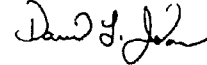


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CASS COUNTY, NE.

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REGISTER OF DEEDS  
#04164 \$136.00

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Title of Document: **Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing**

Date of Document: August 9, 2016

Trustor/Grantor/Borrower: Colby Series I, LLC  
13356 Metcalf Avenue  
Overland Park, Kansas 66213


Grantee/Beneficiary/Lender: CrossFirst Bank  
4707 W. 135<sup>th</sup> Street  
Leawood, Kansas 66224

Trustee: Chicago Title Insurance Company  
2201 Farnam Street  
Omaha, Nebraska 68102

Legal Description: See Exhibit A

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Document prepared by and  
after recording return to:  
Andrew B. Zarda  
Duggan, Shadwick, Doerr & Kurlbaum  
11040 Oakmont  
Overland Park, Kansas 66210

L20154910   
Chicago Title Company, LLC

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING is made as of August 9, 2016, by **Colby Series I, LLC**, a Kansas limited liability company ("Borrower" or "Grantor"), and Chicago Title Insurance Company, 2201 Farnam Street, Omaha, Nebraska 68102 ("Trustee"), to and for the benefit of **CrossFirst Bank**, 4707 W. 135<sup>th</sup> Street, Leawood, Kansas 66213 ("Grantee" or "Lender" or "Beneficiary").

WHEREAS, Borrower is indebted to the Lender in the principal sum of **\$1,187,954.00** as evidenced by a Promissory Note ("Note") of even date herewith, and a Master Loan Agreement dated April 1, 2015 (as amended, "Master Loan Agreement"), the terms of which are incorporated herein by reference.

NOW, THEREFORE, as security for said indebtedness described in the Note and Master Loan Agreement, advancements and other sums expended by Lender pursuant to this Deed of Trust and costs of collection (including attorneys fees as provided in the Promissory Note) and other valuable consideration, the receipt of which is hereby acknowledged, Borrower has bargained, sold, given, granted and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, WITH POWER OF SALE, the parcels of land situated in the **City of Eagle, Cass County, Nebraska** and more particularly described as follows ("Land"):

**SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF**

together with the buildings, structures and improvements now thereon or that may hereafter be erected thereon ("Improvements"), and possession of said Land and Improvements is now delivered unto said Trustee in trust for the benefit of Lender.

Borrower, as further and additional security, hereby mortgages and pledges all items of personal property located on the above-described Land and Improvements and owned by Borrower which are not fixtures or appurtenances as described in the paragraph immediately below and which are used or useful in the operation of the interest of Borrower in the Land and Improvements, including all extensions, additions, improvements, betterments, renewals and replacements thereof now or to be constructed and located on the above described Land and Improvements including all other personal property hereafter acquired by Borrower and located on said Land and Improvements, including replacements of the above described mortgaged personal property so described and acquired after the date of this Deed of Trust, it being understood that the lien granted herein shall continue in force until the Note secured hereby is paid in full. (All of the foregoing mortgaged personal property shall hereinafter be defined as "Personal Property").

TOGETHER WITH all fixtures and appurtenances ("Fixtures"), the same being defined hereinafter as all articles of property which are or shall be in some manner annexed or attached to the above described Land and Improvements or which are adapted to the proper use of any or placed within such Improvements, including, but not limited to, all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures now or hereafter located in, upon or under said Land and Improvements or any part thereof and used or usable in connection with any present or future operation of said Land or Improvements, including, but not limiting the generality of the foregoing, all heating, water, light, air conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing and plumbing fixtures, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, boilers, ranges, furnaces, oil burners or units thereof, appliances, vacuum cleaning systems, elevators, escalators, fork lifts or similar equipment, shades, awnings, screens, storm doors and windows, gas and electric fixtures, mantels, built-in mirrors, cabinets, partitions, ducts and compressors, rugs and carpets, draperies, furniture and furnishings, shrubbery and

plants, and all other goods and property which may be included within the definition of fixtures and appurtenances described above in that they are in some manner annexed and attached to the above described Land or are adapted to the proper use of any or all Improvements erected on such Land or are placed within such Improvements; and all of the above goods and property described immediately above, by virtue of such annexation and adaptation, are and shall at all times be deemed Fixtures and an accession to the freehold and a part of the Land described above.

TOGETHER WITH all estates and rights of Borrower in and to the above-described Land, Improvements, Personal Property and Fixtures and all buildings, structures, improvements, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to Borrower or to the Land, Improvements, Personal Property and Fixtures;

TOGETHER WITH all rents, issues, profits and avails now due or which may hereafter become due under and by virtue of any leasing, whether written or verbal, or any letting of, or any agreement for the use or occupancy of the above-described Land or Improvements or any part thereof which may have been heretofore or may be hereafter made or agreed to by Borrower;

AND TOGETHER WITH any and all awards made to Borrower and any future owners of the premises by any governmental or other lawful authorities for the taking or damaging by eminent domain all of the whole or any part of the Land and Improvements, including any costs for any changes of grade of streets.

TO HAVE AND TO HOLD THE PREMISES with all privileges and appurtenances thereunto belonging, to said Trustee, his heirs, successors, and assigns forever, upon the trust, terms and conditions, and for the uses hereinafter set forth. The said Land, Improvements, Personal Property, Fixtures and additional security as described above may hereinafter shall be collectively referred to as the "Premises", and Borrower for itself, its successors and assigns, does covenant with Lender, its successors and assigns, that it is lawfully seized of the Premises and has the right to sell and convey the same; that it owns good and marketable fee simple title; that the Premises are free from all encumbrances; Lender, its successors and assigns, shall quietly enjoy and possess the Premises; and that Borrower will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

Borrower and Lender hereby agree that this Deed of Trust shall also secure, in addition to the Note, any additional or future advances up to **\$1,187,954.00** which Lender may hereafter make at any time while this Deed of Trust remains unreleased of record to, or for the benefit of Borrower, its successors or assigns or pursuant to any of the provisions of this Deed of Trust and the Note secured hereby.

And Borrower does hereby covenant, promise and agree to and with Lender as follows:

#### ARTICLE I COVENANTS, AGREEMENTS, WARRANTIES OF BORROWER

Borrower has agreed and does by these presents covenant and agree to perform and fulfill all of the provisions hereof and of the Note secured hereby, including specifically but without limiting the generality of the foregoing:

(1.1) Borrower will duly and punctually pay each and every installment of principal and interest on the Note and all other sums due hereunder (hereinafter the debts and obligations owed hereunder and under the Note shall be collectively and individually referred to as the "Indebtedness" or "the Indebtedness Secured Hereby", as and when the same shall become due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note and any other instrument given as security for the payment of the Note.

