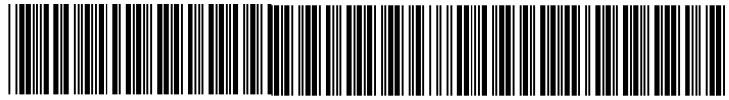




MTG 2015044360



JUN 05 2015 11:28 P 45

Fee amount: 274.00  
FB: M1-22274  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/05/2015 11:28:23.00



2015044360

**DEED OF TRUST AND SECURITY AGREEMENT**

**Cover Page**

Borrower: Legacy Court, LLC, a Nebraska limited liability company

Borrower's Notice  
Address: 12910 Pierce Street, Suite 110, Omaha, NE 68144

Trustee: Old Republic National Title Insurance Company, a national title insurer qualified in Nebraska, and all other successors and assigns for the benefit of Beneficiary (as defined below)

Trustee's Notice  
Address: 400 Second Avenue South, Minneapolis, Minnesota 55401

Beneficiary:  
(Lender) PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders from time to time of the Note (as defined herein).

Beneficiary's  
Notice Address: 2801 Highway 280 South  
Birmingham, Alabama 35223  
Attention: Investment Department

PREPARED BY, AND RECORD AND RETURN TO:  
Nancy C. Drummond, Esq.  
King, Drummond & Dabbs, LLC  
4000 Eagle Point Corporate Drive  
Birmingham, AL 35242  
PH: 205-824-8247

PLIC/ LegacyCourt,OmahaNE

**DEED OF TRUST AND SECURITY AGREEMENT**  
**Cover Sheet**

Date: As of June 5, 2015

Borrower: Legacy Court, LLC, a Nebraska limited liability company

Borrower's Notice Address: 12910 Pierce Street, Suite 110, Omaha, NE 68144

Trustee: Old Republic National Title Insurance Company and all other successors and assigns for the benefit of Beneficiary (as defined below).

Trustee's Notice Address: 400 Second Avenue South, Minneapolis, Minnesota 55401

Beneficiary: (Lender) PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation, together with other holders from time to time of the Note (as defined herein).

Beneficiary's Notice Address: 2801 Highway 280 South  
Birmingham, Alabama 35223  
Attention: Investment Department

Note Amount: \$5,200,000.00

Maturity Date: July 1, 2025

State: Nebraska

Record Owner of Land: Legacy Court, LLC, a Nebraska limited liability company

Exhibits A and B: Attached hereto and incorporated herein by reference.

Additional Borrower Information: Borrower is an Organization  
Type of Organization: limited liability company  
Jurisdiction of Organization: Nebraska

1. DEFINITION OF TERMS. As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:

1.1 Commitment: as defined in Paragraph 3.7.

1.2 Borrower's Notice Address: as defined on cover hereof.

1.3 Casualty: as defined in Paragraph 5.1.

1.4 Contested Sum: as defined in clause (e) of Paragraph 4.1.

1.5 Events of Default: as defined in Paragraph 8.1.

1.6 Improvements: all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all Fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personalty.

1.7 In its sole unfettered discretion: as defined in Paragraph 10.8.

1.8 Indenture: this Deed of Trust and Security Agreement and all modifications, renewals, extensions, restatements, supplements or any other modifications of same.

1.9 Insurance Premiums: as defined in Paragraph 4.3.

1.10 Insurance Proceeds: as defined in clause (a) of Paragraph 5.3.

1.11 Laws: as defined in clause (c) of Paragraph 4.2.

1.12 Land: the land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or appertaining to, the Land.

1.13 Leases: all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.14 Lease Assignment: that certain Assignment of Rents and Leases between Borrower and Beneficiary of even date herewith and all modifications, renewals, extensions, restatements, supplements or any other modifications of same.

1.15 Loan Documents: this Indenture, the Note, the Lease Assignment, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Beneficiary, including without limitation any environmental indemnification and any one or more guarantees and all modifications, renewals, extensions, restatements, supplements or any other modifications of same.

1.16 Note: that certain Promissory Note of even date herewith made by Borrower in favor of Beneficiary in the Note Amount and all modifications, renewals, extensions, restatements, supplements or any other modification of same, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet), subject to any rights of Beneficiary to accelerate the principal due as may be set forth in the Note.

1.17 Parties in Interest: as defined in clause (d) of Paragraph 8.1.

1.18 Personalty: all of Borrower's interest in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a fixture ("Fixture") or attached to the Realty, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), general intangibles (including payment intangibles and software), goods (including consumer goods, inventory, equipment and farm products), letter of credit rights and deposit accounts (as those terms are defined in the Uniform Commercial Code as now adopted or amended from time to time in the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.19 Property: the Realty and Personalty or any portion thereof or interest therein except as the context otherwise requires.

1.20 Property Liabilities: as defined in clause (d) of Paragraph 4.1.

1.21 Property Taxes and Charges: as defined in clause (b) of Paragraph 4.1.

1.22 Realty: the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.23 Secured Debt: to the extent not prohibited by Law, all principal, interest, additional interest, interest at the After-Maturity Rate set forth in the Note on all sums applicable thereto, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Beneficiary under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.24 Taking: as defined in Paragraph 5.1.

1.25 Taking Proceeds: as defined in clause (a) of Paragraph 5.3.

1.26 State: as defined on cover hereof.

2. GRANTING CLAUSES. For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, warrants, bargains, sells and conveys to Trustee, IN TRUST, with all POWERS OF SALE AND STATUTORY RIGHTS in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Beneficiary a first and prior security interest in, the Property and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) All Leases;

(b) All profits and sales proceeds, including, without limitation, earnest money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;

(c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and

(d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO BENEFICIARY, in such order of priority as Beneficiary may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Beneficiary or advanced under the Loan Documents (at the After-Maturity Rate set forth in the Note), even if the sum of the amounts outstanding at any time exceeds the Note Amount; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as now adopted or amended from time to time in the State. Time is of the essence.

TO HAVE AND TO HOLD the Property and all parts thereof unto Beneficiary and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Trustee and Beneficiary that the following warranties and representations in this Paragraph are and will be true, correct and complete at all times:

3.1 Due Organization, Authority. If Borrower is an entity, Borrower (i) is a Single Purpose Entity (defined in paragraph 4.12 below) and is duly organized and validly existing, and in good standing under the laws of the state of its organization and (ii) has power adequate to carry on its business as presently conducted in such state and in the State, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein, and (iii) has duly authorized by all necessary action the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof.

