereunder whenever there is a default in the payment of any installment of the Indebtedness, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

(iv) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Trustor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Trustor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

Beneficiary or Beneficiary's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Subsection 6.3(a) hereof, upon, or at any time after the filing of a complaint to foreclose this Deed of Trust or proceeding under the power of sale, Beneficiary and/or Trustee shall be entitled to the appointment of a receiver of the Property by the court in which such complaint is filed and Trustor hereby consents to such appointment.

(g) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor hereunder or under any other Loan Documents. Beneficiary shall have the right to pursue all remedies afforded to a beneficiary/mortgagee under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Beneficiary and/or Trustee, as required by applicable law, shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

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

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

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

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

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

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

(j) Beneficiary's Judicial Remedies. Beneficiary may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Secured Obligations in accordance with the terms hereof, of the Notes, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Beneficiary with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Beneficiary.

(k) Enforcement of Development Agreement. Beneficiary shall have the right to perform and discharge each and every obligation, covenant, condition and agreement of Trustor under the Development Agreement (to the extent permitted by the terms of the Development Agreement), the right to enforce the Development Agreement and all privileges and remedies of Trustor thereunder and to request, demand, collect and receive performance thereunder and the right to seek and obtain recovery of any amounts payable by the City to Trustor pursuant to the Development Agreement, and, in exercising any such powers, to pay necessary reasonable costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and expenses. None of Beneficiary or any Lender shall be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Development Agreement, or by reason of this Deed of Trust.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary and Trustee under Section 5.9 hereof or Section 5.10 hereof; and

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

6.5 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the reasonable expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under Section 5.9 hereof or Section 5.10 hereof;

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

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

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

6.6 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 6.3 hereof, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;

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

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

## 7. Concerning The Trustee.

7.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

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

7.3 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

7.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become

disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee to act instead of the aforementioned Trustee, Beneficiary shall have full power, in accordance with applicable Law, to appoint a substitute trustee in succession who shall succeed to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof.

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

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

7.7 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

## **8. Miscellaneous Provisions.**

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

## 8.2 No Waiver or Cure.

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

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsections 6.3(b), (c) or (f).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.3 and 6.6 hereof, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 hereof.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 hereof.

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

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

## 8.3 Powers of Beneficiary.

(a) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Section 5.7 or Subsection 6.3 of this Deed of Trust, that act alone shall not release or change the



personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary or Lenders grant(s) any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. None of Beneficiary or any Lender shall be required to comply with any demand by the original Trustor that Beneficiary or any Lender refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Beneficiary may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) hereof regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

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

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

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

8.6 Governing Law; Waivers. THIS DEED OF TRUST SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEBRASKA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF. TRUSTOR HEREBY SUBMITS TO PERSONAL JURISDICTION IN THE CITY OF LINCOLN, COUNTY OF LANCASTER AND STATE OF NEBRASKA AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA HAVING JURISDICTION OVER THE COUNTY OF LANCASTER AND STATE OF NEBRASKA (AND ANY APPELLATE COURTS TAKING APPEALS THEREFROM) FOR THE ENFORCEMENT OF TRUSTOR'S OBLIGATIONS HEREUNDER AND WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAW OF ANY OTHER STATE TO OBJECT TO JURISDICTION WITHIN SUCH STATES FOR THE PURPOSES OF SUCH ACTION, SUIT, PROCEEDING OR LITIGATION TO ENFORCE SUCH OBLIGATIONS OF TRUSTOR. TRUSTOR HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST (a) THAT IT IS NOT SUBJECT TO SUCH JURISDICTION OR THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN THOSE COURTS OR THAT THIS DEED OF TRUST MAY NOT BE ENFORCED IN OR BY THOSE COURT OR THAT IT IS EXEMPT OR IMMUNE FROM EXECUTION, (b) THAT THE

ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR (c) THAT THE VENUE OF THE ACTION, SUIT OR PROCEEDING IS IMPROPER.