(1.2) Borrower will pay when due and before any penalty attaches all general and special taxes, ground rents, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever, whether or not assessed against Borrower, if applicable to the Premises or any interest therein, or the Indebtedness Secured Hereby, or any obligation or agreement secured hereby and will

upon demand furnish to the Lender proof of the payment of any such taxes, assessments and charges; in the event that the Borrower has deposited in escrow sums required by the Lender under Paragraph (1.9) hereof, Borrower shall nevertheless be required to pay any deficiencies or amounts required in addition to the amounts so deposited in escrow to completely pay and discharge the obligations of Borrower for payment of such taxes, assessments, ground rents and other charges and assessments as hereinabove stated. The Borrower shall not be obligated to pay any income tax, profits tax, excise tax or other tax or charge that may be payable by the Lender, excepting only such which may be levied against such income expressly as and for a specific substitute for taxes on the Premises and then only in an amount computed as if Lender derived no income from any source other than its interest hereunder. In the event of a court decree or an enactment after the date hereof by any legislative authority having jurisdiction over the Premises of any law deducting from the value of real estate for the purposes of taxation any lien thereon or imposing upon a mortgagee (including beneficiaries of deeds of trust) the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or a mortgagee's interest in mortgaged premises, or the method of collecting taxes, so as to affect the Deed of Trust or the Note or Lender, then, in any such event, the entire Indebtedness Secured Hereby shall thereupon immediately become due and payable at the option of Lender.

(1.3) Borrower shall not be required to pay, discharge or remove any tax, assessment, tax lien, imposition or charge upon or against the Premises, or any part thereof, or resolve any zoning or ordinance violations so long as Borrower shall not be in default and shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the tax, assessment, lien or imposition so contested and/or the sale of the Premises, or any part thereof, to satisfy the same; provided, that Borrower shall, prior to the date such tax, assessment, lien, imposition or charge is due and payable, have given such security as may be demanded by Lender to insure such payments and prevent any sale or forfeiture of the Premises by reason of such nonpayment. Any such contest shall be prosecuted by Borrower with due diligence and Borrower shall promptly after final determination thereof pay the amount of any such taxes, assessments, liens, impositions or charges so determined, together with all interest and penalties which may be payable in connection therewith. Notwithstanding the provisions of this Section 1.3, Borrower shall (and if Borrower shall fail so to do, Lender may, but shall not be required to) pay all such taxes, assessments, liens, impositions or charges notwithstanding such contest if in the opinion of Lender the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. Any such payments made by Lender may be made out of any escrows held by Lender and if such escrows be insufficient for these purposes any sums expended by Lender in excess of such escrows shall be so much additional Indebtedness Secured Hereby and shall be due and payable on demand together with interest thereon at the rate specified in the Note.

(1.4) Borrower shall keep all Improvements in good and substantial repair and tenantable condition; shall pay any debt, claim or other charge or repairs or improvements that may have been made or may hereafter be made on, or which may become a lien against the Premises or any part thereof, and not to permit any lien or encumbrance of any kind which may be or become superior to this Deed of Trust, to accrue or remain on the Premises or any part thereof; and if any law or ordinance requires or shall hereafter require the demolition of any portion of any building remaining on said Premises after a partial loss by fire before the same may be rebuilt, Borrower shall keep said Lender insured against loss by reason of the cost of such demolition, reasonable wear and tear and damage by fire only excepted, hereby granting to said Lender in the event of foreclosure full authority as attorney irrevocable of Borrower to cancel such insurance and retain the return premiums thereof.

(1.5) Borrower shall not permit or suffer any strip or waste of the mortgaged Premises, nor permit or suffer any violation of any law, ordinance, governmental rule or regulation affecting the same or the use thereof; and Borrower agrees to pay all sums, including costs and attorney fees which the said Lender may incur in any proceedings to prevent the commission of waste.

(1.6) Borrower shall retain in full force and effect and not allow to lapse or be revoked any licenses issued by any agency to Borrower for the operation by Borrower of any business on the Premises described herein.

(1.7) Borrower shall perform and observe all the obligations imposed upon it under any leases of the Premises described herein and shall not do or permit to be done anything to impair the security thereof, and in the event of a default in this Deed of Trust, Borrower shall assign to Lender upon the demand of said Lender any and all leases of the Premises described herein and also Borrower's rights under any subleases thereof and any and all rents and income from said leases or subleases, and for the purpose of making such assignments Borrower hereby grants the power and authority to and constitutes and appoints said Lender or such persons as may be designated by it, the attorney irrevocable of Borrower to make such assignments of then existing leases, and agrees that after such assignments Lender may modify and otherwise deal with all such leases or subleases with the same power and discretion which Lender would have if it were the owner, and free from any trust.

(1.8) Borrower shall not execute any lease on the Premises described herein or any part thereof providing for payment of rent for more than one (1) month in advance without the express consent in writing by Lender.

(1.9) Borrower shall deposit, with Lender, upon Lender's request, a sum sufficient to provide for payment of the annual charges for real estate taxes, including special assessments and any other charges against the Premises by governmental or quasi-governmental bodies (collectively, "Taxes") and annual insurance premiums on all policies required in Section 1.15 hereof (collectively, "Premiums") affecting the Premises, both as estimated by Lender, and thereafter Borrower shall deposit with Lender, together with and in addition to the monthly payments of principal and interest provided for in the Note, one-twelfth (1/12<sup>th</sup>) of the annual amount of said Taxes and one-twelfth (1/12<sup>th</sup>) of the annual amount of said Premiums, both as estimated by Lender, to be held by Lender and used to pay said Taxes and Premiums when the same fall due. Upon and during the continuance of an Event of Default hereunder, Lender may, at its option, apply the amounts described in this Section to the Indebtedness in such manner as Lender may elect, and Borrower shall immediately reimburse Lender for the amounts so applied. No interest shall accrue to Borrower upon any sums deposited with Lender pursuant to this Section. Borrower grants Lender a lien on and security interest in any account established with Lender, and all proceeds thereof, for maintenance of such escrow payments.

(1.10) Borrower shall pay on demand to said Lender, or said Lender may at its option add to the principal balance then due any sums advanced or paid by said Lender on account of any default of this Deed of Trust of whatever nature by Borrower for taxes, repairs, insurance or any sums paid by Lender, including attorney's fees in prosecuting, defending or intervening in any legal or equitable proceeding wherein any of the rights created by this Deed of Trust are in the sole judgment of Lender jeopardized or in issue, and Lender may apply to any of these purposes any sums paid hereunder by Borrower as interest or otherwise.

(1.11) Borrower shall remain liable upon the covenants herein and in any other instruments securing the Note and upon the Note secured hereby notwithstanding any forbearance, extension or other indulgence given by Lender to any future owner of the Premises described herein or other person, notice of any such forbearance, extension or other indulgence being hereby expressly waived.

(1.12) Borrower agrees to appear in and defend any suit, action or proceeding that affects the value of the Premises, the Indebtedness Secured Hereby or the rights or powers of Lender and should Lender elect also to appear in or defend any such action or proceeding, or should Lender be made a party to such action by reason of this Deed of Trust, Borrower will, at all times, indemnify and on demand reimburse Lender from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and attorney's fees, and the sum of all such expenditures shall become so much additional Indebtedness Secured Hereby and shall be due and payable on demand together with interest thereon at the rate specified in the Note.

(1.13) Borrower agrees upon request by the Lender that it will execute and deliver such further instruments, and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof, or intended so to be. Borrower agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or

incident to the filing or recording of this Deed of Trust, such further instruments and assurances or the issuance and delivery of the Note.

