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Deed of Trust, Security Agreement and Fixture Financing Statement (Nebraska)



This Deed of Trust, Security Agreement and Fixture Financing Statement ("Deed of Trust") is made 01/19/2001, by and between Crosstown LLC.

(the "Trustor") a(n) Limited Liability Company
Wells Fargo Bank Nebraska, N.A.
 (the "Trustee"), a national banking association, and
Wells Fargo Bank Nebraska, N.A.
 (the "Beneficiary"), a national banking association.

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 Recording Requested by &
 When Recorded Return To:
US Recordings, Inc.
2925 Country Drive Ste 201
St. Paul, MN 55117

WITNESSETH:

IF THIS BOX IS CHECKED THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT UNDER THE NEBRASKA CONSTRUCTION LIEN ACT AND CREATES, GRANTS AND CONSTITUTES A CONSTRUCTION SECURITY INTEREST IN THE PROPERTY DESCRIBED BELOW.

WHEREAS,

Trustor has executed and delivered to Beneficiary a promissory note in the principal sum of Sixty-Seven Thousand Five Hundred and 0/100 Dollars (\$ 67,500.00), dated 01/19/2001, payable to the order of Beneficiary and having a maturity of 01/19/2004, together with interest thereon, late charges, prepayment penalties, any future advances, and all extensions, modifications, substitutions and renewals thereof (hereinafter the "Note").

(the "Borrower"), has applied to Beneficiary for one or more loans, letters of credit, or other financial accommodations and may hereafter from time to time apply to Beneficiary for additional loans, letters of credit and other financial accommodations, and to induce Beneficiary to provide financial accommodations to Borrower:

- If this box is checked, Trustor has guaranteed to Beneficiary the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Beneficiary (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several),
- If this box is checked, Trustor has guaranteed to Beneficiary the payment and performance of the debt, liability, or obligation of Borrower to Beneficiary evidenced by or arising out of the following:

and any extensions, renewals or replacements thereof, together with accrued interest thereon and related costs of enforcement and collection expenses, pursuant to a Guaranty (hereinafter the "Guaranty") of even date herewith.

Trustor shall also pay all other sums, fees or charges, together with interest thereon, advanced to protect the security of this Deed of Trust and the performance of the covenants and agreements of Trustor, whether or not set forth herein and perform, discharge and comply with every term, covenant, obligation and agreement of Trustor contained herein or incorporated by reference (Trustor's obligations under the Note or the Guaranty, as applicable, and all such other sums are hereinafter collectively referred to as the "Obligations").

NOW, THEREFORE, in consideration of the premises and for the purpose of securing the Obligations, Trustor irrevocably grants and transfers to Trustee, in trust, WITH POWER OF SALE, the following described property located in the County of Douglas, State of Nebraska:

See attached Exhibit A

SUBJECT TO: easements and restrictions of record, and:

together with (i) all buildings, structures, additions, enlargements, modifications, repairs, replacements, and improvements now or hereafter located thereon, (ii) all equipment, machinery and fixtures (including, without limitation, all lighting, heating, ventilating, cooling, air conditioning, sprinkling and plumbing fixtures, water and power systems, engines, boilers, ranges, ovens, dishwashers, mirrors and mantels, carpeting, furnaces, oil burners, elevators and motors, refrigeration plants or units, communication systems, dynamos, transformers, electrical equipment, storm and screen windows, doors, awnings and shades) now or hereafter attached to, or built in, any building improvement or improvement now or hereafter located thereon, (iii) all easements and rights of way appurtenant thereto, (iv) all leasehold estate, right, title and interest of Trustor in and to all leases, whether now or hereafter existing or entered into (including, without limitation, all cash and security deposits, advance rentals and deposits or payments of a similar nature), (v) all rents, issues, profits and income therefrom (subject to the right of Trustor to collect and apply such rents, issues, profits and income as they become due and payable so long as no event of default exists hereunder), (vi) all royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, (vii) all tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection therewith, and (viii) all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance and condemnation awards), all of which are hereinafter collectively the "Trust Property."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. Title. Trustor covenants, warrants and agrees with Beneficiary, its successors and assigns, that Trustor owns the Trust Property (subject to any land sale contract described above) and has the right to convey the Trust Property, that the Trust Property is free from any prior lien or encumbrance except as otherwise listed above, that this Deed of Trust is and will remain a valid and enforceable lien on the Trust Property, that Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary. Trustor hereby relinquishes all right of dower and homestead in and to the Trust Property.

