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

(SECOND POSITION)

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Deed of Trust") dated this 13th day of April, 2012, by Schmidley's, LLC a Florida limited liability company ("Trustor"), whose address is c/o Matthias & Matthias, 700 West Morse Blvd., Suite 201, Winter Park, FL 32789, to Robert C. Matthias and Barbara M. Matthias, husband and wife as joint beneficiaries with rights of survivorship, and whose address is Suite 201, 700 West Morse Boulevard, Winter Park, FL 32789 ("Beneficiary"), and Shaun M. James, a Member of the Nebraska State Bar Association, whose address is 8712 West Dodge Road, Suite 400, Omaha, Nebraska 68114 ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property, rights and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Mortgaged Property":

- A. The "Property," being the real property located in the City of Omaha, County of Douglas, Nebraska, described on Exhibit "A" attached hereto and by this reference made a part hereof, (the "Land"), together with any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and all right, title and interest of Trustor, now owned or hereafter acquired, in and to (i) all streets, roads and public places, alleys, easements, rights-of-way, public or private, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, now or hereafter used in connection with or pertaining to the Land or the Improvements; (ii) any strips or gores between the Land and abutting or adjacent properties; (iii) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and

any greater estate in the Land or the Improvements; (iv) all water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the Property and all of Trustor's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water-bearing formations underlying the Land, together with all associated easements and rights-of-way, any and all rights to obtain water, sewer and other services from service districts, and water stock, timber, crops and mineral interests on or pertaining to the Land; and (v) all development rights and credits and air rights (the Land, Improvements and other rights, titles and interests referred to in this clause (c) being herein sometimes collectively called the "Premises");

B. All fixtures, equipment (including but not limited to, fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, all kitchen equipment, and all other equipment of every kind other than such property owned by tenants of Trustor), systems, machinery, furniture, furnishings, appliances, machinery, tools, inventory, goods, building and construction materials, supplies, and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (d) being herein sometimes collectively called the "Accessories");

C. All (i) plans and specifications for the Improvements, including but not limited to, maps, surveys, studies, reports, permits, licenses, architectural, engineering, construction, management, maintenance, service and other contracts, books of account, insurance policies and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, purchase or operation of the Mortgaged Property, (ii) Trustor's rights, but not liability for any breach by Trustor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness as such term is defined below), insurance policies, interest rate protection agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof, (iii) deposits and deposit accounts arising from or relating to any transactions related to the Premises or the Accessories (including Trustor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (as such term is defined below) for taxes, insurance or otherwise), (iv) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories, (v) permits, licenses, franchises, certificates,

development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (vi) all of Trustor's interest in all leases now or hereafter existing with respect to all or any portion of the Premises, all of the rents, issues and profits of the Mortgaged Property (as defined below) or arising from the use or enjoyment of all or any portion thereof, all security deposits arising from the use or enjoyment of all or any portion of the Mortgaged Property, and other benefits of the Premises and the Accessories, (vii) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof, and (viii) engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property, including software, which are in the possession of Trustor or in which Trustor can otherwise grant a security interest.

D. All estate, interest, right, title, other claim or demand, with respect to (i) proceeds (whether cash or non-cash and including payment intangibles), rents, issues, profits, royalties, income and other benefits (collectively the "rents"), of or arising from the properties, rights, titles and interests referred to above, including the proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance, present and future, payable because of loss sustained to all or part of the Mortgaged Property (including premium refunds), whether or not such insurance policies are required by Beneficiary, proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, proceeds arising out of any damage thereto, including any and all commercial tort claims, and (ii) other interests of every kind and character which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above and all property used or useful in connection therewith, including rights of ingress and egress and remainders, reversions and reversionary rights or interests, and Trustor hereby authorizes, directs and empowers Beneficiary, at Beneficiary's option, on Trustor's behalf, or on behalf of the successors or assigns of Trustor, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

E. All of Trustor's interest in and to all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses (as said terms are defined in the Nebraska Uniform Commercial Code, as the same may be amended from time to time) and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Property (as defined below), whether now existing or entered into or obtained after the date hereof; all existing and future names under or by which the Mortgaged Property, or any portion thereof, may at any time be operated or known; all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the Mortgaged Property, or any portion thereof;

F. All interests, estates or other claims or demands, in law and in equity, which the Trustor now has or may hereafter acquire in the Mortgaged Property and all right, title and interest hereafter acquired by Trustor in any greater estate in any of the foregoing; and

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

The foregoing items are hereinafter called the "Mortgaged Property."

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee, its successors and assigns, shall reconvey and release the Mortgaged Property.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

1. Payment of indebtedness evidenced by that certain Promissory Note dated April 13, 2012 (the "Promissory Note"), executed by Trustor in favor of Beneficiary in the principal amount of \$60,000.00, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, and the performance and discharge of each and every obligation of Trustor set forth in the Promissory Note;
2. Payment of all other indebtedness and the due, prompt and complete performance of all obligations and covenants of Trustor herein and under each of the "Loan Documents" (as defined below);
3. Payment of all of the principal of and interest on any future advances under the Loan Documents, and all sums advanced by Beneficiary to protect the Mortgaged Property, with interest thereon at the Default Rate provided by the Promissory Note from the date of advance by Beneficiary to the date of payment by Trustor; and
4. Such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary, its successors or assigns, by Trustor, its successors or assigns, when evidenced by another promissory note or notes, which are by the terms thereof secured by this Deed of Trust.

The indebtedness and the obligations secured by this Deed of Trust which are described in (1) through (4) above may be referred to herein as the "Secured Obligations."

The indebtedness secured hereby is further evidenced and secured by a "Guaranty" executed by Lauren A. Smith ("Guarantor"), dated of even date herewith. The Guaranty and Promissory Note, and any other instrument evidencing the indebtedness or any security interest or guaranty of payment or performance relating to the indebtedness are referred to herein as the "Loan Documents".

ARTICLE I

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor hereby represents, warrants, covenants and agrees:

Section 1.01. **Payment of Secured Obligations.** Trustor hereby grants this Deed of Trust to secure the payment and performance when due of the Secured Obligations. The consideration received by Trustor to execute and deliver this Deed of Trust and the liens and security interests created herein is sufficient and will provide a direct economic benefit to Trustor.

Section 1.02. **Title of Trustor.** Trustor has in its own right, subject to easements, restrictions and covenants of record and taxes not yet delinquent, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Deed of Trust and has full right to make this conveyance. With respect to any personal property acquired after the date hereof, Trustor shall be the sole owner of the personal property, free of any adverse lien, security interest, encumbrance or adverse claim of any kind. Trustor agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Deed of Trust in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Deed of Trust thereon, or any of the rights of either Trustee or Beneficiary hereunder; and Trustor agrees to pay all costs and expenses incurred by either Trustee or Beneficiary in or in connection with any such action or proceeding, including but not limited to Beneficiary's costs, whether any such action or proceeding progresses to judgment and whether brought by or against Trustee or Beneficiary. Beneficiary or Trustee, as the case may be, shall be reimbursed for any such costs and expenses. Trustee or Beneficiary may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as either may, in its sole and absolute discretion, deem advisable, and may settle or compromise the same and, on that behalf and for any of such purposes, may expend and advance such sums of money as either may deem necessary, and Beneficiary or Trustee, as the case may be, shall be reimbursed therefor. Upon receipt of a written request from Beneficiary, Trustor agrees to supply Beneficiary from time to time, but not more frequently than once each calendar year, with an inventory of all Mortgaged Property in a form acceptable to Beneficiary.

Section 1.03. Intentionally deleted.

Section 1.04. **Maintenance, Repair, Alterations.** Trustor shall: (i) keep the Property and Accessories in good condition and repair, subject to reasonable and ordinary wear and tear; (ii) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; (iii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor; (iv) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged

Property, or any part thereof, or requiring any alterations or improvements; (v) not to commit or permit any waste or deterioration of the Mortgaged Property; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; (vii) comply with the provisions of any lease, if this Deed of Trust is on a leasehold; and (viii) not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation. In the event that Trustor fails to maintain the Mortgaged Property in the manner specified herein, Beneficiary may, at its option, undertake such repairs or maintenance, for the account of Trustor, as Beneficiary deems necessary. The cost of any such repairs or maintenance undertaken by Beneficiary, together with interest thereon at the rate so provided in the Note, from the date such cost was incurred by Beneficiary, shall become immediately due and payable to Beneficiary, and Beneficiary shall be reimbursed therefor. The right of Beneficiary to undertake such repairs or maintenance shall be optional, and shall in no way limit Beneficiary's right to declare a default under the Note, this Deed of Trust or the other Loan Documents for failure to maintain the Mortgaged Property in accordance with the covenants herein.

