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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/06/2013 08:47:39.00



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**WHEN RECORDED, PLEASE RETURN TO:**

Ronald L. Eggers, Esq.  
Gross & Welch, P.C., L.L.O.  
2120 South 72nd Street, Suite 1500  
Omaha, Nebraska 68124

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**DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of April 30, 2013, by and among LMNJ, LLC, a Nebraska limited liability company, 1223 South Saddle Creek Road, Omaha, Nebraska 68106; POPPLETON PARTNERSHIP, c/o Gerald W. Keown, 21925 Quail Ridge Circle, Omaha, Nebraska 68022 ("Beneficiary"); and Ronald L. Eggers, Esq., Gross & Welch, P.C., L.L.O., 2120 South 72nd Street, Suite 1500, Omaha, Nebraska 68124 ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged:

I. Trustor hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Real Property":

A. The "Property," being the real property located in the City of Omaha, County of Douglas, State of Nebraska, is described in Exhibit "A" attached hereto and by this reference incorporated herein, together with all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Trustor in and to all leases or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

B. Any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment,

machinery, and other articles attached to such buildings and improvements (the "Improvements");

The foregoing Real Property is hereinafter called the "Mortgaged Property."

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

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

(i) Payment of indebtedness evidenced by that certain Promissory Note dated April ~~30~~, 2013 ("Promissory Note") executed by Trustor in favor of Beneficiary in the principal amount of One Hundred Ninety Thousand Dollars (\$190,000.00), bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof;

(ii) Payment of all other indebtedness and performance of all obligations and covenants of Trustor under each of the "Loan Documents," as hereinafter defined; and

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents, and all sums advanced by Beneficiary to protect the Mortgaged Property, with interest thereon at the Default Rate provided by the Promissory Note from the date of advance by Beneficiary to the date of payment by Trustor.

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

The indebtedness secured hereby, as evidenced by the Promissory Note and this Deed of Trust, and any amendments or supplements thereto, including extensions and renewals thereof, or other modifications thereof, are hereinafter referred to collectively as the "Loan Documents," and is guaranteed by an instrument entitled Guaranty of Payment executed by Michael D. Schied and Jennifer A. Hendrix Schied (each, a "Guarantor" and collectively, "Guarantors"), dated of even date herewith.

## ARTICLE I

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor hereby represents, warrants, covenants and agrees:

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

Section 1.02. **TITLE OF TRUSTOR.** Trustor has, subject to Permitted Encumbrances set forth in Exhibit "B" hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Deed of Trust and has full right to make this conveyance.

Section 1.03. **CONSTRUCTION OF IMPROVEMENTS.** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any mechanic's or materialmen's lien against the Property.

Section 1.04. **MAINTENANCE, REPAIR, ALTERATIONS.** Trustor shall: (i) keep the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear; not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor; (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property, or any part thereof, or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Property; (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; (v) comply with the provisions of any lease, if this Deed of Trust is on a leasehold; and (vi) not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

Section 1.05. **REQUIRED INSURANCE.** Trustor shall provide, maintain and keep at all times in force the following policies of insurance:

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

(b) Comprehensive general liability insurance (including coverage for elevators and escalators, if any, on the Mortgaged Property) on an "occurrence basis" against claims for "personal injury," including, without limitation, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection in no event less than One Million Dollars (\$1,000,000.00) with respect to personal injury or death to any one or more persons or damage to property.

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

Section 1.06. **DELIVERY OF INSURANCE POLICIES, PAYMENT OF PREMIUMS.** All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents. All policies of insurance shall name Beneficiary as an additional insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary, which endorsement indicates that all insurance proceeds are payable directly to Beneficiary. Trustor shall furnish Beneficiary with an original or certified copy of all policies of required insurance.

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

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

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

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

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

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

required to restore, rebuild or repair the portion of the Mortgaged Property damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Deed of Trust.

