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Pages 33



**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF
LEASES AND RENTS AND FIXTURE FINANCING STATEMENT**

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RECORDATION REQUESTED BY:

Enhanced Capital New Market Development
Fund 96, LLC
c/o Enhanced Community Development, LLC
201 St. Charles Avenue, Suite 3400
New Orleans, LA 70170
Attention: Shane McCarthy

WHEN RECORDED MAIL TO:

Stinson Leonard Street LLP
1299 Farnam Street, Suite 1500
Omaha, NE 68102
Attention: David Lutz

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RECORDER'S USE ONLY

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF
LEASES AND RENTS AND FIXTURE FINANCING STATEMENT**

CREDIT INSTRUMENT

The aggregate principal amount to be advanced pursuant to the Loan Agreement and the Notes is \$4,684,284. The maturity date of the Notes is December 17, 2048.

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT (this "*Leasehold Deed of Trust*") is made effective as of December 17, 2018, by **LSF OPERATIONS, LLC**, a Nebraska limited liability company (the "*Mortgagor*"), as trustor, whose address is 4400 Lucile Drive, Suite 201, Lincoln, NE 68516, to **OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY** ("*Initial Trustee*"), and **ENHANCED CAPITAL NEW MARKET DEVELOPMENT FUND 96, LLC**, a Delaware limited liability company ("*Lender*"), as beneficiary, whose address is 201 St. Charles Avenue, Suite 3400, New Orleans, LA 70170.

THIS LEASEHOLD DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT AND SECURES OBLIGATIONS INCURRED BY MORTGAGOR FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL PROPERTY DESCRIBED HEREIN AND CONSTITUTES A CONSTRUCTION SECURITY INTEREST UNDER THE NEBRASKA CONSTRUCTION LIEN ACT. THIS LEASEHOLD DEED OF TRUST SECURES ALL FUTURE ADVANCES MADE OR TO BE MADE, WHICH FUTURE ADVANCES SHALL HAVE THE SAME PRIORITY AS IF ALL SUCH FUTURE ADVANCES WERE MADE ON THE DATE OF EXECUTION HEREOF.

THIS LEASEHOLD DEED OF TRUST IS INTENDED ALSO AS A FIXTURE FILING AND IS TO BE INDEXED NOT ONLY AS A LEASEHOLD DEED OF TRUST BUT ALSO AS A FIXTURE FILING.

WHEREAS, on or about the date hereof, Mortgagor and Lender have entered into that certain Loan Agreement (as amended, modified, supplemented, extended, renewed, replaced or restated, the "**Loan Agreement**"), pursuant to which Lender has agreed to make available to Mortgagor the original aggregate principal amount of \$4,684,284 (collectively, the "**Loan**") to finance or refinance a portion of the development of a sports facility located in Lincoln, Nebraska.

WHEREAS, Mortgagor owns a leasehold estate in that certain real property located in the city of Lincoln, Lancaster County, State of Nebraska (the "**Land**"), which Land is more particularly described on Exhibit A attached hereto and made a part hereof, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all appliances, furniture and furnishings affixed to the real property; all easements, rights of way and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights) and all other rights, royalties and profits relating to the Land, including without limitation, all minerals, oil, gas, geothermal and similar matters, and all requisite approvals, licenses, permits, variances, cooperative agreements, tax credits (if applicable), tax abatement benefits (if applicable) and land-use entitlements and all proceeds of any of the foregoing (collectively the "**Real Property**") by virtue of that certain Master Lease (defined below).

WHEREAS, to induce Lender to enter into the Loan Agreement, Mortgagor has agreed to execute and deliver this Leasehold Deed of Trust to Trustee and Lender to secure the rights of the Lender on the terms contained herein.

1. **CONVEYANCE AND GRANT.** For valuable consideration, Mortgagor grants, bargains, sells, conveys, assigns and mortgages unto Trustee in trust for the benefit of Lender, its successors and assigns, the leasehold estate and all other of Mortgagor's present and future tenancy, term, right, title and interest in and to: (a) Master Lease, (b) any and all rights, privileges and benefits to which Mortgagor is now or hereafter may be entitled under or by virtue of the Master Lease, including, without limitation: (i) any and all right, title and interest of Mortgagor in and to any and all security deposits, advance rental or leasehold payments and deposits or payments of a similar nature and any interest thereon becoming due and payable from time to time pursuant to the Master Lease; (ii) all right, title and interest of Mortgagor in and to any and all unearned or prepaid rent and any and all refunds or rebates of or with respect to any rent, and any interest thereon, (iii) any and all rights of Mortgagor to exercise options (including, without limitation, options to purchase, renew, extend, terminate, reject or assume), give consents and receive payments, reimbursements and refunds; (iv) any and all rights of Mortgagor to modify, change, supplement, alter, amend, terminate, cancel, sever or surrender the Master Lease and any and all rights of Mortgagor to release or discharge the Lessor of or from any obligations, covenants, agreements, conditions or other provisions by the Lessor to be kept, performed, observed or complied with thereunder; (v) any and all claims and rights to the payment of damages that may presently exist or hereafter arise under or in connection with the Master Lease or the rights of

Mortgagor thereunder, including, without limitation, any such claim or right that may arise as a result of any rejection or disaffirmance of the Master Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor pursuant to the Bankruptcy Code; (vi) any and all rights, privileges and benefits to which Mortgagor may be or may become entitled pursuant to Section 365 of the Bankruptcy Code, including, without limitation, all of Mortgagor's rights to remain in possession after rejection or disaffirmance of the Master Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor; and (vii) any and all easements, rights-of-way and rights of use or passage granted or allowed to Mortgagor under or in connection with the Master Lease; (c) the Real Property; (d) all building materials and supplies, improvements, fixtures and other equipment located from time to time on, under or about the Real Property, together with any alterations, additions and improvements thereto and all restorations and replacements thereof hereafter made from time to time; (e) all estates, easements, interests, licenses, tenements, hereditaments, appurtenances, rights and rights of way, public or private, pertaining, belonging or otherwise relating to the Real Property or any of the other Property described herein; (f) all insurance proceeds and any judgments, settlements, awards and other payments, including interest thereon, which may be made in respect of the Property, as a result of damage to or destruction of the Property, the exercise of the right of condemnation or eminent domain over any interest in the Property, or any other injury to or decrease in the value of the Property; (g) all franchises, permits, licenses and other rights therein respecting the use, occupation or operation of the Property or the activities conducted thereon or thereabout; (h) all rents (including all unearned or prepaid rents and any and all refunds or rebates of or with respect to any rents, and any interest thereon), income, deposits and other benefits arising out of or otherwise related to the Property and all leases on or affecting the Property (including, but not limited to, the Sublease), and any security deposits, contract rights, general intangibles, actions, rights of action and unearned insurance premiums relating to such leases or the Property and (i) all accessions to, substitutes for and all modifications, replacements, renewals, products and proceeds of any of the foregoing. The address of the Property is 150 S.W. 14th Street, Lincoln, Nebraska 68522.

THIS LEASEHOLD DEED OF TRUST, INCLUDING THE ASSIGNMENT OF LEASES AND RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF MORTGAGOR UNDER THE NOTES, THIS LEASEHOLD DEED OF TRUST, AND THE OTHER LOAN DOCUMENTS.

2. **DEFINITIONS.** Capitalized words used in this Leasehold Deed of Trust shall have meanings given in this Section 2. Capitalized terms not defined in this Section or otherwise defined in this Leasehold Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code as now or hereafter in effect. The words "including" or "include" shall mean including or include by way of example and not limitation (regardless of whether the words "without limitation" or words of similar import are used in conjunction therewith), unless otherwise expressly stated. References to Sections are intended to refer to Sections of this Leasehold Deed of Trust, unless otherwise specifically stated.

"Access Laws" has the meaning set forth in Section 8.

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“Bankruptcy Code” means any Section or Chapter of the United States Bankruptcy Code.

