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2011-10043

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Gregory J. Rowland

REGISTER OF DEEDS



This document prepared by and when recorded return to:
Jill M. Stevenson
Nyemaster Goode, P.C.
700 Walnut Street, Suite 1600
Des Moines, Iowa 50309
515-283-3107

DEED OF TRUST AND SECURITY AGREEMENT

Date: April 15, 2011

Borrower (Grantor or Trustor): P.H.A., L.L.C., a Nebraska limited liability company

Borrower's Notice Address: P.H.A., L.L.C.
1325 N. 129th Circle
Omaha, Nebraska 68154

Lender (Beneficiary): THE OHIO NATIONAL LIFE INSURANCE COMPANY, an Ohio corporation, together with other holders from time to time of the Note (as herein defined).

Lender's Notice Address: One Financial Way
Cincinnati, Ohio 45242
Attn: Mortgages & Real Estate

Note Amount: EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$850,000.00)

Maturity Date: The first day of May 2021

State: Nebraska

Trustee: Michael F. Kivett, Esq.

Trustee's Notice Address: Valentine, O'Toole, McQuillan & Gordon
11240 Davenport Street
P.O. Box 540125
Omaha, Nebraska 68154-0125

***Record Owner of Land
(as defined herein):*** P.H.A., L.L.C.

Exhibit A hereto is incorporated herein by reference.

1. **DEFINITION OF TERMS.** As used herein, the terms defined above shall have the meanings given and the following terms shall have the following meanings:

1.1 *Commitment:* the certain Combination Application and Commitment dated September 8, 2010 issued by Lender and accepted by Borrower for the loan secured by this Mortgage (the "Loan").

1.2 *Casualty:* as defined in Paragraph 5.1.

1.3 *Clean-Up:* removal and/or remediation of Contamination in accordance with Laws and good commercial practice.

1.4 *Contamination:* the presence of, use, generation, manufacture, storage, treatment, disposal, discharge or release on, from or to the Property of Hazardous Substances.

1.5 *Contested Sum:* as defined in clause (f) of Paragraph 4.1.

1.6 *Environmental Actions or Claims:* means and includes any claim, demand, obligation, cause of action, accusation, allegation, order, violation, damage (including consequential damage), injury, judgment, assessment, penalty, fine, cost of Enforcement or Remedial Action, or any other cost or expense whatsoever, including actual, reasonable attorneys' fees and disbursements, resulting from or arising out of the violation or alleged violation of any Environmental Law, any Enforcement or Remedial Action, or any alleged exposure of any person or property to any Hazardous Substance.

1.7 *Environmental Law:* any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Property, including without limitation each of the following (and their respective successor provisions): the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 *et seq.* ("RCRA"); the Federal Hazardous Materials Transportation Act, as amended, 49 U.S.C. sections 1801 *et seq.*; the Toxic Substance Control Act, as amended, 15 U.S.C. sections 2601 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. sections 1857 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 *et seq.*; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state, county and municipal agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Property or the use or operation of the Property.

1.8 *Enforcement or Remedial Action:* any action taken by any person or entity in an attempt or asserted attempt to enforce, to achieve compliance with, or to collect or impose assessments, penalties, fines, or other sanctions provided by, any Environmental Law, including Clean-Up.

1.9 *Event of Default:* as defined in Paragraph 8.1.

1.10 Guaranty: a certain Guaranty of Non-Recourse Carve-Outs of even date herewith, made by the Guarantor named in the Note, and all replacements, substitutions, modifications, supplements, restatements, additions, renewals or amendments thereto or extensions thereof.

1.11 Hazardous Substances: (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "pollutants," "toxic substances" or "solid waste" in any Environmental Law; (ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto); (iii) those other substances, materials and wastes which are or become, regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and (iv) any material, waste or substance which is any of the following: (1) asbestos; (2) polychlorinated biphenyl; (3) designated or listed as a "hazardous substance" pursuant to section 311 or section 307 of the Clean Water Act (33 U.S.C. sections 1251 *et seq.*); (4) explosive; (5) radioactive; (6) a petroleum product, by-product or fraction thereof; (7) infectious waste or (8) mold or mycotoxins. The term "Permitted Hazardous Substance" means commercially sold products otherwise within the definition of the term "Hazardous Substance," but (A) which are used or disposed of by Borrower or used or sold by tenants of the Property in the ordinary course of their respective businesses, (B) the presence of which product is not prohibited by any applicable Environmental Law and (C) the use and disposal of which are in all respects in accordance with applicable Environmental Law.

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

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

1.14 Insurance Premiums: as defined in Paragraph 4.3.

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

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

all streets, roads and public places, opened or proposed, now or hereafter used in connection with, existing, belonging or appertaining to the Land.

1.17 Laws: any and all Federal, regional, state or local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority, court or arbitrator whether now in force or as amended or enacted in the future.

1.18 Leases: all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenues, income and other benefits of the Property arising at any time (including, without limitation, after the filing of any petition under any present or future Federal or state bankruptcy or similar law) from the use or enjoyment thereof, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due, additional, percentage, participation and other rentals, fees and deposits.

1.19 Lease Assignment: a certain Assignment of Leases and Rents of even date herewith from Borrower to Lender and all replacements, substitutions, modifications, supplements, additions, renewals, restatements or amendments thereto or extensions thereof.

1.20 Loan Documents: this Mortgage, the Note, the Lease Assignment, the Guaranty, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower and the Guarantor to or for the benefit of Lender and all replacements, substitutions, modifications, supplements, restatements, additions, renewals or amendments thereto or extensions thereof but not including the certain Environmental Indemnity executed by Borrower and Guarantor and dated as of on or about this same date.

1.21 Mortgage: this Deed of Trust and Security Agreement and all modifications, supplements, replacements, substitutions, additions, renewals, restatements or amendments thereto or extensions thereof.

1.22 Note: a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all replacements, substitutions, modifications, supplements, restatements, additions, renewals, restatements and extensions thereof, which Note is payable in Monthly Payments (as defined in the Note), until the Maturity Date.

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

1.24 Permitted Encumbrances: matters set forth or referred to in Schedule B Part 1 of Lender's title insurance policy issued in connection with the execution and recording of this Mortgage.

1.25 *Personalty*: all of Borrower's interest in personal property of any kind or nature whatsoever, whether tangible or intangible, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy, or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, furniture, appliances, equipment, general intangibles and inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, security deposits, utility deposits, refunds of fees, Insurance Premiums, deposits paid to any governmental authority, letters of credit, insurance policies, Insurance Proceeds, Taking Proceeds, and escrowed funds together with all present and future attachments, accretions, accessions, replacements, and additions thereto and products and proceeds thereof.