(1.14) Borrower shall furnish to Lender or Lender's designee, upon request from time to time during the term of the Note, and in any event within sixty (60) days after the end of each fiscal year of Borrower during said term, annual federal and state tax returns and current annual statements itemizing the income and expenses of the Premises, including an itemized rent roll, together with a complete statement of Borrower's assets and liabilities and its profit and loss statement. Said statements shall be certified by Borrower to be true and accurate and in a form acceptable to Lender, including, without limitation, prepared in accordance with generally accepted accounting standards consistently applied throughout the periods covered therein. Lender shall have access to Borrower's books and records at reasonable times and places throughout the term of the Note. Borrower shall also cause all guarantors of the Indebtedness, if any, to provide to Lender upon Lender's request from time to time, and not less than annually, their current personal financial statements in a form acceptable to Lender, and copies of their annual federal tax returns.

(1.15) Borrower shall maintain until the Indebtedness Secured Hereby has been paid in full all insurance policies to keep the Land, Improvements, Fixtures, Personal Property and appliances covered by this Mortgage now or hereafter on the Premises insured against loss by fire, lightning and such other risks customarily covered by Standard Extended Coverage endorsement together with a vandalism and malicious mischief endorsement or an all perils endorsement in an amount not less than the full replacement cost of all such improvements, including the cost of debris removal, and satisfactory to Lender; shall provide Comprehensive General Public Liability insurance in amounts satisfactory to Lender; shall provide, if the Premises are now or hereinafter determined to be in a "flood plain area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973 (PL-93-234) or any similar agency or law, Federal Flood Insurance in maximum amounts obtainable up to the principal amount of the balance due under the Indebtedness Secured Hereby; shall provide Rental Insurance coverage in an amount and term satisfactory to Lender; shall provide, if there be any pressure-fired vessels within the Premises, Broad Form Boiler and Machinery Insurance on all Equipment and Fixtures and objects customarily covered by such insurance and providing for the full repair and replacement cost coverage; and shall provide such other insurance as Lender may be determined to be needful, in such sums as Lender from time to time may determine, all of said insurance to contain a standard mortgagee loss payable clause (New York Standard clause), acceptable to Lender, with Lender and its successors or assigns to be named as the sole mortgagee, and to be from companies qualified to do business in the State of Nebraska and satisfactory to Lender and containing clauses therein requiring thirty (30) days prior written notice of cancellation thereof to be given to Lender, and to deposit certificates and a xerox copy of all such policies in a form acceptable to Lender with and made payable to Lender in case of loss, full power being hereby given to Lender to settle and compromise claims or to bring suit to recover thereunder, and in Lender's discretion to apply the net proceeds therefrom after deducting all costs of collections, including attorneys' fees, in reduction of the Indebtedness Secured Hereby or, the Lender may apply the net proceeds toward repair, reconstruction or restoration of the Premises. In event of foreclosure Lender is hereby authorized to assign each such policy to the transferee of said Premises hereby appointing said Lender attorney irrevocable so to do or, if Lender shall so elect, to cancel or transfer such insurance and to retain any premiums or proceeds and to apply same to the Indebtedness Secured Hereby.

(1.16) Except for the substances disclosed on reports previously disclosed to Lender:

(a) Neither the Borrower nor, to the best knowledge of the Borrower, any other person has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof or into the atmosphere or any watercourse, body of water or wetlands or any other real property legally or beneficially owned (or any interest or estate in which is owned) by the Borrower (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Borrower), and neither the Premises nor any part thereof has ever been used (whether by the Borrower or, to the best knowledge of the Borrower, by any other person) as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material. For purposes of this Agreement, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation,

and Liability Act, any so called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other Federal, state or local statute, law, ordinance code, rule, regulation, order or decree, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, asbestos or any substance or compound containing asbestos, or any other hazardous, toxic or dangerous, waste, substance or material.

(b) Borrower will not place, hold, locate or dispose of on, under or at the Premises or any part thereof or into the atmosphere or any watercourse, body of water or wetlands or any other real property legally or beneficially owned (or any interest or estate in which is owned) by the Borrower (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the Borrower) any Hazardous Material, nor will Borrower permit or cause any other person to do any of the aforesaid.

(c) Borrower hereby indemnifies the Lender and agrees to hold the Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever for any occurrence that takes place prior to Lender, through a receiver or otherwise, taking possession of the Premises, including attorneys' fees, paid, incurred or suffered by, or asserted against, the Lender for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises or into or upon the land, the atmosphere, or any watercourse, body of water or wetland of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material).

(1.17) Borrower is the Landlord under a Lease dated **October 19, 2015** ("Lease") with **Dolgencorp, LLC (Dollar General)** ("Tenant"), and the Lease is in full force and effect.

(1.18) The Premises and the sidewalks, curbs and alleys adjoining or abutting the Premises, and the condition, repair, maintenance, use and occupation thereof by Borrower comply with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, applicable health, safety and environmental laws and regulations, laws relating to the disabled (including but not limited to The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq. and regulations thereunder [hereinafter called the "ADA"] and/or the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq., and regulations thereunder [hereinafter called the "FHAA"]), as any of the same are amended from time to time, and all other applicable laws, statutes, ordinances, rules, regulations, orders, determinations and court decisions (all of the foregoing hereinafter sometimes collectively called "Applicable Laws") without reliance upon grandfather provisions or adjacent or other properties. Borrower or Borrower's tenants have obtained all requisite zoning, utility, building, health and operating permits from the governmental authority or municipality having jurisdiction over the Premises. All engineering specifications with respect to the Premises are within applicable engineering standards. Borrower shall promptly make, or cause to be made, all changes, alterations and improvements necessary to comply with all future laws, statutes, ordinances, rules, regulations and other requirements.

(1.19) Borrower shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Premises, non-compliance with which may affect the security of this Mortgage, or which shall impose any duty or obligation upon Borrower or any tenant or other occupant of the Premises or any part thereof, and Borrower shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Premises.

(1.20) Borrower covenants to complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any

construction lien against such property. Borrower also agrees, anything in this Deed of Trust to the contrary notwithstanding: (a) to promptly commence work and to complete the proposed Improvements promptly; (b) to complete same in accordance with plans and specifications as approved by Lender; (c) to comply with all of the terms of any construction loan agreement between Borrower and Lender; (d) to allow Lender to inspect such property at all times during construction; and (e) to replace any work or materials unsatisfactory to Lender, within fifteen (15) days after written notice from Lender of such fact, which notice may be given to Borrower by registered or certified mail, sent to his last known address, or by personal service of the same.

## ARTICLE II - RIGHTS OF LENDER

Borrower has authorized and does by these presents hereby authorize Lender or the holder of the Note, after the failure of Borrower to so do within the time permitted under the Loan Documents, to deduct from the loan such amounts as may be due as interest on the Note and to apply the same in payment and satisfaction thereof, but without any obligation upon the Lender or holder so to do:

(2.1) To pay all taxes and assessments, with interest, costs, penalties and charges accruing thereon, which may at any time be or become a lien on the Premises described herein or any part thereof.

(2.2) To pay the premiums for any insurance required hereunder.