“Dollars” and ***“\$”*** mean the lawful money of the United States of America.

“Entity” means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

“Environmental Laws” means all local, state and federal laws, rules, regulations and ordinances pertaining to Hazardous Substances and environmental regulation, contamination or clean-up, all as now existing or hereafter amended or adopted (including, without limitation, the federal statutes known as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Resource Conservation and Recovery Act of 1976, Superfund Amendments and Reauthorization Act of 1986 and the Hazardous Materials Transportation Act).

“Event of Default” has the meaning set forth in Section 18.

“Hazardous Substances” means (a) any substance or material now or hereafter defined or designated as a hazardous, infectious, toxic or radioactive material, waste or substance, or as a pollutant or contaminant (or designated by any other similar term), by any Environmental Law now or hereafter in effect; (b) asbestos and any substance or compound containing asbestos; (c) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), ash produced by a resource recovery facility utilizing a municipal solid waste stream and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (d) urea formaldehyde foam insulation; (e) polychlorinated biphenyls (PCBs); (f) radon and (g) any other chemical, material or substance, exposure to which (because of its quantity, concentration or physical or chemical characteristics) is limited or regulated for health and safety reasons by any governmental authority, or which poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment.

“Improvements” means and includes without limitation all existing and future improvements, fixtures, buildings, structures, modular buildings, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

“Indebtedness” means all principal and interest payable under the Notes and any amounts expended or advanced by Lender to discharge obligations of Mortgagor or expenses incurred by Lender to enforce obligations of Mortgagor under this Leasehold Deed of Trust or any of the other Loan Documents, together with interest on such amounts as provided in the Notes.

“Initial Trustee” has the meaning set forth in the Recitals.

“Land” has the meaning set forth in the Recitals.

“Leasehold Deed of Trust” means this Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and includes, without limitation, all assignment and security interest provisions relating to the Personal Property, Leases and Rents.

“Leases” means all present and future leases (including, but not limited to, the Sublease), subleases, rental agreements, licenses and other agreements for the use and occupancy of all or any part of the Real Property, whether written or oral, and any amendments, extensions, renewals and replacements thereof.

“Lender” has the meaning set forth in the Recitals.

“Lessor” means the Lincoln Sports Facility, LLC, a Nebraska limited liability company, or any other of its successors or assigns now or hereafter holding the rights of “Lessor” under the Master Lease.

“Loan” has the meaning set forth in the Recitals.

“Loan Agreement” has the meaning set forth in the Recitals, and includes any amendments, addenda, extensions, supplements, renewals, replacements or restatements thereof or therefor.

“Loan Documents” means and includes, without limitation, this Leasehold Deed of Trust, the Loan Agreement, the Notes and all promissory notes, credit agreements, loan agreements, guaranties, security agreements, subordination agreements, mortgages, deeds of trust and all other instruments, agreements and documents, whether now or hereafter existing, executed by any Person in connection with the Indebtedness secured by this Leasehold Deed of Trust.

“Master Lease” means that certain Master Lease Agreement by and between Lessor, as lessor and fee owner of the Property, and Mortgagor, as lessee, dated on or about the date hereof, and any and all leases or similar agreements that from time to time may constitute replacement(s) or substitution(s) for the aforesaid lease, and any and all presently effective or future amendments, supplements, extensions or renewals of or to the aforesaid lease or any such replacement(s) or substitution(s).

“Mortgagor” has the meaning set forth in the Recitals.

“Note A” means that certain Promissory Note A in the stated principal amount of \$3,927,967.00 payable to Lender being executed on or about the date hereof, as the same may be amended, supplemented or otherwise modified from time to time.

"Note B" means that certain Promissory Note B in the stated principal amount of \$756,317.00 payable to Lender being executed on or about the date hereof, as the same may be amended, supplemented or otherwise modified from time to time.

"Note Rate" means the rate of interest from time to time payable under the Notes.

"Notes" means collectively, Note A and Note B.

"Permitted Encumbrances" means those encumbrances existing on the date hereof which are accepted by Lender in writing pursuant to the terms of the Loan Documents.

"Person" or **"Persons"** means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

"Personal Property" means Mortgagor's interest, whether now owned or hereafter acquired or arising, in all of the following: (a) all equipment, fixtures, inventory and other articles of personal property now or hereafter owned by Mortgagor that is now or hereafter located on or used in connection with all or any part of the Real Property, any construction thereon, or any business operated thereon, together with all accessions, parts and additions to, all replacements of, and all substitutions for, any of such property; (b) all inventory, equipment, materials, supplies and other goods, wherever located, whether in the possession of Mortgagor, a warehouseman, bailee or any other Person that is purchased for use in the construction or furnishing of any Improvements on the Real Property; (c) all accounts, general intangibles, chattel paper and instruments that arise from or relate to the Property or any business operated by Mortgagor thereon; (d) all construction, service, environmental, engineering, consulting, leasing, architectural and other similar contracts of any nature (including, without limitation, those of any general contractors and subcontractors), as such may be modified, amended or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use and/or disposition of any portion of or all of the Property; (e) all architectural drawings, plans, specification, soil tests, feasibility studies, appraisals, engineering reports and similar materials relating to any portion of or all of the Property; (f) all payment and performance bonds or guarantees and any and all modifications and extensions thereof relating to the Property; (g) all deposits and deposit accounts related to the Property, including, without limitation, (i) those relating to the Indebtedness or the Property, (ii) security deposits, (iii) deposits relating to utility services and deposits for the Property, (iv) deposit accounts relating to the Property and (v) reserves established with Lender for taxes, insurance or otherwise relating to the Property; (h) to the extent it is deemed to be personal property, the Real Property; (i) all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Property as a result of the exercise of the right of eminent domain or any other injury to or decrease in the value of the Real Property and (j) all proceeds (including without limitation all condemnation

awards and settlements, insurance proceeds, and refunds of premiums) of any of the foregoing and any other Property.

“Property” means, collectively, the Real Property, the Improvements, the Personal Property and, except where the context otherwise requires, the Leases and Rents.

“Real Property” has the meaning set forth in the Recitals.

“Rents” means all present and future rents, revenues, fees, charges, income, issues, royalties, profits and other income, benefits or payments of any nature arising from or out of the Leases or from or out of all or any part of the Property, including but not limited to fees, charges, accounts and other payments for the use or occupancy of rooms and other public facilities, minimum rents, additional rents, percentage rents, parking or common area maintenance charges, tax and insurance contributions, deficiency rents and claims for damages from default in any Lease.

“Security Document” has the meaning set forth in Section 18.6.

“Sublease” means that certain Sublease Agreement entered into by and between Mortgagor, as lessor, and MBG Holdings, LLC, a Nebraska limited liability company d/b/a First Pick Performance, as lessee, dated as of the date hereof, and any and all leases or similar agreements that from time to time may constitute replacement(s) or substitution(s) for the aforesaid lease, and any and all presently effective or future amendments, supplements, extensions or renewals of or to the aforesaid lease or any such replacement(s) or substitution(s).

“Trustee” means the Initial Trustee or its successor in trust who may be acting under and pursuant to this Leasehold Deed of Trust from time to time.

“UCC” has the meaning set forth in Section 14.1.

3. **PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Leasehold Deed of Trust, Mortgagor shall pay to Lender all Indebtedness secured by this Leasehold Deed of Trust as it becomes due, and Mortgagor shall strictly perform all of Mortgagor’s obligations under the Notes, this Leasehold Deed of Trust and the Loan Documents.

4. **POSSESSION AND MAINTENANCE OF THE PROPERTY.**

4.1. **Possession and Use.** Until the occurrence of an Event of Default, Mortgagor may (a) remain in possession and control of the Property; (b) use, operate and manage the Property and (c) enter into the Sublease to sublet a portion of the Property to MBG Holdings, LLC, a Nebraska limited liability company d/b/a First Pick Performance.