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2. Payment of Indebtedness. Trustor shall promptly pay or cause to be paid when due the Obligations and all other indebtedness. The Trustor shall also promptly and faithfully observe all of its obligations under any other deed of trust encumbering all or part of the Trust Property and, if applicable, any promissory note, guaranty, or other term of contractual indebtedness secured by such other deed of trust, whether junior or senior to the lien of this Deed of Trust, and any other obligations secured by a lien on the Trust Property, whether arising consensually or by operation of law.

3. Construction of Improvements. Trustor shall complete in good and workmanlike manner any buildings, improvements or repairs relating thereto which may be begun on the Trust Property or contemplated by the Obligations secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any construction lien against such Trust Property. In the event construction of buildings, improvements or repairs are contemplated, Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding; (a) to promptly commence any such work and to complete the proposed improvements promptly, (b) to complete the same in accordance with the plans and specifications as approved by Beneficiary, (c) to comply with all the terms of a building loan agreement, if any, between Trustor and Beneficiary, the terms of which are incorporated herein by reference and made a part hereof, (d) to allow Beneficiary to inspect the Trust Property at all times during construction, and (e) to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) days after written notice from Beneficiary of such fact.

4. Funds for Payment of Charges. If requested at any time or from time to time by the Beneficiary, Trustor shall pay to Beneficiary on the first day of each month, or such other date each month as may be specified by Beneficiary, until the Obligations are paid in full, a sum (hereinafter the "Funds") equal to 1/12th of the yearly taxes and assessments which may attain priority over this Deed of Trust and ground rents on the Trust Property, if any, plus 1/12th of the yearly premium installments for hazard insurance, plus 1/12th of the yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills and reasonable estimates thereof. The Funds shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency including Beneficiary. Beneficiary shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. Beneficiary shall give to Trustor, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the Obligations secured by this Deed of Trust. If the amount of the Funds held by Beneficiary, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor against future monthly installments of Funds. If the amount of the Funds held by Beneficiary shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof. Upon payment in full of all Obligations, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If the Trust Property is sold under the power of sale or the Trust Property is otherwise acquired by Beneficiary, Beneficiary shall apply, immediately prior to the sale of the Trust Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the Obligations. If Beneficiary executes a written waiver of Trustor's obligations under this Section, Trustor covenants and agrees to pay, before the same become delinquent, all taxes, assessments, insurance premiums, ground rents, and all other charges whatsoever levied upon or assessed, placed or made against the Trust Property. Trustor further agrees, upon written request by Beneficiary, to promptly deliver to Beneficiary all receipts for the payment of such charges. Trustor likewise agrees to pay all taxes, assessments and other charges levied upon or assessed, placed or made against, or measured by, this Deed of Trust or the recordation hereof.

5. Application of Payments. All payments received by Beneficiary as to any debt, liability or obligation owed to Beneficiary by Trustor may be applied by Beneficiary to the payment of the Obligations in any order or manner of application which Beneficiary, in its absolute discretion, deems appropriate.

6. Charges; Liens. Trustor will keep the Trust Property free from all liens and encumbrances, whether prior or subordinate to this Deed of Trust, other than the lien of current real estate taxes and installments of official assessments with respect to which no penalty is yet payable; provided, however, that Trustor need not discharge any such lien so long as Trustor shall agree, in writing, to pay the obligation secured by such lien in a manner acceptable to Beneficiary and shall in good faith contest such lien by appropriate legal proceedings effective to prevent the enforcement of the lien or the loss of any interest in or part of the Trust Property, and shall also give such reasonable security to Beneficiary as may be demanded by Beneficiary to insure compliance therewith. The Beneficiary may in its sole discretion defend the lien of this Deed of Trust and all costs and attorneys' fees incurred by Beneficiary in said defense shall be reimbursed by Trustor or added to the Obligations.