Trustor agrees that, as to any alteration, addition, construction or improvement to be made upon the Premises, all plans and specifications therefor shall be approved in writing by Beneficiary prior to the commencement of work, provided that, no such approval shall be required for interior non-structural alterations under \$25,000. Once commenced, all work thereunder shall be prosecuted with due diligence, and all construction thereof will be fully in accordance with the plans and specifications so approved, and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire Underwriters. Should Trustor at any time fail to comply with any governmental notice or demand alleging a failure to comply with any such plan, specification, law, ordinance or regulation, such failure shall, at Beneficiary's option and in its sole and absolute discretion, constitute a default hereunder.

Section 1.05. **Required Insurance.** Trustor shall at its sole expense obtain, provide, maintain and at all times keep in force for the benefit of Beneficiary during the term of this Deed of Trust, the following policies of insurance:

(a) Insurance upon all Premises, Accessories and Personal Property against loss or damage by fire, lightning and other risks customarily covered by standard "all risk" and extended covered endorsements, together with theft, vandalism, malicious mischief, collapse, replacement cost, agreed amount and restoration in conformance with applicable laws and ordinances, all in such amounts as may be from time to time required by Beneficiary, but, in no event, less than the full replacement cost of the Improvements now existing or hereafter erected or placed upon the Property, including the cost of debris removal, and of all Accessories and other Personal Property, and, in any event, in an amount not less than the full unpaid balance secured by this Deed of Trust;

(b) Comprehensive general liability insurance (including coverage for elevators and escalators, if any, on the Premises) on an "occurrence basis" against claims for "personal injury," including, without limitation, bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit satisfactory to Beneficiary and in no event less than \$500,000.00 with respect to

personal injury or death to any one or more persons or damage to property, and \$1,000,000.00 for any one occurrence;

(c) Workers' compensation insurance (including employer's liability insurance, if required by Beneficiary) for all employees of Trustor engaged on or with respect to the Premises in such amount as is satisfactory to Beneficiary, or, if such limits are established by law, in such amounts;

(d) During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles acceptable to Beneficiary, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished;

(e) If requested by Beneficiary, flood insurance if the Property is in an area identified as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973, as amended, or other applicable law, with such insurance to be at least the amount available under the National Flood Insurance Act of 1968 and, if available under other policies issued by other sources, then in such additional amounts as Beneficiary may reasonably require; and

(f) Such other insurance, including, by way of example and not of limitation, earthquake insurance, as may from time to time be required by Beneficiary, in such amounts and against such hazards and risks, as is commonly obtained by prudent owners of property similar in use to the Mortgaged Property and located in the same area in which the Property is located.

All policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy, notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Trustor.

Section 1.06. **Delivery of Insurance Policies, Payment of Premiums.** All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents or as otherwise satisfactory to Beneficiary. All policies of insurance shall name Beneficiary as an additional insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary, which endorsement indicates that all insurance proceeds are payable directly to Beneficiary, and shall be in a form satisfactory to Beneficiary. Trustor shall furnish Beneficiary with an original or certified copy of all policies of required insurance.

Fifteen (15) days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including, without limitation, amended to reduce the scope or limits of coverage, without thirty (30) days' prior written notice to Beneficiary and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to Beneficiary. In all cases, Trustor shall immediately

give notice to Beneficiary of any notice received by Trustor of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Trustor fails to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or to make the deposits required hereunder, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the Default Rate provided by the Promissory Note, shall be secured by this Deed of Trust.

If required by Beneficiary, Trustor shall deposit with Beneficiary on the first business day of each and every calendar month until all Secured Obligations are paid in full, a non-interest-bearing amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and provided Trustor has deposited sufficient funds pursuant to this Section 1.06, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited, pursuant to this Section 1.06. In its sole discretion, Beneficiary may waive Trustor's obligation to comply with the deposit requirements of this Section 1.06, provided that Beneficiary may, at any time thereafter, in its sole discretion, rescind such waiver by notice, whereupon Trustor shall resume depositing such amounts in the manner required hereunder. If Beneficiary waives Trustor's obligation to deposit amounts in the manner described above, Trustor shall pay all insurance premiums at least thirty (30) days prior to their due dates and shall, within ten (10) days of such payment, deliver proof of payment to Beneficiary.

Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts received pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any Secured Obligation in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums by Beneficiary hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Beneficiary under the terms of the Loan Documents or any of the obligations of Trustor or any guarantor under the Loan Documents.

Section 1.07. **Insurance Proceeds.** After the occurrence of any casualty to the Mortgaged Property, or any part thereof, Trustor shall give prompt written notice thereof to Beneficiary and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; Trustor shall provide Beneficiary with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Property shall be paid to Beneficiary; each insurer is hereby authorized and directed to make payment for any such loss directly to Beneficiary instead of payment to Trustor. Any Insurance Proceeds

shall be applied first to the payment of all costs and expenses incurred by Beneficiary in obtaining such proceeds. Provided no Event of Default has occurred hereunder, or an event which, with the passage of time or the giving of notice, would constitute an Event of Default hereunder, the balance of the proceeds, if any, shall be (i) applied by Beneficiary toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed, and (ii) the balance against sums secured hereby, in such order as Beneficiary may in its absolute discretion elect. Such damage or destruction shall not affect the lien of this Deed of Trust or the obligations of Trustor hereunder, and Beneficiary is authorized at Beneficiary's option to compromise and settle all loss claims on said policies if not adjusted promptly by Trustor. The application of Insurance Proceeds in the manner set forth above shall be conditional upon Trustor first depositing with Beneficiary such amount as Beneficiary may, in its reasonable discretion, determine to be required beyond the Insurance Proceeds to complete the altering, restoring or rebuilding of the Mortgaged Property, or such portion thereof as may have been altered, damaged or destroyed ("Additional Funds"). Disbursement of Insurance Proceeds, together with the Additional Funds, if any, required to be so deposited by Trustor with Beneficiary shall be in accordance with Beneficiary's then current construction loan procedures. If, however, an Event of Default has occurred which was not cured within the applicable cure period, if any, or Trustor has failed to provide the deposit of the Additional Funds within thirty (30) days following the date of receipt of the Insurance Proceeds, then the balance of the proceeds, if any, may be applied at the option of Beneficiary, (i) toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Beneficiary may in its absolute discretion elect.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations shall remain in full force and effect, and Trustor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature on which insurance was not obtained or obtainable shall result in damage to or loss or destruction of the Mortgaged Property, Trustor shall give immediate notice thereof to Beneficiary and, unless otherwise so instructed by Beneficiary, shall promptly, at Trustor's sole cost and expense, whether or not the Insurance Proceeds are adequate to cover such cost and expense, restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with plans and specifications submitted to and approved by Beneficiary.

(c) Except as provided below, nothing contained in this Deed of Trust shall be deemed to excuse Trustor from repairing or maintaining the Mortgaged Property as provided in Section 1.04. The application or release by Beneficiary of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice. If Beneficiary elects not to so apply the Insurance Proceeds to the restoration, rebuilding or repair of the Mortgaged Property pursuant to Section 1.07(a), Trustor shall not be required to restore, rebuild or repair the portion of the Mortgaged Property damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Deed of Trust.

Section 1.08. **Assignment of Policies Upon Foreclosure.** Delivery of the insurance policies and renewals shall constitute an assignment to Beneficiary as further security of all unearned premiums. In the event of the foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property, or any part thereof, by non-judicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Property, or such part thereof, shall succeed to all of Trustor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.05, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Property or any part thereof. If Beneficiary acquires title to the Mortgaged Property, or any part thereof, in any manner, it shall (as between Trustor and Beneficiary) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to such part or whole of the Mortgaged Property, with the sole right to collect and retain all unearned or returnable premiums thereon, if any.

Section 1.09. **Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Mortgaged Property, or any part thereof or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify and hold Beneficiary harmless from all liability by reason of such litigation, including all attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not the litigation is prosecuted to judgment. Upon an Event of Default, Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and Trustor shall pay all attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of an Event of Default.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Mortgaged Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Trustor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property, or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements, or any part thereof, by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or similar proceeding relating to Trustor, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

Section 1.10. Taxes and Impositions.