3.2 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3 Other Obligations. Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4 Construction and Completion of Improvements. The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to Beneficiary. The Improvements are served by electric, gas, sewer, or septic system, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Beneficiary hereunder as part of the Property, whether located on the Property as described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Beneficiary. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to the Beneficiary, and that the Beneficiary will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5 Legal Actions. There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Beneficiary. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 Financial Statements. All statements, financial or otherwise, submitted to Beneficiary in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7 Solvency of Tenants. To the best of Borrower's knowledge and belief, no Tenant (as specified in the loan commitment or the loan application, if any, to Beneficiary (the "Commitment") for the loan secured hereby) of the Realty or any part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment.

3.8 Adverse Change to Property. No event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse affect on the Property.

3.9 Title to Property. Subject to tenant's interest in the Property pursuant to Leases, Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personalty and Borrower shall and will warrant and forever defend the title thereto and Beneficiary's first and prior lien thereto unto Beneficiary, its successors and assigns, against the claims of all persons whomsoever.



3.10 Compliance with Laws and Private Covenants. The Property complies with all Laws. The Land is a separate and distinct parcel for tax purposes and has not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.

3.11 Independence of the Property. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no Improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

3.12 Environmental. Borrower is a party to and has executed this date in favor of Lender an Environmental Indemnification which is one of the Loan Documents described herein and which is incorporated herein by reference. For purposes of this Indenture, Borrower hereby restates and confirms the representations and warranties contained in the Environmental Indemnification which contains covenants to comply with and perform the obligations contained in the Environmental Indemnification.

#### 4. BORROWER'S COVENANTS.

##### 4.1 Payments.

(a) Secured Debt. Borrower shall pay promptly to Beneficiary, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Except as provided in Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imposts, levies, water, utility and sewer charges, and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or

possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Beneficiary with receipts showing payment of the Property Taxes and Charges prior to the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Beneficiary, Borrower shall cause to be furnished to Beneficiary a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Beneficiary.

(c) Taxes on Trustee or Beneficiary. If any Law of the State or the United States or any other governmental authority imposes upon Trustee or Beneficiary the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Trustee or Beneficiary, then Borrower shall pay Property Taxes and Charges or reimburse Trustee and Beneficiary immediately therefor, unless in the opinion of counsel to either Trustee or Beneficiary, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law ("Unlawful Event"). If such Unlawful Event exists, Lender shall have the right to accelerate all sums due under the Note and other Loan Documents. Lender shall give Borrower notice sent in the manner prescribed herein of such acceleration stating all sums due to Lender. If such sums are not paid within sixty (60) days from the date such notice is given, an Event of Default shall exist.

(d) Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property Liabilities"), including, without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) Right to Contest. Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Beneficiary. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Beneficiary cash or other security, in form satisfactory to Beneficiary in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any

obligation, whether matured or contingent, of Borrower, Trustee or Beneficiary therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) Expenses. Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents, (ii) Trustee or Beneficiary's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof, and (iii) Trustee or Beneficiary's protection of the Property and its interest therein.

(g) Servicing Fees. Borrower shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Beneficiary or its third-party loan servicer for any servicing-related matter arising during the term of the Loan. Borrower agrees to immediately reimburse Beneficiary or such servicer upon Beneficiary's request for any such legal and/or processing fees and costs.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (g).

#### 4.2 Operation of the Property.

(a) Maintenance; Alterations. Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the

Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Beneficiary in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.

(b) Liens. Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) Compliance with Laws and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator (herein collectively "Laws") and private covenants affecting the Property. The Land shall remain a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by Borrower (so long as no default exists under any of the Loan Documents) or a leasing and management agent which has been approved by the Beneficiary prior to execution of any management agreement with the same. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Beneficiary.

(e) Inspection. Borrower shall permit Trustee or Beneficiary to enter upon and inspect the Property at reasonable times without delay, hindrance or restriction.

4.3 Insurance. Borrower shall obtain and keep in force, with one or more insurers acceptable to Beneficiary, such insurance as Beneficiary may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$2,000,000.00, (ii) protection against fire, "extended coverage" and other "All Risk" perils, including, where required, flood, to the full replacement value of the Property

with a waiver of subrogation, replacement cost, and difference in conditions endorsements, and (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months' rental income from all Leases. All property insurance policies shall include the standard mortgage clause in the State naming Beneficiary as the first mortgagee with loss payable to Beneficiary as such mortgagee, shall not be cancelable or modifiable without thirty (30) days' prior written notice to Beneficiary, and shall not have more than a \$10,000.00 deductible for any single Casualty. Borrower shall provide Beneficiary with evidence of compliance with this Paragraph 4.3 in such forms as required from time to time by Beneficiary upon notice from Beneficiary or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Beneficiary that such payment has been made shall be delivered by Borrower to Beneficiary.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Trustee and Beneficiary. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

Beneficiary shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Beneficiary.

4.4 Escrow. Borrower shall pay to Beneficiary monthly on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Beneficiary from time to time estimates will be required to pay all Property Taxes and Charges and Insurance Premiums when due or before becoming past due. Beneficiary's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the preceding year adjusted to reflect for

any anticipated or known increases for the coming year. Beneficiary may require Borrower to pay one-sixth (1/6th) of said estimate as escrow overage, which may be retained by Beneficiary in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Beneficiary on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Beneficiary has received from Borrower or on its account funds sufficient to pay the same, Beneficiary shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Beneficiary at its discretion even though subsequent owners of the Property may benefit thereby. Beneficiary shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

4.5 Sales and Encumbrances. Except as may be otherwise permitted by Exhibit B, Borrower shall not, without the prior written consent of Beneficiary, which consent, if given in Beneficiary's sole unfettered discretion, may be conditioned upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, delivery of a management contract approved by Beneficiary with a management company approved by Beneficiary, and/or the satisfaction of other conditions required by Beneficiary or one or more of the foregoing or other requirements of Beneficiary:

(i) convey, assign, sell, mortgage, encumber, pledge, dispose of, hypothecate, grant a security interest in, grant options with respect to, or otherwise dispose of (directly or indirectly or by operation of law or otherwise, of record or not), all or any part of any legal or beneficial interest in any part or all of the Property or the Leases, or any interest therein, or any or all of the rents, issues, deposits or profits therefrom; or

(ii) sell, assign or otherwise dispose of (whether or not of record or for consideration or not), or permit the sale, assignment or other disposition of any legal or beneficial interest in Borrower.