7. Hazard Insurance. Trustor shall keep the buildings and other improvements now existing or hereafter erected on the Trust Property insured by insurance carriers satisfactory to Beneficiary against loss by fire, hazards included in the term "extended coverage" and such other hazards, casualties and contingencies, including war damage insurance, as may be required by Beneficiary, in such amounts and for such periods as may be required by Beneficiary. The policy of insurance shall be in form acceptable to Beneficiary and shall not contain a defense based on coinsurance, and shall contain the standard provision that no act of the Beneficiary or of the Beneficiary's agents or representatives will render the policy void as to the Beneficiary or affect the Beneficiary's right to recover in case of loss, and the policy or policies shall provide that the same may not be canceled or modified without fifteen (15) days prior written notice to Beneficiary, and have loss payable provisions in favor of and in form acceptable to Beneficiary. All premiums on insurance policies shall be paid in the manner provided under the Section entitled "Funds for Payment of Charges" herein or, if not paid in such manner, by Trustor making payment at least fifteen (15) days prior to the due date, directly to the insurance carrier. Beneficiary shall have the right to hold the policies and renewals thereof and Trustor shall promptly furnish to Beneficiary all renewal notices and all paid premium receipts received by it. In no event shall Beneficiary or Trustor be held responsible for failure to pay insurance premiums or for any loss or damage arising out of a defect in any policy or arising out of any failure of any insurance company to pay for any loss or damage insured against or for failure by Trustor to effect the insurance required hereunder. In the event of loss, Trustor shall give prompt notice by mail to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly or in proper form by Trustor. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to Beneficiary as additional security for the payment of the Obligations. In the event of Beneficiary's exercise of the power of sale contained herein, or in the event of foreclosure, all right, title and interest of Trustor in and to any insurance policy then in force shall pass to the purchaser at the trustee's sale or foreclosure sale. In case of any loss, the insurance proceeds may, at the option of Beneficiary, be applied by Beneficiary upon the Obligations, or any part thereof, and in such order and amount as Beneficiary may determine in its proceedings, at the option of Beneficiary, may either be used in replacing or restoring the Trust Property, partially or totally destroyed to a condition satisfactory to Beneficiary, or said insurance proceeds, or any portion thereof, may be released to Trustor. Unless Beneficiary and Trustor otherwise agree in writing, any such application of insurance proceeds shall not extend or postpone the due date of any note or agreement evidencing the Obligations, or any installments called for therein, or change the amount of such installments. If the Trust Property is acquired by Beneficiary pursuant to the exercise of the power of sale or other foreclosure, all right, title and interest of Trustor in and to any insurance proceeds payable as a result of damage to the Trust Property prior to the sale or acquisition shall pass to Beneficiary and shall be applied first to the costs and expenses, including attorneys' fees, incurred in collecting such proceeds, then in the manner and in the order provided herein. Notwithstanding anything contained in this Section to the contrary, if this Deed of Trust is on a condominium or a town house and there is a master insurance policy in force covering the common areas and facilities and all condominiums and town houses located in the development, then, unless otherwise notified in writing by the Beneficiary, the Trustor shall have no obligation to maintain the insurance required hereunder, and will assign all benefits and proceeds received thereon to the Beneficiary and, in the Beneficiary's sole discretion, name the Beneficiary as the named insured on said policy. Whenever such insurance is in force (regardless of whether requested by the Beneficiary or not) the Trustor hereby authorizes the Beneficiary to cancel such insurance whenever the Beneficiary determines that such insurance does not adequately protect the Beneficiary's interest.

8. Preservation and Maintenance of Trust Property. Trustor will keep the buildings and other improvements now or hereafter erected on the Trust Property in good repair and condition, ordinary depreciation excepted, and shall provide all utility services necessary for the operation and preservation of the Trust Property. Trustor will not commit or permit waste, will not alter the design or structural character constituting any building now or hereafter erected on and constituting the Trust Property without the prior written consent of Beneficiary, will not do any act or thing which would unduly impair or depreciate the value of the Trust Property and will not abandon the Trust Property. Trustor will not remove any fixtures constituting the Trust Property unless the same are immediately replaced with like property subject to the lien and security interest of this Deed of Trust and of at least equal value and utility. Trustor will comply with all present and future ordinances, regulations and requirements of any governmental body which are applicable to the Trust Property and to the occupancy and use thereof. If this Deed of Trust is on a unit in a condominium or a planned unit development, Trustor shall perform all of Trustor's obligations under the declarations or covenants creating or governing the condominium or the planned unit development, the bylaws and regulations of the condominium or planned unit development, and the constituent documents.

