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Pages 19

Recording Requested By,
And After Recording, Return To:
Aaron B. Johnson
Baird Holm LLP
1700 Farnam St., Suite 1500
Omaha, NE 68102

**THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING IMPROVEMENTS ON THE LAND DESCRIBED HEREIN.**

# CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

THIS CONSTRUCTION DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "***Deed of Trust***") is executed as of November 30, 2018, by LINCOLN SPORTS FACILITY, LLC, a Nebraska limited liability company ("***Trustor***"), to and in favor of AARON B. JOHNSON, an active member in good standing of the Nebraska Bar, as trustee ("***Trustee***"), for the benefit of STONEHENGE COMMUNITY DEVELOPMENT 129, LLC, a Delaware limited liability company ("***Beneficiary***"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Loan Agreement (defined below).

## ARTICLE I. GRANT IN TRUST

1.1 Grant. For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, Trustor's interest in: (a) all real property located in Lancaster County, Nebraska, and described on Exhibit A attached hereto; (b) all easements, rights-of-way and rights used in connection with or as a means of access to any portion of said real property; (c) all tenements, hereditaments and appurtenances thereof and thereto; (d) all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining said real property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with said real property; (e) all buildings, improvements, fixtures, equipment, and landscaping now or hereafter erected or located on said real property; (f) all development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, said real



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property; (g) all mineral rights, oil and gas rights, air rights, water or water rights, including without limitation, all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with said real property, whether decreed or undecreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in any water, canal, ditch or reservoir company, and all well permits, water service contracts, drainage rights and other evidences of any such rights; and (h) all interest or estate which Trustor now has or may hereafter acquire in said real property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of said real property by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said real property (collectively, the "***Subject Property***"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

1.2 Address. The address of the Subject Property (if known) is: 150 SW 14th Place, Lincoln, NE 68528. Neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A. In the event of any conflict between the provisions of Exhibit A and said address, Exhibit A shall control.

## ARTICLE II. OBLIGATIONS SECURED

2.1 Obligations Secured. Trustor makes this grant and assignment for the purpose of securing the following obligations (each, a "***Secured Obligation***" and collectively, the "***Secured Obligations***"):

(a) performance of the obligations contained herein and in that certain Loan Agreement dated as of the date hereof to which Trustor and Beneficiary are parties, as the same may be amended, revised, amended and restated, replaced, supplemented or otherwise modified from time to time ("***Loan Agreement***"; capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and the other Loan Documents, which Loan Documents provide for, among other things, the construction of certain improvements on the Subject Property; and

(b) payment to Beneficiary of all sums at any time owing and performance of all other obligations arising under or in connection with the Promissory Note dated as of the date hereof, to and in favor of Beneficiary, in the original principal amount of One Million and 00/100ths Dollars ($1,000,000) (as may be amended, modified, supplemented and restated from time to time, "***Note A***" or the "***Senior Note***"), with interest as provided therein, executed by Trustor and payable to Beneficiary or its order, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Senior Note, whether or not specifically referenced therein; and

(c) payment and performance of all obligations of Trustor under this Deed of Trust together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor; and

(d) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby; and

(e) payment to Beneficiary of all liability, whether liquidated or unliquidated, defined, contingent, conditional or of any other nature whatsoever, and performance of all other obligations, arising under any swap, derivative, foreign exchange or hedge transaction or arrangement (or other similar transaction or arrangement howsoever described or defined) at any time entered into with Beneficiary in connection with any Secured Obligation; and

(f) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of

Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(g) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "***obligations***" is used herein in its broadest and most comprehensive sense and includes, and shall be deemed to include, any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation, together with all reasonable costs of collecting the Secured Obligations.