Any breach of the foregoing by a holder of any interest (legal or beneficial) or stock in Borrower shall constitute an Event of Default under Section 8.1(a).

4.6 Financial Records and Statements. Borrower shall keep accurate books and records in accordance with generally accepted accounting principles, consistently applied, in which full, true and correct entries shall be promptly made as to all

operations of the Property and shall permit all such books and records to be inspected and copied by Beneficiary, its designee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Beneficiary within sixty (60) days after the end of each calendar year a statement of condition or balance sheet of Borrower relating solely to the Property as of the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, both certified as to accuracy (a) by Borrower, provided no default exists hereunder, or (b) by an independent certified public accountant acceptable to Beneficiary (said documents need not be audited but shall be reviewed), if a default occurs hereunder and Beneficiary requests such a certification in writing; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to accuracy by a representative of Borrower acceptable to Beneficiary, and in form and substance satisfactory to Beneficiary.

4.7 Further Assurances. Borrower shall promptly upon request of Beneficiary (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof, or (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases), or (c) join with the Beneficiary in notifying any third party who is in possession of any Personalty of Beneficiary's security interest in such Personalty and obtaining the acknowledgment from such third party that such third party is holding such Personalty for the benefit of Beneficiary, or (d) cooperate with Beneficiary in obtaining control (as defined in the Uniform Commercial Code as now adopted and amended from time to time in the State) with respect to Personalty consisting of deposit accounts, letter-of-credit rights and electronic chattel paper, and (e) do such further acts, in any case as may be necessary, desirable or proper in Beneficiary's opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto, and (iii) protect the interest and security interest of Beneficiary in the Property against the rights or interests of third parties. By signing this Indenture, Borrower authorizes Beneficiary to file such financing statements, with or without the signature of Borrower, as Beneficiary may elect, as may be necessary or desirable to perfect the lien of Beneficiary's security interest in the Fixtures and Personalty. Borrower further authorizes Beneficiary to file, with or without any additional signature from Borrower, as Beneficiary may elect, such amendments and continuation statements

as Beneficiary may deem necessary or desirable from time to time to perfect or continue the lien of Beneficiary's security interest in the Fixtures and Personalty. Borrower hereby expressly ratifies any financing statements that may have been filed by Beneficiary in advance of the date hereof to perfect Beneficiary's security interest in the Fixtures and Personalty. Borrower hereby appoints Beneficiary as Borrower's attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7. Borrower hereby acknowledges and agrees that Borrower is not authorized to and shall not make or change any Uniform Commercial Code filing in connection with this loan.

4.8 Indemnity. Borrower shall indemnify, defend and hold harmless Trustee or Beneficiary from and against, and, upon demand, reimburse Trustee or Beneficiary for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by either Trustee or Beneficiary by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Beneficiary on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except as a result of the willful misconduct or gross negligence of Trustee or Beneficiary, whereupon the exception shall apply only against Trustee or Beneficiary as the case may be.

4.9 No Preferences. Borrower shall not repay any sums borrowed from anyone other than Beneficiary, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10 Notices. Borrower shall deliver to Beneficiary at Beneficiary's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11 Estoppel Certificates. Borrower shall promptly furnish to Beneficiary from time to time, on the request of Beneficiary, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Beneficiary.



4.12 Legal Existence. If Borrower as an entity is executing this instrument:

(a) Authorization/Organization. Borrower covenants that so long as any of Borrower's obligations hereunder or under the Loan Documents remain unsatisfied, Borrower (i) will remain a "Single Purpose Entity" (defined below) duly organized and validly existing and in good standing under the laws of the state of Borrower's organization or formation, and (ii) will observe and comply with all formalities and requirements of the state of Borrower's organization or formation in order to preserve its valid and legal existence and good standing under the laws of the state of Borrower's organization or formation as an entity separate and apart from its owners, and (iii) will remain duly qualified or registered to do business and in good standing under the laws of the state where the Property is located, and (iv) will observe and comply with all formalities and requirements of the state where the Property is located in order to preserve its valid qualification or registration and good standing under the law of the state where the Property is located, and (v) will retain the power, authority and legal right to carry on the business now being conducted by Borrower and to engage in the transactions contemplated by the Loan Documents. Single Purpose Entity means that Borrower will not engage in any business or activity or incur any liabilities other than related to the ownership, operation and maintenance of the Property and activities incidental thereto, and will not acquire, own, hold, lease, operate, manage, develop or improve any asset other than the Property, will not guarantee or become obligated for the debt of another or make any loans or advances to any entity or person, will not merge with, consolidate with or become affiliated in any manner with any other business, entity or person, will pay its own operational liabilities, will maintain its own separate books, accounts and financial statements, will conduct business under its own name, will not comingle its assets with those of any other entity or person and will maintain adequate capital in light of its business operation of the Property.

(b) Dissolution/Disposition of Assets/State of Organization. Borrower agrees that so long as any of Borrower's obligations hereunder or under the Loan Documents remain unsatisfied, Borrower will not change, dissolve or liquidate (in whole or in part) Borrower's existence, that Borrower will maintain Borrower's existence, will not dissolve or otherwise dispose of all or substantially all of Borrower's assets and will not consolidate with or merge into another entity, and will not change the state of Borrower's organization, without the prior express written consent of Beneficiary except as may be otherwise provided herein.