8.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 8.7 does not waive the provisions of Section 6.1 hereof.

8.8 Interpretation.

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

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

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

8.9 Counsel Fees. Whenever Trustor is obligated to pay or reimburse Beneficiary for any attorneys' fees, those fees shall only include the reasonable direct out-of-pocket attorneys' fees which are paid to outside attorneys.

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

8.11 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no

way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.12 Notices. Any notice, demand, request or other communication which any party hereto may be required to give hereunder, or may desire to give hereunder, shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service for delivery on the next Business Day, on the next Business Day after delivered to such courier service, or (d) if by confirmed facsimile or e-mail transmission on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to the Trustor: RED Capital Management, LLC  
One East Washington, Suite 300  
Phoenix, Arizona 85004  
Attention: Steven M. Maun  
Telephone: (480) 556-7736  
Facsimile: (480) 947-7997

With copies to: Dallas Police and Fire System  
c/o AEW Capital Management, L.P.  
Two Seaport Lane  
Boston, MA 02210-2012  
Attention: Ron Pastore

If to Beneficiary: KeyBank Real Estate Capital  
4910 Tiedeman Rd., 3rd Flr  
Mail Code OH-01-51-0311  
Cleveland, Ohio 44144  
Attention: Real Estate Capital Client Services  
Facsimile: (216) 357-6383

With copies to: KeyBank National Association  
10 West Market Street, 10th Floor  
Indianapolis, Indiana 46204  
Attention: Theodore J. Lewis, Senior Vice President  
Telephone: (317) 464-8040  
Facsimile: (317) 464-8137

Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Attention: Dennis A. Johnson, Esq.  
Telephone: (317) 231-7736  
Facsimile: (317) 231-7433

Any notice or demand delivered to the person or entity named above to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused. Failure of Beneficiary to furnish Trustor's attorney, Dallas Police and Fire System, AEW Capital Management, L.P. or any other Person other than Trustor, with a copy of any notice provided to Trustor hereunder shall not be deemed a failure of Beneficiary to provide Trustor with such notice and shall not affect or in any way prevent or estop Beneficiary from exercising any right or remedy of Beneficiary or Lenders hereunder.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused.

8.13 Future Advances. This Deed of Trust secures all future advances and obligations under the Secured Obligations and all other amounts payable by Trustor (individually or together) under the Notes, the Loan Agreement and all Interest Rate Agreements, including, without limitation, all taxes and insurance premiums paid or advanced by Beneficiary with respect to the Property, all costs of enforcing and foreclosing on the lien of this Deed of Trust, all sums expended or incurred for the protection of the security interest hereby created in the Property, regardless of whether the foregoing was advanced, paid, incurred or expended now or at any future time or times.

8.14 Beneficiary's Lien for Service Charge and Expenses At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary. For purposes hereof, all obligations of Trustor to Beneficiary under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Trustor secured hereby.

8.15 WAIVER OF TRIAL BY JURY. TRUSTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTES, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR OR BENEFICIARY. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A

MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

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

8.17 No Representation by Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Beneficiary.

8.18 Entire Agreement; Amendment. THIS DEED OF TRUST, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENTS AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Trustor and Beneficiary.

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

8.20 Request for Notice. Pursuant to the Nebraska Trust Deeds Act, Trustor and Beneficiary request that a copy of any notice of default and notice of sale be mailed to them at their respective addresses set forth hereinabove.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as of the date first above written.