2.3 Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Senior Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

## ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. For the purposes and upon the terms and conditions set forth herein, Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under all present and future leases, licenses, rental agreements and other agreements of any kind relating to the management, leasing, operating, use or occupancy of any of the Subject Property or any portion thereof, whether existing as of the date hereof or at any time hereafter entered into, together with all subleases and other agreements for the use or occupancy of the Subject Property or any portion thereof, all guarantees of and security for any tenant's or lessee's performance thereunder, the right to exercise any landlord's liens and other remedies to which the landlord is entitled, and all amendments, extensions, renewals and modifications thereto (each, a "***Lease***" and collectively, the "***Leases***"), together with any and all other rents, issues, revenues, receipts, deposits, and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (collectively, "***Rents***"). This assignment shall not impose upon Beneficiary any duty to produce Rents from the Subject Property, nor cause Beneficiary to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property, or (d) directly or indirectly liable to Trustor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies, or powers granted to Beneficiary hereunder or to perform or discharge any obligation, duty or liability of Trustor arising under the Leases. This is an absolute assignment, not an assignment for security only, and Beneficiary's right to Rents is not contingent upon and may be exercised without taking possession of the Subject Property Property, however, Beneficiary grants to Trustor a license and right to collect and apply all Rents as set forth in Section 3.3 hereof. Trustor agrees to execute and deliver to Beneficiary, within five (5) days of Beneficiary's written request, such additional documents as Beneficiary or Trustee may reasonably request to further evidence the assignment to Beneficiary of any and all Leases and Rents. Beneficiary or Trustee, at Beneficiary's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents.

3.2 Protection of Security. To protect the security of this assignment, Trustor agrees:

(a) At Trustor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Trustor assigns to Beneficiary all of Trustor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Trustor to exercise any such rights or powers without Beneficiary's prior written consent shall be a breach of the terms hereof.

(b) At Trustor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all reasonable costs of Beneficiary or Trustee, including reasonable attorneys' fees, in any such action in which Beneficiary or Trustee may appear.

(c) That, should Trustor fail to do any act required to be done by Trustor under a Lease, then Beneficiary or Trustee, but without obligation to do so and without notice to Trustor and without releasing Trustor from any obligation hereunder, may make or do the same in such manner and to such extent as Beneficiary or Trustee deems necessary to protect the security hereof, and, in exercising such powers, Beneficiary or Trustee may employ attorneys and other agents, and Trustor shall pay necessary costs and reasonable attorneys' fees incurred by Beneficiary or Trustee, or their agents, in the exercise of the powers granted herein. Trustor shall give prompt notice to Beneficiary of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Trustor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Beneficiary immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Secured Obligation, and the same, at Beneficiary's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 License. Beneficiary confers upon Trustor a license ("***License***") to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Default as hereinafter defined. Upon the occurrence and during the continuance of any Default, the License shall be automatically revoked and Beneficiary or Trustee may, at Beneficiary's option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter, take possession of, manage and operate the Subject Property or any part thereof; (b) make, cancel, enforce or modify any Lease; (c) obtain and evict tenants, fix or modify Rents, and do any acts which Beneficiary or Trustee deems proper to protect the security hereof; and (d) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Deed of Trust. All payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rentals or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Beneficiary or Trustee the right to possession, except as provided in this Deed of Trust.

## ARTICLE IV. SECURITY AGREEMENT AND FIXTURE FILING

4.1 Security Interest. Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest located at or derived from the Subject Property (collectively, the "***Collateral***"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Subject Property; together with all Rents, other payments and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chatter paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences or any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan documents, all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Trustor's right, title and interest, now or hereafter acquired, to the payment of money from Beneficiary to Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Note; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Nebraska Uniform Commercial Code, as amended or recodified from time to time ("***UCC***"), and is acknowledged and agreed to be a "construction mortgage" under the UCC.

4.2 Rights of Beneficiary. Upon the occurrence of a Default, Beneficiary shall have all the rights of a "secured party" under the UCC. In addition to such rights, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Beneficiary may: (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; and/or (iii) sell, assign and deliver at any place or in any lawful manner all or

any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that ten (10) days prior notice of such disposition is commercially reasonable notice. Trustor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

## ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

5.1 Warranty of Title; Use of Property. Trustor warrants that, except as disclosed to Beneficiary prior to the date hereof in a writing which refers to this warranty, and except for Permitted Encumbrances as that term is defined in the Loan Agreement, Trustor lawfully possesses and holds good and marketable unencumbered fee simple title to, or if permitted by Beneficiary in writing a leasehold interest in, the Subject Property without limitation on the right to encumber, as herein provided, subject only to those exceptions approved by Beneficiary in writing and that this Deed of Trust is a valid lien on the Subject Property and all of Trustor's interest therein. Trustor warrants that the Subject Property is not used principally for agricultural or farming purposes.