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

1.27 *Property Liabilities*: as defined in clause (e) of Paragraph 4.1.

1.28 *Property Taxes and Charges*: all real estate taxes, personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewage charges, any and all income, franchise, withholding, profits and gross receipts taxes, all other taxes and public charges, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits of use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed.

The term "real estate taxes" in the foregoing sentence shall include any form of assessment, license fee, license tax, business license fee or tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or Federal government, or any school, architectural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property, except general business taxes imposed on Lender other than taxes or other amounts referred to in Paragraph 4.1(d).

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

1.30 *Secured Debt*: to the extent not prohibited by Laws, all principal, interest, late charges and other sums, charges, premiums, prepayment and other indemnification amounts or other amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by or on behalf of Lender under the Loan Documents or otherwise with respect to the care, maintenance or preservation of the Property or the enforcement of the Loan Documents.

1.31 *Taking*: as defined in Paragraph 5.1.

1.32 *Taking Proceeds*: as defined in clause (a) of Paragraph 5.4.

2. **GRANTING CLAUSES.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely does by these presents GRANT AND CONVEY, WARRANT, SET OVER, TRANSFER, ASSIGN, BARGAIN AND SELL to Trustee, and its successors in trust, for the benefit of Lender, its successors and assigns, IN TRUST, WITH POWER OF SALE and all statutory rights under the laws of the State, all of Borrower's estate, right, title and interest in, to and under the Realty, and grants to Lender a first and prior security interest in the Personalty and any and all of the following, whether now owned or held or hereafter acquired or owned by Borrower:

(a) all Leases;

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

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

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

(1) payment of the Secured Debt;

(2) payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender, even if the sum of the amounts outstanding at any time exceeds the Note Amount, provided, however, the maximum principal amount of indebtedness secured by this Mortgage at any one time, not including advances made by Lender in protection of the Realty or Personalty or the lien of this Mortgage, shall be \$1,600,000.00; and

(3) due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Mortgage is also intended to be a security agreement under the Uniform Commercial Code as in force from time to time in the State.

3. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Lender that the following are true, correct and complete as of the date of this Mortgage.

3.1 *Due Organization; Authority.* Borrower is duly organized and validly existing, in good standing, and authorized to transact business under the laws of Nebraska and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein. Borrower is authorized to transact business in the State, and is in good standing therein.

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

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

3.4 *Construction and Completion of Improvements.* The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and any plans and specifications previously delivered to Lender. The Improvements do not contain any urea formaldehyde or asbestos. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, utility lines and off-site improvements, which provide access to the Property or are necessary for its present and contemplated uses, have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

3.5 *Legal Actions.* There are no material actions, suits or proceedings, including without limitation any Environmental Actions or Claims (whether or not material), condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, its

business or the Property; or investigations, at law or in equity before or by any court or governmental authority pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or, which if resolved adversely to Borrower, would not have a material, adverse effect on Borrower or the Property. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect the validity or enforceability of the Loan Documents, or the condition of Borrower (financial or otherwise) or the ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6 *Financial Statements.* All statements, financial or otherwise, submitted to Lender in connection with the Commitment are true, correct and complete in all material respects, and such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof. Since the date thereof, neither Borrower nor any such party or entity has experienced any material adverse change in its finances, business, operations, affairs or prospects.

3.7 *Adverse Change to Property.* No event or series of events has occurred since the date of the Commitment which would, either individually or collectively, materially and adversely affect the Property.

3.8 *Title to Property.* Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personalty, free of all liens, claims, encumbrances or restrictions other than the Permitted Encumbrances.

3.9 *Compliance with Laws and Private Covenants.* The Property complies in all material respects with all Laws. Borrower has examined and is familiar with all private covenants affecting the Property, including, without limitation, private covenants contained in the Permitted Encumbrances and there now exists no material violation thereof. Borrower has no notice that any of the Improvements encroach upon any easement over the Land or encroach upon adjacent property or that buildings or other structures on adjacent property encroach upon the Land.

3.10 *Independence of the Property.* The Land is a separate and distinct parcel for tax purposes and is not subject to Property Taxes and Charges against any other land. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvement, and no Improvement on the Property relies on any property not covered by this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired

the integrity of the Property as a single, separate, subdivided zoning lot separate and apart from all other property.

3.11 Contamination. To the best of Borrower's knowledge and belief, after due investigation and inquiry, no Contamination has occurred.

3.12 Anti-Terrorism Laws. Borrower (in this Paragraph 3.12, "Borrower" includes Borrower's officers, directors, shareholders, partners, indirect equity interest holders, members, and affiliates) has complied and will comply with Anti-Terrorism Laws (as defined below).

Borrower is not and shall not be a Prohibited Person (as defined below).

Borrower: (a) shall not conduct business, transactions, or dealings with a Prohibited Person; and (b) shall not engage in or conspire to engage in transactions violative of prohibitions of Executive Order 13224 (as defined below).

Upon Lender's request, Borrower shall promptly deliver to Lender certification or evidence confirming that Borrower: (a) is not a Prohibited Person; and (b) has not engaged in business, transactions, or dealings with a Prohibited Person, including contributing or receiving funds, goods, or services, to or for the benefit of a Prohibited Person.

Borrower has established policies and procedures to prevent and detect money laundering, including processes to meet all applicable anti-money laundering requirements of the USA Patriot Act (as defined below).

"Anti-Terrorism Laws" are laws and regulations related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act.

"Executive Order 13224" is Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001.

"Prohibited Person" is any person (a) listed in the Annex to or subject to the provisions of Executive Order 13224; (b) whose name appears on the United States Treasury Department's Office of Foreign Assets Control's ("OFAC") current list of "Specially Designated Nationals and Blocked Persons" (published in various media, including on the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (c) who commits, threatens, or supports "terrorism," as defined in Executive Order 13224; (iv) who violates laws and regulations related to terrorism or money laundering, including Executive Order 13224 and the USA Patriot Act; or (d) who affiliates with any entity or person described above.

"USA Patriot Act" is the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56.

4. COVENANTS.

4.1 *Payments.*

(a) *Secured Debt.* Borrower shall pay to Lender the Secured Debt at the times and in the manner provided in the Note and the other Loan Documents.