4.2. **Duty to Maintain.** Mortgagor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements and maintenance necessary to preserve its value.

4.3. **Nuisance, Waste.** Mortgagor shall not cause, conduct or permit any nuisance nor commit, permit or suffer any stripping of or waste on or to the Property or any portion of the Property. Specifically, without limitation, Mortgagor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), soil, gravel or rock products without the prior written consent of Lender.

4.4. **Removal of Improvements.** Mortgagor shall not alter, demolish or remove any Improvements from the Real Property, nor permit such alteration, demolishing or removal, without the prior written consent of Lender. As a condition to the alteration, demolition or removal of any Improvements, Lender may require Mortgagor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

4.5. **Lender's Right to Enter.** Lender and its agents and representatives may enter upon the Real Property at all reasonable times and upon reasonable notice to Mortgagor to attend to Lender's interests and to inspect the Property for purposes of Mortgagor's compliance with the terms and conditions of this Leasehold Deed of Trust.

4.6. **Compliance with Governmental Requirements.** Mortgagor shall promptly comply with all laws, ordinances and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including the obligation to pay prior to delinquency all taxes, levies, charges and assessments in accordance with the Loan Agreement. Mortgagor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Mortgagor has notified Lender in writing prior to doing so and so long as, in Lender's reasonable opinion, Lender's interests in the Property are not jeopardized. Lender may require Mortgagor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

4.7. **Duty to Protect.** Mortgagor agrees neither to abandon nor leave unattended the Property. In addition to those acts set forth above in this section, Mortgagor shall do all other acts that are reasonably necessary to protect and preserve the character and use of the Property.

4.8. **Access Laws.**

(a) Mortgagor agrees that Mortgagor and the Property shall at all times strictly comply with the requirements of the Federal Americans with Disabilities Act of 1990; the Federal Fair Housing Amendments Act of 1988; any other federal, state or local laws or ordinances related to disabled access; and any statute, rule, regulation, ordinance, order of governmental body or regulatory agency or order or decree of any court adopted or enacted with respect thereto, as now existing or hereafter amended or adopted (collectively, the "**Access Laws**"). At any time, Lender may require a certificate of compliance with the Access Laws and indemnification agreement in a form reasonably acceptable to Lender. Lender may also require a certificate of compliance with the Access Laws from an architect, engineer or other third party acceptable to Lender.

(b) Except as required by the Access Laws, notwithstanding any provisions set forth herein or in any other document, Mortgagor shall not alter or permit any tenant or other Person to alter the Property in any manner which would increase Mortgagor's responsibilities for compliance with the Access Laws without the prior written approval of Lender. In connection with such approval, Lender may require a certificate of compliance with the Access Laws from an architect, engineer or other Person acceptable to Lender.

(c) Mortgagor agrees to give prompt written notice to Lender of the receipt by Mortgagor of any claims of violation of any of the Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any of the Access Laws.

(d) Mortgagor shall indemnify, defend and hold harmless Lender from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines and other proceedings including, without limitation, reasonable attorney fees and expenses arising directly or indirectly from, out of, or in any way connected with, any failure of the Property to comply with any of the Access Laws. The obligations and liabilities of Mortgagor under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure proceeding or delivery of a deed in lieu of foreclosure.

4.9. **Reappraisals.** In addition to the appraisal of the Property required as a condition to funding of the Loan, Lender shall have the right to have the Property appraised at Borrower's expense at any time during the term of the Loan if (a) an Event of Default has occurred; (b) Borrower requests an extension of the Loan; (c) any damage, destruction (in either case in excess of \$100,000) or condemnation of the Property occurs or (d) Lender determines in its reasonable opinion that the security for the Loan has been physically or financially impaired.

5. **HAZARDOUS SUBSTANCES.**

5.1. **Representations and Warranties.** Except as disclosed to and acknowledged by Lender in writing, Mortgagor continuously represents and warrants that: (a) during the period of its leasehold ownership or its operation of the Real Property, no Person has used, generated, manufactured, stored, treated, disposed, released or threatened release of any Hazardous Substance on, under, about or from the Property except such use and storage as is necessary and customary in the operation of its business, and any such use and storage has been conducted in accordance with all applicable federal, state, and local laws, regulations, and ordinances; (b) it has no knowledge or reason to believe that there has been (i) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, except such use and storage that has been conducted in accordance with applicable federal, state and local laws, regulations and ordinances or (ii) any actual or threatened litigation or claims of any kind by any Person relating to such matters. The representations and warranties contained herein are based on the Mortgagor's due diligence in investigating the Property for Hazardous Substances.

5.2. **Activities.** Except as agreed to by Lender in writing, Mortgagor agrees that neither it nor any tenant, contractor, agent or other authorized user of the Property will have permission to use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; provided, however, that Mortgagor may use and store such Hazardous Substances as are necessary and customary in the operation of its business, so long as such use, storage and any other permitted activity is conducted in compliance with all applicable federal, state and local laws, regulations and ordinances.

5.3. **Inspections.** Upon reasonable notice to Mortgagor, Mortgagor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with the provisions relating to Hazardous Substances. Any inspections or tests made by Lender shall be at the expense of Mortgagor and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Mortgagor or any other Person. Mortgagor shall pay the costs of any environmental audit if either an Event of Default exists or the audit reveals an Event of Default pertaining to Hazardous Substances.

5.4. **Notice.** Mortgagor agrees to immediately notify Lender if Mortgagor becomes aware of (a) any Hazardous Substances or other environmental problem or liability with respect to the Property or any adjacent property or (b) any lien, action or notice of any governmental authority related to Hazardous Substances. At its own cost, Mortgagor will take all actions which are necessary or desirable to clean up any Hazardous Substances affecting the Property, including removal, containment or any other remedial action required by applicable governmental authorities.

5.5. **Release and Indemnity.** Mortgagor hereby (a) releases and waives any future claims against Lender for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs under any Environmental Laws and (b) agrees to defend, indemnify and hold Lender harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, and costs and expenses (including attorney fees) arising directly or indirectly from, out of, or in any way connected with, (i) the inaccuracy of the statements and information contained herein, (ii) any breach of any provisions of this Leasehold Deed of Trust related to Hazardous Substances, (iii) any past, present or future use, generation, manufacture, storage, disposal, treatment, release or threatened release of Hazardous Substances on or from the Property which is not otherwise allowed hereunder, (iv) the discovery of unauthorized Hazardous Substances on the Property or on any other property which is caused by activities on the Property and (v) the cleanup of Hazardous Substances from the Property or any such other properties. Mortgagor acknowledges that it will be solely responsible for all costs and expenses relating to the cleanup of Hazardous Substances from the Property or from any other properties which become contaminated with Hazardous Substances as a result of activities on or the contamination of the Property.

5.6. **Survival.** The provisions of this Section 5, including the obligation to indemnify, shall survive the repayment of the Indebtedness and other liabilities and obligations of Mortgagor

under this Leasehold Deed of Trust and the satisfaction and reconveyance of the lien of this Leasehold Deed of Trust, and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise. Notwithstanding the foregoing, Mortgagor shall not be liable hereunder, if liability first arises as a result of an event first occurring subsequent to Mortgagor's conveyance of the Property to any unrelated third party and/or as a result of the willful misconduct or gross negligence of Lender.

6. DUE ON SALE - CONSENT BY LENDER.

6.1. Due on Sale. Mortgagor shall not sell or transfer all or any part of the Real Property, or any interest in the Real Property (including, without limitation, Mortgagor's leasehold estate in the Land). Upon the sale or transfer, without the Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property, Lender may, at its option, (a) declare immediately due and payable all sums secured by this Leasehold Deed of Trust or (b) impose such conditions as Lender deems appropriate. A "sale or transfer" or to "sell or transfer" means the conveyance of the Real Property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, lease, lease-option contract or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of Real Property interest. However, the options in this Section 6.1 shall only be exercised by Lender to the extent such option is not prohibited by law.