(a) Trustor agrees to pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Trustor pursuant to subparagraph (a) hereof, or (ii) any other claims, liens and encumbrances affecting or purporting to affect the title to, or which may be or appear to be liens on, the Mortgaged Property, or any part thereof, and all costs, charges, interest and penalties on account thereof, or (iii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. In the event that Trustor shall not be permitted to pay such fees, taxes or assessments on behalf of Beneficiary, then in addition to the other remedies of Beneficiary under Article V of this Deed of Trust, and at the option of Beneficiary, all Secured Obligations, together with all accrued interest thereon, shall become due and payable one hundred eighty (180) days after Trustor receives written notice of such Imposition but not less than thirty (30) days after notice from Beneficiary to Trustor. PROVIDED, HOWEVER, that such election shall be ineffective if Trustor is not prohibited by law from paying the whole of such tax in addition to all other payments required hereunder, and the payment of such tax will not constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms of the Promissory Note, this Deed of Trust or otherwise, and if Trustor, prior to such specified date, in a writing in all respects satisfactory to Beneficiary agrees to pay any such tax when thereafter levied or assessed against the Mortgaged Property, and such agreement shall constitute a modification of this Deed of Trust.

(c) Subject to the provisions of subparagraph (d) of this Section 1.10, Trustor covenants to furnish Beneficiary within thirty (30) days after the date upon which any Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Subject to the applicable state law provisions, Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed

in any way as relieving, modifying, or extending Trustor's covenant to pay such Imposition at the time and in the manner provided in this Section 1.10, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; and (iii) Trustor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) If required by Beneficiary, Trustor shall deposit with Beneficiary on the first business day of each and every calendar month, until all Secured Obligations are paid in full, an amount equal to one-twelfth of the annual Impositions estimated by Beneficiary to be due on the Mortgaged Property. Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and provided Trustor has deposited sufficient funds pursuant to this Section 1.10(e), Beneficiary may pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor, and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. In its sole discretion, Beneficiary may waive Trustor's obligation to comply with the deposit requirements of this Section 1.10(e), provided, however, that Beneficiary may at any time, in its sole discretion, rescind such waiver by notice, whereupon Trustor shall resume depositing such amounts in the manner required herein.

Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited pursuant to this Section 1.10(e). Beneficiary may impound or reserve for future payment of Impositions any portion of such payments as Beneficiary may in its absolute discretion deem proper, applying the balance to the Secured Obligations. If Trustor fails to deposit sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at its election, but without any obligation so to do, advance any amounts required to make up the deficiency. Such advances shall be secured hereby and shall be repayable to Beneficiary as herein provided. Beneficiary may, at its option and without making any advance whatever, apply any sums held by it upon any Secured Obligation.

(f) Trustor covenants and agrees not to suffer, permit or initiate the joint assessment of the Real Property and Personal Property, or any other procedure whereby the lien of the Real Property taxes and the lien of the Personal Property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

(g) If requested by Beneficiary, Trustor shall cause a report covering the Mortgaged Property to be furnished to Beneficiary, at Trustor's expense, by a tax reporting service with a company satisfactory to Beneficiary.

Section 1.11. **Utilities.** Trustor shall pay when due all utility charges incurred for the benefit of the Premises or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.12. **Actions Affecting Mortgaged Property.** Trustor shall appear in and contest any action or proceeding purporting to affect the title of Trustor in the Mortgaged Property or security thereof or the rights or powers of Beneficiary or Trustee; and Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

Section 1.13. **Actions by Beneficiary and/or Trustee to Preserve Mortgaged Property.** Should Trustor fail to make any payment or do any act as and in the manner provided in this Deed of Trust, Beneficiary, in its sole discretion, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any Secured Obligation, may make or do the same in such manner and to such extent as Beneficiary deems necessary to protect the security hereof without prejudice to its right to declare a default hereunder. Without limiting its general powers, Beneficiary shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Property; (ii) to direct Trustor to terminate any management agent and to employ such management agent as Beneficiary may determine in its sole discretion; (iii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary or proper to keep the Premises in good condition and repair; (iv) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Beneficiary may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall immediately upon demand from Beneficiary pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

Section 1.14. **Survival of Warranties.** Trustor shall fully and faithfully satisfy and perform the Secured Obligations. All representations, warranties and covenants of Trustor contained herein shall remain continuing obligations, warranties and representations of Trustor during any time when any portion of the Secured Obligations remain outstanding.

Section 1.15. **Eminent Domain.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary may participate in any such Condemnation proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by Beneficiary to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings and shall consult with Beneficiary and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property or any part

thereof or interest therein shall be paid to Beneficiary and shall be applied first to all costs and expenses incurred by Beneficiary in obtaining the proceeds. Provided no Event of Default has occurred hereunder and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, the balance of the proceeds, if any, shall be applied at the option of Beneficiary (i) toward altering, restoring or rebuilding the Mortgaged Property, or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Beneficiary may in its absolute discretion elect. If Beneficiary elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Property, Trustor shall not be required to repair or restore that portion of the Mortgaged Property affected by Beneficiary's election and the failure to do so shall not constitute a breach by Trustor of its obligation to maintain the Mortgaged Property.

Trustor hereby assigns and transfers to Beneficiary, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Beneficiary may request. Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Beneficiary shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.16. **Additional Security.** In the event Beneficiary at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. **Additional Indebtedness.** The Trustor shall not further encumber the Mortgaged Property or any portion thereof (including, without limitation, secured transactions under the UCC) without the prior written consent of Beneficiary.

Section 1.18. **Successors and Assigns.** This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The covenants and agreements of Trustor contained herein shall apply to and be binding upon any successor owner of the Mortgaged Property or any part thereof.

Section 1.19. **Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

Section 1.20. **Liens.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall require but not more than 150% of the amount of the claim plus costs (including attorneys' fees) and interest and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor fails to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary,

Beneficiary may, but shall not be obligated to, discharge the same, either, by paying the amount claimed to be due, or by procuring the discharge of such lien, either, by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any cost incurred by Beneficiary in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

Section 1.21. **Restrictions Affecting Title.** Trustor shall perform when due all Secured Obligations required to be performed by Trustor by the provisions of any agreement affecting title to the Mortgaged Property.

Section 1.22. **Further Assurances.** Trustor shall take all action and do all things which it is authorized by law to take and do, and cooperate with Beneficiary as Beneficiary deems necessary or desirable, to insure the release of all encumbrances against the Mortgaged Property, except Permitted Exceptions, existing prior to the date hereof. So long as any Secured Obligation remain unpaid, Trustor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Beneficiary all such instruments and documents as in the opinion of Beneficiary are necessary or desirable to preserve the first priority lien created by this Deed of Trust.

Section 1.23. **Performance of Covenants.** At all times Trustor shall faithfully perform all covenants, undertakings, stipulations and provisions contained in the Loan Documents and all of its proceedings pertaining to this Deed of Trust.

Section 1.24. **No Event of Default Under Loan Documents.** Trustor agrees to notify Beneficiary immediately in writing of any default by Trustor in the performance or observance of any covenant, agreement, representation, warranty or obligation of Trustor set forth in this Deed of Trust. Trustor shall also notify Beneficiary in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.25. **Rules, Regulations, Environmental Laws.** Trustor represents, warrants and covenants:

(a) that the location, construction, occupancy, operation and use of the Premises do not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Premises, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called Applicable Regulations");

(b) that the Premises and Trustor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976 ("RCRA"), and this representation and warranty would continue to be true and correct following disclosure to the applicable

governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises. If any such investigation or inquiry is subsequently initiated, Trustor will promptly notify Beneficiary;

(c) that Trustor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws;

(d) that Trustor has taken all steps to determine and has determined to its reasonable satisfaction that no hazardous substances or solid wastes have been disposed of or otherwise released on or about the Premises;

(e) that the Premises does not contain asbestos, ureaformaldehyde foam insulation or any other chemical, material or substance exposure to which may or could pose a health hazard, whether or not the substance is prohibited, limited or regulated by any governmental authority;

(f) that the use which Trustor makes and intends to make of the Mortgaged Property will not result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Premises. For purposes of this Section 1.25, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the state where the Property is located establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply;

(g) Trustor agrees to promptly notify Beneficiary of any violation or alleged violation of any Applicable Environmental Laws of which Trustor becomes aware; and

(h) Trustor agrees to indemnify and hold harmless Beneficiary from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including the reasonable fees and expenses of counsel) which may be incurred by Beneficiary relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of hazardous substances on or about the Premises occurring prior to the reconveyance of the Premises, conveyance in lieu of foreclosure or the completion of foreclosure proceedings and termination of possession by Trustor.