9. Inspection. Beneficiary or its agents may, at all reasonable times, enter upon the Trust Property for the purpose of inspection including, but not limited to environmental testing. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it makes or fails to make any such inspection.

10. Protection of Security. If Trustor fails to perform any of the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which does or may adversely affect the Trust Property or the interest of Trustor or Beneficiary therein or the title of Trustor thereto, then Beneficiary, at its option, may perform such covenants and agreements, make such appearances, defend against and/or investigate such action or proceeding and take such other action as Beneficiary deems necessary to protect its interest including, but not limited to, disbursement of reasonable attorneys' fees and entry upon the Trust Property to make repairs. Any amounts disbursed or incurred by Beneficiary pursuant to this Section, including, but not limited to, reasonable attorneys' fees, with interest thereon, shall constitute additional Obligations secured by this Deed of Trust. Beneficiary is hereby given an irrevocable power of attorney (which power is coupled with an interest for purposes of security) to enter upon the Trust Property as the Trustor's agent and in the Trustor's name to perform any and all covenants and agreements to be performed by the Trustor as herein provided. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement or the date incurred at the rate set forth in the Note or the rate provided in the most recent obligation covered by the Guaranty, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permitted by applicable law. Nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder. Beneficiary shall, at its option, be subrogated to any encumbrance, lien, claim or demand and to all rights and securities for the payment thereof paid or discharged by Beneficiary under the provisions hereof and any such subrogation rights shall be additional and cumulative security for this Deed of Trust.

11. Condemnation. The proceeds of any award or payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Trust Property, or any part thereof, either temporarily or permanently, or for conveyance in lieu of or in anticipation of condemnation, are hereby assigned to and shall be paid to Beneficiary. Trustor will file and prosecute, in good faith and with due diligence, its claim for any such award or payment, and will cause the same to be collected and paid to Beneficiary, and should it fail to do so, Trustor irrevocably authorizes and empowers Beneficiary, in the name of Trustor or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receive for and retain the proceeds. If the Trust Property is abandoned by Trustor, or, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within thirty (30) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds in the manner indicated herein. The proceeds of any award or claim may, after deducting all reasonable costs and expenses, including attorneys' fees, which may have been incurred by Beneficiary in the collection thereof, at the sole discretion of Beneficiary, be released to Trustor, applied to restoration of the Trust Property, or applied to the payment of the Obligations. Unless Beneficiary and Trustor otherwise agree in writing, any such application of proceeds to the Note or Guaranty, as applicable, shall not extend or postpone the due date of any regular installments called for thereunder or change the amount of any such installments.

12. Environmental Representations and Warranties; Indemnification; Inspection and Testing. Trustor represents and warrants that, except as disclosed in writing to Beneficiary and except where Trustor has obtained the requisite local, state, and/or federal permits and approvals, Trustor does not and will not generate nor have in its possession any hazardous or toxic wastes, chemicals or other substances, the generation or possession of which are governed by local, state and/or environmental laws, ordinances, decrees, regulations and statutes (hereinafter "Environmental Wastes"). Trustor further represents and warrants that it is not presently the subject of any environmental inquiry, litigation, administrative proceeding or threat thereof by a governmental authority, and that Trustor shall promptly notify Beneficiary of same if any of the foregoing does occur. Trustor also represents and warrants to Beneficiary that it is not subject to any judgment, decree, order or citation relating to or arising out of a violation of local, state or federal environmental laws or regulations. Trustor shall also provide Beneficiary when applicable with copies of all appropriate environmental permits and approvals.

Trustor warrants and represents that there are not now, nor to the Trustor's knowledge after reasonable investigation have there ever been Environmental Wastes stored, deposited, treated, recycled or disposed of on, under, or at the Trust Property (including tanks or other facilities thereon containing such materials), which materials or contained materials, if known to be present on the property or present in soils or ground water, would require clean up, removal, or other remedial action under environmental laws.

Trustor will indemnify and hold harmless Beneficiary, its successors, assigns, employees, agents, parent, affiliates and subsidiaries, and each of them, from any and all claims, suits, damages, liabilities and expenses arising out of or in connection with any alleged or actual pollution or contamination of the ground, water or air of, on or near the Trust Property.