**Section 1.08. ASSIGNMENT OF POLICIES UPON FORECLOSURE.** In the event of the foreclosure of this Deed of Trust, or other transfer of title to the Mortgaged Property, or any part thereof, by nonjudicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Property, or such part thereof, shall succeed to all of Trustor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.05, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Property or such part thereof. If Beneficiary acquires title to the Mortgaged Property, or any part thereof, in any manner, it shall thereupon (as between Trustor and Beneficiary) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to the Mortgaged Property, or such part thereof, required by Section 1.05, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Property, or such part thereof, if any.

**Section 1.09. INDEMNIFICATION; SUBROGATION; WAIVER OF OFFSET.**

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

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

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

**Section 1.10. TAXES AND IMPOSITIONS.**

(a) Trustor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other

governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Trustor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Beneficiary under Article V of this Deed of Trust, at the option of Beneficiary, all Secured Obligations, together with all accrued interest thereon, shall become due and payable one hundred eighty (180) days after Trustor receives written notice thereof in the event that Trustor shall not be permitted to pay such fees, taxes or assessments on behalf of Beneficiary.

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

(d) Subject to the applicable state law provisions, Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.10, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; and (iii) Trustor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

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

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

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

Section 1.13. **ACTIONS BY BENEFICIARY AND/OR TRUSTEE TO PRESERVE MORTGAGED PROPERTY.** Should Trustor fail to make any payment or to do any act as and in the manner provided in this Deed of Trust, Beneficiary, in its sole discretion, without

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

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

Section 1.15. **EMINENT DOMAIN.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary may participate in any such Condemnation proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by Beneficiary to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings and shall consult with Beneficiary and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property or any part thereof or interest therein shall be paid to Beneficiary and shall be applied first to all costs and expenses incurred by Beneficiary in obtaining the proceeds. Provided no Event of Default has occurred hereunder and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, the balance of the proceeds, if any, shall be applied at the option of Beneficiary (i) toward altering, restoring or rebuilding the Mortgaged Property, or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Beneficiary may in its absolute discretion elect.

If Beneficiary elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Property, Trustor shall not be required to repair or restore that portion of the Mortgaged Property affected by Beneficiary's election and the failure to do so shall not constitute a breach by Trustor of its obligation to maintain the Mortgaged Property set forth in Section 1.04 hereof.

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

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

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

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

Section 1.19. **INSPECTIONS.** Beneficiary, or its agents, representatives or workmen, are authorized to enter upon or in any part of the Mortgaged Property for the purpose of inspecting THE MORTGAGED PROPERTY, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents, UPON REASONABLE NOTICE TO TRUSTOR. Reasonable notice shall be at least twenty-four (24) hours' advance notice except in the instance of an emergency. For purposes of any such entry, advance notice may be given orally or in writing.

Section 1.20. **LIENS.** Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall require but not more than one hundred fifty percent (150%) of the amount of the claim plus costs (including attorneys' fees) and interest and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail so to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either, by paying the amount claimed to be due, or by procuring the discharge of such lien, either, by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any cost incurred by Beneficiary in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

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

Section 1.22. **FURTHER ASSURANCES.** Trustor shall take all action and do all things which it is authorized by law to take and do, and cooperate with Beneficiary, to insure the release of all encumbrances against the Mortgaged Property, except Permitted Encumbrances, existing prior to the date hereof.

So long as any Secured Obligation shall remain unpaid, Trustor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Beneficiary all such instruments and documents as in the opinion of Beneficiary are necessary or desirable to preserve the first priority lien created by this Deed of Trust.

Section 1.23. **PERFORMANCE OF COVENANTS.** Trustor shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Loan Documents and in all of its proceedings pertaining to this Deed of Trust.

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

Section 1.25. **RULES, REGULATIONS, ENVIRONMENTAL LAWS.** Trustor represents, warrants and covenants:



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

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

(iii) **INTENTIONALLY DELETED.**

Section 1.26. **ORGANIZATION; DUE AUTHORIZATION.** Trustor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nebraska and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents to which it is a party. The execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Trustor.