Section 1.26. **Organization; Due Authorization.** Trustor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Florida, is duly authorized to transact business in the State of Nebraska, and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by this Deed of Trust, the Loan Documents and all other documents pertaining to the Loan to which it is a party. The execution and delivery of the Loan Documents

and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Trustor and will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance (other than those contained herein or in any instrument concurrently delivered to Beneficiary) upon any of the Mortgaged Property or other assets of Trustor under any other indenture or instrument to which Trustor is bound.

Section 1.27. **Liabilities; Compliance with Other Instruments.** Trustor has no liabilities except hereunder and those incurred in the ordinary course of business and which are not delinquent or which are otherwise contemplated or permitted by this Deed of Trust and the other Loan Documents. Trustor is not in default (i) in the payment of any taxes levied or assessed against it or its assets, (ii) under any applicable statute, rule, order or regulation of any governmental authority, (iii) under this Deed of Trust or any of the other Loan Documents or (iv) under any other agreement to which it is a party or by which it or any of its properties are bound.

Neither the execution and delivery of this Deed of Trust or any of the other Loan Documents, nor the consummation of the transaction contemplated, nor compliance with the terms and provisions hereof or thereof, conflicts with or results or will result in a breach of any of the terms, conditions or provisions of the Articles of Organization or the Operating Agreement of Trustor, any law, order, rule, regulation, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Trustor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder, or results or will result in the creation or imposition of any lien of any nature whatsoever upon any of its property or assets pursuant to the terms of any such agreement or instrument except the liens created or permitted by the Loan Documents.

Section 1.28. **Enforceability.** This Deed of Trust and each of the other Loan Documents have been duly executed and delivered by Trustor and constitute valid and binding obligations of Trustor, enforceable in accordance with their respective terms, except as the enforceability (but not the validity thereof) may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

Section 1.29. **Pending Litigation.** There are no proceedings pending or, to the knowledge of Trustor threatened, against or affecting Trustor in any court or before any governmental authority, arbitration board or tribunal which if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor or the right or ability of Trustor to enter into the Loan Documents, and if any such proceedings are subsequently initiated or threatened Trustor will promptly provide written notice to Beneficiary. Trustor is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

Section 1.30. **Compliance With Law.** Trustor is in compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules or regulations relating to environmental protection the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor. No portion of the proceeds of the Loan shall be used by Trustor for the purpose of purchasing, acquiring or owning registered equity securities as defined in Regulation G of the United States Federal Reserve Board or for

the purpose of refinancing, releasing or retiring any secured indebtedness originally incurred for such purpose.

Section 1.31. **Appointment of Successor Trustee.** If Trustee shall die, be dissolved or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of Trustee named herein, Beneficiary shall have full power, subject to applicable law, to appoint by written instrument a substitute Trustee and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary, and, if Beneficiary is a corporation or limited partnership, and such appointment is executed in its behalf by any officer of such corporation or general partner of such limited partnership, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or further partnership action.

Section 1.32. **Transfer of Interests in Mortgaged Property.** Trustor shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Property or any interest therein, without the consent of Beneficiary. In the event that without first obtaining the written consent of the Beneficiary there shall be any (i) transfer, sale, mortgage or conveyance (except leases of space in the Mortgaged Property as specifically permitted under the Loan Agreement) of all or any part of the interest of the Trustor in the Mortgaged Property or any part thereof, whether voluntarily or by operation of law, or (ii) transfer, sale, conveyance, or pledge of 50% or more of the ownership interests in Trustor, or (iii) mortgage, pledge, encumbrance, lien or security interest to be outstanding against the Trustor's interest in any portion of the Mortgaged Property, except as created by this Deed of Trust and the other documents which secure the Promissory Note, and except Permitted Encumbrances, the entire amount secured hereby shall, without notice at the option of the Beneficiary, become immediately due and payable. Failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent transfer, sale or conveyance. It is understood that a consent by the Beneficiary to any such transfer, conveyance or mortgage shall not be deemed a waiver of the right to require such consent to any subsequent transfer, mortgage or conveyance and that the provisions of this paragraph shall be binding upon any and all successive holders of the interest of the Trustor in the Mortgaged Property or any part thereof.

Section 1.33. **Lease Provisions.** Any lease of all or any part of the Property by Trustor permitted under this Deed of Trust shall contain a provision obligating such lessee to enter into a subordination, attornment and nondisturbance agreement and an estoppel agreement with Beneficiary, in form and substance satisfactory to Beneficiary.

Section 1.34. **Financial Statements.** Within thirty (30) days of notice from Beneficiary, Trustor shall provide Beneficiary the following financial reports:

- (a) Quarterly operating statements of Trustor or any lessee occupying the Property;
- (b) Annual Guarantor financial statements of each Guarantor, including a balance sheet, a 12-month actual and projected cash flow statement, and a statement of

contingent liabilities within one hundred twenty (120) days after the close of each fiscal year of the Guarantor;

(c) Annually Trustor and Guarantor federal income tax returns for the immediately preceding year, submitted not later than May 1 of each calendar year; and

(d) Such other financial detail, information, reports and copies of tax returns as Beneficiary shall request from time to time with respect to Trustor, each Guarantor and, if requested, any tenant.

All financial data required to be provided hereunder shall be in such form as Beneficiary shall approve.

ARTICLE II

BENEFICIARY'S POWERS

At any time, or from time to time, without liability and without affecting the personal liability of any person for payment of the Secured Obligations and without effecting the enforceability of this Deed of Trust upon the remainder of said Mortgaged Property, Beneficiary may without notice (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Secured Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any obligation herein mentioned, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Trustor hereunder, and all amounts so advanced, with interest thereon at the rate provided by the Promissory Note, shall be secured hereby.

ARTICLE III

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Section 3.01. **Assignment of Rents.** Trustor hereby irrevocably, absolutely, presently and unconditionally, grants, transfers and assigns to Beneficiary all rights, title and interest of Trustor in and to all existing and future lease agreements, occupancy agreements and use agreements (collectively the "Leases") relating to the Mortgaged Property or any part thereof, all rents, issues, profits and security deposits thereunder, and all utility deposits made to procure or maintain utility services to the Premises. This assignment is a present and absolute assignment, not an assignment for security only. This assignment shall extend to and cover any and all (i) extensions and renewals of existing and future Leases, (ii) present and future rights against guarantors of any such obligations and to any and all rents, revenues, issues, income, receipts, profits, deposits and other amounts now or hereafter becoming due to Trustor or collected under the Leases (whether due for the letting of space, for services, materials or installations supplied by Trustor or for any other reason whatsoever), insurance proceeds, condemnation awards, damages following defaults by tenants under the Leases (the "Tenants"), cash or securities deposited by Tenants to secure performance of their obligations under the Leases, and all other extraordinary receipts and all proceeds thereof, both cash and non-cash (all of the foregoing,

being referred to as the "Rents") and all rights to direct the payment of, make claim for, collect, receive and receipt for the Rents, (iii) claims, rights, privileges and remedies on the part of Trustor, whether arising under the Leases or by statute, at law, in equity or otherwise, arising out of or in connection with any failure by any Tenant to pay the Rents or to perform any of its other obligations under its Lease, (iv) rights, powers and privileges of Trustor to exercise any election or option or to give or receive any notice, consent, waiver or approval under or with respect to the Leases, and (v) other claims, rights, powers, privileges and remedies of Trustor under or with respect to the Leases, including without limitation the right, power and privilege (but not the obligation) to do any and all acts that Trustor is entitled to do thereunder or with respect thereto. This assignment is given to secure payment and performance of the Promissory Note, this Deed of Trust, the Loan Documents, and any other agreements at any time secured by this Deed of Trust, and shall neither impair nor diminish the obligations of Trustor under the Leases nor obligate or impose upon Beneficiary any duty to perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of this assignment. The acceptance of this assignment of Leases and Rents, with all of the rights, powers, privileges and authority so created, shall not under any circumstances be deemed or construed to constitute Beneficiary a mortgagee-in-possession, or in control of, or a partner or joint venturer with, Trustor. Trustor shall and does hereby agree to indemnify and hold Beneficiary harmless from all liability, loss or damage it might incur under any Lease or by reason of this assignment and from all claims and demands whatsoever which may be asserted against Beneficiary by reason of an alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. In further pursuance of this assignment, and not in lieu hereof, Trustor shall on demand give Beneficiary separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference.