7. TAXES AND LIENS.

7.1. Payment. Mortgagor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Mortgagor shall maintain the Property free of all liens and encumbrances except Permitted Encumbrances, the lien of taxes and assessments not due and except as otherwise provided in this Leasehold Deed of Trust.

7.2. Right to Contest. Mortgagor may withhold payment of any tax, assessment or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Mortgagor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Mortgagor has notice of the filing, secure the discharge of the lien or, if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorney fees or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Mortgagor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Mortgagor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

7.3. **Evidence of Payment.** Mortgagor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

7.4. **Notice of Construction.** Mortgagor shall notify Lender at least fifteen (15) days before any construction work is commenced, any services are furnished or any materials are supplied to the Property, if any mechanic's lien, materialman's lien or other lien could be asserted on account of the work, services or materials and the cost exceeds fifty thousand Dollars (\$50,000.00). Mortgagor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Mortgagor can and will pay the cost of such Improvements.

8. **INSURANCE.**

8.1. **Maintenance of Insurance.** Mortgagor shall obtain and maintain such policies of insurance as Lender requires in accordance with the Loan Documents, including but not limited to the following: (a) property insurance with respect to all Improvements, Personal Property and any other insurable Property, covering loss by fire, theft and such other hazards as are now or hereafter covered by Special Form (also known as "all-risk") coverage, including earth movement if required by Lender, and covering such other hazards as Lender requires, in an amount equal to 100% of the full replacement cost value and sufficient to avoid application of any coinsurance clause, and with an acceptable mortgagee and/or lender loss payable clause in favor of Lender, which insurance shall, during the course of any construction, be in a "builder's risk" completed value (non-reporting) form; (b) commercial general liability insurance on an occurrence basis, in such amounts as Lender requires, which shall, if required by Lender, name Lender as an additional insured; (c) if the Real Property at any time becomes located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, flood insurance in such amounts as Lender requires and (d) such other insurance, including but not limited to, hazard, business interruption, loss of rents and boiler insurance, as Lender may reasonably require. Additionally, all such policies of insurance as required under the Loan Documents shall name Lender as an "additional insured" party.

8.2. **Power of Attorney.** Mortgagor irrevocably makes, constitutes and appoints Lender (and all officers, employees or agents designated by Lender) as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution, for the purpose of making and adjusting claims under such policies of insurance, endorsing the name of Mortgagor on any check, draft, instrument or other item of payment of the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance required above or to pay any premium in whole or in part relating thereto. Lender, without waiving or releasing any obligation or default by Mortgagor hereunder, may (but shall be under no obligation to) at any time or times hereafter maintain such action with respect thereto as Lender deems advisable. All sums disbursed by Lender in connection therewith, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, on demand, by Mortgagor to Lender and shall be additional obligations hereunder secured by this Leasehold Deed of Trust and

each of the other Loan Documents which secure the Notes. Lender shall not exercise the power of attorney granted in this Section 8.2 until the occurrence of an Event of Default.

8.3. **Form of Policies.** All policies shall be written in forms, amounts, coverages and bases reasonably acceptable to Lender and shall be issued by a company or companies reasonably acceptable to Lender. All policies shall include a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Lender. Each policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Mortgagor or any other Person and shall include the agreement of the insurer waiving all rights of setoff, counterclaim and/or deduction against Mortgagor.

8.4. **Delivery of Policies.** Mortgagor shall furnish to Lender an original duplicate policy or, at Lender's option, a certificate of insurance in a form reasonably acceptable to Lender. At least thirty (30) days prior to the expiration date of each policy, Mortgagor shall furnish Lender a renewal policy, together with evidence that the renewal premium has been paid.

8.5. **Application of Proceeds.** Mortgagor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds twenty-five thousand Dollars (\$25,000.00). Lender may make proof of loss if Mortgagor fails to do so within fifteen (15) days of the casualty. Lender may, at its election, receive and retain the proceeds and apply the same to the reduction of the Indebtedness and/or the payment of any lien affecting the Property, or may permit the proceeds to be applied to the repair, restoration and replacement of the Property. In the event Lender elects to apply the insurance proceeds to the repair, restoration and replacement of the Property, Mortgagor shall repair or replace the damaged or destroyed Improvements in a manner reasonably satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration. Any proceeds which have not been disbursed within one hundred eighty (180) days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Leasehold Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Mortgagor as Mortgagor's interests may appear.

8.6. **Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property or any interest in the Property covered by this Leasehold Deed of Trust at any trustee's sale or other sale held under the provisions of this Leasehold Deed of Trust, or at any foreclosure sale of such Property.

8.7. **Mortgagor's Report on Insurance.** Within thirty (30) days of a written request by Lender, Mortgagor shall furnish to Lender a report on each existing policy of insurance showing: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the property insured, the then current replacement value of such property and the manner of determining that value and (e) the expiration date of the policy. Mortgagor shall, upon request of

Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

8.8. **Insurance Disclosure.** Unless Mortgagor provides Lender with evidence of the insurance coverage as required herein, Lender may purchase insurance at Mortgagor's expense to protect Lender's interest. This insurance may, but need not, also protect Mortgagor's interest. If the Property becomes damaged, the coverage Lender purchases may not pay any claim Mortgagor makes or any claim made against Mortgagor. Mortgagor may later cancel Lender's coverage by providing evidence that Mortgagor has obtained the required coverage elsewhere. Mortgagor is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the balance of the Notes. If the cost is added to the balance of the Notes, the interest rate on the Notes will apply to this added amount. The effective date of coverage may be the date Mortgagor's prior coverage lapsed or the date Mortgagor failed to provide proof of coverage. The coverage Lender purchases may be considerably more expensive than insurance Mortgagor can obtain on Mortgagor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

9. **TAX AND INSURANCE RESERVES.** Subject to any limitations imposed by applicable law, Lender may require Mortgagor to maintain with Lender reserves for payment of annual taxes, assessments and insurance premiums, which reserves shall be created by advance payment or monthly payments of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before due, amounts at least equal to the taxes, assessments and insurance premiums to be paid. If fifteen (15) days before payment is due the reserve funds are insufficient, Mortgagor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit from Mortgagor, which Lender may satisfy by payment of the taxes, assessments and insurance premiums required to be paid by Mortgagor as they become due. Lender shall have the right to draw upon the reserve funds to pay such items, and Lender shall not be required to determine the validity or accuracy of any item before paying it. Nothing in the Leasehold Deed of Trust shall be construed as requiring Lender to advance other monies for such purposes, and Lender shall not incur any liability for anything it may do or omit to do with respect to the reserve account. Subject to any limitations set by applicable law, if the reserve funds disclose a shortage or deficiency, Mortgagor shall pay such shortage or deficiency as required by Lender. All amounts in the reserve account are hereby pledged to further secure the Indebtedness, and Lender is hereby authorized to withdraw and apply such amounts on the Indebtedness upon the occurrence of an Event of Default. Lender shall not be required to pay any interest or earnings on the reserve funds unless required by law or agreed to by Lender in writing. Lender does not hold the reserve funds in trust for Mortgagor, and Lender is not the agent of Mortgagor for payment of the taxes and assessments required to be paid by Mortgagor.

10. **EXPENDITURES BY LENDER.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Mortgagor fails to comply with any provision of this Leasehold Deed of Trust or any Loan Documents, including but not limited to Mortgagor's failure to discharge or pay when due any amounts Mortgagor is required to discharge or pay under this Leasehold Deed of Trust or any of the Loan Documents, Lender, on Mortgagor's

behalf may (but shall not be obligated to) take any action that Lender reasonably deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the Note Rate from the date incurred or paid by Lender to the date of repayment. All such expenses will become a part of the Indebtedness and will be payable on demand. The Property (and any interest Mortgagor holds in the Property) also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled on account of the default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that they otherwise would have had.