5.2 Taxes and Assessments. Subject to the right, if any, of Trustor to contest payment of the following pursuant to any other agreement between Trustor and Beneficiary, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided however, that Trustor shall have no obligation to pay any income taxes of Beneficiary. Promptly upon request by Beneficiary, Trustor shall furnish to Beneficiary reasonably satisfactory evidence of the payment of all of the foregoing. Beneficiary is hereby authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any of the foregoing.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation when due. If Trustor fails to timely pay or perform any portion of the Secured Obligations (including taxes, assessments and insurance premiums), or if a legal proceeding is commenced that may significantly affect Beneficiary's rights in the Subject Property, then Beneficiary may (but is not obligated to), at Trustor's expense, take such action as it considers to be necessary to protect the value of the Subject Property and Beneficiary's rights in the Subject Property, including the retaining of counsel, and any amount so expended by Beneficiary will be added to the Secured Obligations and will be payable by Trustor to Beneficiary on demand, together with interest thereon from the date of advance until paid at the default rate provided in the Senior Note.

5.4 Liens, Encumbrances and Charges. Except for the Permitted Encumbrances and except for such liens as Trustor diligently and in good faith contests in accordance with the terms of the Loan Agreement, Trustor shall immediately discharge any lien on the Subject Property not approved by Beneficiary in writing. Except as otherwise provided in any Secured Obligation or other agreement with Beneficiary, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

5.5 Insurance and Failure to Provide Insurance. Trustor shall insure the Subject Property against loss or damage by fire and such other risks as Beneficiary shall from time to time require. Trustor shall carry commercial

general liability insurance, flood insurance as required by applicable law and such other insurance as Beneficiary may reasonably require, including without limitation, business interruption insurance or loss of rental value insurance. Trustor shall maintain all required insurance at Trustor's expense, under policies issued by companies and in form and substance reasonably satisfactory to Beneficiary. Neither Beneficiary nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance, shall incur any liability for: (a) the existence, nonexistence, form or legal sufficiency thereof; (b) the solvency of any insurer; or (c) the payment of losses. All policies and certificates of insurance shall name Beneficiary as loss payee, and shall provide that the insurance cannot be terminated as to Beneficiary except upon a minimum of ten (10) days' prior written notice to Beneficiary. Immediately upon any request by Beneficiary, Trustor shall deliver to Beneficiary the original of all such policies or certificates, with receipts evidencing annual prepayment of the premiums.

Trustor acknowledges and agrees that if Trustor fails to provide any required insurance on the terms set forth herein or in any related documents, or fails to continue such insurance in force in compliance with the requirements of this agreement or any related documents, Beneficiary may purchase insurance at Trustor's expense as provided therein. Such insurance may protect Beneficiary's interests, and may otherwise protect none of, or less than all of, Trustor's interests. The cost of any such insurance shall become a part of the Secured Obligations and shall be payable on demand or added to the Senior Note as provided herein, at Lender's option. OWNER ACKNOWLEDGES THAT IF BENEFICIARY SO PURCHASES ANY SUCH INSURANCE, THE INSURANCE MAY PROVIDE LIMITED PROTECTION AGAINST PHYSICAL DAMAGE TO THE COLLATERAL, UP TO THE BALANCE OF THE LOAN; HOWEVER, OWNER'S EQUITY IN THE COLLATERAL MAY NOT BE INSURED. IN ADDITION, THE INSURANCE MAY NOT PROVIDE ANY PUBLIC LIABILITY OR PROPERTY DAMAGE INDEMNIFICATION AND MAY NOT MEET THE REQUIREMENTS OF ANY FINANCIAL RESPONSIBILITY LAWS.