(2.3) To incur and pay expenses in protecting its rights hereunder and the security hereby granted; to enter upon the Premises and make repairs, procure insurance, and to pay any debt, claim or other charge which Borrower should have made, procured or paid (the receipt of the creditor or proper tax official being conclusive evidence of the amount, validity and fact of payment thereof).

(2.4) In the discretion of Lender after a default to pay any balance due under any security agreement on any article and fixtures included in or added to the Premises described herein and Borrower hereby covenants to notify Lender promptly of the existence of and the exact details of the said security agreement, and shall at any time at the express request in writing of Lender assign to Lender any and all right, title and interest that Borrower may have in and to any and all security agreements, and Borrower hereby grants the power and authority to and constitutes and appoints Lender or such persons as may be designated by it the attorney irrevocable of Borrower, if Lender shall so elect, to make such assignments.

(2.5) If Borrower shall fail to comply with any of the covenants or obligations of this Deed of Trust, the Lender may, but shall not be obligated to, without further demand upon Borrower and without waiving or releasing Borrower from any obligations in this Deed of Trust contained, remedy such failure on the part of the Borrower, and the Borrower agrees to repay upon demand all sums incurred by the Lender in remedying any such failure together with interest thereon at the rate as specified in the Note. All such sums, together with interest as aforesaid shall become so much additional Indebtedness Secured Hereby, but no such advance shall be deemed to relieve the Borrower from any failure hereunder. In making any payment authorized hereby Lender may after a default and in order to protect Lender's security do so without inquiry into the validity or amount of any such obligation.

(2.6) To add all amounts paid under the foregoing provisions to the principal sum secured hereby, all of said sums shall be immediately due and payable, shall bear interest at the highest rate permitted to be charged on delinquent installments of principal and interest under the aforesaid Note and the Lender is hereby authorized to apply to any of these purposes or to the repayment of, any amount so paid by Lender any sums paid hereunder by Borrower as interest or otherwise.

(2.7) Nothing contained in this Deed of Trust shall constitute any consent or request by the Lender, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Borrower or any lessee under any leases any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the



Lender in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.

(2.8) Borrower will permit the Lender's authorized representatives to enter the Premises at all reasonable times and hours for the purpose of inspecting the same; provided, the Lender shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

(2.9) Without affecting the liability of Borrower or any other party liable for payment of any Indebtedness Secured Hereby or performance of any obligation contained herein, and without affecting the rights of the Lender with respect to any security not expressly released in writing, the Lender may, at any time, and without notice to or the consent of any party in interest with the Premises or the Note (a) Release any person liable for payment of all or any part of the Indebtedness Secured Hereby or for performance of any obligation herein, (b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness Secured Hereby or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof, (c) Resort to any chattel mortgages, pledges, contracts of guarantee, assignments of rents and leases or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such orders as it may determine.

(2.10) In the event that the Premises covered hereby or any part thereof, shall be damaged by fire or other hazard against which insurance is held as hereinbefore provided, the amounts paid by any insurance company pursuant to the contract of insurance shall, to the extent of the Indebtedness then remaining unpaid, be paid to said Lender, and, in its discretion, may be applied to the debt if there shall be an event of default, as defined in said Note, or if the proceeds of said insurance shall be sufficient, to retire said Indebtedness, or released for the repairing or rebuilding of the Premises.

Each right, power or remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising at law or in equity and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender and shall not be deemed a waiver of its right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Lender to resort thereto at a later date or be construed to be a waiver of any default or event of default under this Deed of Trust or the Note; any agreement made by Borrower and Lender pursuant to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance; and the Borrower hereby waives to the full extent it may lawfully do so the benefit of any appraisal, evaluation, stay and extension laws now or hereinafter in force and all rights of marshalling. In the event of any foreclosure sale the Lender shall have the right to have the Premises sold as separate units or parcels.

### ARTICLE III - CONDEMNATION

Borrower has agreed and by these presents does covenant and agree that should the Premises or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or under right of eminent domain, the Lender shall be entitled to all compensation, awards, and any other payment or relief therefor, and shall be entitled at its own option to commence, appear in, and prosecute in its own name any action, or proceedings, or to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds are hereby assigned to said Lender, who may after deducting therefrom all its expenses, including attorney's fees, release any moneys so received by it or apply the same on any Indebtedness Secured Hereby and Borrower shall execute such further assignments of any compensation, awards, damages, rights of action and proceeds as Lender may require.

#### ARTICLE IV - NOTICES

Notices shall be in writing, either by hand delivery, overnight delivery or by registered or certified mail, return receipt requested, and the delivery or mailing of notices to the following addresses, or to such other place any party hereto may by notice in writing designate, shall constitute service of notice hereunder:

If to the Lender:                   CrossFirst Bank.  
  4707 W. 135<sup>th</sup> Street  
  Leawood, Kansas 66213

If to the Borrower:               **Colby Series I, LLC**  
  Attn: Tyler S. Oliver  
  13356 Metcalf Avenue  
  Overland Park, Kansas 66213

#### ARTICLE V - COMPLIANCE WITH LAW

Borrower has agreed and by these presents does covenant and agree that the whole of said principal sum and the accrued interest thereon shall become due, at the option of Lender, upon failure of Borrower to comply with any law of the State of Nebraska or with the requirements of any ordinance, condition, rule, regulation of any department of the city and county in which said Premises are situated relating to said Premises or any part thereof and which jeopardizes or threatens Lender's lien or interest in the premises.

#### ARTICLE VI - EVENTS OF DEFAULT AND REMEDIES

(6.1) It shall be an "Event of Default" under this Deed of Trust if (a) The Borrower shall fail to pay any principal or interest due under the Note when and as the same becomes due (whether at the stated maturity or at a date fixed for any installment payment or otherwise); or (b) An Event of Default occurs under the Note, the Master Loan Agreement, or any other Loan Document executed in connection with the Note, or (c) The Borrower shall fail to comply with or perform any of the terms, conditions or covenants of the Note, Master Loan Agreement, this Deed of Trust, or any other Loan Document executed in connection with this Loan.

(6.2) NOW, THEREFORE, if said Note and the interest thereon be paid when due, and said agreements be kept and performed as aforesaid and if no Event of Default occurs, then these presents, including the lease hereinafter set forth, shall be void, and the Premises hereinbefore conveyed shall be released at the cost of said Borrower. But if an Event of Default shall occur, then the whole of said Indebtedness Secured Hereby shall at the option of Lender, without notice become immediately due and payable for all purposes, and this deed shall remain in force. Upon an Event of Default, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or may be sold in the manner provided in the **Nebraska Trust Deeds Act** under the power of sale conferred upon the Trustee hereunder.