(c) Place of Business. Borrower agrees that so long as any of Borrower's obligations hereunder or under the Loan Documents remain unsatisfied, Borrower will not change Borrower's place of business, or if Borrower has more than one place of business, Borrower will not change Borrower's chief executive office (i.e. the place from where Borrower manages the main part of Borrower's business operations or

affairs), unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.13 Place of Residence. If Borrower as an individual is executing this instrument, Borrower agrees that so long as any of Borrower's obligations hereunder or under the Loan Documents remain unsatisfied, Borrower will not change Borrower's place of residence, unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change, and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.14 Borrower Name or Identity. Borrower shall not change Borrower's name or identity unless Borrower shall have delivered to Beneficiary written notice of such proposed change not less than thirty (30) days before the effective date of such change and shall have taken all action which Beneficiary determines to be reasonably necessary or desirable to file or amend any Uniform Commercial Code financing statement or continuation statement regarding the loan evidenced and secured by the Note and the Loan Documents.

4.15 Defense and Notice of Actions. Borrower shall, without liability, cost or expense to Trustee or Beneficiary, protect, preserve and forever defend title to the Property, the security hereof and Lender's first and prior lien thereto unto Lender, its successors and assigns and the rights or powers of Trustee or Beneficiary, against all adverse claimants or all persons whomsoever to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Trustee or Beneficiary or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.16 Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note. Borrower shall condition such delivery upon the certification by Beneficiary that the Note has not been negotiated or otherwise conveyed and is in fact mutilated, destroyed, lost or stolen.

4.17 Personalty. Borrower shall use the Personalty primarily for business purposes and keep it at the Land. Borrower shall immediately notify Beneficiary in writing of any change in its place of business and, as of the execution hereof and hereafter from time to time when requested by Beneficiary, upon any acquisition of items of property constituting Personalty, Borrower shall provide Beneficiary with a current, accurate inventory of the Personalty.

## 5. CASUALTIES AND TAKINGS.

5.1 Notice to Beneficiary. In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Beneficiary describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Beneficiary copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2 Repair and Replacement. In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Beneficiary. Provided, however, upon a Casualty or Taking, if Beneficiary applies the Insurance Proceeds (defined below) or the Taking Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as is practicable under the circumstances.

### 5.3 Proceeds.

(a) Collection. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Beneficiary may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Beneficiary's prior written consent.

(b) Assignment to Beneficiary. Borrower hereby assigns, sets over and transfers to Beneficiary all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Beneficiary. Beneficiary may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Beneficiary in its sole unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Beneficiary may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Beneficiary shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Beneficiary shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

## 6. CONCERNING TRUSTEE.

6.1 Trustee's Covenants. Trustee, by Trustee's acceptance hereof, covenants faithfully to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willfull misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof.

6.2 Resignation of Trustee. Trustee may resign at any time upon giving thirty (30) days' notice in writing to Borrower and to Beneficiary.

6.3 Substitution of Trustee. In the event of the death, removal, resignation, refusal to act, or the inability to act of Trustee or in Beneficiary's sole unfettered discretion for any reason whatsoever, Beneficiary may, at any time or from time to time without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor Trustee, and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor without conveyance from the predecessor Trustee. Neither Trustee nor any

substitute Trustee shall be required to give bond for the faithful performance of its duties unless required by Beneficiary. Such substitute Trustee shall be appointed by written instrument duly recorded in the county where the Realty is located, which appointment may be executed by an authorized agent of Beneficiary and 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 and any superior officer of Beneficiary. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee, or its successors or assigns in this trust, shall do lawfully by virtue hereof. Borrower hereby agrees, on behalf of itself and of its heirs, executors, administrators and assigns, that the recitals contained in any deed or deeds executed in due form by Trustee or any substitute Trustee, acting under the provisions of this Indenture, shall be prima facie evidence of the facts recited, and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds and the passing of title thereby.

6.4 Reconveyance and Agreements. At any time, or from time to time, without liability therefor and without notice upon written request of Beneficiary and presentation of this Indenture and the Note or notes secured hereby for endorsement, and without affecting the personal liability of any person for the payment of the Secured Debt or the effect of this Indenture upon the remainder of the Property, Trustee may reconvey any part of the Property, consent in writing to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

6.5 Release of Lien. Upon written request of Beneficiary stating that the Secured Debt has been paid and upon surrender to Trustee of this Indenture and the Note or notes secured hereby for cancellation and retention and payment of Trustee's fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

6.6 Exculpation and Indemnification of Trustee. Trustee shall not be liable 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 willful misconduct. 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 it hereunder, believed by Trustee in good faith to be genuine. All monies 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 monies (except to the extent required by

law), and Trustee shall be under no liability for interest on any monies received by it hereunder (except to the extent required by Law). Borrower will reimburse Trustee for, and indemnify, save harmless and defend Trustee against, any and all liability and expense (including, without limitation, attorneys' fees and expenses) which Trustee may incur in performance of its duties under the Loan Documents.

7. LEGAL PROCEEDINGS. Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Beneficiary shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Beneficiary's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

8. DEFAULTS; REMEDIES OF BENEFICIARY.

8.1 Defaults; Events of Default. Any of the following shall constitute an "Event of Default" hereunder:

(a) Breach of Named Covenant. Any breach by Borrower of the covenants in the Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) Misrepresentations. Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, materially misleading or is not fulfilled; or

(c) Breach of Covenant. Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents; or

(d) Leases. Any breach by Borrower of any covenant contained in any Leases which breach continues beyond any applicable cure period under such Lease, if the failure to cure such breach would result in the termination of such Lease.

(e) Bankruptcy. Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Beneficiary: (i) any one or more of the then legal or beneficial owners of the Property, or any

individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due, or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment, or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent, or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof, or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(f) Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a part of the Property, or the Property is taken on execution or by other process of law; or

(g) Suspension. Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents terminates or suspends its business or dies; or

(h) SDN List. An Event of Default shall exist if the following appear on the list of Specially Designated Nationals and Blocked Persons that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by any governmental entity or agency (collectively, the SDN List"): (a) any Borrower; (b) any Principal (as defined in the Commitment or any Loan Document); (c) any guarantor or indemnitor; or (d) any person or entity related to any Borrower, any Principal, any guarantor, any indemnitor, the Secured Debt or the Property.

(i) Other Events. Any other event occurs which, under the Loan Documents, constitutes a default by the Borrower or gives the Beneficiary the right to accelerate the indebtedness secured by this Indenture.