(b) *Property Taxes and Charges.* Except as provided in Paragraph 4.1(f), Borrower shall pay, prior to delinquency, all Property Taxes and Charges. Upon Lender's written request, Borrower shall furnish to Lender, within thirty (30) days after the date on which any such Property Taxes and Charges are due and payable, official receipts from the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

(c) *Escrow.* Borrower shall pay to Lender monthly, on each date on which a Monthly Payment (as defined in the Note) is due, 1/12 of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges when due. If the Property Taxes and Charges are due in less than twelve months from the First Payment Date (as defined in the Note), Borrower shall make equal monthly payments in amounts sufficient to pay the Property Taxes and Charges when due. Borrower shall also pay to Lender monthly, on each date on which a Monthly Payment is due under the Note, 1/12 of such amount as Lender from time to time estimates will be required to pay Insurance Premiums. All tax and insurance accounts shall equal amounts sufficient to pay one year's Property Taxes and Charges and one year's Insurance Premiums at least thirty (30) days prior to the due dates for the payment thereof. If the Insurance Premiums are due in less than twelve months from the First Payment Date (as defined in the Note), Borrower shall make equal monthly payments in amounts sufficient to pay the Insurance Premiums when due. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Borrower shall transmit to Lender bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received funds sufficient to pay the same, Lender shall, except as provided in Paragraph 8.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Any deficiencies shall be paid by Borrower to Lender on demand. Payments for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of such funds and may commingle them with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

(d) *Taxes on Lender.* If any Law imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way Laws for the taxation of mortgages or debts secured by mortgages or the manner of collection of any such taxes, so as to affect adversely this Mortgage or the Secured Debt, then Borrower shall pay such Property Taxes and Charges or reimburse Lender immediately therefor, unless in the opinion of counsel to

Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Laws. In such case, an Event of Default shall exist, but if Lender accelerates the Secured Debt solely because of such Event of Default, the Secured Debt shall not include the prepayment indemnification provided for in Paragraph 10 or Paragraph 11 of the Note.

(e) *Liabilities.* Except as provided in Paragraph 4.1(f), Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration, management and Clean-Up of the Property (“Property Liabilities”) including without limitation, utility charges, sums related to construction liens and other sums secured or which might be secured by liens on the Property.

(f) *Right to Contest.* Borrower may, in good faith and by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges, Property Liabilities or liens, charges, attachments or lis pendens under Paragraph 4.2(b) (“Contested Sum”) after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if: (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender or Lender’s nominee cash or other security, in form reasonably satisfactory to Lender, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon; and (ii) Borrower promptly pays any amounts adjudged to be due, together with all costs, penalties and interest thereon, on or before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final and before any writ or order is issued under which the Property could be sold pursuant to such judgment.

(g) *Expenses.* To the extent allowed by Laws, Borrower shall pay, on demand, but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction all fees (including, without limitation, reasonable attorneys’ fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with: (i) the making or enforcement of the Loan Documents; (ii) Lender’s exercise and enforcement of its rights and remedies under Paragraphs 7 and 8; (iii) Lender’s protection of the Property and its interest therein; and (iv) any amendments, consents, releases, or waivers if granted by Lender under the Loan Documents.

Borrower shall not be entitled to any credit on the Secured Debt by reason of its payment of any sums required to be paid under Paragraph 4.1(b) through (f) unless such sums are paid to reimburse Lender for amounts paid by Lender and added by Lender to the Secured Debt.

4.2 *Operation of the Property.*

(a) *Maintenance; Alterations.* Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of the Property may be materially decreased. Borrower shall not make any material alterations, improvements, additions, utility installments, transmission or cellular towers, or the like to the Property (improvements to tenant leased spaces shall be exempt from this restriction), without the prior written consent of Lender in each instance; provided, however, that Borrower may make replacements or substitutions of any item of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Mortgage.

(b) *Liens.* Except as provided in Paragraph 4.1(f) Borrower shall promptly discharge any construction, laborers', materialmens' or similar lien or any other lien, charge, attachment, or lis pendens filed or recorded against the Property which relates to Borrower, the Property or any Contamination.

(c) *Compliance with Laws and Private Covenants.* Borrower shall keep, observe, and satisfy, and not suffer violations of, Laws and private covenants (whether or not listed as Permitted Encumbrances) materially affecting the Property.

(d) *Use.* Borrower shall not permit the use or occupancy of the Property other than pursuant to Leases which shall have been approved in advance and in writing by Lender pursuant to the Lease Assignment or which require no approval thereunder. Borrower shall not use or permit the use or occupancy of the Property in a manner which will result in Contamination and Borrower shall take all steps reasonably necessary under the circumstances including, without limitation, periodic inspections and assessments of the Property, to determine whether Contamination has occurred.

(e) *Inspection.* Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender and its agents and contractors, shall have the right, but not the duty or obligation, to enter upon the Property at reasonable times without delay, hindrance or restriction, in order to conduct appraisals and inspections of the Property, including, but not limited to environmental inspections. If, in the reasonable belief of Lender, Contamination has occurred or is likely to occur Lender shall have the right, but not the duty or obligation to conduct, or cause to be conducted, testing, including, but not limited to, soil, air and groundwater sampling, regarding such Contamination. Any environmental inspections or testing shall be paid for by Borrower. Lender shall have the right, but not the duty or obligation, to disclose the results of such inspections and testing as required by Laws or as deemed appropriate by Lender.

(f) *Notification of Contamination; Clean-Up.* Borrower shall notify Lender immediately upon discovery of any Contamination. Borrower shall not, without Lender's prior consent, initiate Clean-Up of any Contamination, or enter into any settlement agreement, consent decree or other compromise with respect to any violation or alleged violation of any Laws concerning Hazardous Substances, if such Clean-up, settlement agreement, consent decree or other compromise might, in Lender's judgment, impair the value of Lender's security hereunder; provided, however, that Lender's prior consent shall not be required in the event the Contamination either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary, such that it is impossible to obtain Lender's consent before taking such remedial action; provided further, however, that in such event, Borrower shall notify Lender as soon as practicable of any remedial action so taken.

4.3 *Insurance.* Borrower shall deliver to Lender original or certified copies of policies evidencing that the following insurance is in effect with respect to the Property. All policies must be properly assigned to Lender by a standard mortgagee clause:

(a) Physical hazard insurance on an "all risks" basis, with a Replacement Cost Endorsement, an Increased Cost of Construction Endorsement, a Terrorism Endorsement, and an Agreed Amount Endorsement covering the perils of fire, boiler and machinery (to include major components of HVAC systems, if not already included in the above coverage, and such other equipments, as Lender may require), and extended coverage in an amount at least equal to the Note Amount and not less than the full replacement cost of the Improvements and Personality. "Full replacement cost" shall mean the cost of replacing the Improvements and Personality without deduction for physical depreciation, and with a deductible amount not greater than Ten Thousand Dollars (\$10,000.00).