Lender may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Lender and recorded in the office of the register of deeds of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

Such successor to such Trustee shall succeed to the title and all of the rights and powers of the original Trustee, and either Trustee or said successor trustee if a successor Trustee is appointed shall proceed to take possession and to sell the Premises hereinbefore described and any and every part thereof, in whole, or in parcels, at such place in said county where it is customary to hold such sales, as shall be designated in the sale notice, for cash, first giving twenty (20) days' public notice or such notice as may at such time be required by the laws of Nebraska of the time, terms and place of sale, and of the property to be

sold, by advertisement in some newspaper as may at such time be required by the laws of Nebraska, and upon such sale shall execute and deliver a deed of conveyance of the property sold to the purchaser or purchasers thereof; and any statement or recital of fact in such deed shall be prima facie evidence of the truth of such statement or recital; and the said trustee, or the successor, shall receive the proceeds of said sale, out of which shall be paid (1) the cost and expense of executing this trust, including compensation to the trustee for services as provided by law, and attorneys' fees, which shall be immediately due upon first publication of sale aforesaid; (2) to Lender or its assigns, upon the usual vouchers therefor, all monies paid for insurance, taxes, repairs, abstracts, judgments upon statutory lien claims and any other advances and interest thereon, as herein provided for; (3) any notes then unpaid, whether due by their terms or not, with interest; (4) any liens, either superior or inferior to this Deed of Trust and (5) the balance of such proceeds, if any, shall be paid to said Borrower or legal representatives. If sale be advertised but stopped by act or request of Borrower, said Borrower shall pay a trustee's fee of One Thousand Dollars (\$1,000.00), all costs of publication and title certificates, and attorney's fees as part of the costs incurred.

(6.3) Borrower agrees that should Lender or assigns elect to collect said Note or any Indebtedness Secured Hereby by suit, or to foreclose this Deed of Trust through court or by filing and providing same as a claim in any Probate Court or in bankruptcy proceedings, then attorney's fees for enforcing its rights hereunder or under the Note, or in collecting any obligations due under the Note, shall be allowed and taxed with other costs and be considered Indebtedness Secured Hereby. And it is expressly stipulated and agreed that the lien of this Deed of Trust shall extend to and include such expenses.

(6.4) Trustee may bid, sell, purchase and do any acts on behalf of Lender to transfer the Premises under the power of sale notwithstanding the fact that Trustee is presently or may hereafter be Lender's attorney or agent. The Lender may bid and purchase at any sale under this Deed of Trust.

(6.5) If the Premises are sold under foreclosure or are otherwise acquired by the Lender after default, any remaining balance of the amounts on deposit with Lender pursuant to Article I, II and VI may be credited to the Indebtedness Secured Hereby as of the date of the commencement of foreclosure proceedings or as of the date the title to the Premises shall be otherwise acquired.

(6.6) In addition to the power of sale foreclosure, Lender shall have such other rights and remedies allowed by law and equity, and as allowed by any other document concerning or securing the Indebtedness, including without limitation, the right to have a receiver appointed upon ex parte application without notice. Further, Lender may foreclose on part of the Premises without exhausting its power of sale as to the remainder of the Premises as long as the Indebtedness Secured Hereby remains unpaid.

(6.7) Each right, power or remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising at law or in equity and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Lender and shall not be deemed a waiver of its right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Lender to resort thereto at a later date or be construed to be a waiver of any default or event of default under this Deed of Trust or the Note. Any agreement made by Borrower and Lender pursuant to this Deed of Trust shall be superior to the rights of the holder of any intervening lien or encumbrance.

(6.8) Upon an Event of Default, Lender (or the holder or owner of any debt secured by this Deed of Trust) shall immediately have the right without further notice to Borrower to set off against the Note and any other debts secured by this Deed of Trust all debts of Lender (or such holder or owner) to Borrower, whether or not then due, including all depository account balances, cash and any other property of the Borrower now or hereafter in the possession of the Lender and the right to refuse to allow withdrawals from any account (collectively "Setoff") or to exercise any recoupment, administrative freeze or stay or similar rights. As additional security for the payment of the Indebtedness, the Borrower hereby grants to the Lender a security interest in, a lien on and an express contractual right to set off against including all depository account balances, cash and any other property of the Borrower now or hereafter in

the possession of the Lender. The Lender may, at any time upon the occurrence of an Event of Default (notwithstanding any notice requirements or grace/cure periods under this or other agreements between the Borrower and the Lender) setoff against the Indebtedness whether or not the Indebtedness (including future installments) are then due or have been accelerated, all without any advance or contemporaneous notice or demand of any kind to the Borrower, such notice and demand being expressly waived.

(6.9) Borrower hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each of the parties hereto at the address shown on the first page of this Deed of Trust.

## ARTICLE VII – SECURITY AGREEMENT AND FIXTURE FILING

(7.1) Security Agreement. Borrower and Lender agree that this Deed of Trust shall constitute a security agreement within the meaning of the UCC with respect to all sums on deposit with the Lender with respect to insurance proceeds or condemnation proceeds ("Deposits") and with respect to any personal property and fixtures included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in **Exhibit A** or may not constitute a "fixture" within the meaning of the UCC, and all replacements of such property, substitutions and additions thereto and the proceeds thereof, all such property being sometimes hereinafter collectively referred to as the "Collateral" and described on **Exhibit B** attached hereto and made a part hereof, and that a security interest in and to the Collateral and the Deposits is hereby granted to Lender and the Deposits and all of Borrower's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Indebtedness and to secure performance by Borrower of the terms, covenants and provisions hereof. Upon the occurrence of an Event of Default under this Deed of Trust, Lender, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding with respect to the Collateral in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Lender shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lender shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Lender. Borrower agrees that, without the written consent of Lender, Borrower will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Borrower is not in default hereunder, Borrower shall be permitted to sell or otherwise dispose of the Collateral, when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other Collateral at least equal in value to the initial value to that disposed of and in such a manner so that said Collateral shall be subject to the security interest created hereby, and so that the security interest of Lender shall be first in priority, it being expressly understood and agreed that all replacements of the Collateral and any additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and covered hereby. Borrower shall, from time to time, on request of Lender, deliver to Lender an inventory of the Collateral in reasonable detail. Borrower covenants and represents that all Collateral, and all replacements thereof, substitutions therefor or additions thereto, unless Lender otherwise consents, now are and will be free and clear of liens (other than the lien of taxes not yet due or payable), encumbrances or security interests of others. Borrower shall, upon demand execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender, and will do all such acts and things as Lender may at anytime, or from time to time, reasonably request or as may be necessary or appropriate to establish and maintain a first perfected security interest in the Deposits and Collateral, subject to no liens (other than the lien of taxes not yet due or payable), encumbrances, or security interests of others.

Name and Address of Debtor: **Colby Series I, LLC**  
13356 Metcalf Avenue  
Overland Park, Kansas 66213

Debtor's Organizational Number: **7875636 (Kansas)**

Address of Property: **See Exhibit A**

Name and Address of Secured Party: CrossFirst Bank  
4707 W. 135<sup>th</sup> Street  
Leawood, Kansas 66224

This financing statement covers the Collateral. Some of the items or types of property comprising the Collateral are or are to become fixtures on the real property described in this Deed of Trust. Borrower is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located. This Deed of Trust also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the County in which the Land is located.

(7.2) Fixture Filing. This Deed of Trust is intended to be a financing statement within the purview of the **Nebraska Uniform Commercial Code** with respect to those items of such property as constitute fixtures on the Real Estate. The address of Borrower (Debtor) and Lender (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of Trust is to be filed for record with the Register of Deeds of **Cass County, Nebraska** where the real estate is located. Borrower is the record owner of the real estate.