11. WARRANTY; DEFENSE OF MORTGAGOR'S LEASEHOLD INTEREST.

11.1. Mortgagor's Leasehold Interest. Mortgagor warrants that:

(a) Mortgagor is the sole tenant or lessee under the Master Lease and the sole owner and holder of the leasehold estate;

(b) the leasehold estate is a good and valid tenancy and interest in the Land (terminable only as provided in the Master Lease or in accordance with the Bankruptcy Code);

(c) to the best of Mortgagor's knowledge and belief, subject only to Permitted Encumbrances, the Lessor is seized of an indefeasible estate in fee simple in and to the Land;

(d) subject only to Permitted Encumbrances, Mortgagor has good and absolute title to the Personal Property;

(e) the Property is free and clear of any and all liens, security interests, charges, encumbrances and claims of other persons, other than Permitted Encumbrances, and without limiting the generality of the foregoing, neither the Master Lease nor the leasehold estate is subject to any other mortgage, pledge, hypothecation or assignment;

(f) no subtenancy under the Master Lease and no tenancy or other rights of use or occupancy of all or any part of the Property (other than the Sublease) have been created, by operation of law or otherwise, whether absolutely, conditionally, collaterally or otherwise;

(g) to the best of Mortgagor's knowledge and belief, the Lessor has not assigned all or any part of its right, title and interest in and to the Master Lease, or any rights or benefits thereunder (including, without limitation, the right to collect and receive rent or other money), whether absolutely, conditionally, collaterally or otherwise;

(h) the Master Lease is in full force and effect and has not been amended, supplemented, renewed, extended, replaced or substituted for in any respect;

(i) no Event of Default or cause for termination exists under the Master Lease and no state of facts exists which, with notice or the passage of time, or both, would constitute such a default or cause for termination if not cured or corrected;

(j) all leasehold rent (including, without limitation, any payments designated in the Master Lease as additional rent), all leasehold and acquisition payments, all use and occupancy charges and all other charges and costs reserved or otherwise payable under or in connection with the Master Lease have been paid to the extent such rent or other payments are or were payable as of or before the date hereof; and

(k) accurate and complete copies of the Master Lease and all other agreements, waivers and similar arrangements relating thereto have been delivered to the Lender.

11.2. **Defense of Title.** Except for Permitted Encumbrances, Mortgagor warrants and will forever defend its leasehold interest to the Property against the lawful claims of all Persons and agrees that there shall be no other liens or encumbrances against the Property, even if such liens or encumbrances are subordinate to the lien of this Leasehold Deed of Trust, unless Lender consents to such additional liens or encumbrances in writing, such consent to be in Lender's sole discretion. In the event any action or proceeding is commenced that questions Mortgagor's leasehold interest or the interest of Lender under this Leasehold Deed of Trust, Mortgagor shall defend the action at Mortgagor's expense. Mortgagor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Mortgagor will deliver or cause to be delivered to Lender such instruments as Lender may request from time to time to permit such participation.

11.3. **Compliance With Laws.** Mortgagor warrants that the Property and Mortgagor's use of the Property complies with all existing applicable laws, ordinances and regulations of governmental authorities.

11.4. **Mortgagor's Obligations; Lender's Rights.**

(a) Mortgagor shall (i) pay or cause to be paid all rents, additional rents and other sums required to be paid by Mortgagor as tenant under and pursuant to the provisions of the Master Lease on or before the date on which such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Master Lease, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, (iii) promptly notify Lender of the giving of any notice by the Lessor under the Master Lease to Mortgagor of any default by Mortgagor as tenant thereunder, and promptly deliver to Lender a true copy of each such notice except, in the case of clauses (i) through (iii) above, for

any such defaults or breaches as would not be reasonably expected to have a material adverse effect on Mortgagor;

(b) Mortgagor shall not (i) surrender the leasehold estate created by the Master Lease or terminate or cancel the Master Lease, (ii) modify, change, supplement, alter or amend the Master Lease, in any respect, either orally or in writing, in any manner that materially impairs the collateral value of the leasehold created by the Master Lease or in any manner that would be materially adverse to Lender. Mortgagor hereby assigns to Lender, as further security for the payment and performance of the Obligations and observance of the terms, covenants and conditions of this Leasehold Deed of Trust, all of the rights, privileges and prerogatives of Mortgagor, as tenant under the Master Lease following the occurrence and during the continuance of an Event of Default, to surrender the leasehold estate created by the Master Lease or to terminate, cancel, modify, change, supplement, alter or amend any of the Master Lease, and any such surrender of the leasehold estate created by any of the Master Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Master Lease not permitted pursuant to the foregoing terms of this Section (b) shall be void and of no force or effect;

(c) If at any time after the occurrence and during the continuance of an Event of Default, Mortgagor shall default in the performance or observance of any term, covenant or condition of the Master Lease to be performed or observed by Mortgagor, as tenant thereunder, then, without limiting the generality of the other provisions of this Leasehold Deed of Trust, and without waiving or releasing Mortgagor from any of its Obligations, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Master Lease on the part of Mortgagor, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Master Lease shall be kept unimpaired and free from default. If Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, Lender will notify Mortgagor thereof. In any such event, upon the occurrence and during the continuance of an Event of Default, Lender and any tenant designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time for the purpose of taking any such action. If Lessor shall deliver to Lender a copy of any notice of default sent by Lessor to Mortgagor, as tenant under the Master Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon;

(d) In the event that Mortgagor shall become the owner and holder of the fee title to any portion of the Premises while any portion of the Obligations remains unpaid or unsatisfied, the lien of this Leasehold Deed of Trust shall be spread to cover such Mortgagor's fee title to such portion of the Premises and such fee title shall be deemed to be included in the Property. Mortgagor agrees, at its sole cost and expense, including any reasonable attorneys' fees and disbursements incurred by Lender, to execute or cause to be executed any and all documents or instruments necessary to subject Mortgagor's fee title to the Premises to the lien of this Leasehold Deed of Trust. In addition, upon such event, the lien of this Leasehold Deed of Trust shall be a first lien on Mortgagor's fee title to the Premises subject only to (i) Permitted

Encumbrances, (ii) liens that exist on the fee title to the Premises as of the date of this Leasehold Deed of Trust, (iii) liens to which Lender has consented in writing, and (iv) liens that the fee owner of the Premises (prior to any transfer of the fee interest to the Mortgagor or any affiliate of Mortgagor and not due to any act of Mortgagor or any affiliate of Mortgagor) has caused or permitted and which liens did not require the consent of Mortgagor in order to exist; and

(e) In the event of the bankruptcy, reorganization or insolvency of Mortgagor, any attempt by Mortgagor to surrender its leasehold estate, or any portion thereof, under the Master Lease, or any attempt under such circumstances by Mortgagor to terminate, cancel or acquiesce in the rejection of the Master Lease without the consent of Lender shall be null and void. Mortgagor hereby expressly releases, assigns, relinquishes and surrenders unto Lender all of its right, power and authority to terminate, cancel, acquiesce in the rejection of, modify, change, supplement, alter or amend the Master Lease in any respect, either orally or in writing, in the event of the bankruptcy, reorganization or insolvency of Mortgagor, and any attempt on the part of Mortgagor to exercise any such right without the consent of Lender shall be null and void. Mortgagor hereby irrevocably appoints Lender as its true and lawful attorney-in-fact which power of attorney shall be coupled with an interest, for the purpose of exercising its rights pursuant to Section 365(h) of the Bankruptcy Code or any successor to such Section (i) to obtain for the benefit of Mortgagor or Lender a right to possession or statutory term of years derived from or incident to the Master Lease, or (ii) to treat the Master Lease as terminated.