(b) Comprehensive public liability insurance covering claims for bodily injury, death and property damage, in an amount reasonably required by Lender (but not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate) naming Lender as an additional insured.

(c) Business interruption or loss of rent insurance to cover actual loss sustained in an amount not less than twelve (12) month's rent. Rent insurance policies, or an endorsement to the property or liability insurance policy, shall be written by companies and in form and content satisfactory to Lender and shall be submitted for approval.

(d) Flood insurance, if the Property is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards or in which flood insurance has been made available under applicable Laws.

(e) Either affirmative coverage for hail, windstorm and named storms in its property insurance or evidence that coverage for hail, windstorm and named storms is not excluded from its property insurance; (f) Earthquake insurance, in the event the PML for the Property is greater than 20 or if Lender is required to require such insurance by law or regulation; and

(g) Such other insurance coverages on the Property as required by Lender.

All insurance shall be written by companies with a Best's Rating of A:VIII or higher, on policy forms satisfactory to Lender, cite Lender's interest as mortgagee, maintained in force throughout the term of the Loan without cost to Lender, and deposited with Lender (if required), shall include a loss payable provision in Lender's favor, shall provide that the insurance may not be terminated, materially modified or allowed to lapse without at least thirty (30) days' prior written notice to Lender, and shall provide that any loss shall be payable notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance, and shall bear notations, evidencing the prior payment of premiums ("Insurance Premiums").

All property insurers shall agree not to acquire any rights of recovery against Lender by subrogation. Borrower, to the full extent permitted by Laws and to the full extent permitted without invalidating the insurance policies required above, shall obtain endorsements by all insurers waiving any right of subrogation against tenants under any Leases and shall require the same of such tenants. Lender shall not because of accepting, rejecting, approving or obtaining insurance, incur any liability for the existence, nonexistence, continuation, form or legal sufficiency of any insurance, the solvency of any insurer, or the payment of losses.

Borrower shall furnish to Lender or Lender's designee an original or certified copy of all policies of insurance required under this Mortgage, provided, however, that if Lender consents to Borrower providing any of the insurance required under this Mortgage through blanket policies carried by Borrower and covering more than one location, Borrower shall furnish Lender or Lender's designee with a certificate of insurance for each such policy, setting forth the coverage, the limits of liability as to the Property, the name of the insurer, the policy number and the expiration date, or with a certified true copy of the original of each such policy.

Borrower shall keep, observe and satisfy, and not suffer violations of the requirements, including those requirements pertaining to acts committed or conditions existing on the Property, of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required by this Mortgage.

Upon foreclosure of this Mortgage or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of

Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.4 *Sales, Transfers and Encumbrances.* If, without the Lender's prior written consent (i) the Property or any part thereof or any interest in the Property or the Borrower, including beneficial interests, is sold or conveyed, (ii) title to the Property or any interest therein is divested, (iii) the Property or any ownership interest in the Borrower, including beneficial interests, is further encumbered or pledged, or (iv) any lease that gives the lessee any option to purchase the Property or any part thereof is entered into; then the Lender shall, in its sole unfettered discretion, be entitled to accelerate the Loan and declare the then unpaid principal balance and all accrued interest and other sums due and payable under the Note to be immediately due and payable and exercise all remedies available to Lender under the Loan Documents. Any consent by Lender to a change in ownership or to a change in the composition of the Borrower may be conditioned upon payment of a transfer fee equal to one percent (1%) of the then outstanding indebtedness for processing such request for consent, upon an increase in the rate of interest on the unpaid balance of the indebtedness to a then-current market rate, and/or other terms and conditions as Lender may impose in its sole unfettered discretion.

(a) *One Time Transfer.* Notwithstanding the foregoing, Lender may permit a one-time transfer of title to the entire Property provided that (i) the transferee has a financial and credit standing and management expertise acceptable to Lender as equal or greater than that of Borrower at the time of the original approval of the Loan; (ii) assumption documents in form and substance satisfactory to Lender are executed by the transferee; (iii) Lender is paid a transfer fee equal to one percent (1%) of the then outstanding indebtedness; (iv) Borrower reimburses Lender at closing all fees and expenses associated with the transfer including legal fees; (v) Lender receives an endorsement to the Lender's title policy, in form and substance acceptable to Lender; and (vi) at Lender's option, the transferee accepts changes in the terms of the Loan, including without limitation a reduction of the principal balance, requested by Lender and Lender receives opinions of counsel and Borrower and transferee authorization documents in form and substance acceptable to Lender. The rights granted to Borrower in this Paragraph 4.4(a) are personal to Borrower, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any subsequent transferee. Such transfer and assumption will not, however, release the Borrower or any guarantors from any liability to the Lender without the prior written consent of Lender, which consent may be given or withheld in Lender's sole unfettered discretion, but if given, may be conditioned upon, without limitation, the execution of new guaranties from principals of the transferee as Lender deems necessary, execution by the principals of the transferee of Lender's standard Environmental Indemnity and such other requirements as Lender may deem appropriate in its discretion.

(b) *Permitted Transfers.* Notwithstanding the foregoing, Lender will permit the following transfers of ownership interests in the Borrower without Lender's prior consent and without payment of a 1% fee or change in the loan

terms provided that (i) no event of default shall have occurred and be continuing under the Loan Documents or any separate documents guarantying payment and performance of any of the Loan Documents; (ii) Lender is promptly notified of such proposed transfer and provided with such documentation evidencing the transfer and the identity of the transferee as reasonably requested by Lender; (iii) assumption documents, if deemed necessary by the Lender, in a form that is acceptable to Lender are executed by the transferee; (iv) Borrower reimburses Lender for all fees and expenses including reasonable attorney's fees associated with the Lender's review and documentation of the transfer; and (v) the request is made in writing and accompanied by a non-refundable review fee of One Thousand Dollars (\$1,000.00):

(1) Any ownership interest in the Borrower may be voluntarily sold, transferred, conveyed or assigned among the persons owning an interest in Borrower as of the date hereof ("Current Owners");

(2) Any ownership interest in the Borrower may be voluntarily sold, transferred, conveyed or assigned to spouses, lineal descendants, or to a trust created for the sole benefit of such spouses and lineal descendants, for estate planning purposes, provided that at all times the Current Owners retain ownership of at least 51% of the outstanding ownership interests, retain voting control of the Borrower and retain managing control of the Borrower and the Property. Such transfer will not, however, release any guarantors from any liability to the Lender without the prior written consent of Lender, which consent may be given or withheld in Lender's sole unfettered discretion, but if given, may be conditioned upon, without limitation, the execution of new guaranties as Lender deems necessary, execution of Lender's standard Environmental Indemnity and such other requirements as Lender may deem appropriate in its discretion.