8.2 Remedies. In case of an Event of Default, Beneficiary may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable;

(b) Foreclosure. Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Beneficiary;

(c) Offset Rights. Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Beneficiary to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4;

(d) Cure of Default. Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Beneficiary may enter upon the Property and do such acts and things as Beneficiary deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities, (ii) paying any Insurance Premiums, and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary in the foregoing. Should Beneficiary make any such payments, the amount thereof shall be secured hereby and Borrower shall reimburse Beneficiary therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid;

(e) Possession of Property. Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing any default. If necessary to obtain possession as provided for above, Beneficiary may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Beneficiary pursuant to this subparagraph (e), Beneficiary shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other



act or omission of Beneficiary in managing the Property unless caused by the willful misconduct or gross negligence of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Beneficiary from and against any liability, loss or damage incurred by Beneficiary under any Lease or under the Loan Documents as a result of Beneficiary's exercise of rights or remedies under any of the Loan Documents. Should Beneficiary incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Beneficiary therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid. Beneficiary shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Beneficiary;

(f) Remedies under State Law. Beneficiary shall have the right to exercise all rights under laws of the State, whether or not herein specified, including without limitation those described or referred to in Exhibit B of this Indenture;

(g) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Beneficiary. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the rents and income pursuant to the Lease Assignment;

(h) Uniform Commercial Code Remedies. Exercise any and all rights of a secured party with respect to the Personalty under the Uniform Commercial Code of the State and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect the Personalty or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personalty and make it available at any place Beneficiary may designate so as to allow Beneficiary to take possession or dispose of the Personalty.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of Property as provided in this Indenture. In the event of a foreclosure sale, whether made by Beneficiary under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Beneficiary, be sold in parts or as a whole. It shall not be necessary that Beneficiary take possession of the Personalty prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personalty be present at the location of such sale;

A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT TO THE EXTENT ALLOWED BY THE LAWS OF THE STATE. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF BENEFICIARY AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF;

(i) Sale. Sell the Property as provided in Exhibit B or under applicable laws of the State;

(j) Judicial Actions. Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy;

(k) Subrogation. Have and exercise all rights and remedies of any person, entity or body politic to whom Beneficiary renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record; and

(l) Other. Take such other actions or commence such other proceedings as Beneficiary deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws. In the case of the occurrence of an Event of Default under Section 4.18 hereof, Beneficiary shall have the right to take any and all action or to make any report or notification required by OFAC or any other applicable governmental entity or agency or by the Laws relating to the SDN list.

Any sums advanced by Beneficiary under this Paragraph 8.2 shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Beneficiary under this Paragraph 8.2, less all costs and expenses incurred by Beneficiary under this Paragraph 8.2, including, without limitation, attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Beneficiary and all expenses incident to Beneficiary taking possession of the Property, and such sums as Beneficiary deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Beneficiary shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

8.3 Holding Over. Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Beneficiary, at a reasonable rental per diem, based upon the value of the Property occupied computed by Beneficiary in its sole unfettered discretion, such rental to be due and payable daily to Beneficiary.

#### 8.4 General Provisions.

(a) Multiple Sales. Several sales may be made pursuant to Paragraph 8.2 without exhausting Beneficiary's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 8.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) Cumulative Remedies. All of the rights, remedies and options set forth in Paragraph 8.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Beneficiary.

(c) Right to Purchase. At any sale or sales of the Property pursuant to Paragraph 8.2, Beneficiary shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid), the amount of the Secured Debt then due.

(d) Right to Terminate Proceedings. Beneficiary may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 8.2, terminate, without prejudice to Beneficiary, such proceedings or actions.

(e) No Waiver or Release. Beneficiary may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Beneficiary in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Beneficiary to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale of all or any of the Property, no forbearance on the part of Beneficiary and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Beneficiary to Borrower or any other person or entity, shall operate to release or in any manner affect Beneficiary's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so, Borrower hereby:

(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisalment, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of

alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Beneficiary to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Beneficiary's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Beneficiary's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitation.

(g) Beneficiary's Discretion. Beneficiary may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) Sales. In the event of a sale or other disposition of the Property pursuant to Section 8.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the

consideration therefor as herein provided. The purchaser at any Trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or Lease.

## 9. POSSESSION AND DEFEASANCE.

9.1 Possession. Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

9.2 Defeasance. If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Beneficiary shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by Law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Beneficiary shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

## 10. GENERAL.

10.1 Beneficiary's Right to Waive, Consent or Release. Beneficiary may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing, (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing, or (c) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Beneficiary, except to the extent specifically agreed to by Beneficiary in such writing.

10.2 No Impairment. The interests and rights of Beneficiary under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Beneficiary may grant with respect to any of the Secured Debt, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

10.3 Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Beneficiary, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

10.4 No Usury. Any provision contained in any of the Loan Documents notwithstanding, Beneficiary shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 10.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Beneficiary's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

10.5 Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail, postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Beneficiary shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

10.6 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Beneficiary and its successors, substitutes and assigns, and Trustee and its successors and assigns in trust, and shall constitute covenants running with the Land. All references in this Indenture to Borrower, Beneficiary or Trustee shall be deemed to include all such successors, substitutes and assigns.

If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Beneficiary may, without notice to the Borrower, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in the same manner as with Borrower, without in any way vitiating or discharging Beneficiary's remedies under or Borrower's liability under the Loan Documents or on the Secured Debt.

10.7 Severability. A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

10.8 Gender and Construction. Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Beneficiary, it shall permit Beneficiary to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

10.9 Liability. Borrower's liability under the Loan Documents is limited as set forth in the Note.

10.10 Modifications. References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

10.11 Governing Laws. This Indenture shall be construed according to and governed by the laws of the State.

10.12 Captions. All paragraph and subparagraph captions are for convenience



of reference only and shall not affect the construction of any provision herein.

10.13 Acknowledgment of Receipt. Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

10.14 Exhibits. The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

Exhibit A - Property Description

Exhibit B - State Law and Additional Provisions

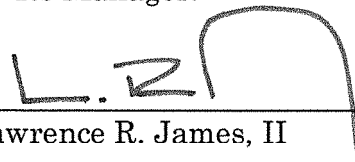
10.15 Waiver of Jury Trial. After consultation with counsel and recognizing that any dispute hereunder will be commercial in nature and complex, and in order to minimize the costs and time involved in any dispute resolution process, the undersigned knowingly, voluntarily, and intentionally waive any right to a trial by jury with respect to any litigation based upon this transaction or this instrument, or arising out of, under, or in connection with any of the other Loan Documents executed in connection with this transaction, or respecting any course of conduct, course of dealing, statement (whether verbal or written) or action of any party and acknowledge that this provision is a material inducement for entering into this loan transaction by all parties.