Notwithstanding the rejection of the Master Lease by Lessor, as debtor in possession, or by a trustee for the Lessor, pursuant to Section 365 of the Bankruptcy Code, neither the lien of this Leasehold Deed of Trust nor Lender's rights with respect to the Master Lease shall be affected or impaired by reason thereof. In the event that Mortgagor shall remain in possession of the Property following a rejection of the Master Lease by Lessor, as debtor in possession, or by a trustee for Lessor, Mortgagor agrees that it shall not exercise any right of offset against the rent payable under the Master Lease, pursuant to Section 365(h)(2) of the Bankruptcy Code, or otherwise, without the prior consent of Lender thereto.

12. CONDEMNATION.

12.1. **Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may, at its election, require that all or any portion of the net proceeds of the award due to Mortgagor be applied to the Indebtedness or may permit such proceeds to be applied to the repair or restoration of the Property. If the proceeds are applied to repair or restoration, Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Mortgagor from the proceeds for the reasonable cost of repair or restoration if Mortgagor is not in default under this Leasehold Deed of Trust. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses and attorney fees of Lender in connection with the condemnation.

12.2. **Proceedings.** If any proceeding in condemnation is filed, Mortgagor shall promptly notify Lender in writing, and Mortgagor shall promptly take such steps as may be

necessary to defend the action and obtain the award. Mortgagor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of their its choice, and Mortgagor will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

13. IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.

13.1. **Current Taxes, Fees and Charges.** Upon request by Lender, Mortgagor shall execute such documents in addition to this Leasehold Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Property. Mortgagor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Leasehold Deed of Trust, including without limitation all taxes, fees, documentary stamps and other charges for recording or registering this Leasehold Deed of Trust.

13.2. **Taxes.** The following shall constitute taxes to which this section applies: (a) a specific tax upon this type of Leasehold Deed of Trust or upon all or any part of the Indebtedness secured by this Leasehold Deed of Trust; (b) a specific tax on Mortgagor which it is authorized or required to deduct from payments on the Indebtedness secured by this type of Leasehold Deed of Trust; (c) a tax on this type of Leasehold Deed of Trust chargeable against the Lender or the holder of the Notes and (d) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Mortgagor.

13.3. **Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Leasehold Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of their available remedies for an Event of Default unless Mortgagor either (a) pays the tax before it becomes delinquent or (b) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

14. SECURITY AGREEMENT; FINANCING STATEMENTS.

14.1. **Security Agreement.** This Leasehold Deed of Trust constitutes a security agreement under the Nebraska Uniform Commercial Code (the "*UCC*"). Mortgagor has granted and hereby grants to Lender a security interest in all of its right, title and interest in and to the Property (whether now owned or hereafter acquired) which is or may be subject to the provisions of Article 9 of the UCC, including, without limitation, all personal property, fixtures, leases and related agreements, rents, and other tangible and intangible personal property, and all proceeds and products of the same and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under the UCC.

14.2. **Security Interest.** Upon request by Lender, Mortgagor shall take whatever action is requested by Lender to evidence, perfect, protect, enforce and continue Lender's security interest

in the Rents and Personal Property. In addition to recording this Leasehold Deed of Trust in the real property records, Lender may, at any time and without further authorization from Mortgagor, file executed counterparts, copies or reproductions of this Leasehold Deed of Trust as a financing statement. Mortgagor authorizes Lender to file any financing statements and to take all other actions which Lender deems advisable to evidence, perfect or continue its security interest in any collateral for the Indebtedness. Mortgagor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Mortgagor shall assemble the Personal Property in a manner and at a place reasonably convenient to Mortgagor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender.

14.3. Fixture Financing Statement. This Leasehold Deed of Trust constitutes a fixture financing statement pursuant to the UCC. For purposes of this Section 14.3, this Leasehold Deed of Trust is to be filed and recorded in the real estate records of the county in which the Real Property is located and the following information is included: (1) the Mortgagor shall be deemed the "Debtor" with the address set forth for the Mortgagor on the first page of this Leasehold Deed of Trust which the Mortgagor certifies is accurate; (2) the Lender shall be deemed to be the "Secured Party" with the address set forth for the Lender on the first page of this Leasehold Deed of Trust and shall have all of the rights of a secured party under the UCC; (3) this Leasehold Deed of Trust covers goods which are or are to become fixtures, including any proceeds thereof; (4) the land upon which the fixtures are located is described in Exhibit A; (5) the name of the record owner of the Real Property is Lincoln Sports Facility, LLC, a Nebraska limited liability company and (6) the Debtor is a limited liability company, incorporated under the laws of the State of Nebraska. The Debtor hereby authorizes the Lender to file any fixture financing statements and terminations thereof or amendments or modifications thereto without the signature of the Debtor, where permitted by law.

15. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns and conveys to Lender all of Mortgagor's right, title and interest in and to all present and future Leases and Rents. Lender grants to Mortgagor a license to collect the Rents and profits, which license may be revoked at Lender's option and shall be automatically revoked upon acceleration of all or part of the Indebtedness.

15.1. Mortgagor's Representations and Warranties. Mortgagor continuously represents and warrants that: (a) Mortgagor has good right, title and interest to the Leases and Rents, free of all liens, encumbrances and claims except those disclosed to and accepted by Lender in writing; (b) Mortgagor has full right, power and authority to enter into and perform this assignment; (c) the Leases are in full force and effect and have not been modified or amended; (d) the Rents have not been waived, discounted, compromised, setoff or paid more than one month in advance; (e) there are no other assignments, transfers, pledges or encumbrances of any Leases or Rents and (f) neither Mortgagor nor the lessees and tenants are in default under the Leases.

15.2. Mortgagor's Agreements. Mortgagor shall (a) fulfill or perform each and every term, covenant and provision of the Leases to be fulfilled or performed by the lessor thereunder; (b) give prompt notice to Lender of any notice received by Mortgagor of default under any Lease

or of any alleged default or failure of performance that could become a default thereunder, together with a complete copy of any such notice and (c) enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of each Lease to be performed or observed by the lessees and tenants thereunder. Mortgagor, without the prior written consent of Lender, shall not: (i) cancel, modify, alter or accept the surrender of, any Lease; (ii) assign, transfer, pledge or encumber the whole or any part of the Leases and Rents to anyone other than Lender; (iii) accept any Rents more than one month in advance of the accrual thereof; (iv) do or permit anything to be done, or omit or refrain from doing anything, that could be a breach or default under the terms of any Lease or a basis for termination thereof or (v) enter into any tenant leases except the Sublease.

15.3. Lender Not Liable. Lender does not assume and shall not be liable for any obligation of the lessor under any of the Leases and all such obligations shall continue to rest upon Mortgagor as though this assignment had not been made. Neither the assignment of the Leases and Rents nor the exercise by Lender of any of its rights or remedies hereunder or in connection herewith, prior to Lender obtaining actual possession of the Property, shall constitute Lender a "mortgagee in possession" or otherwise make Lender responsible or liable in any manner with respect to the Property or the occupancy, operation or use thereof.

15.4. Lender's Rights to Collect Rents. In addition to the other remedies available to Lender, Lender shall have the right at any time, if an Event of Default has occurred, to collect and receive the Rents. For this purpose, Lender is hereby given and granted all rights, powers and authority to (a) send notices to any and all tenants of the Property advising them of the assignment and directing all Rents to be paid directly to Lender or Lender's agent; (b) enter upon and take possession of the Property; demand, collect and receive from the tenants, or from any other Persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; and collect the Rents and remove any tenant or tenants or other Persons from the Property; (c) enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property; (d) do any and all things to execute and comply with applicable state laws and all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property; (e) rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate; (f) engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Mortgagor's name, to rent and manage the Property, including the collection and application of Rents and (g) do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Mortgagor and to have all of the powers of Mortgagor for the purposes stated above. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

15.5. **Application of Rents.** All costs and expenses incurred by Lender in connection with the exercise of Lender's rights pursuant to Section 15.4 shall be for Mortgagor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Leasehold Deed of Trust, and shall be payable on demand, with interest at the Note Rate from date of expenditure until paid.