(a) Unless otherwise specified by Beneficiary in writing, all existing and future Leases for the use or occupancy of all or any part of the Premises shall be subordinate and inferior to the lien of this Deed of Trust. Beneficiary hereby expressly permits the First Deed of Trust (described in 4.2 (a) below) to remain as a lien on the Trust Property. Trustor shall not, without the prior written consent of Beneficiary, collect, accept or anticipate any rent from any Tenant for a period of time in excess of one (1) month prior to the due date or accrual of such rent, whichever first occurs.

(b) Beneficiary is hereby authorized to notify all Tenants of the Premises of the existence of any and all such assignments. Trustor hereby authorizes and directs all Tenants of the Premises that upon written notice from Beneficiary all payments required under the Leases, or in any way respecting same, shall be made directly to Beneficiary as they become due, provided, that Beneficiary shall not have authority to give such notice unless an Event of Default occurs. Trustor hereby relieves Tenants from any liability to Trustor by reason of payments being made to Beneficiary. Until Beneficiary in writing notifies such Tenants to make payments to Beneficiary, Trustor shall be entitled to collect all such Rents and payments, but after an Event of Default Trustor's license to collect Rents and payments shall automatically terminate and be revoked and to the extent Trustor collects any Rents thereafter accruing or paid, Trustor covenants to hold all such Rents in trust for the use and benefit of Beneficiary.

(c) Trustor agrees that upon (1) the occurrence and continuance beyond any applicable grace or cure period of a default or an event of default hereunder, under the

Promissory Note or the Loan Documents, or (2) the recordation of a notice of public trustee sale for the foreclosure of this Deed of Trust pursuant to applicable law, or (3) the commencement of an action to foreclose this Deed of Trust pursuant to applicable law, or (4) the commencement of any period of redemption after foreclosure of this Deed of Trust, Beneficiary shall, upon application to the Court of competent jurisdiction in the county where the Mortgaged Property or any part thereof is located, by an action separate from the foreclosure, in the foreclosure action, or by independent action (it being understood and agreed that the existence of a foreclosure or a foreclosure action is not a prerequisite to any action for a receiver hereunder), be entitled as a matter of right, without notice and without giving bond to Trustor, to the appointment of a receiver for the Rents, issues, profits and all other income of every kind which shall accrue and be owing for the use or occupation of the Premises or any part thereof, whether before or after foreclosure, or during the full statutory period of redemption, if any, including, without limitation, any covenant relating to any of the following:

1. Repayment of tenant security deposits, with interest thereon, if applicable;
2. Payment when due of taxes or special assessments with respect to the Mortgaged Property, or the periodic impound for payment of the same; or
3. Payment when due of premiums for insurance of the types required hereby, or the periodic impound for payment of the same.

(d) Beneficiary shall be entitled as a matter of right to the appointment of a receiver without regard to waste, adequacy of the security or solvency of Trustor. The court shall determine the amount of the bond to be posted by the receiver. The receiver, who shall be an experienced property manager, shall collect (until the Secured Indebtedness is paid in full and, in the case of a foreclosure sale, during the entire redemption period, if any) the Rents, issues, profits and all other income of any kind from the Mortgaged Property, manage the Mortgaged Property so as to prevent waste, execute leases within or beyond the period of the receivership, if approved by the court, and apply all Rents, issues, profits and other income collected by him in the following order:

1. to payment of all reasonable fees of the receiver, if any, approved by the court;
2. to the items listed in clauses 1 through 3 above (as applicable);
3. to expenses for normal maintenance, operation and management of the Premises, including but not limited to Beneficiary's out-of-pocket costs and all other costs and expenses which Beneficiary is entitled to pay or incur pursuant to this Assignment of Leases and Rents; and
4. the balance to Beneficiary to be credited, prior to commencement of foreclosure, against the Secured Indebtedness, in such order as Beneficiary may elect, or to be credited, after commencement of

foreclosure, to the amount required to be paid to effect a reinstatement prior to foreclosure sale, or to be credited, after a foreclosure sale, to any deficiency and then to the amount required to be paid to effect a redemption, pursuant to Nebraska law, with any excess to be paid to Trustor. The receiver shall file periodic accountings as the court determines are necessary and a final accounting at the time of his discharge. Beneficiary shall have the right, at any time and without limitation, as provided in by law to advance money to the receiver to pay any part or all of the expenses which the receiver should otherwise pay, if cash were available from the Mortgaged Property, and all sums so advanced, with interest at the Default Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

(e) Upon the happening of any of the events set forth above, or during any period of redemption after foreclosure sale, and prior to the appointment of a receiver as provided, Beneficiary shall have the right to collect the Rents, issues, profits and other income of every kind from the Mortgaged Property and apply the same in the manner provided for the application by a receiver. Enforcement hereof shall not cause Beneficiary to be deemed a mortgagee in possession, unless it elects in writing to be so deemed. For the purpose aforesaid, Beneficiary may enter and take possession of the Mortgaged Property, manage and operate the same and take any action which, in Beneficiary's judgment, is necessary or proper to conserve the value of the Mortgaged Property.

(f) The costs and expenses (including any receiver's fees and attorney's fees) incurred by Beneficiary pursuant to the powers herein contained shall be immediately reimbursed by Trustor to Beneficiary on demand, shall be secured hereby and shall bear interest from the date incurred at the Default Rate. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto, other than to account for any Rents actually received by Beneficiary. Beneficiary shall have the right to compromise any claim or setoff against rent which any Tenant may assert pursuant to its Lease, and such compromise shall be binding and enforceable against Trustor, unless Beneficiary acted in a grossly negligent and reckless manner. Notwithstanding, this paragraph shall not require Beneficiary to take any action to compromise or settle any such claim.

(g) Trustor shall not, without the prior written consent of Beneficiary, further assign the Rents, issues or profits or deposits from, or relating to, the Mortgaged Property, and any such assignment without the prior written consent of Beneficiary shall be null, void and of no force or effect.

Section 3.02. **Collection Upon Default.** Upon any Event of Default under any of the Loan Documents, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any Secured Obligations, and in such order as Beneficiary may determine. The collection of such rents, issues and profits, or the entering

upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

Section 3.03. **Cross-Default.** The Beneficiary has made a second loan to Trustor of even date herewith in the original principal amount of \$240,000.00, (the "Cross-Default Loan"). The Loan is hereby cross-collateralized with the Cross-Default Loan, and Trustor agrees that any default under the Cross-Default Loan, as the same may hereafter be renewed, modified, amended or extended, and to pay all other indebtedness or other fees, expenses or other charges with respect thereto, and to perform all of the terms and conditions under the Loan Documents in respect of the Cross-Default Loan, shall be a default under the terms of this Deed of Trust and the Promissory Note secured hereby, and subject the Trustor to the remedies provided, including, but not limited to, acceleration of the outstanding balance of the Promissory Note and foreclosure under the terms of this Deed of Trust.

ARTICLE IV

SECURITY AGREEMENT

Section 4.01. **Creation of Security Interest.** With respect to any portion of the Mortgaged Property which constitutes Personal Property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Trustor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of its security interest, or any modification thereof. Trustor shall pay all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option in lieu of proceeding under the UCC, dispose of such property in accordance with Beneficiary's rights and remedies to the Property pursuant to the provisions of this Deed of Trust.

Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or business form or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property.

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing

for record in the real estate records of the county in which the Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated in Section 6.05 of this Deed of Trust. The mailing address of Trustor, as debtor, is as stated in Section 6.05 of this Deed of Trust.

The security interest in the personal property created hereby shall be subject to the right of Trustor and Tenants of Trustor to replace any such personal property from time to time so long as the replacement has a fair market value, as determined by Beneficiary, in Beneficiary's sole and absolute discretion, equal or greater to the fair market value of the property replaced. The personal property may be moved about and relocated from time to time within the Premises without the prior consent of Beneficiary.

Trustor agrees that, all property of every nature and description, whether real or personal, tangible or intangible, covered by this Deed of Trust or by the security interest granted hereby, or in the Loan Documents or as contained in other instruments executed or to be executed by Trustor, are encumbered as one unit, and upon default by Trustor under the Promissory Note, or this Deed of Trust, or any other security agreement given, this Deed of Trust and such security interest may, at Beneficiary's option, be foreclosed or sold in the same proceeding. All of the Mortgaged Property may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions and requirements of all applicable Nebraska law. The filing of any financing statement relating to any personal property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

Section 4.02. **Warranties, Representations and Covenants of Trustor in Regard to Personal Property.** Trustor hereby warrants, represents and covenants, with respect to the Personal Property, as follows:

(a) except for the security interest granted hereby, and the first position deed of trust securing indebtedness in the original principal amount of \$240,000.00 executed by Trustor to Beneficiary of even date herewith ("First Deed of Trust"), Trustor is, and as to any personal property to be acquired, will be, the sole owner of the personal property, free and clear of any adverse lien, security interest, encumbrance or adverse claim of any kind whatsoever. Trustor will notify Beneficiary of, and will defend the personal property against, all such claims and demands.