4.5 *Financial Records and Statements.* Borrower shall keep its books and records of the operation of the Property in accordance with generally accepted accounting principles, and shall deliver to Lender:

(a) annually, within one hundred twenty (120) days after the close of Borrower's fiscal year, a detailed income and expense statement for the Property for the preceding fiscal year, prepared by a Certified Public Accountant satisfactory to Lender;

(b) annually, within one hundred twenty (120) days after the close of Borrower's fiscal year, a certified rent roll showing the names of all tenants, the amount of space leased, the annual rental amount being paid, the rent per square foot, any participation rent or expense reimbursements being paid by the tenants, the lease expiration date, the amount of the security deposits, and the amount of vacant space, and, if required by Lender, financial statements of tenants;

(c) annually within one hundred twenty (120) days after the close of Borrower's fiscal year, financial statements of Borrower, prepared by a Certified Public Accountant satisfactory to Lender; and

(d) annually within one hundred twenty (120) days after the close of Borrower's fiscal year, personal financial statements, signed and dated, of Guarantor (as defined in the Note).

4.6 *General Indemnity.* Borrower shall indemnify, defend and hold harmless Lender, its agents, employees and contractors from and against, and upon demand, reimburse Lender for all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees, expenses and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with:

(a) any violation of Laws;

(b) any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever;

(c) any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents;

(d) any expenditures or amounts advanced (other than advances of principal under the Note) by Lender at any time under the Loan Documents; and

(e) any act or omission of Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under Paragraph 8.2 or under any of the other Loan Documents.

The foregoing indemnification shall apply in all instances, unless the claim was directly caused by the gross negligence or intentional misconduct of Lender.

Borrower shall have the right to control any action for which an indemnity is required pursuant to this Paragraph 4.6 through counsel of its choice, subject to Lender's consent; however, at Lender's option, Lender may participate in such action through its own counsel at Borrower's expense. If Borrower does not notify Lender of its intent to control such action within the earlier of thirty (30) days of notice of such claim or five (5) days prior to the time required by Law to respond to such claims, Lender may control and settle such action, including a settlement for non-monetary relief, without Borrower's consent and at Borrower's expense.

If Borrower is a general or limited partnership, Borrower waives any rights it may have to require Lender to proceed against the assets of the partnership before proceeding against the assets of individual general partners in the exercise of its rights under this Paragraph 4.6.

4.7 *Notices.* Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases, including, without limitation, those given in connection with Contamination or Environmental Actions or Claims.

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

4.9 *Subordination, Non-Disturbance and Attornment Agreement.* Should a tenant, under any present or future Lease at the Property, require Borrower to secure a Subordination, Non-Disturbance and Attornment Agreement from Lender, the document shall be satisfactory to Lender in its sole discretion.

4.10 *Legal Existence.* Borrower shall continuously maintain its existence as a legal entity and its right to own the Property and to do business in the State.

4.11 *Defense and Notice of Actions.* Borrower shall, without liability, cost or expense to Lender protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.12 *Lost Note.* Borrower shall, if the Note is mutilated, destroyed, lost, or stolen, deliver to Lender a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, whereupon the prior note shall be void and of no further force and effect. Any such new note shall be secured hereby and shall be deemed to be the "Note" referred to herein.

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

4.14 *Further Assurances.* Borrower shall promptly upon request of Lender: (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgement thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and

specific assignments of rents or leases); and (c) do such further acts as may be necessary, desirable or proper in Lender's opinion to: (i) protect and preserve the first and valid lien, title and security interest of this Mortgage on the Property or subject thereto any property intended by the terms thereof to be covered thereby, including, without limitation, any renewals, additions, substitutions or replacements thereto; or (ii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply with this Paragraph 4.14.

4.15 Environmental. Borrower, after reasonable inquiry, covenants, represents and warrants to Lender that:

(a) no Hazardous Substance has been or shall be discharged, disbursed, released, stored (other than Permitted Hazardous Substances), treated, generated, disposed of (other than Permitted Hazardous Substances), or allowed to escape or migrate, or shall threaten to be injected, emptied, poured, leached, or spilled on or from the Property;

(b) no asbestos or asbestos-containing materials have been or will be installed, used, incorporated into, placed on, or disposed of on the Property;

(c) no polychlorinated biphenyls ("PCBs") are or will be located on or in the Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device;

(d) no underground storage tanks are or will be located on the Property or were located on the Property and subsequently removed or filled;

(e) no investigation, administrative order, consent order and agreement, litigation, settlement, lien, or encumbrance with respect to Hazardous Substances is proposed, threatened, anticipated or in existence with respect to the Property;

(f) the Property and Borrower's operations at the Property are in compliance with all applicable Environmental Laws including without limitation any, state and local statutes, laws and regulations. No notice has been served on Borrower from any entity, government body, or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources. Copies of any such notices shall be forwarded to Lender within three (3) days of their receipt;

(g) Borrower has no knowledge of the release or threat of release of any Hazardous Substance from any property adjoining or in the immediate vicinity of the Property;

(h) no portion of the Property is a wetland or other water of the United States subject to jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any comparable state statute or local ordinance or regulation defining or protecting wetlands or other special aquatic areas;

(i) there are no concentrations of radon or other radioactive gases or materials in any buildings or structures on the Property that exceed background ambient air levels; and

(j) to the best of Borrower's knowledge, there have been no complaints of illness or sickness alleged to result from conditions inside any buildings or structures on the Property.

Borrower agrees to defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, contractors, sub-contractors, licensees, invitees, participants, successors and assigns (said parties being referred to herein collectively and severally as the "Indemnified Parties"), from and against any and all claims, demands, judgments, settlements, damages, actions, causes of actions, injuries, administrative orders, consent agreement and orders, liabilities, penalties, costs, including, but not limited to, any cleanup costs, remediation costs, response costs, and all expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of Borrower, its predecessors in interest, third parties who have trespassed on the Property, or parties in a contractual relationship with Borrower, or any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of the Indemnified Parties, that:

(aa) arises out of the actual, alleged or threatened migration, spill, leach, pour, empty, inject, discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Hazardous Substance or Permitted Hazardous Substance; or

(bb) actually or allegedly arises out of the use, specification, or inclusion of any product, material or process containing any Hazardous Substance or Permitted Hazardous Substance, the failure to detect the existence or proportion of any Hazardous Substance or Permitted Hazardous Substance in the soil, air, surface water or ground water, or the performance or failure to perform the abatement of any Hazardous Substance or Permitted Hazardous Substance source or the replacement or removal of any soil, water, surface water, or ground water containing any Hazardous Substance or Permitted Hazardous Substance; or

(cc) arises out of the breach of any covenant, warranty, or representation of the Borrower regarding these matters set forth above; or

(dd) arises out of a judicial or administrative action brought pursuant to any Environmental Law or pursuant to any similar state law that relates to the Property.