Beneficiary may at any time hire the services of an environmental consulting and/or testing company to inspect the Trust Property with the costs thereof to be charged to Trustor. Trustor shall not rely on such inspection nor shall Trustor be relieved thereby of conducting its own environmental audit or taking such other steps as are necessary to comply with environmental laws and regulations.

13. Trustor Not Released. Extension of the time for payment or modification of any amortization of the Obligations granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of Trustor and Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the Obligations by reason of any demand made by Trustor and Trustor's successors in interest.

14. Additional Covenants. In addition to any other covenants of Trustor made in any other agreement, instrument or document, Trustor shall comply with the covenants set forth in any Rider attached and made a part of this Deed of Trust.

15. Schedule of Leases. Within ten (10) days after demand, Trustor shall furnish to Beneficiary a schedule, certified to by Trustor, setting forth all leases of the Trust Property, or any portion thereof, including in each case, the name of the tenants or occupants, a description of the space occupied by such tenant or occupant, the rental payable for such space, and such other information and documents with respect to such leases and tenancies as Beneficiary may reasonably request.

16. Covenants of Trustor with Respect to Leases. Without the prior written consent of Beneficiary, Trustor shall not, directly or indirectly, with respect to any lease of space in the Trust Property, or any portion thereof, whether such lease is now or hereafter in existence:

- (a) Accept or permit any prepayment, discount or advance payment of rent hereunder in excess of one month,
- (b) Cancel or terminate the same, or accept any cancellation, termination or surrender thereof, or permit any event to occur which would occur thereunder to terminate or cancel the same, other than termination for nonpayment of rent,
- (c) Amend or modify the same so as to reduce the term thereof, the rental payable thereunder, or to change any renewal provisions therein contained,
- (d) Waive any default thereunder or breach thereof,
- (e) Give any consent, waiver or approval thereunder or take any other action in connection therewith, or with a lessee thereunder, which would have the effect of impairing the value of the lessor's interest thereunder or the property subject thereto, or of impairing the position of interest of Beneficiary therein, or
- (f) Sell, assign, pledge, mortgage or otherwise dispose of, or encumber its interest in any said lease or any rents, issues, profits issuing or arising thereunder.

17. Waiver of Statute of Limitations. Time is of the essence in all of Trustor's obligations and duties hereunder; and to the extent permitted by law, Trustor waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereby and any action or proceeding for the purpose of enforcing this Deed of Trust or any rights or remedies contained herein.

18. Assignment of Deposits. In the event construction of improvements is contemplated by the Obligations secured hereby, as additional security therefor, Trustor hereby transfers and assigns to Beneficiary, all right, title and interest to any and all monies deposited by or on behalf of Trustor with any city, county, public body or agency, sanitary district, utility company, and any other body or agency, for the installation or to secure the installation of any utility by Trustor, pertaining to the Trust Property.

19. Organizational Existence. If Trustor is an organization organized under the laws of a state, it will do all things necessary to preserve its existence and all rights and privileges under the laws of the state of its organization.

20. Forbearance by Beneficiary Not a Waiver. Any delay by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law or equity, shall not be a waiver of or preclude the exercise of such right or remedy or of any other right or remedy granted hereunder or at law or equity. The failure of the Beneficiary to exercise any option to accelerate maturity of the Obligations secured by this Deed of Trust, the forbearance by the Beneficiary before or after the exercise of such option, or the withdrawal or abandonment of proceedings provided for by this Deed of Trust shall not be a waiver of the right to exercise such option or to accelerate the maturity of such Obligations by reason of any past, present or future event which would permit acceleration under the Section entitled "Acceleration of Debt; Foreclosure" herein. The procurement of insurance, the payment of taxes or the discharge of liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Obligations hereby secured. The Beneficiary's receipt of any awards, proceeds or damages under the Section entitled "Hazard Insurance" and the Section entitled "Condemnation" herein shall not operate to cure or waive default by the Trustor under the Section entitled "Events of Default" herein.

21. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively, and as often as the occasion therefor arises.