(b) Trustor will not lease, sell, convey or in any manner transfer the personal property (except personal property transferred in the ordinary course of business and replaced by personal property of a similar nature and having at least the same value as the personal property replaced) without the prior written consent of Beneficiary;

(c) the personal property is not used or bought for personal, family or household purposes;

(d) the personal property will be kept on or at the Premises and Trustor will not remove the personal property from the Premises without the prior written consent of Beneficiary, except such portions or items of personal property which are consumed or

worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality; and

(e) all covenants and obligations of Trustor contained herein relating to the Mortgaged Property shall be deemed to apply to the personal property, whether or not expressly referred to herein.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 5.01. **Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

(a) Failure by the Trustor to pay, as and when due and payable, any installments of principal or interest due under the Promissory Note whether upon demand, maturity, by acceleration or otherwise, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by the Trustor hereunder or under any other instrument securing the Promissory Note, and such failure shall continue for ten (10) days beyond the date such payment is due;

(b) Failure by the Trustor to duly keep, perform and observe any other covenant, condition or agreement in this Deed of Trust, any other instrument securing the Promissory Note or any other instrument collateral to the Promissory Note or executed in connection with the sums secured hereby, and such failure shall be continuing and uncured for thirty (30) days after notice in writing delivered to the Trustor, unless such default cannot be cured within such thirty (30) day period with diligent efforts and the Trustor has been diligently pursuing a cure thereof;

(c) The occurrence of a default, or an Event of Default, under any Loan Document (other than this Deed of Trust) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such default is not cured within the applicable cure period, if any;

(d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) A trustee or receiver is appointed for the Trustor's interest in the Mortgaged Property or any portion thereof, for Trustor or any Guarantor, or for any portion of any of Trustor's or any Guarantor's assets, or an involuntary petition in

bankruptcy or insolvency is filed against Trustor or any Guarantor, and is not discharged within sixty (60) days after such appointment or filing;

(f) An order, judgment, or decree shall be entered, without the application, approval or consent of the Trustor, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization of the Trustor or any Guarantor or appointing a receiver, trustee, liquidator, intervener or the like of the Trustor or any Guarantor, or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days;

(g) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become a lien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(h) Any suit or proceeding shall be filed against Trustor or any endorser or Guarantor on any of the Loan Documents which, if adversely determined, could substantially impair the ability of Trustor or any endorser or Guarantor to perform any of their obligations contained in the Loan Documents, as determined by Beneficiary in its sole and absolute discretion, provided that such suit or proceeding is not dismissed within thirty (30) days after service of summons upon such party;

(i) If, during the term of the Promissory Note, Trustor shall, without the prior written approval of Beneficiary, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Trustor;

(j) Any assignment by Trustor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the prior written consent of Beneficiary;

(k) At any time any representation, warranty or statement made by Trustor in any Loan Document, certificate or financial statement delivered by Trustor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Beneficiary by Trustor;

(l) There shall be any unrepaired damage to or destruction of the Premises, or any part of the Premises shall have been taken by condemnation or eminent domain or be subject to pending proceedings thereof and such taking may materially affect the value of the Premises, unless provision for repair or restoration of the same shall have been made to the Beneficiary's satisfaction; or

(m) If any of the events in (d), (e) or (f) shall occur with respect to any Guarantor.

Section 5.02. **Remedies, Judicial Foreclosure or Trustee's Sale on Default.** Upon the occurrence of one or more Events of Default, or default by Trustor in the performance of any other agreement hereunder or under any instrument or agreement secured hereby, and the expiration of any applicable cure period, then without presentment, demand or further notice of any kind, all of which are hereby waived, the interest rate on the indebtedness evidenced by the Promissory Note shall be increased to the Default Rate as defined in and on such terms as are provided for in the Promissory Note, and Beneficiary may, at its option, and without further notice or demand, declare all Secured Indebtedness immediately due and payable and irrespective of whether Beneficiary exercises such option, it may, in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following:

(a) Beneficiary may, either in person or by its agent with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon, take possession of, manage and operate the Mortgaged Property, or any part thereof, make repairs and alterations, and do any acts which Beneficiary deems proper to protect the security hereof, including but not limited to those granted Beneficiary pursuant to the other Loan Documents; and with or without taking possession, in its own name, sue for or otherwise collect and receive Rents, issues, and profits, including those past due and unpaid. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, which appointment is coupled with an interest, with full power of substitution for such purposes, and Beneficiary may apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees and Beneficiary's costs, upon any Secured Indebtedness, and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Premises all of the Mortgaged Property. The entering upon and taking possession of the Mortgaged Property, the collection of any Rents, issues and profits and the application thereof, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default hereunder or invalidate any act done pursuant to any such notice and shall not constitute a waiver of any other remedies of Beneficiary under this Deed of Trust or any of the Loan Documents. Notwithstanding Beneficiary's continuance in possession or receipt and application of Rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of a default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary is so entitled, without regard to the adequacy of any security for the Secured Indebtedness.

Beneficiary shall, without notice and without regard to the adequacy of any security for the Secured Indebtedness, be entitled as a matter of right to the appointment of a receiver by any court having jurisdiction, to take immediate possession of and protect the Mortgaged Property, and operate the same and collect the Rents, issues and profits therefrom. Furthermore, if any Event of Default shall have occurred and be continuing, the Beneficiary may at its option withhold or advance such further sums under the Loan Agreement as Beneficiary in its sole discretion deems appropriate.

(b) This Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Property, or any part thereof, may be sold in the manner provided by state law under the power of sale conferred upon the Trustee hereunder.

(c) Beneficiary may proceed as if all of the Mortgaged Property were real property, or Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Premises without causing structural damage thereto as if the same were personal property, and dispose of the same separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property. In the event that the Mortgaged Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to each purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, second, to the payment of the obligation secured by this Deed of Trust, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto. Upon foreclosure of the lien of this Deed of Trust (whether by judicial action or by exercise of the power of sale), or delivery of a deed in lieu of foreclosure, all right, title and interest of Trustor in, to and under the Leases shall thereupon vest and become the absolute property of the purchaser of the Premises in such foreclosure proceeding, or the grantee in such deed, without any further act or assignment by Trustor. Nevertheless, Trustor shall execute, acknowledge and deliver from time to time such further instruments and assurances as Beneficiary may require in connection therewith and hereby irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution, in its name and stead to execute all appropriate instruments of transfer or assignment, or any instrument of further assurance, as Beneficiary may deem necessary, and Beneficiary may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof.

(d) Beneficiary may elect to cause any of the Mortgaged Property to be disposed of as personal property, it may dispose of any part thereof in any manner now or hereafter permitted by the Uniform Commercial Code of the State of Nebraska or in accordance with any other remedy provided by law. Trustor, Beneficiary and Trustee shall each be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the Uniform Commercial Code. Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other

intended disposition is made, and if such notice is sent as provided in Section 6.05 hereof, it shall constitute reasonable notice to Trustor.

(e) In the event that the Promissory Note secured hereby does not expressly permit prepayment at any time, then upon the occurrence of any Event of Default under this Deed of Trust or any note secured hereby and following any acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior or subsequent to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms of the indebtedness secured hereby and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include a charge required under the prepayment privilege, if any, contained in the Promissory Note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a charge equal in amount to the greatest prepayment charge provided in the Promissory Note for prepayment at any other permitted prepayment period. If no prepayment is permitted in the Promissory Note, then the charge hereunder shall be five percent (5%) of the outstanding principal balance at the time such payment occurs.

(f) Trustor agrees, for itself and any and all persons or concerns claiming by, through or under Trustor, that if it, or any one or more of them, shall hold possession of the Premises, or any part thereof, subsequent to foreclosure hereunder, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the Real Estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result are hereby expressly waived.