5.6 Tax and Insurance Impounds. At Beneficiary's option and upon its demand, Trustor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amount required for the payment thereof when due, and Trustor shall pay to Beneficiary such additional amount within thirty (30) days after notice from Beneficiary. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Beneficiary shall apply said amounts to the payment of, or at Beneficiary's sole option release said funds to Trustor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Beneficiary at its sole option may apply all or any part of said amounts to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Trustor hereby grants and transfers to Beneficiary a security interest in all amounts so paid and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary and Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Beneficiary in its reasonable discretion may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor, and no other party shall have any right of claim thereto.

5.7 Damages; Insurance and Condemnation Proceeds.

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting all or any part of or any interest in the Subject Property or Collateral; (ii) all other claims and awards for damages to or decrease in value of the all or any part of or any interest in Subject Property or Collateral; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Beneficiary. So long as no Event of Default (as defined in the Loan Agreement) is continuing beyond any cure period, Beneficiary shall release all of the condemnation proceeds it receives to Trustor upon any conditions Beneficiary may impose. If and Event of Default (as defined in the Loan Agreement) is continuing beyond any cure period, at the absolute discretion of Beneficiary, whether or not its security is or may be impaired, but subject to applicable law if any, and without regard to any requirement contained in any other Section hereof, Beneficiary may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided however, that in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or non-feasance by Beneficiaries or its employees or agents.

(b) So long as no Event of Default (as defined in the Loan Agreement) is continuing beyond any cure period, Beneficiary shall release all of the insurance or condemnation proceeds to Trustor upon any conditions Beneficiary may impose. If an Event of Default (as defined in the Loan Agreement) is continuing beyond any cure period, at its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may impose any conditions on such use as Beneficiary deems necessary, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement and the other Loan Documents for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be in form and substance reasonably acceptable and satisfactory to Beneficiary; and (iv) the delivery to Beneficiary of evidence, in form and substance reasonably acceptable and satisfactory to Beneficiary, (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no adverse change in the financial condition or credit of Trustor and Borrower (if different from Trustor) and any guarantors since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

5.8 Maintenance and Preservation of Subject Property. Subject to the provisions of any Secured Obligation, Trustor covenants:

(a) to keep the Subject Property in good condition and repair;

(b) except with Beneficiary's prior written consent, not to remove or demolish the Subject Property, nor alter (other than in the ordinary course of Trustor's business), restore (other than in the ordinary course of Trustor's business) or add to the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;

(c) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed, unless Beneficiary requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.7 hereof;

(d) to comply in all material respects with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;

(e) not to commit or permit waste of the Subject Property; and

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

5.9 Hazardous Substances; Environmental Provisions. Trustor represents and warrants to Beneficiary as follows:

(a) Except as disclosed to Beneficiary in writing prior to the date hereof, the Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "***Hazardous Materials***").

(b) To the best of Trustor's knowledge, the Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "***Hazardous Materials Laws***"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.

(c) There are no claims or actions pending or threatened against Trustor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including without limitation, reasonable attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of Hazardous Materials in, on, under or about the Subject Property. Trustor shall pay to Beneficiary immediately upon demand any amounts owing under this indemnity, together with interest from the date of demand until paid in full at the highest rate of interest applicable to any Secured Obligation. TRUSTOR'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY

AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THIS DEED OF TRUST.

(e) Trustor shall immediately advise Beneficiary in writing upon Trustor's discovery of any occurrence or condition on the Subject Property or on any real property adjoining or in the vicinity of the Subject Property that does or could cause all or any part of the Subject Property to be contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

5.10 Protection of Security. Trustor shall, at Trustor's sole expense: (a) protect, preserve and defend the Subject Property and Collateral, and Trustor's title and right to possession of the Subject Property and Collateral against all adverse claims; (b) if Trustor's interest in the Subject Property is a leasehold interest or estate, pay and perform in a timely manner all obligations to be paid and/or performed by the lessee or tenant under the lease or other agreement creating such leasehold interest or estate; and (c) protect, preserve and defend the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee under this Deed of Trust against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property and, if Trustor's interest in the Subject Property is a leasehold interest or estate, of any notice of default or demand for performance under the lease or other agreement pursuant to which such leasehold interest or estate was created or exists.