22. Successors and Assigns Bound; Number; Gender; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assigns of Beneficiary, Trustee, and Trustor. 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. All covenants and agreements of Trustor shall be joint and several; provided, however, that if the Trustor is an individual, nothing contained in this Deed of Trust shall in any way obligate a spouse of the Trustor to pay the Obligations unless such spouse also signs the Note or the Guaranty. The captions and headings of the Sections of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

23. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail, return receipt requested addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary or Trustee shall be given by certified mail, return receipt requested, to Beneficiary's and Trustee's mailing address stated herein or to such other address as Beneficiary or Trustee may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor, Beneficiary or Trustee when given in the manner designated herein.

24. Governing Law; Severability. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provisions and to this end the provisions of this Deed of Trust are declared to be severable. In the event that any applicable law in effect on the date of the execution of this Deed of Trust limits the amount of interest or other items which may be lawfully charged and is interpreted in a manner such that any payment provided for in this Deed of Trust or in the Note or the Guaranty (whether considered separately or together with other payments that are considered a part of this Deed of Trust and this transaction) violates such law, such payment is hereby reduced to the extent necessary to eliminate such violation if the Trustor is entitled to the benefit of such law.

- 25. **Events of Default.** Each of the following occurrences shall constitute an event of default hereunder, (hereinafter an "Event of Default"):
 - (a) Any amount payable under the Obligations secured by this Deed of Trust is not paid when due, after giving effect to any applicable grace period therein,
 - (b) Trustor is otherwise in default under the terms of the Obligations,
 - (c) Trustor fails to observe or perform any of the covenants, agreements, or conditions in this Deed of Trust,
 - (d) Any representation or warranty including, but not limited to, any warranty of title made by Trustor in this Deed of Trust is false or materially misleading, or
 - (e) Trustor sells or conveys the Trust Property, or any part thereof, or any interest therein, or is divested of its title, or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary.

26. **Acceleration of Debt; Foreclosure.** Upon the occurrence of any Event of Default, or any time thereafter until such Event of Default is cured to the satisfaction of Beneficiary, Beneficiary may, at its option, declare all Obligations secured hereby immediately due and payable and the same shall bear interest at the default rate, if any, set forth in the Note or the default rate, if any, set forth in the most recent obligation covered by the Guaranty, or otherwise at the highest rate permitted by law, and, irrespective of whether Beneficiary exercises said option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

- (a) Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and Beneficiary's costs, upon the Obligations secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and shall make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any of the actions referred to in this Section may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any security for the Obligations secured hereby.
- (b) Beneficiary shall, without regard to the adequacy of any security for the Obligations secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of, protect, and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.
- (c) Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.
- (d) Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give such notice of default and notice of sale to each party to this Deed of Trust by mail at the address set forth herein and any other notice which may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the bid price, Trustee shall apply the proceeds in the following order: (i) to the cost and expenses of exercising the power of sale and of the sale, including but not limited to, trustee's fees of not more than \$500.00 plus one-half of one percent of the gross sale price, and reasonable attorneys' fees, (ii) to the Obligations, and (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorneys' fees and court costs, shall be and constitute Obligations secured hereby.

- 27. **Duties of Trustee.** Trustor agrees that:
 - (a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee,
 - (b) No provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers,
 - (c) Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon, and
 - (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within its discretion or rights or powers conferred upon it by this Deed of Trust.

28. **Security Agreement and Fixture Filing.** From the date of its recording, this Deed of Trust shall constitute a security agreement and fixture filing under the provisions of the Nebraska Uniform Commercial Code with respect to those fixtures described in the preambles hereof as constituting a part of the Trust Property, together with all other property of Trustor, either similar or dissimilar to the same, now or hereafter located at or on the Trust Property. For this purpose, the following information is set forth:

<p>(a) Name and Address of Debtor/Trustor:</p> <p><u>Crosstown LLC.</u></p> <p>_____</p> <p><u>115 Hickory St</u></p> <p><u>Omaha, NE 68108</u></p>	<p>(b) Name and Address of Secured Party/Beneficiary:</p> <p><u>Wells Fargo Bank Nebraska, N.A.</u></p> <p>_____</p> <p><u>4725 S. 84th Street</u></p> <p><u>Ralston, NE 68127</u></p>
<p>(c) Debtor's Social Security Number/Federal Taxpayer I.D. Number <u>470837058</u></p>	
<p>(d) This document covers goods which are or are to become fixtures.</p>	
<p>(e) The name of the record owner of the Trust Property is the Debtor/Trustor described above.</p>	

29. **Future Advances.** Beneficiary, at Beneficiary's option, prior to full reconveyance of the Trust Property by Trustee to Trustor, may make future advances to Trustor. Such future advances, with interest thereon, shall be secured by this Deed of Trust. At no time shall the principal amount of the Obligations secured by this Deed of Trust, not including sums advanced to protect the security, exceed the total sum of \$ 67,500.00

Nothing herein contained shall imply any obligation on the part of the Beneficiary to make any such additional advances. Advances of disbursements made by Beneficiary to protect the security, under the terms hereof, while discretionary, shall not be deemed to be optional advances.