16. **FURTHER ASSURANCES; ATTORNEY-IN-FACT.**

16.1. **Further Assurances.** At any time, and from time to time, upon request of Lender, Mortgagor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue or preserve (a) the obligations of Mortgagor under the Notes, this Leasehold Deed of Trust and the Loan Documents and (b) the liens and security interests created by this Leasehold Deed of Trust on the Property, whether now owned or hereafter acquired by Mortgagor. Unless prohibited by law or agreed to the contrary by Lender in writing, Mortgagor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

16.2. **Attorney-in-Fact.** If Mortgagor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Mortgagor and at Mortgagor's expense. For such purposes, Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph. This power of attorney is irrevocable and is coupled with an interest.

17. **FULL PERFORMANCE.** If Mortgagor pays all the Indebtedness when due, terminates the availability of advances, and Mortgagor otherwise performs all the obligations imposed upon Mortgagor under this Leasehold Deed of Trust, Lender shall execute and deliver a request for full reconveyance and shall execute and deliver to Mortgagor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Mortgagor shall pay Lender a reasonable reconveyance fee for said reconveyance. The grantee in any such reconveyance may be described as the "person or persons legally entitled thereto."

18. **DEFAULT.** Each of the following shall constitute an event of default ("*Event of Default*") under this Leasehold Deed of Trust and each of the other Loan Documents:

18.1. **Default on Indebtedness.** Mortgagor fails to pay (a) when due any principal due under the Notes or any other Loan Document or (b) within ten (10) days after it is due, any interest, fees, charges or any other amount due under the Notes or any other Loan Document.

18.2. **Other Payments.** Subject to Mortgagor's rights pursuant to Section 7.2, Mortgagor fails to make any payment for taxes, insurance or any other payment necessary to prevent filing of or to effect discharge of any lien within the time required by this Leasehold Deed of Trust.

18.3. **Performance Default.** Any default or event of default continues following thirty (30) days' notice to Mortgagor under, or Mortgagor fails, following thirty (30) days' notice, to pay, perform, or comply with any term, condition, covenant or obligation in this Leasehold Deed of Trust (other than an Event of Default specified in Section 18.1 or 18.2).

18.4. **Agreements with Lender.** Any default or event of default occurs under or Mortgagor fails to pay, perform or comply with any term, condition, covenant or obligation in any loan agreement, promissory note, guaranty or any other agreement, document or instrument (including, but not limited to, the Loan Agreement and the Loan Documents) of such Person with or in favor of Lender, and such failure is not remedied within any applicable grace period.

18.5. **[Intentionally Omitted].**

18.6. **Security Documents.** Any default or event of default occurs under any security agreement, pledge agreement, mortgage, leasehold mortgage, assignment or any other document or instrument securing any indebtedness or obligation of Mortgagor to Lender (each, a "**Security Document**") or any security interest or lien created or purported to be created by any Security Document shall cease to be, or shall be asserted by any Person not to be, a valid, perfected, first priority security interest or lien, through no fault of Lender.

18.7. **Representations and Warranties.** Any warranty, representation, statement or information made or furnished to Lender by or on behalf of Mortgagor proves to have been false or misleading in any material respect when made or furnished or when deemed made or furnished, or becomes false or misleading at any time thereafter, and, to the extent such warranty, representation, statement or information can be cured, is not cured within 30 days after written notice from Lender to Mortgagor outlining such warranty, representation, statement or information that has become false or misleading.

18.8. **Bankruptcy, Insolvency, Etc.** Any proceeding under any Bankruptcy or insolvency laws is commenced by or against, a receiver is appointed for any part of the Property of or any attachment, seizure or levy is made on any property of Mortgagor, or Mortgagor makes an assignment for the benefit of creditors, enters into any type of creditor workout, or admits in writing its inability to pay its debts as they mature, or becomes insolvent.

18.9. **Dissolution.** Mortgagor is dissolved or liquidated or takes any action to authorize a dissolution or liquidation.

18.10. **Judgments.** Any judgment, writ of attachment or similar process shall be entered or filed against Mortgagor or any property of Mortgagor, which together with all other outstanding judgments, writs of attachment and similar processes against Mortgagor or Mortgagor's property, exceeds the sum of \$50,000 in excess of insurance coverage, and shall remain unpaid, unvacated, unbounded or unstayed for a period of thirty (30) days or more.

18.11. **Reserved.**

18.12. **Foreclosure, Etc.** Any foreclosure or forfeiture proceeding is commenced, whether by judicial or non-judicial proceeding, self-help, repossession or any other method, by any Person or any governmental agency against any of the Property or the occurrence any event occurs which gives any creditor the right to take such action.

19. **RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Lender, at its option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

19.1. **Event of Default under the Master Lease.** Lender shall have the right, but not the obligation, to (i) be recognized as the lessee under the Master Lease or (ii) designate a third party as the lessee under the Master Lease. Additionally, if the Mortgagor causes an Event of Default under the Master Lease, Mortgagor shall:

(a) forward to Lender any notice from Lessor providing notice of the occurrence of the Event of Default or any state of facts exists which, with the passage of time, would constitute such a default or cause for termination if not cured or corrected; and

(b) grant Lender an opportunity, but not obligation, to cure the Event of Default under the Master Lease, and such opportunity shall exist for one hundred twenty (120) days following the receipt of notice of the Event of Default.

19.2. **Accelerate Indebtedness.** Lender shall have the right at its option to cease making advances and declare the entire Indebtedness immediately due and payable, including any prepayment fee or penalty which Mortgagor would be required to pay; provided, however, if any proceeding under any bankruptcy or insolvency laws is commenced by or against Mortgagor, the Indebtedness shall automatically become due and payable in full without notice.

19.3. **Foreclosure.** With respect to all or any part of the Real Property, or any of Mortgagor's interest in the Real Property, Lender shall have the right to foreclose, by notice and sale or advertisement and sale, and to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by Chapter 76 of the Nebraska Revised Statute, including any successor thereof, or any other applicable law. If this Leasehold Deed of Trust is foreclosed

(whether by judicial foreclosure or otherwise), Lender will, to the fullest extent permitted by applicable law, be entitled to a judgment which will provide that, if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the amount of the unpaid balance of the judgment.

19.4. **UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the UCC, including, without limitation, the right to recover any deficiency in the manner and to the full extent provided by applicable law.

19.5. **Collect Rents.** Lender shall have the right, without notice to Mortgagor, to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Mortgagor irrevocably designates Lender as Mortgagor's attorney-in-fact to endorse instruments received in payment thereof in the name of Mortgagor and to negotiate the same and collect the proceeds. This power of attorney is irrevocable and is coupled with an interest. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent or through a receiver.

19.6. **Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a Person from serving as a receiver.

19.7. **Tenancy at Sufferance.** If Lender becomes entitled to possession of the Mortgagor's leasehold interest upon default of Mortgagor, Mortgagor shall become a tenant at sufferance of Lender and shall, at Lender's option, either (a) pay a reasonable rental for the use of the Property or (b) vacate the Property immediately upon the demand of Lender.

19.8. **Other Remedies.** Lender shall have any other right or remedy provided in this Leasehold Deed of Trust, the Notes, the other Loan Documents or by law, including, without limitation, the right to take possession of the Property and to take any and all actions necessary to complete construction of the Improvements being constructed with the proceeds of the Notes.

19.9. **Sale of the Property.** To the extent permitted by applicable law, Mortgagor hereby waives any and all rights to have the Mortgagor's leasehold interest or any other interest in the Property marshalled. In exercising their rights and remedies, Lender shall be free to sell all or any

part of the Mortgagor's leasehold interest or any other interest in the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Mortgagor's leasehold interest or any other interest in the Property.

19.10. Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Leasehold Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy provided in this Leasehold Deed of Trust, the Notes, in any Loan Document or provided by law shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Mortgagor under this Leasehold Deed of Trust after failure of Mortgagor to perform shall not affect Lender's right to declare a default and to exercise any of their remedies.