Borrower shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against the Indemnified Parties, shall hold the Indemnified Parties harmless from and against those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth above.

The indemnifications and representations made herein shall survive any termination or expiration of the Loan Documents and/or the repayment of the indebtedness evidenced by the Note, including, but not limited to, any foreclosure of or on this Mortgage or acceptance of a deed in lieu of foreclosure; it being understood and agreed that the indemnity given herein is independent of the secured indebtedness and the documents securing the Note. Borrower's indemnifications and representations shall not apply to any Hazardous Substance that first originates subsequent to Lender's taking title to the Property by virtue of a foreclosure or accepting a deed in lieu thereof.

5. CASUALTIES AND TAKINGS.

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

5.2 Repair and Replacement. In case of a Casualty or Taking, Borrower shall promptly (at Borrower's sole cost and expense and regardless of whether the Insurance Proceeds or the Taking Proceeds, if any, shall be sufficient or made available by Lender for the purpose) restore, repair, replace and rebuild the Property as nearly as possible to its quality, utility, value, condition, and character immediately prior to the Casualty or the Taking, as the case may be.

5.3 Casualties and Insurance Proceeds. Borrower shall give Lender prompt notice of damage to or destruction of the Property, and in case of loss covered by policies of insurance, Lender (whether before or after foreclosure sale) shall at its option settle and adjust any claim arising out of such policies and collect and receipt for the proceeds payable therefrom ("Insurance Proceeds"), provided, if no Event of Default has occurred and is continuing, Borrower may itself adjust and collect for any losses arising out of a single occurrence aggregating not in excess of the lesser of (a) five percent (5%) of the then outstanding balance of the Note or (b) seventy-five thousand dollars (\$75,000.00).

Notwithstanding the above, Lender agrees to make Insurance Proceeds available for restoration or repair of the Improvements when the cost of repair does not exceed twenty-five percent (25%) of the then outstanding balance of the Note. Prior to the

release of Insurance Proceeds for the repair or restoration of the Improvements, Lender shall be entitled to receive the following:

(a) Evidence that no Event of Default exists under any of the terms, covenants and conditions of this Mortgage, the Note or the other Loan Documents.

(b) Evidence that all leasing requirements for the Property as established by Lender have been met.

(c) Satisfactory proof that the Improvements have been fully restored, or, if Lender approves disbursement in installments, that the Insurance Proceeds not disbursed will be sufficient to pay the cost of repair, restoration or rebuilding of the Property, free and clear of all liens, except the lien of this Mortgage. In the event such Insurance Proceeds shall be insufficient to pay for such repair, restoration or rebuilding, Borrower shall deposit with Lender funds equal to the amount of the deficiency, which, together with the insurance proceeds, shall be sufficient to pay for such restoration, repair and rebuilding.

(d) (i) a statement of Borrower's architect, certifying the repair and restoration completed to the date thereof, and that such repair, restoration and rebuilding has been performed in conformity with the plans and specifications that have been approved by Lender, and (ii) evidence satisfactory to Lender of payment for labor and materials furnished to the Property with lien waivers substantiating such payments. Lender will release funds upon the satisfaction of requirements set forth herein at such time as lien waivers are deposited in escrow with the title insurance company and the title insurance company assures Lender of a first lien position.

(e) A waiver of subrogation from any insurer to the effect that such insurer has no liability as to Borrower or the then owner or other insured under the policy of insurance in question.

(f) Evidence that zoning, building and other necessary permits and approvals have been obtained.

(g) Satisfactory evidence is delivered to Lender that the Improvements can be rebuilt substantially to the same condition as when originally financed and can with restoration and repair continue to be operated for the purposes utilized prior to such damage.

(h) Tenants of the Property as designated by Lender shall certify to Lender their intention to continue to occupy the Property without any abatement or adjustment of rental payments (other than temporary abatements during the period of restoration and repair).

(i) Evidence that the appraised value of the Property after such restoration or repair shall not be less than its appraised value as of the date hereof.

(j) Evidence of fulfillment of all other requirements, which Lender may make in connection with repair of the Improvements.

In the event Borrower fails to restore, repair or rebuild the Improvements within sixty (60) days, such failure shall constitute an Event of Default hereunder and Lender, at its option and upon not less than thirty (30) days' written notice to Borrower, shall have the right to (i) restore, repair or rebuild the said Improvements for or on behalf of Borrower and for such purpose, may perform all necessary or appropriate acts to accomplish such restoration, repair or rebuilding or (ii) apply all or any part of Insurance Proceeds on the indebtedness whether then due or not. In the event Insurance Proceeds shall exceed the amount necessary to complete the repair, restoration, or the rebuilding of the Improvements, such excess may, at Lender's option, be applied on the indebtedness, without application of any otherwise applicable Prepayment Fee (as defined in the Note), or be returned to Borrower. Damage to the Property shall not excuse or defer payment on the indebtedness as it comes due.

5.4 *Taking Proceeds.* Lender may, at its option, in its own name (a) appear or proceed in any condemnation proceeding, and (b) make any compromise or settlement thereof, provided that so long as the Borrower promptly prosecutes any compromise or settlement thereof, the Borrower shall control any compromise or settlement proceeding with the result thereof being subject to the Lender's approval. The Borrower shall give the Lender immediate notice of the initiation of any condemnation proceeding, and a copy of every pleading, notice and other items served in any condemnation proceeding. Borrower hereby assigns, transfers and sets over unto the Lender the entire proceeds of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation ("Taking Proceeds"). Lender may elect to apply the Taking Proceeds upon or in reduction of the Secured Debt, whether due or not, or make said Taking Proceeds available for restoration or rebuilding of the Property. In the event that Lender elects, in Lender's sole and absolute discretion, to make said Taking Proceeds available to reimburse Borrower for the cost of the rebuilding or restoration of the Improvements, such Taking Proceeds shall be made available in the manner and under the conditions that Lender may require. In any event, the Improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by Lender prior to commencement of any building or restoration. If the Taking Proceeds are made available by Lender to reimburse Borrower for the cost of said rebuilding or restoration, any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall at the option of Lender be applied on account of the Secured Debt or be paid to any party entitled thereto. No interest shall be allowed to Borrower on the Taking Proceeds held by the Lender.