- 30. **Reconveyance.** Upon payment of all Obligations secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and all notes evidencing Obligations secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.
- 31. **Substitute Trustee.** Beneficiary, at its option, may from time to time remove Trustee and appoint a Successor Trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Trust Property, the Successor Trustee shall succeed to all title, power and duties conferred upon Trustee herein and by applicable law.
- 32. **Miscellaneous Rights of Beneficiary.** Beneficiary may at any time and from time to time, without notice, consent to the making of any plat of the Trust Property or the creation of any easement thereon or any covenants restricting use or occupancy thereof or agree to alter or amend the terms of this Deed of Trust. Any personal property remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent or any purchaser following Trustee's sale or foreclosure, or under any deed in lieu of Trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor.
- 33. Trustor hereby requests that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Trustor at its mailing address set forth above.

IN WITNESS WHEREOF, this Deed of Trust has been duly executed the day and year first above written.

Signatures

Trustor's Name

Crosstown LLC.

Signature
X Timothy J Odorisio
Name and Title (if applicable)
Timothy J Odorisio, Member

Signature
X Gary Lee Mandolfo
Name and Title (if applicable)
Gary Lee Mandolfo, Member

Signature
X
Name and Title (if applicable)

Signature
X
Name and Title (if applicable)

Individual

STATE OF NEBRASKA)
) SS
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this _____, by _____ and _____.

Witness my hand and official seal.

Signature of Person Taking Acknowledgment

Title or Rank

[Notarial Seal]

Serial Number (if any)

My commission expires: _____

Organization

STATE OF NEBRASKA)
) SS
COUNTY OF Douglas)

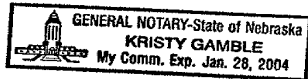
The foregoing instrument was acknowledged before me this _____, by Timothy J Odorisio, Member and Gary Lee Mandolfo, Member on behalf of the Limited Liability Company.

Witness my hand and official seal.

Kristy Gamble
Signature of Person Taking Acknowledgment

Sales Associate
Title or Rank

[Notarial Seal]



Serial Number (if any)

My commission expires: 1-28-04

EXHIBIT A

PARCEL A: Lots Four (4), Five (5), and Six (6), in Block Two (2), in SCHAEFER PLACE, an Addition to the City of Omaha, in Douglas County, Nebraska, together with the West ½ of vacated alley adjoining on the East - 06-34680

PARCEL B: Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), and Eleven (11), in BLUFF VIEW, an Addition to the City of Omaha, in Douglas County, Nebraska, AND Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), in Block One (1), and Lots One (1), Two (2), and Three (3), in Block Two (2), all in SCHAEFER PLACE, an Addition to the City of Omaha, in Douglas County, Nebraska, together with and including vacated alley between Evans Street and Pratt Street from 14th Avenue to the West line of Lot Three (3), Block Two (2), in Schaefer Place, and the west line of Lot Seven (7), in BLUFF VIEW ADDITION, the vacated portion of 15th Street from the north line of the alley between Evans Street to Pratt Street to the south line of Pratt Street, the West ½ of vacated portion of 14th Avenue from Evans Street to Pratt Street, and the East ½ of the vacated North and South alley East of 16th Street from Evans Street to Pratt Street, and the West ½ of the vacated North and South alley East of 16th Street adjoining Lots Eight (8), Nine (9) and Ten (10), in Bluff View Addition and all of the interest of the fee title holder in the East ½ of the vacated portion of 14th Avenue from Evans Street to Pratt Street, all in the City of Omaha, in Douglas County, Nebraska



U06678951-01

DEED OF TRUST
REF# 1117PAULAHOPPE
US Recordings