

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

Dial REIT, Inc.

Dial REIT, Inc.
11506 Nicholas Street
Suite 205
Omaha, Nebraska 68154

the
BAND & WIF
fol-

CONSTRUCTION/TERM LOAN DEED OF TRUST,
SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS CONSTRUCTION/TERM LOAN DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of the 29th day of November, 1989, among STOCKYARDS PLAZA, LIMITED PARTNERSHIP, a Nebraska limited partnership ("Trustor") whose address is 11506 Nicholas Street, Suite 200, Omaha, Nebraska 68154, Joseph H. Carter ("Trustee"), whose address is 11506 Nicholas Street, Suite 205, Omaha, Nebraska 68154, and DIAL REIT, INC., a Maryland corporation, whose address is 11506 Nicholas Street, Suite 205, Omaha, Nebraska 68154 ("BENEFICIARY").

WITNESSETH

THAT, WHEREAS, pursuant to that certain commitment letter agreement dated of even date herewith, between Trustor and Beneficiary (the "Commitment Letter"), Beneficiary has made a loan to Trustor and Trustor has executed a promissory note (the "Note") of even date herewith, made payable to the order of Beneficiary, in the stated principal amount of One Million Nine Hundred Fourteen Thousand and no/100 Dollars (\$1,914,000), with interest thereon as provided therein and having a maturity date as set forth in the Note, but in no event later than May 31, 1991 unless extended, at the option of Trustor to not later than November 30, 1991; and

WHEREAS, Trustor has executed that certain Construction Loan Agreement of even date herewith (the "Construction Loan Agreement") prescribing certain rights and obligations of the parties with respect to the aforementioned loan; and

WHEREAS, Trustor desires to secure the prompt payment of the indebtedness evidenced by the Note, the repayment of any advances made pursuant to the Construction Loan Agreement, or this Deed of Trust and the due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement contained in the Commitment Letter, the Note, the Construction Loan Agreement, this Deed of Trust or in any other document or instrument heretofore or hereafter executed by Trustor having reference to, arising out of, securing, evidencing or in any way pertaining to the indebtedness represented by the Note (the Commitment Letter, the Note, the Construction Loan Agreement, this Deed of Trust, and such other documents and instruments being collectively referred to herein as the "Loan Documents").

er,
and
by
le
ed
the

ar

1 5431

ms 3435 N _____ C/O _____ FEE 185⁰⁰
437-469 N4-14 139 DEL VIK MC WC
MAY AV COMP JH F/B 21-6000

RECEIVED
NOV 30 12 05 PM '89
RECORDS & COMM. DIV.
STATE OF NEBRASKA

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND FOR THE PURPOSES HEREIN DESCRIBED, TRUSTOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS AND ASSIGNS TO TRUSTEE, ITS SUCCESSORS AND ASSIGNS IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's estate, right, title and interest in, to and under, and grants to Beneficiary a security interest in, any and all of the following described property (collectively, the "Property"), whether now owned or hereinafter acquired:

(A) That certain real property situate in the City of Omaha, County of Douglas, State of Nebraska, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining (the "Real Estate") and all of the estate, right, title, interest, claim and demand whatsoever of Trustor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements");

(C) All machinery, appliances, apparatus, equipment, fittings, fixtures (whether actually or constructively attached and including all trade, domestic and ornamental fixtures) now or hereafter located in, upon or under the Real Estate or the Improvements, or any part thereof, or used in connection with any present or future operation thereof, and all additions thereto and replacements therefor;

(D) All right, title and interest of Trustor in and to the land lying in the bed of any street, road, avenue, alley or public place, opened or proposed, and all easements and rights of way, public or private, tenements, hereditaments, rights and appurtenances, now or hereafter used in connection with, belong or appertaining to, the Real Estate;

(E) All right, title and interest of Trustor in and to all water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Real Estate and/or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(F) All right, title and interest of Trustor in and to all minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;