#### ARTICLE VIII - MISCELLANEOUS

(8.1) The Borrower further agrees that such expenses and fees as may be incurred in the protection of said Premises and the maintenance and execution of this Deed of Trust, including the fees of any attorney employed by the Lender for the collection of any and all of the Indebtedness Secured Hereby, or foreclosure by trustee's sale or court proceedings or in any other litigation or proceedings affecting said Premises, including any litigation to establish or preserve the lien of this Deed of Trust or its priority, shall be paid by the Borrower.

(8.2) No waiver by Lender of any covenant herein of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the Note secured hereby.

(8.3) If Borrower defaults in any of the covenants or agreements contained herein, or contained in said Note, then Lender may perform the same, and all expenditures made by Lender in so doing shall draw interest at the rate set forth in the Note secured hereby, and shall be repayable immediately and without demand, and together with interest and costs accruing thereon, shall be secured by this Deed of Trust.

(8.4) Borrower further covenants and agrees that all data, financial or otherwise, heretofore or hereafter furnished to Lender, is complete, true and correct.

(8.5) Borrower further agrees and covenants that if a trustee's sale under either any prior or junior mortgage or any junior lien of any kind on the within described Premises, or any part thereof, should be instituted, or in the event of any levy or sale upon execution or other proceedings of any nature whereby the owner of said Premises shall be deprived of owner's title or right of possession to said Premises or any part thereof, then in either event, said Lender may, at its option, immediately declare the entire Indebtedness and Note secured hereby due and payable and start such proceedings or take such action as Lender shall deem necessary to protect its interest in the Premises.

(8.6) Grantor agrees that if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law (other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Premises; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law on the death of a joint

tenant or tenant by the entirety; (iv) the grant of a leasehold interest of three (3) years or less not containing an option to purchase; (v) a transfer to a relative resulting from death of a Guarantor; (vi) a transfer where spouse or children of the Grantor become the owner of the Premises; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Grantor becomes an owner of the Premises; (viii) a transfer into an inter vivos trust in which Grantor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Premises) without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Note secured hereby and all other Indebtedness hereunder to be forth with due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises. In the event Borrower shall sell, convey, transfer, or encumber the described Premises at any time subsequent to the date hereof, except such sale, conveyance, transfer or encumbrance made with written consent of the Lender, or if full possessory rights therein shall be transferred, the entire Indebtedness Secured Hereby, together with any advances secured hereby, shall at the option of Lender, become due and payable. The above provision shall apply to each and every sale, conveyance, transfer or encumbrance, whether voluntary, involuntary or by operation of law and regardless of whether Lender has consented or waived its rights, by action or nonaction, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more. Lender's consent hereunder shall not be unreasonably withheld.

(8.7) In the event that Borrower or any subsequent owner or transferee of the Premises or of full possessory rights therein shall be a limited liability company or partnership, the sale, conveyance, transfer or encumbrance of a membership or partnership interest without Lender's prior written consent shall be deemed the equivalent of a sale, conveyance, transfer or encumbrance of the Premises; likewise in the event that Borrower or any subsequent owner or transferee of the Premises or of full possessory rights therein shall be a corporation, the sale, conveyance, transfer or encumbrance of a controlling interest in such corporation shall be deemed to be the equivalent of a sale, conveyance, transfer or encumbrance of the Premises. In the event the ownership of the Premises described herein or any part thereof becomes vested in a person other than Borrower, the Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to the Deed of Trust and the Indebtedness Secured Hereby, and in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or upon the Indebtedness Secured Hereby. Except as otherwise provided, no sale of the Premises described herein and no forbearance on the part of said Lender and no extension, whether oral or in writing, of the time for the payment of the Indebtedness Secured Hereby, given by Lender, shall operate to release, discharge, modify, change or affect the original liability of the Borrower, either in whole or in part. In the event of a sale of the Premises, any such funds then on deposit with Lender automatically and without the necessity of further notice or written assignment shall be transferred to and thereafter held for the account of the new owner, to be applied in accordance with Articles I, II and VI.

(8.8) No waiver by Lender of any default or other indulgence shall be effective unless expressed in writing executed by Lender.

(8.9) Neither the exercise by Lender of any right or remedy herein given or reserved, nor delay or failure by Lender to exercise any such right or remedy, in case of one or more defaults, shall constitute a waiver thereof, or stop Lender thereafter from exercising the same or any other right or remedy at any time in respect of the same or any subsequent default or defaults. All such rights and remedies shall be cumulative and none shall be exclusive of the other or others or of any right or remedy now or hereafter given or allowed by law.

(8.10) Trustee covenants faithfully to perform the Trust herein created. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee in such action shall be paid by the Lender and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default. TRUSTEE ACCEPTS this Trust when this Deed of Trust, duly executed and

acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or any action or proceeding in which Borrower, Lender or Trustee shall be a party, unless brought by Trustee.

(8.11) That at any time, or from time to time, without liability therefor, and without notice, upon written request of Lender, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of such property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Lender or the Trustee with respect to the remainder of such property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereto. That, upon written request of Lender stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Lender.

(8.12) This Deed of Trust and each and every covenant, agreement and other provision hereof shall be binding upon the Borrower and its heirs, administrators, representatives, successors and assigns including without limitation each and every from time to time record owner of the Premises or any other person having an interest therein and shall inure to the benefit of the Lender and its successors and assigns. Wherever herein the Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note whether so expressed or not and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereafter and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if each such from time to time holder is herein by name specifically granted such rights, privileges, options, benefits and is herein by name designated by the Lender.

(8.13) The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

(8.14) IT IS FURTHER MUTUALLY AGREED by and between the parties hereto that all notice to any party of the exercise of any and all options reserved by Lender pursuant to this Deed of Trust is hereby expressly waived.

(8.15) To the extent allowed by law, Borrower and any successor, transferee or assignee of the ownership of the Premises hereby waives all rights and benefits of Redemption, Homestead, Moratorium or any rights pursuant to any Stay or Extension rights granted or permitted under or pursuant to the laws of the State of Nebraska.

(8.16) Borrower represents that the Indebtedness is a business loan, transacted solely for the purpose of carrying on or acquiring the business of Borrower.

(8.17) The word "Lender" or "holder" as used herein shall be construed as descriptive of Lender and of any subsequent holder or holders hereof; and all of the covenants and agreements of the Borrower herein contained shall be binding upon its successors and assigns and if the context so requires, "Lender" and the pronouns referring to them shall be construed as plural, neuter, masculine or feminine.

(8.18) This Deed of Trust and all the provisions hereof are to be governed, construed and enforced by and according to the laws and statutes of the State of Kansas, except to the extent it is necessary to apply the laws of the State of Nebraska to enforce Lender's rights and remedies.

(8.19) Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and every mention of the Borrower or Trustee shall include the heirs, executors, legal representatives, administrators, successors and assigns of the party so designated.

(8.20) All the terms, covenants and conditions hereby shall bind Borrower and its successors and assigns, jointly and severally, and shall inure to the benefit of and be available to the successors and assigns of Lender.