6. **LIMITED LIABILITY OF LENDER.** Lender shall not be a trustee with respect to any Insurance Proceeds, and may mingle Insurance Proceeds with its funds without obligation to pay interest thereon. Lender shall in no event be liable for the performance or observance of any covenant or condition arising under any Lease in connection with the Property nor obligated to take any action to restore the Property.

7. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 8.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings including, without limitation, any eminent domain proceedings which affect the Property, the Leases or any of the rights created by the Loan Documents, but only after notice to Borrower and if permitted by Laws.

8. **DEFAULTS; REMEDIES OF LENDER.**

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

(a) *Breach of Named Covenants; Transfer or Encumbrance.* Any breach by Borrower of the covenants in Paragraph 4.1(a) (Secured Debt), Paragraph 4.1(b) (Property Taxes and Charges), Paragraph 4.2(f) (Clean-Up) or Paragraph 4.3 (Insurance); or any transfer or encumbrance that pursuant to Paragraph 4.4 (Sales, Transfers and Encumbrances) would permit Lender to accelerate the Loan.

(b) *Breach of Other Covenants.* Any breach by Borrower of any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents, which continues for thirty (30) days after written notice thereof by Lender to Borrower; provided, however, that if the nature of Borrower's breach is such that more than thirty (30) days is reasonably required to cure the same, then Borrower shall not be deemed to be in default if Borrower commences such cure as promptly as reasonably possible within such initial thirty (30) day period, and, in Lender's sole judgment diligently prosecutes such cure to completion, and such cure is completed within an additional thirty (30) day period.

(c) *Misrepresentations.* Any representation or warranty made by Borrower in the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled, in any material way.

(d) *Bankruptcy.* (i) Any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on the Secured Debt (including, without limitation, any guarantor or indemnitor pursuant to any guaranty or indemnity) or, if Borrower is a partnership, any general partner or joint venturer (collectively "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or an assignment for the benefit of, creditors, or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver, custodian, liquidator or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and such appointment is not promptly contested or is not dismissed or discharged within one hundred twenty

(120) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or (iv) a petition against a Party in Interest is filed commencing an involuntary case under any present or future Federal or state bankruptcy or similar law and such petition is not dismissed or discharged within one hundred twenty (120) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest.

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

(f) *Death of a Guarantor.* The death of any Guarantor, unless a substitute guarantor satisfactory to Lender assumes the obligations of the deceased Guarantor within sixty (60) days after the death.

(g) *Death of a Borrower.* The death of any Borrower who is a natural person.

(h) *Note.* The occurrence of an "Event of Default," as that term is defined in the Note.

(i) *Capital Improvements Reserve Agreement.* The occurrence of a default under the Capital Improvements Reserve Agreement executed this same date by Borrower, Lender and Northmarq Capital.

8.2 *Remedies.* Upon the occurrence of an Event of Default, Lender may, at any time thereafter, at its option, without notice, and without bringing any legal action or proceeding unless expressly required by law, exercise any or all of the following remedies:

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

(b) *Foreclosure; Power of Sale; Expense of Litigation.*

(i) When the Secured Debt or any part thereof shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such Secured Debt or part thereof in the manner provided by law for the foreclosure of mortgages on real property; or the Property secured by the Deed of Trust may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or

incurred by or on behalf of Lender for reasonable attorneys' fees (to the extent permitted by applicable law), appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such action or to provide evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature in this Paragraph mentioned and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorneys employed by Lender in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including appellate, probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceedings or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon at the Default Rate of interest as set forth in the Note and shall be secured by this Deed of Trust.

(ii) In the event that the 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 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 Property, either as a whole or in separate parcels, and in such order as it or Lender may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the 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 such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value and without notice. Any person, including Borrower or Lender, 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, not to exceed five percent (5%) of the Secured Debt unpaid at the time of recording the notice of default, second, to the payment of the Secured Debt including the indebtedness evidenced by the Note and all other obligations 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.

(iii) Borrower agrees, for itself and any and all persons or concerns claiming by, through or under Borrower, that if it, or any one or more of them, shall hold possession of the Property, 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 Property, 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 thereof being hereby expressly waived.

(iv) Borrower requests that copies of any notice of default and notice of sale hereunder be provided to Borrower at its address set forth in this instrument.

(c) *Offset Rights.* Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.1(c).

(d) *Cure Rights.* Without releasing Borrower from any obligation hereunder or under the Loan Documents, perform any of Borrower's obligations. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance (including, without limitation, any junior debt outstanding), charge, lien, claim of lien, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums; (iii) employing counsel, accountants, contractors and other persons to assist Lender in the foregoing; and (iv) undertaking the Clean-Up of any Contamination.

(e) *Possession of Property.* To the full extent permitted by applicable law, take physical possession of the Property and of all books, records, and documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the Property, to collect rents, issues and profits, to hire a professional property manager for the Property, to Clean-Up any Contamination and to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender. Nothing in this Paragraph 8.2 shall impose any duty, obligation or responsibility upon Lender for the control, care, management, repair or Clean-Up of the Property. If necessary to obtain possession as provided for

above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more actions for forcible entry and detainer, trespass and restitution. Lender shall not be deemed a mortgagee in possession unless and until Lender enters into actual possession of the Property.

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

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

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

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

Written notice mailed to Borrower, as provided herein, 15 days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made, shall constitute reasonable notice. Any sale made pursuant to the provisions of this Paragraph 8.2(g) shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with the sale of the Property as provided in Paragraph 8.2(j) of this Mortgage. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personalty and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personalty prior to the time that any sale pursuant to the provisions of this Paragraph 8.2(g) is conducted and it shall not be necessary that the Personalty be present at the location of such sale.

BORROWER HEREBY AUTHORIZES LENDER TO FILE FINANCING STATEMENTS WITH RESPECT TO THE PERSONALTY, WITH ALL APPROPRIATE FILING OFFICES. A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS MORTGAGE OR ANY FINANCING STATEMENT RELATING TO THIS MORTGAGE SHALL

BE SUFFICIENT AS A FINANCING STATEMENT. THIS MORTGAGE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, ARE SET FORTH ON THE COVER SHEET HEREOF.

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

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

(j) *Sale.* Sell the Property in accordance with Laws.

(k) *Other.* Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Laws.

Any sums advanced by Lender under this Paragraph 8.2 shall bear interest at the lesser of (i) the Default Rate specified in the Note or (ii) the maximum nonusurious interest rate permitted by applicable law, and shall be payable by Borrower on demand. Such sums together with such interest shall constitute a part of the Secured Debt.

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

8.3 *Holding Over.* Should Borrower, after Lender has obtained title to the Property, continue in possession of any part of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day, terminable at the will of either Borrower or Lender, at a reasonable rental per diem, such rental to be due and payable daily to Lender.