IN WITNESS WHEREOF, this Indenture has been executed by the undersigned intending the same to be under seal as of the date first above written.

"BORROWER:"

LEGACY COURT, LLC, a  
Nebraska limited liability company

By Its Manager:

  
\_\_\_\_\_  
Lawrence R. James, II (SEAL)

STATE OF Nebraska )

COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of June, 2015, by LAWRENCE R. JAMES, II, as Manager of LEGACY COURT, LLC, a Nebraska limited liability company, on behalf of the said limited liability company.

*Mark James* (SEAL)  
Notary Public

Title or Rank /

Serial Number /

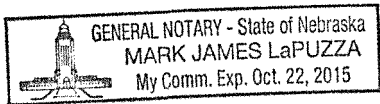


EXHIBIT A

All of that certain land, along with all improvements situated thereon and rights appurtenant thereto, located in Omaha, Douglas County, Nebraska described as follows:

Lot 1, in Legacy Replat 4, an Addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska as Instrument No. 2003234708

TOGETHER WITH all those certain easements and appurtenant rights established by the following documents recorded in the office of the Register of Deeds of Douglas County, Nebraska:

1. Declaration of Covenants, Conditions, and Restrictions dated October 16, 2003 and recorded October 21, 2003 as Instrument No. 2003203737
2. Easements, Covenants and Restrictions Agreement dated October 14, 2003 and recorded October 21, 2003 as Instrument No. 2003203741, amended at 2010067574 and 2014025024

## EXHIBIT B

### Nebraska State Law And Additional Provisions

1. Definitions. For purposes of this Indenture, the following defined terms shall have the following meanings:

- (a) Borrower shall mean Trustor and/or Debtor.
- (b) Beneficiary shall mean Secured Party and Lender.
- (c) Collateral shall mean any part of the Property which may or might now or hereafter be deemed to be personal property, fixtures or property other than real estate.

2. Additional Security Interest. This Indenture also constitutes a SECURITY AGREEMENT under the UNIFORM COMMERCIAL CODE OF THE STATE OF NEBRASKA (herein called the "Code") with respect to the Collateral. All of the terms, provisions, conditions and agreements contained in this Indenture apply to the Collateral as fully and to the same extent as to any other property comprising the Property and the following provisions of this Paragraph shall not limit the generality or applicability of any other provision of this Indenture but shall be in addition thereto:

(a) Borrower is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien of this Indenture.

(b) The Collateral is used by Borrower solely for business purposes and is installed upon the Property for Borrower's own use or as the equipment and furnishings furnished by Borrower, as landlord, to tenants of the Property.

(c) The Collateral will be kept at the Realty and will not be removed without the consent of Beneficiary and the Collateral may be affixed to the Realty but will not be affixed to any other real estate.

(d) No financing statement covering any of the Collateral or any proceeds of the Collateral is on file in any public office; Borrower will, at its cost and expense, upon demand, furnish to Beneficiary such further information and will execute and deliver to Beneficiary such financing statements and other documents in form satisfactory to Beneficiary and will do all such acts and things as Beneficiary may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Secured Debt, subject to no adverse liens or encumbrances except as otherwise permitted in this Indenture; and Borrower will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument in all public offices wherever filing or recording is deemed by Beneficiary to be necessary or desirable.

(e) Upon any default or Event of Default under this Indenture, and at any time thereafter, Beneficiary at its option, may declare the Secured Debt immediately due and payable, as may be more fully set forth in this Paragraph, and thereupon, Beneficiary shall have the remedies of a Secured Party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part of the Collateral, and for that purpose may, so far as Borrower can give authority, with or without judicial process, enter (if this can be done without breach of the peace) upon any place on which the Collateral or any part of the Collateral may be situated and remove it (provided, that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption, if any, in satisfaction of Borrower's obligations as provided in the Code. Beneficiary without removal may render the Collateral unusable and dispose of the Collateral on the Property. Beneficiary may require Borrower to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary which is reasonably convenient to both parties. Notwithstanding anything contained herein to the contrary, Beneficiary will give Borrower reasonable notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of the Collateral is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Borrower shown on the Cover Sheet of this Indenture (or to such other address of Borrower as to which Beneficiary may have been notified in accordance with the terms of this Indenture) at least five (5) days before the time of the sale or disposition. Beneficiary may buy at any public sale and if the Collateral is of the type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Beneficiary may buy at private sale. Any such sale may be held as part of and in conjunction with any judicial foreclosure sale or

trustee's sale of the Realty, and the Collateral and the Realty to be sold as one lot if Beneficiary so elects. The net proceeds realized upon any such disposition after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and attorneys' fees and legal expenses incurred by Beneficiary shall be applied in satisfaction of the Secured Debt. Beneficiary will account to Borrower for any surplus realized on such disposition.

(f) The remedies of Beneficiary under this Indenture are cumulative and the exercise of any one or more of the remedies provided for in this Indenture or under the Code shall not be construed as a waiver of any of the other remedies of Beneficiary, including having the Collateral deemed part of the Realty upon any judicial foreclosure or trustee's sale thereof so long as any part of the Secured Debt remains unsatisfied.

(g) The terms and provisions contained in this Paragraph shall, unless the context otherwise requires, have the meanings and can be construed as provided in the Code.

(h) This Indenture constitutes a financing statement under the Code with respect to the Collateral. As such, this Indenture covers all items of the Collateral that are or are to become fixtures on the Property.