(8.21) Borrower acknowledges that Lender may and shall have the right to sell participation interests in this loan. Notwithstanding any such participation, Borrower need look only to Lender for any approvals required. Borrower hereby waives any rights Borrower may have under applicable law to be notified if Lender sells or assigns this Deed of Trust.

**(8.22) BORROWER AND LENDER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER OR ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS DEED OF TRUST, THE NOTE, THE GUARANTY, THE INDEBTEDNESS, THE RELATIONSHIP BETWEEN BORROWER AND LENDER OR THE PREMISES.**

(8.23) (a) The parties agree that Borrower has substantial duties of performance apart from its mere financial obligations under this Deed of Trust, the Note and the other Loan Documents, and that parties other than the Borrower could not adequately and fully perform the covenants to be performed by Borrower in this Deed of Trust. The parties also agree that this Deed of Trust is an agreement for the making of loans and for the extending of debt financing or financial accommodations. No assumption of or assignment of this Deed of Trust shall be allowed in bankruptcy. Should an assumption of or assignment of this Deed of Trust be permitted in violation of this covenant, the parties agree that Lender will not have adequate assurance of performance unless and until Lender is allowed access to adequate financial and other information to satisfy itself that the trustee or proposed assignee is fully able to assume the financial and personal covenants of Borrower under this agreement, in full accordance its terms, and that sufficient collateral is pledged and sufficient bonds or letters of credit are posted by the trustee or proposed assignee to guarantee performance of such obligations. The parties further agree that the definition of the term "adequate assurance" as set forth in section 365(b)(3) of the Bankruptcy Code of 1978 shall be applicable directly or by analogy to any determination of adequate assurance in connection with this Deed of Trust.

(b) In the event Borrower becomes a debtor in bankruptcy, the debtor in possession or trustee shall not be permitted to use, sell or lease any of the Premises, whether or not in the ordinary course of business, without providing adequate protection to Lender. The parties agree that the language in Section 361 of the Bankruptcy Code of 1978 shall be the definition of the term "adequate protection" in connection with any use, sale or lease of the Premises. The cash payment referred to in that section shall mean the full payments required under the Note and all other indebtedness which this Deed of Trust secures, plus payment representing the full replacement value of the Premises used, sold or leased; the replacement liens referred to in that section shall mean liens on property the actual market value of which is equal to or greater than the replacement cost of the Premises used, sold or leased; and the term "indubitable equivalent" as used in that section shall mean protection afforded by either grants of administrative expense priority, grants to Lender of ownership interests in a continuing business surviving the bankruptcy, or grants to Lender of protected securities issued by a continuing business surviving the bankruptcy, which completely compensate Lender for the loss of the present value (computed at the then market rate of interest for commercial loans) of its interest in the Premises. For purposes of computation, the value of the Premises shall be the actual market cost of replacement real estate in approximately the same location and condition as the Premises, and with similar improvements.

(c) The parties agree that because of the extreme financial importance to Lender of this transaction, Lender will be irreparably harmed by any stay of its collection efforts or the exercise of its remedies under this Deed of Trust.

(d) The parties agree that in the event a plan of reorganization is proposed under Chapter 11 of the Bankruptcy Code of 1978, the plan will be fair and equitable to Lender, as a secured creditor, only if Lender realizes under the plan the indubitable equivalence of its interests in the Premises. The term "indubitable equivalent" in such context shall have the same meaning as previously set forth herein.



(8.24) Borrower will protect, indemnify, save harmless and defend Trustee and Lender from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Lender and/or Trustee by reason of (a) ownership of an interest in the Premises, (b) any accident or injury to or death of Persons or loss of or damage to or loss of the use of property occurring on or about the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any use, non-use or condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Borrower to perform or comply with any of the terms of this Deed of Trust, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof made or suffered to be made by or on behalf of Borrower, (f) any negligence or tortious act on the part of Borrower or any of its respective agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any alterations, changes, new construction or demolition of the Premises. Borrower will pay and save Trustee or Lender harmless against any and all liability with respect to any intangible personal property tax or similar imposition of the State in which the Premises is located or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Lender in respect of this Deed of Trust or the indebtedness secured hereby. All amounts payable to Lender or Trustee under this paragraph shall be payable on demand and shall be deemed Indebtedness secured by this Deed of Trust and any such amounts which are not paid within ten (10) days after demand therefor shall bear interest at the Default Rate from the date of such demand. In case any action, suit or proceeding is brought against Trustee or Lender by reason of any such occurrence, Borrower, upon request of Trustee and/or Lender, as the case may be, will, at Borrower's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel designated by Borrower and approved by Trustee and Lender.

(8.25) Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' or other lien rights that the property manager or anyone claiming by, through or under the property manager may have in any of the Premises shall be subject and subordinate to the lien of this Deed of Trust and shall provide that Lender may terminate such agreement at any time after the occurrence of an Event of Default hereunder. The failure of any such property management agreement to contain such provisions, however, shall not affect the superiority of this Deed of Trust. The Deed of Trust shall be superior in all respects to any and all mechanics' or other lien rights that the property manager or anyone claiming by, through or under the property manager may have in any of the Premises; Lender may terminate any such property management agreement at any time after the occurrence of an Event of Default hereunder. Any such property management agreement or a short form thereof, at Lender's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if any property management agreement in existence as of the date hereof does not contain a subordination provision, Borrower shall cause the property manager under such agreement to enter into a subordination of the management agreement with Lender, in standard recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Deed of Trust.

#### **ARTICLE IX – ASSIGNMENT OF LEASES AND RENTS**

On or about April 1, 2015, Borrower executed and delivered to Lender a Master Assignment of Leases and Rents ("Master Assignment") which is incorporated herein by reference. The Master Assignment grants, conveys and assigns to Lender the rights to all profits, rents, and revenues from the Property, provided, as long as no Event of Default exists hereunder, Lender has provided Borrower with a revocable license to collect all profits, rents and revenues. Upon the happening of such event of default, Lender may enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Lender may determine; and except for such

application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Lender be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Borrower shall not, without the prior written consent of Lender, amend, modify or terminate any lease of the trust property after the same has been submitted to and approved by Lender. In the event of a conflict between this Article IX and the Master Assignment, the Master Assignment shall be controlling.

IN WITNESS WHEREOF, Borrower has executed these presents as of the day and year first herein written.

Colby Series I, LLC

By [Signature]  
Name Tyler E. Olive  
Title Member

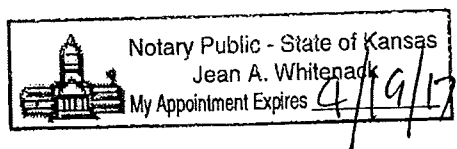
STATE OF KANSAS )  
 ) ss  
COUNTY OF JOHNSON )

On this 8<sup>th</sup> day of August, 2016, before me appeared Tyler Olive, to me personally known, who, being by me duly sworn, did say that s/he is the Member of Colby Series I, LLC, a Kansas limited liability company, and that said instrument was signed on behalf of said limited liability company, and said individual acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid on the day and year first above written.