19.11. Attorney Fees; Expenses. Whether or not any court action is involved, all reasonable expenses incurred by Lender which in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note Rate from the date of expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorney fees whether or not there is a lawsuit, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, appraisal fees, title insurance and fees, to the extent permitted by applicable law. Without limiting the foregoing, if any suit or action is commenced to construe or to enforce any of the terms of this Leasehold Deed of Trust, Lender shall be entitled to recover such sums as the court may adjudge reasonable as attorney fees. As used in this Leasehold Deed of Trust, "attorney fees" include attorney fees whether or not there is a lawsuit and include without limitation attorney fees at trial, in any appellate proceeding, proceeding under the bankruptcy code (including efforts to modify or vacate any automatic stay or injunction) or receivership and post-judgment fees of enforcing any judgment. Mortgagor also will pay any court costs, in addition to all other sums provided by law.

20. NOTICES TO MORTGAGOR AND OTHER PARTIES. Any notice under this Leasehold Deed of Trust shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified or registered mail, postage prepaid, directed to the addresses shown near the beginning of this Leasehold Deed of Trust. Any party may change its address for notices under this Leasehold Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. All copies of notices of foreclosure from the holder of any lien which has priority over this Leasehold Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Leasehold Deed of Trust. For notice purposes, Mortgagor agrees to keep Lender informed at all times of Mortgagor's current address.

21. ANTI-DEFICIENCY WAIVERS. To the fullest extent permitted by applicable law, Mortgagor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Mortgagor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency,

before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

22. MISCELLANEOUS PROVISIONS.

22.1. **Amendments.** This Leasehold Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Leasehold Deed of Trust. No alteration of or amendment to this Leasehold Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

22.2. **Subrogation.** If, and to the extent that, the proceeds of the Notes are used to pay, satisfy or discharge any existing lien on the Property, Lender shall be subrogated to the rights, including the lien priority, of the holder of such existing lien, whether or not such existing lien is released.

22.3. **Accounts and Records.** Mortgagor will maintain a standard system of accounting administered in accordance with generally accepted accounting principles. Lender shall have the right to examine the books of account of Mortgagor, and to discuss the affairs, finances and accounts of Mortgagor with Mortgagor's representatives, all at such reasonable times and intervals as Lender may desire. Mortgagor will furnish to Lender from time to time such financial and other information as Lender reasonably requests regarding Mortgagor and the Property.

22.4. **Applicable Law.** This Leasehold Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska. The loan transaction which is evidenced by the Notes and this Leasehold Deed of Trust (which secures the Notes) has been applied for, considered, approved and made in the State of Nebraska. **IF THERE IS A LAWSUIT, MORTGAGOR, AT LENDER'S OPTION, AGREES TO SUBMIT TO THE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED IN OR HAVING JURISDICTION OVER LANCASTER COUNTY, NEBRASKA; PROVIDED, HOWEVER, THAT THIS SHALL NOT AFFECT LENDER'S RIGHT TO BRING PROCEEDINGS AGAINST MORTGAGOR IN THE COMPETENT COURTS OF ANY OTHER JURISDICTION.** To the fullest extent that it can legally do so, Mortgagor waives any objection which it may now or hereafter have to the laying of venue in any such court, including without limitation any objection based on the doctrine of *forum non conveniens*. **NOTHING CONTAINED HEREIN SHOULD BE DEEMED TO AFFECT THE PARTIES' RIGHTS TO REMOVE TO ANY UNITED STATES FEDERAL DISTRICT COURT WITHIN THE DISTRICT OF NEBRASKA.**

22.5. **Waiver of Jury Trial.** **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE INDEBTEDNESS, OR ANY TRANSACTION ARISING THEREFROM**

OR CONNECTED THERETO. MORTGAGOR ACKNOWLEDGES AND AGREES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

22.6. **Caption Headings.** Caption headings in this Leasehold Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Leasehold Deed of Trust.

22.7. **Assignments and Participations.** Lender may at any time sell, assign, transfer, negotiate, grant participations in or otherwise dispose of, to any one or more other lenders all or any part of the Indebtedness of Mortgagor at any time outstanding under the Notes, this Leasehold Deed of Trust or any of the Loan Documents and in connection therewith disclose any information Lender may have concerning Mortgagor.

22.8. **Merger.** There shall be no merger of the interest or estate created by this Leasehold Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

22.9. **Severability.** If a court of competent jurisdiction finds any provision of this Leasehold Deed of Trust to be invalid or unenforceable as to any Person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other Persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Leasehold Deed of Trust in all other respects shall remain valid and enforceable.

22.10. **Successors and Assigns.** Subject to the limitations stated in this Leasehold Deed of Trust on transfer of Mortgagor's interest, this Leasehold Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a Person other than Mortgagor, Lender, without notice to Mortgagor, may deal with Mortgagor's successors with reference to this Leasehold Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Mortgagor from the obligations of this Leasehold Deed of Trust or liability under the Indebtedness.

22.11. **Time Is of the Essence.** Time is of the essence in the performance of this Leasehold Deed of Trust.

22.12. **Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Leasehold Deed of Trust (or under the Loan Documents) unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Leasehold Deed of Trust shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Mortgagor, shall constitute a waiver of any of Lender's rights or any of Mortgagor's obligations as to any future transactions. Whenever consent

by Lender is required in this Leasehold Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required.

22.13. **Continuing Representations and Warranties.** All representations and warranties made by Mortgagor in this Leasehold Deed of Trust or any of the other Loan Documents shall survive the execution and delivery of this Leasehold Deed of Trust and the other Loan Documents, and shall remain in full force and effect and shall be deemed made continuously until payment and performance in full of all obligations of Mortgagor under the Loan Documents.

23. **COMMERCIAL PROPERTY.** The Property is used exclusively for business or commercial purposes. This Leasehold Deed of Trust is not a residential trust deed.

24. **TRUSTEE**

24.1. **Liability of Trustee.** Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Loan Documents or the description, value or status of title to the Property. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good faith, nor generally shall Trustee have any accountability hereunder except for willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful misconduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Lender, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Property following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Lender.

24.2. **Indemnification of Trustee.** Mortgagor agrees to indemnify Trustee and to hold Trustee harmless from and against any and all Claims and Expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including but not limited to any Claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Mortgagor or any other Person in connection with the ownership, development, financing, operation or sale of the Property; provided, however, that Mortgagor shall not be obligated to indemnify Trustee with respect to any Claim arising solely from the gross negligence or willful misconduct of Trustee.

The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed conveyance or assignment in lieu thereof and any other action by Trustee to enforce the rights and remedies of Lender or Trustee hereunder or under the other Loan Documents.

24.3. **Substitution of Trustee; Multiple Trustees.** Lender shall have, and are hereby granted with warranty of further assurances, the irrevocable power to appoint a new or replacement or substitute Trustee. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Leasehold Deed of Trust is recorded. The power of appointment of a successor Trustee may be exercised as often as and whenever Lender may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Leasehold Deed of Trust, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Property and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder. Whenever in this Leasehold Deed of Trust reference is made to Trustee, it shall be construed to mean each Person appointed as Trustee for the time being, whether original or successor in trust. All title, estate, rights, powers, trusts and duties granted to Trustee shall be in each Person appointed as Trustee so that any action hereunder by any Person appointed as Trustee shall for all purposes be deemed to be, and as effective as, the action of all Trustees.

IMPORTANT - READ BEFORE SIGNING: THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

[Remainder of page intentionally left blank]
[Signature and notary page follows]

EXHIBIT A
Legal Description

Improvements and leasehold interest in and to Lots 3, 4, 5 and 6, Block 1, Earl Carter Addition, Lincoln, Lancaster County, Nebraska -and- that certain beneficial easement to subject property for access and pedestrian way over private roadway granted in Final Plat and Dedication of Earl Carter Addition recorded December 21, 2005 as Inst. No. 2005074585 in the office of the Register of Deeds of Lancaster County, Nebraska.