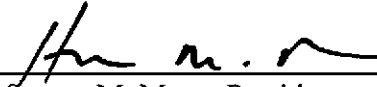
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**SIGNATURE PAGE OF TRUSTOR TO DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**"TRUSTOR"**

RED CAPITAL MANAGEMENT, LLC, a Kansas limited liability company

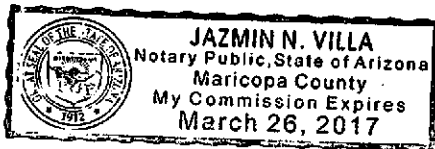
By: RED Development, LLC, a Missouri limited liability company, its Manager


By:   
Steven M. Maun, President

STATE OF ARIZONA     )  
  ) SS:  
COUNTY OF MARICOPA    )

Before me, a Notary Public in and for said County and State, personally appeared Steven M. Maun, known to be the President of RED Development, LLC, a Missouri limited liability company, the Manager of RED CAPITAL MANAGEMENT, LLC, a Kansas limited liability company, and acknowledged the execution of the foregoing for and on behalf of said limited liability company.

Witness my hand and Notarial Seal, this 24<sup>th</sup> day of March, 2017.



  
Notary Public - Signature  
Jazmin N. Villa  
Notary Public - Printed

My Commission Expires:  
3-26-17

My County of Residence:  
Maricopa

EXHIBIT A

Tract I:

Parcel 1:

Lot 5, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska.

Parcel 2:

Lot 6, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska.

Parcel 3:

Lot 7, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska.

Parcel 4:

Lot 8, Block 1, South Pointe Pavilions 1st Addition, Lincoln, Lancaster County, Nebraska.

Parcel 5:

Non-exclusive easements for pedestrian and vehicular ingress and egress, parking, utilities, drainage and encroachment as created by that certain Construction, Operation and Reciprocal Easement Agreement recorded June 3, 1998 as Instrument No. 98-26882, and as amended by Amendment and Release of Initial REA, filed July 9, 1999, as Instrument No. 99-38139, and further as amended by Amendment to Construction, Operation and Reciprocal Easement Agreement recorded August 16, 2002 as Instrument No. 2002-054426.

Parcel 6:

Together with non-exclusive easements for parking, vehicular and pedestrian ingress and egress, signs, utilities and storm drainage as contained in Declaration of Reciprocal Easements, Covenants and Restrictions, filed as Inst. No. 99-38137.

Parcel 7:

Together with a perpetual non-exclusive easement to dispose of storm water as created by that certain Southpointe Pavillion Drainage Easement and Covenants, filed as Instrument No. 98-26883.

Tract II:

Parcel 1:

Outlots A, B, and C, and Lot 3, Block 1, Southpointe Pavilions 3rd Addition, Lincoln, Lancaster County, Nebraska.

Parcel 2:

Lot 2, Block 1, Southpointe Pavilions 5th Addition, Lincoln, Lancaster County, Nebraska.

Parcel 3:

Lot 2, Block 1, Southpointe Pavilions 3rd Addition, Lincoln, Lancaster County, Nebraska.

↑ SOPOPA1

↑ SOPOPA3

↑ SOPOPA5

Parcel 4:

Lot 1 and Outlot A, Southpointe Pavilions 6th Addition, Lincoln, Lancaster County, Nebraska.

Parcel 5:

Together with non-exclusive easements for parking, vehicular and pedestrian ingress and egress, signs, utilities and storm drainage as contained in Declaration of Reciprocal Easements, Covenants and Restrictions, filed as Inst. No. 99-38137.

Parcel 6:

Non-exclusive easements for pedestrian and vehicular ingress and egress, parking, utilities, drainage and encroachment as created by that certain Construction, Operation and Reciprocal Easement Agreement recorded June 3, 1998 as Instrument No. 98-26882, and as amended by Amendment and Release of Initial REA, filed July 9, 1999, as Instrument No. 99-38139, and further as amended by Amendment to Construction, Operation and Reciprocal Easement Agreement recorded August 16, 2002 as Instrument No. 2002-054426.

NO  
SOPOPA6



**EXHIBIT B**

**Permitted Encumbrances**

Those exceptions set forth in Schedule B of the Commitment for Title Insurance issued by First American Title Insurance Company as File No. NCS-824101-HHLV.