(G) All articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to,

AND
 BLY
 EE,
 OF
 and
 ity
 rty
 ter

placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate and/or the Improvements or any portion thereof and owned by Trustor or in which Trustor now has or hereafter acquires an interest;

ha,
 rly
 by
 ts,
 ces
 e")
 and
 in

(H) All right, title and interest of Trustor in and to the rents, royalties, issues, profits, revenue, income and other benefits of the Real Estate and/or the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the General Intangibles, as hereafter defined (the "Rents and Profits"), and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Real Estate and/or the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by the tenants, lessees or licensees, as applicable, of their obligations thereunder, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses or occupancy agreements or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms, subject to, however, the provisions contained in Section 1.9 hereinbelow;

ind
 on

(I) All right, title and interest of Trustor in and to all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements and all architectural renderings and models, plans and specifications now or hereafter relating to the Improvements;

it,
 and
 or
 che
 any
 nd

(J) All of Trustor's right, title and interest in, to and under any and all contracts and agreements now or hereafter entered into by Trustor covering any part of the Real Estate or the Improvements, including, without limitation, any contracts relating or pertaining to construction on the Real Estate and/or the Improvements or to the management or operation of the Real Estate and/or the Improvements;

the
 lic
 y,
 nd
 or

(K) All monetary deposits which Trustor has been required to give to any public or private utility with respect to utility services furnished to the Real Estate and/or the Improvements;

ll
 sh,
 io,
 al
 ow

(L) All right, title and interest of Trustor in and to all funds, accounts, instruments, accounts receivable, documents, general intangibles (including trademarks, trade names and symbols used in connection with the Real Estate and/or the Improvements) and notes or chattel paper arising from or by virtue of any transactions related to the Real Estate and/or the Improvements (collectively, the "General Intangibles");

ll
 ng
 al

(M) All right, title and interest of Trustor in and to all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Real Estate and/or the Improvements and all right, title and interest of Trustor in and to all warranties and guaranties relating to the Improvements and to

o,
 ry
 nd
 o,

all equipment, furniture, furnishings, personal property and components of any of the foregoing located or installed on the Real Estate or in the Improvements;

(N) All right, title and interest of Trustor in and to all proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

(O) All other or greater rights and interests of every nature in the Real Estate and/or the Improvements or in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor.

FOR THE PURPOSE OF SECURING:

(1) prompt payment of the indebtedness evidenced by the Note, with interest thereon, according to the terms thereof, which Note has been delivered to and is payable to the order of Beneficiary, and any and all modifications, extensions and renewals thereof or notes given in substitution therefor, in whole or in part;

(2) prompt payment of any and all other indebtedness required to be paid to Beneficiary herein, in the Note, in the Construction Loan Agreement, or in any of the other Loan Documents;

(3) prompt payment of all other sums, with interest thereon, advanced by Beneficiary hereunder, under the Construction Loan Agreement or under any of the other Loan Documents;

(4) prompt payment of such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary, its successors or assigns, by the then record owner or owners of the Property, when evidenced by another promissory note or notes reciting that they are secured by this Deed of Trust;

(5) due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Trustor contained herein, in the Note, in the Construction Loan Agreement or in any of the other Loan Documents;

(6) performance of all agreements of Trustor to pay fees and charges to Beneficiary with respect to the loan evidenced by the Note and secured hereby, whether or not herein set forth; and

(7) Prompt payment of any and all future advances necessary to protect the Property and/or the security interests created hereby and future advances made at the option of the parties.