(g) To the extent permitted by law, Trustor shall be and remain liable for any deficiency remaining after sale, either pursuant to the power of sale or judicial proceedings. After default or breach, Trustor shall pay Beneficiary's attorneys' fees, Beneficiary's costs, Trustee's attorneys' fees, Trustee's fees and its cost and expenses incurred as a result of said default or breach, and if suit is brought, all costs of suit, all of which sums shall be secured by this Deed of Trust. As used herein, "costs of suit" shall include but not be limited to costs of tests and analyses, architectural, engineering and other professional fees and costs, expert witness fees and costs, travel and accommodation expenses, deposition and trial transcript expenses and costs of court. Trustor's statutory rights of reinstatement, if any, are expressly conditioned upon Trustor's payment of all sums required under the applicable statute and performance of all required acts.

(h) Trustor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

(i) Upon any sale of the Mortgaged Property, or any part thereof, whether made under a power of sale herein granted or pursuant to judicial proceedings, if the holder of the Promissory Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Obligations then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased. To the extent permitted by law, Trustor hereby waives any right of redemption.

Section 5.03. **Appointment of Receiver.** If an Event of Default shall have occurred, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Mortgaged Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases.

Section 5.04. **Remedies Not Exclusive.** Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents, or the provisions of Nebraska law, as now enacted or subsequently amended, any other laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and failure of Trustor to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of amount on account. Beneficiary or Trustee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Beneficiary to any action or inaction of Trustor which is subject to consent

or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

ARTICLE VI

MISCELLANEOUS

Section 6.01. **Governing Law.** This Deed of Trust shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. **Waiver of Rights.** To the extent permitted by law, Trustor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Property, and (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section 6.02 and now in force, of which Trustor, Trustor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section 6.02, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 6.02. Trustor expressly waives and relinquishes any and all rights, remedies and defenses that Trustor may have or be able to assert by reason of the laws of the state in which the Property is located pertaining to the rights, remedies and defenses of sureties. To the fullest extent permitted by law, Trustor waives the pleading of any statute of limitations as a defense to any obligation secured by this Deed of Trust. Trustor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities. Trustor waives all rights or privileges it might otherwise have to require Trustee or Beneficiary to proceed against or exhaust the assets encumbered hereby or by any other security document or instrument securing the Promissory Note or to proceed against any Guarantor of such Secured Obligations, or to pursue any other remedy available to Beneficiary in any particular manner or order under the legal or equitable doctrine or principle of marshaling or suretyship, and further agrees that Trustee or Beneficiary may proceed against any or all of the assets encumbered hereby, or by any other security document or instrument securing the Promissory Note, in the event of default in such order and manner as Beneficiary, in its sole discretion, may determine.

Section 6.03. **Limitation of Interest.** All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so

that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Promissory Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary or holder of the Promissory Note shall ever receive as interest under the Promissory Note or this Deed of Trust or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note or on account of other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and such other Secured Obligations, such excess shall be refunded to Trustor, or to the maker of the Promissory Note, if other than Trustor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, pro-rated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Trustor, or the maker of the Promissory Note, if other than Trustor, and Beneficiary.

Section 6.04. **Statements by Trustor.** Trustor, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Beneficiary a written statement stating the unpaid principal of and interest on the Promissory Note and any other amounts secured by this Deed of Trust and stating that no offset or defense exists against such amounts.

Section 6.05. **Notices.** Any notice required or permitted to be given by any party hereto to the other under the terms of this Deed of Trust, or documents related hereto, shall be deemed to have been given (i) three (3) days after the date the same is deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, (ii) on the date the same is forwarded by telefacsimile with proof of transmission, or (iii) one (1) day following deposit with a reputable overnight courier providing a receipt for overnight delivery, addressed as follows:

If to Trustor:	Schmidley's LLC Attn: Robert C. Matthias, Esq. Matthias & Matthias, PL 700 West Morse Blvd., Suite 201 Winter Park, FL 32789
If to Beneficiary:	Robert and/or Barbara Matthias Suite 201 700 West Morse Boulevard Winter Park, FL 32789
If to Trustee:	Shaun M. James, Esq. Smith Gardner Slusky Law 8712 West Dodge Road, Suite 400 Omaha, NE 68114

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change at least ten (10) in advance of change of address.

Section 6.06. **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties only and are not a part of this Deed of Trust.

Section 6.07. **Invalidity of Certain Provisions; Conflicting Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust. To the extent any conflict exists between the terms of the Commitment Letter and the terms of the other Loan Documents, the terms of the other Loan Documents will govern.

Section 6.08. **Severability.** Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. Should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage, with Trustor being the mortgagor and Beneficiary being the mortgagee.

Section 6.09. **Change in Ownership.** If the ownership of the Mortgaged Property or any part thereof or interest therein becomes vested in a person other than Trustor owning the same on the date hereof, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and the Secured Obligations in the same manner as with Trustor without in any way vitiating or discharging Trustor's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Secured Obligations given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability, if any, of Trustor or the liability of any Guarantors or sureties of Trustor, either in whole or in part.

Section 6.10. **Assignment of Beneficiary's Interest.** It is expressly agreed that any and all terms of this Deed of Trust, the other Loan Documents and all other agreements made or executed by Trustor or others in favor of Beneficiary, and all rights, powers, privileges, options and remedies conferred upon Beneficiary herein and therein, shall inure to and be for the benefit of Beneficiary and may be exercised by Beneficiary, its successors and assigns. The word "Beneficiary" shall also mean and include the successor or successors and the assign or assigns of Beneficiary and their successors and assigns. Trustor hereby specifically grants unto Beneficiary the right and privilege, at Beneficiary's option, to transfer and assign to any third person all or any part of Beneficiary's rights to receive funds or payments hereunder.

Section 6.11. **Time Is of the Essence.** In the performance of all obligations, time is of the essence under this Deed of Trust and the other Loan Documents.

Section 6.12. **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Mortgaged Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

Section 6.13. Intentionally deleted.

Section 6.14 **Late Payment Charge.** Should any payment secured hereby be not paid within ten (10) days after the same becomes due and payable, it is recognized by Trustor that Beneficiary will incur extra expenses for handling of delinquent payments, in loss to Beneficiary of the use of the money due, in frustration to Beneficiary in meeting its loan commitments and related costs and expenses, the exact amount of such extra expenses being impossible to ascertain, and in such case Trustor shall pay to Beneficiary a late payment charge as provided in the Promissory Note.

Section 6.15 **Non-Liability of Trustee.** At any time, or from time to time, without liability therefor and without notice, upon the written request of Beneficiary and presentation of the Promissory Note and this Deed of Trust for endorsement, without affecting the personal liability of any person for the payment of the Secured Indebtedness, and without affecting the lien of this Deed of Trust upon the Mortgaged Property for the full amount of all amounts secured hereby, Trustee may (a) reconvey all or any part of the Mortgaged Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

Section 6.16 **Compensation and Indemnification of Trustee.** Trustee shall be entitled to reasonable compensation for all services rendered or expenses incurred in the administration or execution of the trusts hereby created, and Trustor hereby agrees to pay same, subject to all legal limitations. Trustee and Beneficiary shall be indemnified and held harmless by Trustor for any liability, damage or expense, including attorneys' fees, Beneficiary's costs and amounts paid in settlement, which they or either of them may incur or sustain in the execution of this trust or in the doing of any act which they, or either of them, are required or permitted to do by the terms hereof or by law, and they shall be reimbursed therefor in accordance with the provisions herein.

Section 6.17 **Definitions.** The term "Beneficiary" means the original Beneficiary hereunder, or any future owner and holder, including pledgees, of the Promissory Note. This Deed of Trust in all its parts applies to and binds the successors and assigns of Trustor. The provisions hereof shall apply according to the context thereof and without regard to the number or gender of words or expressions used.

Section 6.18 **Amendment.** No alternation or amendment of this Deed of Trust, the Promissory Note or the Loan Documents shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

Section 6.19 **Offsets**. No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying installments or performing any other obligation herein or secured hereby.

Section 6.20 **Further Assurances**. Trustor will, upon request of Beneficiary, promptly correct any errors which may be discovered in the contents of this Deed of Trust or any other Loan Document, or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest. Upon any failure by the Trustor to do so, the Beneficiary may make, execute, record, file, re-record or refile any and all such deeds of trust, financing statements, continuation statements, instruments, certificates and documents for and in the name of the Trustor, and the Trustor hereby irrevocably appoints the Beneficiary the agent and attorney-in-fact of the Trustor to do so. The Trustor further agrees to pay to the Beneficiary, upon demand, all costs and expenses incurred by the Beneficiary in connection with the preparation, execution, recording, filing and refiling of any such documents including charges for examining title and attorneys' fees for rendering an opinion as to the priority of this Deed of Trust or other security instrument as a valid, and subsisting lien, subordinate only to the First Deed of Trust. However, neither a request so made by the Beneficiary nor the failure of the Beneficiary to make such a request shall be construed as a release of any of the Mortgaged Property, or any part thereof, from the lien of this Deed of Trust, it being understood and agreed that this covenant and any deed of trust or security instrument delivered to the Beneficiary are cumulative and given as additional security.