5.11 Acceptance of Trust; Powers and Duties of Trustee. Trustee accepts this trust when this Deed of Trust is executed. From time to time, upon written request of Beneficiary and, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Secured Obligations, Beneficiary, or Trustee at Beneficiary's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Subject Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Trustor, Beneficiary or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

5.12 Compensation; Exculpation; Indemnification.

(a) Trustor shall pay all Trustee's reasonable fees and reimburse Trustee for all reasonable expenses in the administration of this trust, including reasonable attorneys' fees. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or non-exercise of any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under this Deed of Trust or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Trustor or any third party as a result of Beneficiary's failure to (whether by malfeasance, nonfeasance or refusal to act), lease the Subject Property after any Default or from any other act or omission of Beneficiary (regardless of whether the same constitutes negligence), in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Beneficiary; and no

such liability shall be asserted or enforced against or imposed upon, Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) Trustor shall indemnify Trustee and Beneficiary against, and hold them harmless from and against, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other reasonable legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or the performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking of Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Trustor under this Deed of Trust. Trustor's duty to indemnify Trustee and Beneficiary shall survive the payment, release, discharge or cancellation of the Secured Obligations and the release or reconveyance, in whole or in part, of this Deed of Trust.

(c) Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Beneficiary, together with interest thereon from the date such indebtedness arises at the highest rate per annum payable under any Secured Obligation. Beneficiary may, at its option, add any such indebtedness to any Secured Obligation.

5.13 Substitution of Trustees. From time to time, by a writing signed and acknowledged by Beneficiary and recorded in each Office in which this Deed of Trust is recorded, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth the recordation date and any recording or other information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new Trustee.

5.14 Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation or applicable law, if the Subject Property or any interest therein shall be sold, transferred (including without limitation, where applicable, through sale or transfer of a majority or controlling interest of the corporate stock, or any general partnership, limited liability company or other similar interests, of Trustor), mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "***Transfer***"), without Beneficiary's prior written consent, THEN Beneficiary may, at its sole option, declare all Secured Obligations immediately due and payable in full. Trustor shall notify Beneficiary in writing of each Transfer within ten (10) business days of the date thereof.

5.15 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or the Collateral, or in any manner obligated under any Secured Obligation (each, an "***Interested Party***"), Beneficiary may, from time to time, release any Interested Party from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property, the Collateral or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of, or the security interests created by, this Deed of Trust upon the Subject Property and/or the Collateral.

5.16 Reconveyance. Upon payment of all obligations and/or Beneficiary's written request, and solely to the extent required by applicable law upon surrender of this Deed of Trust and every note or other instrument setting forth any Secured Obligations to Trustee for cancellation, Trustee shall reconvey, without warranty, the Subject

Property, or that portion thereof then covered hereby, from the lien of this Deed of Trust. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future Rents to the person or persons legally entitled thereto. Upon Beneficiary's demand, Trustor shall pay all reasonable costs and expenses incurred by Beneficiary in connection with any reconveyance.

5.17 Subrogation. Beneficiary shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any Secured Obligation.

5.18 Special Assessment District. Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Subject Property in any Special Assessment District. Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party or any intent or proposal to include all or any part of the Subject Property in a Special Assessment District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Subject Property in a Special Assessment District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

5.19 Appraisals. Trustor hereby authorize Beneficiary, in its sole discretion, to obtain new or updated appraisals of the mortgaged property at Trustor's expense if and when desired by Beneficiary, but not more often than annually. In addition, Beneficiary may obtain new or updated appraisals at other times at Beneficiary's expense. Such appraisals shall be for the use and benefit of Beneficiary only, and shall not be relied upon Trustor for any purpose. This authorization shall continue until this Deed of Trust is reconveyed.

## ARTICLE VI. DEFAULT PROVISIONS

6.1 Default. Subject to any notice and/or cure provision in the Loan Documents, the occurrence of any of the following shall constitute a "***Default***" under this Deed of Trust: (a) Trustor shall fail to observe or perform any obligation or agreement contained herein; (b) any representation or warranty of Trustor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) any default in the payment or performance of any obligation, or any defined "event of default," under any provisions of the Loan Agreement, the Senior Note, the other Loan Documents or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation.