(All of the sums, obligations, covenants and agreements referred to in Paragraphs (1) through (7) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

F
E
C
T
C
H
T
W
H
T
S
C
R
I
T

h
f
r
a

s
t

t
f
r
t
f
a
s
T
p
p
s
a
a
s
s
t
p
f

O
T
N

Provided, however, that if Trustor shall pay or cause to be paid to Beneficiary the principal and interest due under the Note, any prepayment fee or premium provided in the Note, if due, and all other sums due or to become due under the Note at the time and in the manner stipulated therein and shall pay or cause to be paid all other sums payable hereunder and all other indebtedness secured hereby, then in such case, the estate, right, title and interest of Trustee and Beneficiary in the Property shall cease, and upon written notice from Beneficiary that all of the indebtedness secured hereby has been paid, and upon surrender of this Deed of Trust to Trustee and cancellation of the Note and all other notes, if any, secured hereby and upon payment of Trustee's fees, all recording costs and all Trustor's costs associated therewith, Trustee shall reconvey, without warranty, the Property. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

ARTICLE I
COVENANTS OF TRUSTOR

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Deed of Trust, for so long as the indebtedness secured hereby or any part thereof remains unpaid or remains to be performed, Trustor covenants and agrees as follows:

1.1. Warranties of Trustor: Trustor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Beneficiary, its successors and assigns, that:

(a) Trustor has good and marketable fee simple title to the Property subject to those permitted exceptions to title set forth on Exhibit B attached hereto and incorporated herein by reference, and has full power and lawful authority to grant, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Trustor will preserve its interest in and title to the Property and will forever warrant and defend the same to Trustee against any and all claims made by, through or under Trustor, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever claiming by, through or under Trustor. Trustor shall promptly and completely observe, perform and discharge each and every obligation, covenant, condition, restriction and agreement affecting the Property, whether the same is prior and superior or subject and subordinate hereto. (The foregoing warranty of title shall survive the foreclosure of this Deed of Trust and shall inure to the benefit of and be enforceable by the Beneficiary or any person who may acquire title to the Property pursuant to any foreclosure);

(b) No bankruptcy or insolvency proceedings are pending or contemplated by Trustor or, to Trustor's knowledge, against Trustor or by or against any endorser, cosigner or guarantor of the Note;

(c) All reports, certificates, affidavits, statements and other data furnished by Trustor to Beneficiary in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

(d) To the best of its knowledge and belief the execution and delivery of this Deed of Trust, the Note and all of the other Loan Documents do not contravene, result in a breach of or constitute a default under any contract or agreement to which Trustor is a party or by which Trustor or any of its properties may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Trustor is subject;

(e) The Real Estate and the Improvements and the intended use thereof by Trustor shall comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property;

(f) to the best of its knowledge and belief, there are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting Trustor or the Property which would materially impair either the Property or Trustor's ability to perform the covenants or obligations required to be performed under the Loan Documents;

(g) The Property is free from delinquent water charges, sewer use fees, taxes and assessments;

(h) The Property is free from damage caused by fire or other casualty; and

(i) No part of the Property has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending.

1.2 Defense of Title. Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if, while this Deed of Trust is in force, the title to the Property described herein and the interest of Beneficiary therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Trustor shall at Trustor's expense, take all necessary and proper steps for the defense of said title or interest, including the employment of counsel approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest.

1.3 Performance of Obligations. Trustor shall pay when due the principal of and the interest on the indebtedness evidenced by the Note and all charges, fees and other sums as provided in the

Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements that are secured by this Deed of Trust in accordance with their terms. Further, Trustor shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Trustor in connection with any other document or instrument affecting title to the Property, or any part thereof, regardless of whether such document or instrument is superior or subordinate to this Deed of Trust.

1.4 Insurance. Trustor shall, at Trustor's expense, maintain in force and effect on the Property at all times while this Deed of Trust continues in effect the following insurance, all of which must include Beneficiary as an additional insured thereunder:

(a) Insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, sprinkler leakage, motor vehicles, aircraft and smoke damage, and loss or damage from such hazards as are presently included in so-called "extended coverage" insurance policies or "Builder's Risk" insurance policies (with XCU endorsement deleted) and against vandalism, malicious mischief, theft, and against such other insurable hazards as, under good insurance practices, from time to time, are insured against for Improvements of like character in the area of the Property. The amount of such insurance shall be not less than 100% of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property, without reduction for depreciation or the outstanding balance of the Note, whichever is greater. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing same. Each policy or policies shall contain a replacement cost endorsement and such other endorsements sufficient to prevent Trustor and Beneficiary from becoming co-insurers within the terms of such insurance with respect to the Improvements;