2. Additional Remedies -- Power of Sale. In addition to the remedies set forth in this Indenture:

(a) At any time at or after the occurrence of an Event of Default (Beneficiary having declared the Secured Debt to be due and payable as provided for herein), Beneficiary may deliver to Trustee a written declaration of default and demand for sale. Trustee shall have the power of sale of the Property and if Beneficiary decides the Property is to be sold, Beneficiary shall deposit with Trustee this Indenture and the Note and any other documents evidencing expenditures secured hereby, and shall deliver to Trustee a written notice of default and election to cause the Property to be sold, and Trustee, in turn, shall prepare a similar notice in the form required by law which shall be duly filed for record by Trustee.

(b) After the lapse of such time as may be required by law following the recordation of notice of default, and notice of default and notice of sale having been given as required by law, Trustee, without demand on Trustor, shall sell the Property in one or more parcels and in such order as Trustee may determine on the date and at the time and place designated in said notice of sale, at public auction to the highest bidder with the purchase price payable in cash in lawful money of the

United States at the time of sale. The person conducting the sale may, for any cause (s)he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice of the postponement shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser a deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Beneficiary or Trustee, may purchase at the sale.

(c) When Trustee sells pursuant to the powers herein, Trustee shall apply the proceeds of the sale to payment of the costs and expenses of exercising the power of sale and of the sale, including, without limitation the payment of Trustee's fees incurred, which Trustee's fees shall not in the aggregate exceed the sum of \$500 plus 1/2 of 1% of the amount secured hereby and remaining unpaid and then to the items set forth below in Paragraph 3 in the order therein stated.

3. Proceeds. The proceeds of any sale under this Indenture will be applied in the following manner:

FIRST: If the sale is by Trustee, pursuant to Paragraph 2 above, then to the fees and expenses of Trustee as set forth in subparagraph 2(c).

SECOND: If the sale is by Trustee pursuant to Paragraph 2, or by a court pursuant to judicial foreclosure or by other sale permitted by law or equity but not specified in Paragraph 2, then to payment of the costs and expenses of the sale, including but not limited to, Beneficiary's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Beneficiary, together with interest at the After-Maturity Rate provided under the Note on all advances made by Beneficiary.

THIRD: Payment of all sums expended by Beneficiary under the terms of this Indenture and not yet repaid, together with interest on such sums at the After-Maturity Rate provided under the Note.

FOURTH: Payment of the indebtedness and obligations of Borrower secured by this Indenture (including without limitation all amounts due under the Note and other Loan Documents) in any order that Beneficiary chooses.

FIFTH: Payment of the remainder, if any, to the Borrower or any other person legally entitled thereto.

4. Order of Sale. Borrower waives all rights to direct the order or manner in which any of the Property will be sold in the event of any sale under this Indenture, and also any right to have any of the Property marshalled upon any sale. Beneficiary may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Beneficiary selects.

5. Beneficiary's Option on Foreclosure. At the option of Beneficiary, this Indenture may be foreclosed as provided by law or in equity in the manner provided by law for the foreclosure of mortgages on real property, in which event attorney's fees shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Beneficiary exercises its option to foreclose the Indenture in equity, Beneficiary may at its option foreclose this Indenture subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted by Borrower to be a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property.

6. Appointment of Successor Trustee. As provided herein, Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Borrower and recorded in the county or counties in which the Property is located and by otherwise complying with the provisions of the applicable laws of the State substitute a successor or successors to Trustee named herein or acting hereunder.

7. Notices. Except for any notices, demands, requests or other communications required under applicable law to be given in another manner, whenever Beneficiary, Borrower or Trustee gives or serves any notice (including, without limitation, notice of default and notice of sale), demands, requests or other communication with respect to this Indenture, each such notice, demand, request or other communication shall be given to each party hereto in writing and shall be effective only if the same is given as herein provided. Any party may at any time change its address for such notices as provided herein. Any notice hereunder shall be deemed to have been given when given in the manner designated herein.

8. NOTICE OF DEFAULT AND NOTICE OF SALE. Borrower hereby requests that Beneficiary send to Borrower, at the address for notices referred to in this Deed of Trust, a Notice of Default and Notice of Sale pursuant to Neb. Rev. Stat. Section 76-1008(3), and Beneficiary has agreed to send such notices.



9. Sales and Encumbrances. The following is hereby added at the end of Paragraph 4.5:

4.5.1 Permitted Transfers. Notwithstanding anything to the contrary contained in Paragraph 4.5, the right to "transfer" (defined below) as hereafter set forth shall be permitted provided that (i) no default exists under any of the Loan Documents and no event has occurred which with the giving of notice or with the passage of time would constitute an Event of Default, (ii) no such transfer shall be construed as a novation, release, impairment, or alteration of liability to Lender as set forth in the Note and other Loan Documents, (iii) for a transfer under sub-paragraph (a) below, Lender is furnished at least thirty (30) days prior to such transfer with such documentation as is reasonably required by Lender to evidence compliance herewith and for a transfer under sub-paragraph (b) below, Lender shall be furnished no later than fifteen (15) days prior to date of such transfer with written notice of such transfer accompanied by such documentation as is reasonably required by Lender to evidence compliance herewith, and (iv) all of the conditions set forth herein are fully complied with. "Transfer" shall mean sale, assignment, gift or other conveyance. Upon any such transfer permitted herein, the initial restrictions of Paragraph 4.5 shall apply automatically to the Proposed Borrower and any Transferee (each as defined below):

(a) Borrower shall have a one-time right to transfer the Property to a proposed grantee satisfying the following criteria (for purposes of this paragraph "Proposed Borrower"), but only upon full compliance with the following conditions prior to such conveyance:

- (i) Lender shall have received a detailed explanation of the proposed conveyance and assumption, along with such financial data and information respecting the Proposed Borrower and Proposed Principals (defined below) as Lender may reasonably request, including but not limited to a financial statement certified by a certified public accountant dated within two (2) months prior to the date of the requested conveyance; and
- (ii) Lender, in Lender's sole unfettered discretion, approves the Proposed Borrower and Proposed Principal for the assumption; and
- (iii) Lender shall have received such financial data and information respecting the Property as Lender may reasonably request, including but not limited to an income and expense statement

covering the operation of the Property for the five (5) year period immediately preceding the date of the request to convey, which financial information demonstrates in Lender's sole unfettered discretion, that as calculated by Lender the Property is producing and will continue to produce "Net Operating Income" (defined below) of at least one hundred forty percent (140%) of the total annual debt service (defined below) of the Property. For purposes of this paragraph, "Net Operating Income" shall mean the annual gross income produced by the Property less all annual costs and expenses of operating, maintaining and repairing the Property, but excluding payments due under this loan and any other financing as may have been approved by Lender for which the Property serves as security ("debt service"); and