6.2 Rights and Remedies. Upon the occurrence of any Default, and at any time thereafter, Beneficiary and Trustee shall have all the following rights and remedies:

(a) With or without notice, to declare all Secured Obligations immediately due and payable in full.

(b) With or without notice, without releasing Trustor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Trustor and, in connection therewith: (i) to enter upon the Subject Property, possess, manage and operate the Subject Property or any part thereof, and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto;

(iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Trustor under this Deed of Trust, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Trustor waives the defenses of laches and any applicable statute of limitations.

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property and/or the Collateral as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Trustor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(f) To execute or cause Trustee to execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor, except as otherwise required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Trustor nor any other person or entity shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may postpone any sale of the Subject Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary, may purchase at such sale.

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received in accordance with Section 6.3 hereof, all in such order and manner as Beneficiary shall determine in its sole discretion.

(h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) reasonable expenses and reasonable costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) reasonable expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and reasonable costs of defending or settling litigation affecting the Subject

Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Trustor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Trustor and Beneficiary or previously discussed by Trustor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

6.3 Application of Foreclosure Sale Proceeds. After deducting all reasonable costs, fees and expenses of Trustee, and of this trust, including costs of evidence of title and attorneys' fees in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in such order and amounts as Beneficiary in its sole discretion shall determine; and the remainder, if any, to the person or persons legally entitled thereto.

6.4 Application of Other Sums. All Rents or other sums received by Beneficiary or any agent or receiver hereunder, less all reasonable costs and expenses incurred by Beneficiary or such agent or receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.5 No Cure or Waiver. Neither Beneficiary's, Trustee's or any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of, or failure to exercise, any other right or remedy by Beneficiary, Trustee or any receiver shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Trustor has cured all other Defaults), or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Deed of Trust.

6.6 Costs, Expenses and Attorneys' Fees. Trustor agrees to pay to Beneficiary immediately upon demand the full amount of all payments, advances, charges, reasonable costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated reasonable costs of Beneficiary's in-house counsel), expended or incurred by Trustee or Beneficiary pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) relating to Trustor or in any way affecting any of the Subject Property and/or the Collateral or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Trustor with interest from the date of demand until paid in full at the highest rate per annum payable under any Secured Obligation.

6.7 Power to File Notices and Cure Defaults. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as Trustor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute a Default, to perform any obligation of Trustor hereunder; provided however, that Beneficiary, as such attorney-in-fact, shall only

be accountable for such funds as are actually received by Beneficiary, and Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Beneficiary and Trustee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Trustor and Beneficiary. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Secured Obligations after its due date, Beneficiary shall not be deemed to have waived the agreement contained herein that time is of the essence, nor shall Beneficiary be deemed to have waived either its right to require prompt payment or performance when due or the remainder of the Secured Obligations or its right to consider the failure to so pay or perform, a Default.

## ARTICLE VII. MISCELLANEOUS PROVISIONS

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

7.2 Execution of Documents; Incorporation of Exhibits/Schedules. Trustor agrees, upon demand by Beneficiary or Trustee, to execute any and all documents and instruments required to effectuate the provisions hereof. For all intents and purposes, all exhibits, schedules or other items attached hereto are deemed incorporated into this Deed of Trust by such attachment.

7.3 Right of Inspection. Upon reasonable prior notice to Trustor (except while a Default is continuing, in which case no notice is required), Beneficiary or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.

7.4 Notices, Requests for Notice. All notices, requests and demands which Trustor or Beneficiary is required or may desire to give to the other party must be in writing, delivered to Beneficiary at the following address:

Stonehenge Capital Company, LLC
191 W. Nationwide Blvd., Suite 600
Columbus, OH 43215
Attn: Legal
Email: legal@stonehengecapital.com

With a copy to: Baird Holm LLP
1700 Farnam St., Suite 1500
Omaha, NE 68102
Attn: Aaron B. Johnson
ajohnson@bairdholm.com

and to Trustor at its address set forth at the signature lines below, or at such other address as either party shall designate by written notice to the other party in accordance with the provisions hereof. Any Trustor whose address is set forth below hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to such Trustor at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for any such notice. While hereby expressly reserving the priority of this Deed of Trust as established by law, Trustee and Beneficiary hereunder request that a copy of any notice of default and any notice of sale under any deed of trust recorded against the Property either prior to, or subsequent to the date this Deed of Trust is recorded, be mailed to each at the addresses set forth in this Section 7.4. Trustee's address is Baird Holm LLP, 1700 Farnam St., Suite 1500, Omaha, NE 68102, Attn: Aaron B. Johnson.