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

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

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

Section 1.29. **PENDING LITIGATION.** There are no proceedings pending or, to the knowledge of Trustor threatened, against or affecting Trustor in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor or the right or ability of Trustor to enter into the Loan Documents to which it is a party, and if any such proceedings are subsequently initiated or threatened then

Trustor will promptly provide written notice to Beneficiary. Trustor is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

Section 1.30. **COMPLIANCE WITH LAW.** Trustor is in compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules or regulations relating to environmental protection the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor.

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

Section 1.32. **TRANSFER OF INTERESTS IN MORTGAGED PROPERTY.** Trustor shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Property or any interest therein, without the consent of Beneficiary.

Section 1.33. **INTENTIONALLY DELETED.**

Section 1.34. **FINANCIAL STATEMENTS.** Trustor shall provide Beneficiary, if requested by Beneficiary, no later than May 1 of each calendar year:

- (a) Trustor's annual operating statement with respect to the Mortgaged Property for the immediately preceding calendar year and a current financial statement of Trustor;
- (b) The current financial statement of each member of Trustor;
- (c) A copy of Trustor's federal income tax return for the immediately preceding year;
- (d) Such other financial detail, information, reports and copies of tax returns as Beneficiary shall request from time to time with respect to Trustor and each of the members of Trustor; and
- (e) The current financial statement of each Guarantor and, if requested, a copy of each Guarantor's federal income tax return for the immediately preceding year.

Trustor shall further provide Beneficiary such other and further financial information and data concerning Trustor and the Mortgaged Property as Beneficiary shall require from time to time.

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

## ARTICLE II

### BENEFICIARY'S POWERS

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

## ARTICLE III

### ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Section 3.01. **ASSIGNMENT OF RENTS.** Trustor hereby absolutely assigns and transfers to Beneficiary all the rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon Beneficiary the right, power and authority to collect such rents, issues and profits. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to take possession and control of the Mortgaged Property and to demand, receive and enforce payment, to give receipts, releases and satisfaction, and to sue, in the name of Trustor or Beneficiary, for all such rents, issues and profits and apply the same to the Secured Obligations; provided, however, that Trustor shall have a revocable license to possess and control the Mortgaged Property and to collect such rents, issues and profits (but not more than one month in advance) prior to or at any time there is not an Event of Default under any of the Loan Documents. The assignment of the rents, issues and profits of the Mortgaged Property in this Article III is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

Section 3.02. **COLLECTION UPON DEFAULT.** Upon any Event of Default under any of the Loan Documents, Beneficiary may, at any time, WITH NOTICE IN WRITING TO TRUSTOR, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any Secured Obligations, and in such order as Beneficiary may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

## ARTICLE IV

### SECURITY AGREEMENT

Section 4.01. **CREATION OF SECURITY INTEREST.** With respect to any portion of the Mortgaged Property which constitutes fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Trustor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches required by

Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC.

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

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated in Section 6.05 of this Deed of Trust. The mailing address of Trustor, as debtor, is as stated in Section 6.05 of this Deed of Trust.

Section 4.02. **INTENTIONALLY DELETED.**

## **ARTICLE V**

### **EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT**

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

- (a) failure by Trustor to pay within ten (10) days of the date such payment is due and payable, except with respect to the final payment, for which there is no grace period, (i) any payment of principal of or interest on the Promissory Note or (ii) any other sum due thereunder or under any other Loan Document, together with interest thereon;
- (b) failure by Trustor to punctually perform or observe any covenant or agreement contained in this Deed of Trust (other than the monetary obligations described in subparagraph (a) above) and such failure shall not have been cured within thirty (30) days after written notice from Beneficiary of such failure;
- (c) the occurrence of a default, or an Event of Default, under any Loan Document (other than this Deed of Trust) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such default is not cured within the applicable cure period, if any;
- (d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Trustor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Trustor and such appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become a lien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within thirty (30) days after its entry or levy;

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

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

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

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

(k) if any of the events in (d.) (e) or (f) shall occur with respect to any Guarantor of the Promissory Note.