Section 6.21 Intentionally deleted.

Section 6.22 Intentionally deleted.

Section 6.23 **Impounds**. In accordance with Sections 1.06 and 1.10 above, at any time after the occurrence of an Event of Default, and while same is continuing, or upon the request of Beneficiary, and subject to the terms of any Leases between Trustor and Tenants consented to by Beneficiary, Trustor shall deposit with Beneficiary or Beneficiary's designee a deposit to pay the costs of taxes, assessments and insurance premiums next due, and thereafter on each installment payment date as set forth in the Promissory Note secured hereby one-twelfth (1/12) of the amount of real estate taxes and any assessments assessed or to be assessed against the Mortgaged Property for the then current year, as estimated by Beneficiary, together with one-twelfth (1/12) of the total of all insurance premiums required to be paid for the then current year as estimated by Beneficiary. In the event Beneficiary, in its sole and absolute discretion, at any time determines that the amounts deposited for payment of real estate taxes, assessments and insurance premiums will be insufficient to pay such taxes, assessments and/or premiums, Trustor shall, within ten (10) days after written notice from Beneficiary, deposit the difference between the amounts previously deposited and the amount Beneficiary determines will be necessary to pay such taxes, assessments and/or premiums. Such moneys shall at proper times be progressively returned to Trustor for use in the actual payment of such taxes, assessments and insurance premiums or, at the sole election of Beneficiary, Beneficiary may disburse such moneys in actual payment of taxes, assessments and premiums, but nothing in this section shall release Trustor of its obligations to pay such taxes and assessments as the

same become due and payable under the provisions hereof, and to maintain in force all insurance policies as required hereby. All impounds required under this section shall be deposited in a non-interest bearing account of Beneficiary, to be withdrawn by Beneficiary at such times and in such amounts as shall be deemed appropriate by Beneficiary. All amounts deposited under this section are hereby assigned to Beneficiary as additional security for the Secured Indebtedness, and, so long as any Event of Default as set forth herein or a default in the payment of any money or the performance of any covenant or obligation herein contained or secured hereby exists, then any deposits made by Trustor under this section may, at the option of Beneficiary, be applied to the payment of principal or interest upon the Secured Indebtedness, in lieu of being applied for any of the purposes of this section previously stated.

Section 6.24 **Right to Cure Defaults**. If the Trustor shall fail to comply with any of the terms, covenants and conditions herein with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term, covenant or condition herein contained, the Beneficiary may (but shall be under no obligation to) perform the same and/or make advances to perform the same without notice to or demand upon the Trustor and without waiving or releasing any obligation or default and, where necessary, enter the Premises for the purpose of performing any such term, covenant or condition without liability to the Trustor for any loss or damage caused by such entry. The Trustor agrees to repay all sums so advanced upon demand, with interest from the dates such advances are made, at the Default Rate under the Promissory Note, and all sums so advanced, with interest, shall be secured hereby, but no such advance shall be deemed to relieve the Trustor from any default hereunder.

Section 6.25 **Indemnification; No Abatement**. The Trustor will protect, indemnify, defend and save harmless the Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by or asserted against the Beneficiary by reason of any accident, injury to or death of any person or loss of or damage to any property occurring on, about, or in connection with any portion of the Mortgaged Property or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (together with the Mortgaged Property, collectively hereafter referred to as the "Extended Property") during the term of this Deed of Trust; any use, nonuse or condition of the Extended Property during the term of this Deed of Trust; any failure on the part of the Trustor to perform or comply with any of the terms of this Deed of Trust; or performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property at the instance or request of the Trustor. Any amounts payable to the Beneficiary under this Section which are not paid within ten (10) days after written demand therefor by the Beneficiary shall bear interest at the Default Rate provided in the Promissory Note, which shall in no event exceed the maximum rate allowed by law from the date of such demand. In case any action, suit or proceeding is brought against the Beneficiary by reason of any such occurrence, the Trustor will, upon the Beneficiary's request, at the Trustor's expense resist and defend such action, suit or proceeding or cause the same to be resisted and defended, either by counsel designated by the Trustor and approved by the Beneficiary, or, where such occurrence is covered by liability insurance, by counsel designated by the insurer. The obligations of the Trustor under this Section shall survive any termination, satisfaction or release of this Deed of Trust. All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall

in no way be released, discharged or otherwise affected by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. Notwithstanding the foregoing provisions, the Trustor shall not be obligated to indemnify Beneficiary for any loss arising out of Beneficiary's gross negligence or willful conduct, or for claims arising after the date on which the Beneficiary takes possession of the Mortgaged Property.

Section 6.26 **Debtor-Creditor Relationship**. Nothing contained herein or in any Loan Document shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of debtor-creditor. Trustor and Beneficiary expressly disclaim any intent to create a partnership or joint venture pursuant to this Deed of Trust, any other Loan Document, or any other document related hereto or thereto.

Section 6.27 Intentionally deleted.

Section 6.28 **Nonforeign Entity**. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Mortgaged Property pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury that:

- (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue code and the regulations promulgated thereunder; and
- (b) Trustor's principal place of business is 700 West Morse Boulevard, Suite 201, Winter Park, Florida, 32789.
- (c) Trustor is duly qualified to do business in Nebraska. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the appropriate state tax authority and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed on

the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

TRUSTOR:

Schmidley's, LLC,
a Florida limited company

By: *Lauren A. Smith*
Lauren A. Smith,
Sole member and manager

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this ^{16th} day of April, 2012, by Lauren A. Smith, who took an oath and is XX personally known to me, produced a driver's license (issued by a state of the United States within the last five [5] years), or produced other identification, to wit: . Lauren A. Smith executed the foregoing instrument in her authorized capacity as the sole member and manager of Schmidley's, LLC, a Florida limited liability company, Maker, and acknowledged her execution hereof to be the voluntary act and deed of the Maker.



Kolleen M. Murphy
Print Name: Kolleen m. Murphy
Notary Public, State of Florida

EXHIBIT "A"

Legal Description

The Southeast Quarter of the Northeast Quarter of Section 6, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, lying East of the Big Papillion Drainage Ditch Except the North 260.00 feet, described as follows: from the Northeast corner of said Southeast Quarter, thence $S0^{\circ}05'00''W$ (assumed bearing) on the Easterly line of said Southeast Quarter, 260.00 feet to the point of beginning; thence $S89^{\circ}36'15''W$ on a line 260.00 feet Southerly from and parallel with the Northerly line of said Southeast Quarter 908.48 feet to the centerline of the Big Papillion Drainage Ditch; thence $S19^{\circ}21'39''E$ on the Centerline of said Ditch 1127.90 feet to the Southerly line of said Southeast Quarter, thence $N89^{\circ}36'15''E$ on the Southerly line of the Southeast Quarter 533 feet; thence $N0^{\circ}05'00''E$ on the Easterly line of said quarter 1067.18 feet to the point of beginning.

EXCEPT the following: The East 403 feet of the South 125 feet of the North 385 feet of the Southeast Quarter of the Northeast Quarter of Section 6, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, lying East of the Big Papillion Drainage Ditch, EXCEPT the North 260.00 feet, all in Douglas County, Nebraska.

AND EXCEPT that part of the Southeast Quarter of the Northeast Quarter of Section 6, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the Northeast corner of said Southeast Quarter, thence $S0^{\circ}05'00''W$ (assumed bearing) on the East line of said Southeast Quarter, 260.00 feet; thence $S89^{\circ}36'15''W$ on a line 260.00 feet South of and parallel to the North line of said Southeast Quarter, 403.00 feet to the point of beginning; thence continuing $S89^{\circ}36'15''W$ on a line 260.00 feet South of and parallel to the North line of said Southeast Quarter 505.48 feet to a point on the centerline of the Big Papillion Drainage Ditch; thence $S19^{\circ}21'39''E$ on the centerline of said Big Papillion Drainage Ditch, 132.17 feet; thence $N89^{\circ}36'15''E$ on a line 385.00 feet South of and parallel to the North line of said Southeast Quarter, 461.48 feet, thence $N00^{\circ}05'00''E$ on a line 403.00 feet West of and parallel to the East line of said Southeast Quarter, 125.00 feet to the point of beginning.