7.5 Successors; Assignment. This Deed of Trust shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; provided however, that this Section does not waive the provisions of Section 5.14 hereof. Beneficiary reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Beneficiary's rights and benefits under the Senior Note, any and all other Secured Obligations and this Deed of Trust. In connection therewith, Beneficiary may disclose all documents and information which Beneficiary now has or hereafter acquires relating to the Subject Property or the Collateral, all or any of the Secured Obligations and/or Trustor and, as applicable, any partners, joint venturers or members of Trustor, whether furnished by any Trustor or otherwise.

7.6 Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term "Subject Property" means all and any part of or interest in the Subject Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Deed of Trust, and shall be disregarded in the interpretation of any portion of this Deed of Trust; (d) if more than one person or entity has executed this Deed of Trust as "Trustor," the obligations of all such Trustors hereunder shall be joint and several; and (e) all terms of Exhibit A, and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Deed of Trust by this reference.

7.7 Severability of Provisions. If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust.

7.8 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Nebraska.

7.9 Waiver of Marshaling Rights. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien securing the Secured Obligations. Beneficiary shall have the right to sell the Subject Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may, in its sole discretion, designate.

7.10 Facsimile and Counterpart. This document may be signed in any number of separate copies, each of which shall be effective as an original, but all of which taken together shall constitute a single document. An electronic transmission or other facsimile of this document or any related document shall be deemed an original and shall be admissible as evidence of the document and the signer's execution.

7.11 Document Delivery and Electronic Transmission of Documents. Each party or person signing this agreement (referred to in this paragraph as "you") agrees that Beneficiary may, in its reasonable discretion, rely upon any document, report, financial statement, tax return, agreement or other communication ("***Document***")

physically delivered to Beneficiary by mail, hand delivery or delivery service which Beneficiary in good faith believed was sent by you or any of your representatives or employees. Similarly, Beneficiary may, in its reasonable discretion, rely upon any Document sent by email, facsimile or other electronic means to Beneficiary which Beneficiary in good faith believed was sent by you or any of your representatives or employees. Beneficiary may treat the Document as genuine and authorized to the same extent as if it was an original document validly executed or authenticated as genuine by you. Beneficiary may from time to time in its reasonable discretion reject any such Document and require a signed original, or require you to provide acceptable authentication of any such Document before accepting or relying on same. You understand and acknowledge that there is a risk that Documents sent by electronic means may be viewed or received by unauthorized persons, and you agree that by sending Documents by electronic means, you shall be deemed to have accepted this risk and the consequences of any such unauthorized disclosure.

ANY EXERCISE OF RIGHTS BY BENEFICIARY HEREUNDER IS SUBJECT TO COMPLIANCE WITH THE TERMS OF ANY INTERCREDITOR AGREEMENT NOW OR HEREAFTER EXECUTED BETWEEN BENEFICIARY AND UNION BANK & TRUST COMPANY.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

**TRUSTOR:**

LINCOLN SPORTS FACILITY, LLC, a Nebraska limited liability company

By:_____
Name: Sam Manzitto Jr
Title: Managing Member

Address:
150 SW 14th Place
Lincoln, NE 68528
Attn:_____

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me, a Notary Public, this 26 day of November, 2018, by Sam Manzitto Jr, the authorized signatory of Lincoln Sports Facility, LLC, a Nebraska limited liability company, on behalf of the company.

Darla R. Servi
Notary Public

GENERAL NOTARY-State of Nebraska
DARLA R SERVI
My Comm. Exp. October 18, 2020

**EXHIBIT A**
**(Description of Property)**

LOTS 3 4, 5 AND 6, BLOCK 1, EARL CARTER ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA.

EACA