#### **Section 5.02. JUDICIAL FORECLOSURE OR TRUSTEE'S SALE ON DEFAULT.**

(a) Upon the occurrence of one or more Events of Default or default by Trustor in the performance of any other agreement hereunder, or under any instrument or agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or Mortgaged Property may be sold in the manner provided in the Nebraska Trust Deeds Act under the power of sale conferred upon the Trustee hereunder.

(b) In the event that the Mortgaged Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest

bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, 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.

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

(d) Trustor agrees, for itself and any and all persons or concerns claiming by, through or under Trustor, that if it, or any one or more of them, shall hold possession of the above described 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 Real Estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

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

Section 5.04. **REMEDIES NOT EXCLUSIVE.** Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents, or the provisions of the Nebraska Trust Deeds Act, as now enacted or subsequently amended, any other laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it

may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

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

## ARTICLE VI

### MISCELLANEOUS

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

Section 6.02. **INTENTIONALLY DELETED.**

Section 6.03. **LIMITATION OF INTEREST.** All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Promissory Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, inso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary or holder of the Promissory Note shall ever receive as interest under the Promissory Note or this Deed of Trust or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note or on account of other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and such other Secured Obligations, such excess shall be refunded to Trustor, or to the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Trustor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Trustor, or the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Trustor, and Beneficiary.

**Section 6.04. INTENTIONALLY DELETED.**

**Section 6.05. NOTICES.** Whenever Beneficiary or Trustor shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Trustor:	LMNJ, LLC 1223 South Saddle Creek Road Omaha, Nebraska 68106
If to Trustee or Beneficiary:	Poppleton Partnership c/o Gerald W. Keown 21925 Quail Ridge Circle Omaha, Nebraska 68022
With copy to:	Ronald L. Eggers, Esq. Gross & Welch, P.C., L.L.O. 2120 South 72 <sup>nd</sup> Street, Suite 1500 Omaha, Nebraska 68124

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

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

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

**Section 6.08. SUBROGATION.** To the extent that proceeds of the Promissory Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds or advances have been or will be advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released of record.

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

**Section 6.10. INTENTIONALLY DELETED.**



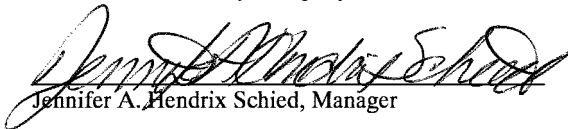
Section 6.11. **TIME IS OF THE ESSENCE.** Time is of the essence under this Deed of Trust and the other Loan Documents.

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

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

**TRUSTOR:**

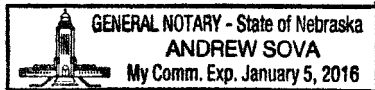
LMNJ, LLC,  
A Nebraska Limited Liability Company

By:   
Jennifer A. Hendrix Schied, Manager

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me, a Notary Public, this 30 day of April, 2013, by Jennifer A. Hendrix Schied, Manager of LMNJ, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**

**20-30040**

**Legal Description**

Lots 17 and 18, in Block 2, in Patterson's Subdivision of part of Himebaugh's Addition to Omaha, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska; and Lot 13, in Block 10, in West Side, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska, except that part of said Lot 13, in Block 10, in West Side, an Addition to the City of Omaha, as surveyed, platted and recorded, Douglas County, Nebraska, conveyed to the City of Omaha by Warranty Deeds dated September 23, 1963, recorded September 27, 1963, in Book 1198 at Page 427 of the Deed Records of Douglas County, Nebraska, and at Page 430.

**20-43220**

**EXHIBIT "B"**

**Permitted Encumbrances**

1. Minerals of whatsoever kind, subsurface, and surface substances, including, but not limited to, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel in, on, under, and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions, or reservations of interests that are not listed.
2. Plat recorded August 15, 1914 in Book 34 at Page 34 of the Records of Douglas County, Nebraska, granted to the City of Omaha as described therein for vacating part of Saddle Creek.
3. Deed recorded September 27, 1963 in Book 1198 at Page 427 of the Records of Douglas County, Nebraska, which contains restrictions as contained therein.