- (iv) Lender shall have received a management agreement acceptable to Lender executed by the Proposed Borrower with a management company acceptable to Lender, or such documents and information requested by Lender relating to the Proposed Borrower sufficient to demonstrate that the Proposed Borrower possesses the experience and capability needed in Lender's sole unfettered discretion to manage the Property; and
- (v) Lender shall have received an amount in good funds equal to one percent (1%) of the outstanding balance of the Note ("Assumption Fee") at the time of the conveyance and assumption are approved by Lender, or in Lender's sole unfettered discretion, at the time of the conveyance and assumption; and
- (vi) Assumption by Proposed Borrower, in form and content acceptable to Lender, of all obligations and duties of Borrower under the Loan Documents and assumption by such individuals as are required by Lender ("Proposed Principals"), in form and content acceptable to Lender, of all of the obligations of the Principals (defined in the Note) under the Loan Documents. Proposed Borrower and Proposed Principals shall execute in favor of Lender an environmental indemnification and guaranty in the same form as executed by Borrower and the Principals (defined in the Note) and such other documents as Lender in Lender's sole unfettered discretion shall require to accomplish the assumption. Nothing contained herein or in any assumption document shall be construed to require Lender to approve any Proposed Borrower or Proposed Principal or to entitle Borrower, any Principal, any

guarantor, any indemnitor or any other person or entity to any release from any liability or obligation under any of the Loan Documents; and

- (vii) Lender shall have received a written waiver of right of first refusal or option to purchase from any tenant having such right under such tenant's lease, if any; and
- (viii) Borrower and/or Proposed Borrower must pay any and all of Lender's related fees, costs and expenses in connection with the proposed assumption, including without limitation, any and all attorneys' fees, recording costs, title costs and related expenses.

Nothing contained in this Paragraph shall be construed to entitle the Proposed Borrower to have a right to transfer the Property to a subsequent grantee or to permit any subsequent assumption of the Loan Documents.

In the event, however, Lender in its sole unfettered discretion, approves any subsequent sale and assumption upon the terms set forth above, the Borrower and/or Proposed Borrower shall pay to Lender the Assumption Fee and all of Lender's related fees, costs and expenses as stated above in connection therewith.

In the event of any conveyance of the Property by Borrower and/or Proposed Borrower in violation of the terms and conditions hereof, Lender shall be entitled to (i) the Assumption Fee and all of Lender's related fees, costs and expenses as stated above in connection therewith (as payment to Lender for Lender's administrative expenses and not as liquidated damages) and (ii) any or all of Lender's remedies contained in any of the Loan Documents.

(b) So long as the Principal (defined in the Note) retains management and control (defined below) of Borrower and any entity which directly or indirectly through one or more intermediate entities holds an ownership interest in Borrower ("Borrower and Entity Owners"), each holder of a membership interest in Borrower as of the date hereof ("Member") shall have the right to transfer such Member's said membership interest in Borrower to a "Transferee" which term for purposes of this sub-paragraph shall mean:

- (i) another Member of Borrower
- (i) an adult member of a Member's immediate family defined as such Member's spouse, siblings, children or grandchildren (including those legally adopted) or the spouse of any such

siblings, children or grandchildren (“Immediate Family Members”), provided, however, any transfer to any such Immediate Family Member who is not competent is prohibited unless made to a trust as provided in sub-paragraph (iii) below; or

- (ii) a trust for the benefit of such Member and/or any one or more Immediate Family Members in which event the trust and the beneficiary(ies) thereunder shall be deemed the Transferee.

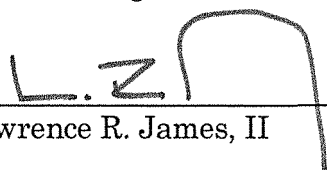
For purposes of this sub-paragraph “management and control” shall mean (i) at least fifty-one percent (51%) of the voting stock, profits and losses, or ownership interest (as appropriate) in Borrower and Entity Owners is held by the Principal, and (ii) the Principal is either an officer and director, general partner, member, or owner (as appropriate) with the authority to bind Borrower and Entity Owners, and (iii) the Principal retains the same management rights in Borrower and Entity Owners as exist as of the date hereof.

Provided, however, any transfer permitted by the foregoing shall in no manner be construed to entitle Borrower or any Principal to any release from any liability or obligation under any of the Loan Documents or any guaranty or environmental indemnification. And as a further condition to such Transfer, the Transferee shall comply with all terms and conditions of the Loan Documents and the Principal and the Transferee shall execute any Transfer documentation as may be required by Lender. Borrower, on behalf of Borrower and any Transferee, hereby authorizes Lender to file any Uniform Commercial Code Financing Statements deemed necessary by Lender reflecting such Transferee as a debtor. Borrower shall pay all Lender’s fees, costs and expenses, including attorneys’ fees and costs and expenses in connection with any such Transfer. Notwithstanding anything otherwise provided herein, no Transfer permitted herein shall be to any person or entity appearing as a Specially Designated National or Blocked Person (or similar prohibitive or limiting term) on the U.S. Treasury Department’s Office of Foreign Asset Control list or in any similar list maintained by any governmental entity or agency.

**"BORROWER:"**

Legacy Court, LLC, a  
Nebraska limited liability company

By Its Manager:

  
\_\_\_\_\_  
Lawrence R. James, II (SEAL)

GENERAL NOTARY - State of Nebraska  
MARK JAMES LaPUZZA  
My Comm. Exp. Oct. 22, 2015

STATE OF Nebraska )  
  :  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of June, 2015, by Lawrence R. James, II, as Manager of LEGACY COURT, LLC, a Nebraska limited liability company, on behalf of the said limited liability company.

*Mark James* (SEAL)  
Notary Public

Title or Rank \_\_\_\_\_

Serial Number \_\_\_\_\_

GENERAL NOTARY - State of Nebraska  
MARK JAMES LaPUZZA  
My Comm. Exp. Oct. 22, 2015