8.4 *General Provisions.*

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

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

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

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

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

(f) *Waivers and Agreements Regarding Remedies.* To the full extent Borrower may do so and with respect to Lender's exercise of its remedies hereunder, Borrower hereby:

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

(ii) waives all rights to marshalling of the assets of Borrower, Borrower's partners, members and shareholders, and others with interests in Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Laws pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one in good faith which denies the existence or sufficiency of the facts upon which the foreclosure action is grounded or which is based on Lender's wrongful actions. If any defense, counterclaim or setoff (other than one permitted by the preceding sentence) is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, the foregoing waiver shall not bar a separate action for such damages (unless such claim is required by Laws or applicable rules of procedure to be pleaded in or consolidated with the action initiated by Lender) but such separate action shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's foreclosure action;

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

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

(vi) waives any and all rights to compel partition of all or any part of the Property.

(g) WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER, ON OR IN RESPECT OF ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, OR THE RELATIONSHIP OF BORROWER AND LENDER HEREUNDER OR THEREUNDER.

(h) *Lender's Discretion.* Unless specifically stated otherwise, Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

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

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement, rental agreement or Lease.

9. POSSESSION AND DEFEASANCE.

9.1 *Possession.* Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary in any of the Loan Documents, Borrower shall retain full possession of the Property with full right to use the Property and to collect the rents, issues and profits therefrom, subject, however, to all of the terms and provisions of the Loan Documents.

9.2 *Reconveyance Upon Payment and Discharge of Borrower's Obligations.* Upon written request of Lender stating all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Borrower of Trustee's fees, Trustee shall reconvey to Borrower, or the person or persons legally entitled thereto, without warranty, any portion of the Property

then held hereunder. The recitals and such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

To the extent permitted by Laws such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

Notwithstanding the foregoing, Borrower's obligation under Paragraph 4.15 (environmental indemnity) shall not terminate and shall survive the discharge of the Loan Documents, whether through full payment of the Secured Debt, foreclosure, deed in lieu of foreclosure or otherwise, for the benefit of Lender and its successors and assigns, including without limitation, any purchaser at a foreclosure sale.

10. GENERAL.

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

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

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

10.4 No Usury. Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on any of the Secured Debt in excess of the maximum rate of interest permitted by Laws, and if any provisions of the Loan Documents shall ever be

construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 10.4 shall control unless contrary or inconsistent with any provisions of the Note, in which case the provisions of the Note shall control. Borrower and Lender intend to conform strictly to the usury Laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to modification to conform to said Laws as now or hereafter construed.

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

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

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

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

10.8 Gender and Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Mortgage to "herein," "hereunder" or "hereby" shall refer to this entire

Mortgage, unless the context otherwise requires. When the phrase “in its sole unfettered discretion” is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria (without allowance for reasonableness) as it chooses in approving or disapproving the requested or pending action.

10.9 Joint and Several Liability. If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained in the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

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

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

10.12 Captions. All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

10.13 Nonrecourse. Borrower’s personal liability hereunder is limited as set forth in the Note.

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

10.15 Time of the Essence. Time is of the essence of each and every payment and/or performance obligation of Borrower and the Guarantor under this Mortgage or any of the other Loan Documents.

10.16 Exhibits. The Exhibits referred to in this Mortgage are hereby incorporated by reference herein.

10.17 Business Purpose. Borrower represents, covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of Borrower.

10.18 Waiver of Co-Tenancy Rights. Borrower, and each party comprising Mortgagee, hereby waive all of their co-tenancy rights provided at law or in equity for tenants in common between, among or against each other, including, without limitation, any right to partition the Property.

10.19 ERISA. Borrower hereby represents, warrants and agrees that as of the date hereof, none of the investors in or owners of the Borrower is an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 as amended, a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986 as amended, nor an entity the assets of which are deemed to include plan assets pursuant to Department of Labor regulation Section 2510.3-101 (the “Plan Asset Regulation”). Borrower further represents, warrants and agrees that at all times during

the term of the Loan, the Borrower shall satisfy an exception to the Plan Asset Regulation, such that the assets of the Borrower shall not be deemed to include plan assets. If at any time during the entire term of the Loan any of the investors in or owners of the Borrower shall include a plan or entity described in the first sentence of this Paragraph, Borrower shall as soon as reasonably possible following an investment by such a plan or entity, provide Lender with an opinion of counsel reasonably satisfactory to Lender indicating that the assets of the Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. In lieu of such an opinion, the Lender may in its sole discretion accept such other assurances from the Borrower as are necessary to satisfy Lender in its sole discretion that the assets of the Borrower are not deemed to include plan assets pursuant to the Plan Asset Regulation. Borrower understands that the representations and warranties herein are a material inducement to Lender in the making of the Loan, without which Lender would have been unwilling to proceed with the closing of the Loan.

10.20 Substitute Trustee. If, for any reason, Lender prefers to appoint a substitute Trustee hereunder, Lender may, from time to time, by written instrument, appoint one or more substitute Trustees, who shall succeed to all the estate, rights, powers, and duties of the original Trustee named herein. Such appointment may be executed by anyone acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority.

10.21 Indemnification of Trustee. Except for willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by Trustee in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. Borrower hereby indemnifies Trustee against all liability and expenses that Trustee may incur in the performance of Trustee's duties hereunder.

10.22 Grantor agrees and acknowledges that this Deed of Trust contains the power of sale which creates substantially different rights and obligations for Grantor from those contained in a mortgage in case of an Event of Default or breach of any obligation hereunder.

10.23 Integration. **This agreement or instrument and the other Transaction Documents (as defined in the Note) constitute the entire agreement of the parties with respect to the transactions that form the subject matter thereof, and there are no other agreements, express or implied, with respect to such transactions. Any and all prior or contemporaneous commitments, term sheets, negotiations, agreements or representations have been merged into the Transaction Documents and are hereby superseded.**

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Mortgage has been executed and delivered on the date set forth in the acknowledgement below, to be effective as of the "Date" set forth on the first page .

P.H.A., L.L.C.,
a Nebraska limited liability company

By: *Dennis P Tierney*
Name: Dennis P Tierney
Title: Manager

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 14 day of April, 2011, by Dennis P. Tierney, the manager of P.H.A., L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

Amy Blumenthal
Printed Name: Amy Blumenthal
Notary Public



[Signature Page to Mortgage]

EXHIBIT A
PROPERTY DESCRIPTION

Lot One (1), Southampton Replat 1, an Administrative Subdivision as surveyed, platted and recorded, Sarpy County, Nebraska.