[Signature]  
Notary Public  
Print Name: Jean A. Whitencak

My commission expires:  
4/19/17



## EXHIBIT A

Lot 1 of the Eagle Eyrie Addition to the Village of Eagle, a subdivision of a part of the Northeast Quarter of Section 29, Township 10 North, Range 9 East, of the 6th Principal Meridian, Cass County, Nebraska, according to the recorded plat thereof, and being more particularly described as follows:

Referring to the Northeast corner of said Section 29; thence westerly on an assumed bearing of North 90°00'00" West, on the North line of the Northeast Quarter of Section 29, 955.91 feet; thence southerly South 00°00'00" East, 65.00 feet, to a point of intersection on the southerly right of way line of Highway 34; thence South 00°06'25" East, 13.00 feet; thence westerly South 90°00'00" West, 66.00 feet, to the true Point of Beginning; thence following the perimeter of the described tract on the following bearings and distances: South 00°06'25" East, 290.00 feet; thence South 90°00'00" West, 180.00 feet; thence North 00°06'25" West, 290.00 feet; thence North 90°00'00" East, 180.00 feet, to the Point of Beginning.

Containing a total calculated area of 52,200 square feet, or 1.198 acres, more or less.

## EXHIBIT B

All assets of Borrower (herein the "Debtor"), including, without limitation, all contracts, plans, specifications, permits, licenses, intangibles, fixtures, proceeds, rents, awards, receivables, and deposits in connection with the Premises described on Exhibit A, now or hereafter owned by Debtor, together with all the estate, right, title and interest of Debtor in, to and under, or derived from:

1. **Land.** All those certain lot(s), piece(s) or parcel(s) of land more particularly described in Exhibit A, and all and singular the reversions or remainders in and to said land and the tenements, hereditaments, easements, rights-of-way or use, rights (including alley, drainage, crop, timber, logging and cutting, agricultural, horticultural, mineral, water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any such right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or with said land, and all claims or demands of Debtor, either at law or in equity, in possession or expectancy, of, in or to the same (all of the foregoing hereinafter collectively called the "Land").

2. **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building material, building equipment and fixtures of every kind and nature now or hereafter owned by Debtor and located on the Land or attached to, contained in, or used in any such buildings, structures, facilities or other improvements (such fixtures collectively called the "Fixtures"), and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by Debtor or in which Debtor has or shall acquire an interest (all of the foregoing hereinafter collectively called the "Improvements").

3. **Equipment.** All chattels and articles of personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, of every character and wherever situated, now or hereafter owned, constructed or acquired by Debtor or in which Debtor has or shall acquire an ownership interest, other than Inventory, which is in any way belonging, relating or appertaining to, or located on the Land herein described or the buildings and Improvements now erected or to be erected thereon, or used or intended to be used in connection with the Land, which is used in the operation of the buildings and Improvements, situated thereon (the "Mortgaged Property"), or placed on any part thereof, though not attached thereto (all of the foregoing hereinafter collectively called the "Equipment"). Without limitation, Debtor hereby grants to Secured Party (if applicable) a security interest in and to all of Debtor's present and future Equipment, and Secured Party shall have, in addition to all rights and remedies provided in the Security Documents, all of the rights and remedies of a "secured party" under the Uniform Commercial Code of the State in which the Mortgaged Property is located.

Equipment shall include any and all fixtures, appliances, machinery and equipment of any nature whatsoever, partitions, screens, awnings, shades, blinds, curtains and other articles of personal property at any time now or hereafter installed in, attached to or situated in or upon the Mortgaged Property, whether or not the personal property is or shall be affixed thereto, all to the extent owned by Debtor.

Including, without limiting the generality of the foregoing, all plants, furnaces, incinerating and power equipment, boilers, machinery, engines, stokers, pumps, heaters, tanks, compressors, dynamos, motors, electrical transformers, fittings, siding, pipe, pipe connections, conduits, ducts, partitions, communication systems, storm and screen windows, doors, furniture, furnishings, elevators and motors, built-in filing cabinets, shelves, water coolers, signs, tools, switchboards and all equipment, appliances and apparatus of every kind and description now or hereafter affixed or attached to or contained within and used or procured for use in connection with said buildings or improvements for heating necessary for operation, cooling, lighting, plumbing, lifting, cleaning, fire extinguishing and preventing, communication, ventilating, sprinkling, irrigating, refrigerating or air conditioning, or for providing water, gas, electricity or

other services or for general operation of the buildings and improvements, or the plan or business situated or operated thereon.

Such security interest shall extend to and include as well as any and all proceeds of such fixtures and personal property and any and all subsequently acquired fixtures and personal property by way of replacement, substitution, addition or otherwise, all materials and work in process and the proceeds thereof.

4. **General Intangibles.** All now owned and hereafter acquired accounts, contract rights, chattel paper, general intangibles (including, but not limited to, all of Debtor's now existing or hereafter arising tax and duty refunds, prepaid expenses, all now owned or hereafter acquired patents, patent applications, trademarks, trademark applications, copyrights, copyright applications, tradenames and trade styles, license agreements, customer lists, blueprints, drawings and specifications relative to the rendering of services or the sale or manufacture of goods), documents and instruments, whether now owned or hereafter acquired by Debtor; Debtor's interest in the goods represented by all accounts and all returned, reclaimed or repossessed goods with respect thereto; all contracts and rights of Debtor for the sale of its shares; all of Debtor's present and future rights as an unpaid vendor including stoppage in transit, replevin or reclamation; all additional amounts now or hereafter due to Debtor from any account debtor and all construction funds irrespective of whether such additional amounts have been specifically assigned to Secured Party; all guarantees, mortgages on real and personal property, letters of credit, trust receipts, bankers' acceptances, choses in action or other agreements or property securing or relating to any of the items referred to above; all monies, deposits, securities, bank accounts, instruments, credits and other property now or hereafter held by Secured Party or any other entity which at any time participates in Secured Party's financing of Debtor; all licenses, permits, franchises, certificates and other rights, privileges and documents obtained in connection with or necessary in the operation of the Mortgaged Property; all plans and specifications, architectural contracts, construction contracts, all leases with respect to any part of the Mortgaged Property, and all rents, revenues, royalties, bonuses, accounts, issues and profits arising out of the operation of the Mortgaged Property; and all rights and remedies of Debtor under or in connection with such collateral;

5. **Proceeds and Awards.** All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Debtor, all proceeds of the conversion, voluntary or involuntary, of any of the property described in these GRANTING CLAUSES into cash or other liquidated claims, including proceeds of hazard, title and other insurance, and all judgments, damages, awards, settlements and compensation (including interest thereon) heretofore or hereafter made to the present and all subsequent owners of the Land, the Improvements, the Equipment and/or any other property or rights encumbered or conveyed hereby for any injury to or decrease in the value thereof for any reason, or by any governmental or other lawful authority for the taking by eminent domain, condemnation or otherwise of all or any part thereof, including awards for any change of grade or streets.

The collateral listed in this Exhibit B includes any monies on deposit for the payment of real estate taxes, insurance premiums or special assessments against the Premises and all proceeds paid for damage done to the collateral described in this Exhibit B or the Premises and all proceeds of any award or claim for damages for any of the collateral described in this Exhibit B or the Premises taken or damaged under the power of eminent domain or by condemnation and all rents, issues and profits of and from the Premises and all leases or subleases of the Premises.