(b) Comprehensive general liability insurance for personal injury, including, without limitation, bodily injury, death or property damage liability, on a per occurrence basis in an amount reasonably acceptable to Beneficiary, which amount shall not be less than One Million Dollars (\$1,000,000);

(c) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, if any, or other similar equipment installed in the Improvements, in an amount determined by Beneficiary, which policies shall also insure against physical damage to the Improvements arising out of an accident covered thereunder;

ts
on
ll
ce

he
of
or
ch
may
e,

he
le
ng
ws
ts
or

re
ng
ch
to
er

s,

or

in
ch

er
of
nd
ily
ed
ted
ll
or
by
he
or

ue
by
he

(d) if the Real Estate or any part thereof is situated in an area now or subsequently designed as having special flood hazards, as defined in the Flood Disaster Protection Act of 1973 as amended from time to time, flood insurance in an amount equal to the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser;

(e) Rent-loss insurance (or business interruption insurance) in amounts sufficient to compensate Trustor during a period not less than one year in which the Property may be damaged or destroyed for all Rents and Profits; and

(f) Such other insurance on the Property, or any replacements or substitutions thereof, or additions thereto, including, without limitation, such workmen's compensation insurance required by applicable state law and rent continuation insurance upon completion of construction of the Improvements, in an amount not less than six (6) months' rents, and in such amounts as may from time to time be reasonably required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated.

All such insurance shall be subject to the reasonable approval of Beneficiary as to insurance companies, amounts, content, forms of policies and expiration dates.

Trustor shall deliver to Beneficiary the original insurance policies, or copies of such insurance policies and an original certificate of insurance satisfactory to Beneficiary evidencing such insurance and any additional insurance which shall be taken out upon any part of the Property, and, except to the extent provision is actually made therefor pursuant to Section 1.6 hereof, receipts evidencing the payment of all premiums therefor (which premiums must be paid at least one (1) year in advance), and Trustor shall deliver certificates evidencing annual renewals of all such policies of insurance to Beneficiary at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Trustor further agrees that all such liability insurance policies shall name Beneficiary as an additional insured thereunder and all such casualty insurance policies shall provide that proceeds thereunder shall be payable to Beneficiary as its interest may appear pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy. Trustor further agrees that all such insurance policies shall provide for at least thirty (30) days' prior written notice to Beneficiary prior to any cancellation or termination or modification thereof. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property, all right, title and interest of Trustor in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure, or in Beneficiary or other transferee in the event of such other transfer of title. Approval of any insurance by Beneficiary shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event

i
f
t
i

p
p
a
a
f
a
d
a
d
a
n
r
nc
ar
pr
es
th
su
sh
a
ca
ju
th
hc
th
pr
Pr
an
pa
pe

pr
el.
"In
ta
ad
Tri
an
ye

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, but shall not be obligated to, procure such insurance and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary; any premiums so paid by Beneficiary shall be added to the outstanding principal balance of the Note (even if such addition results in the outstanding principal balance being in excess of the face amount of the Note), shall bear interest at the Default Rate (as defined in the Note) and shall be secured by this Deed of Trust. Beneficiary shall not be responsible for nor incur any liability for the insolvency of the insurer, even though Beneficiary has caused the insurance to be placed with the insurer after failure of Trustor to furnish such insurance.

1.5 Payment of Taxes. Trustor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.6 of this Deed of Trust, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Trustor shall furnish Beneficiary with receipts showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable default date therefor; except that Trustor may in good faith, by appropriate proceedings, contest, so long as such contest is diligently pursued, the validity, applicability or amount of any asserted tax or assessment, and pending such contest, Trustor shall not be deemed in default hereunder if Beneficiary determines, in its reasonable opinion, that non-payment of such tax or assessment will not result in the loss, forfeiture or diminution of the Property or any part thereof or any interest of Beneficiary therein and if, prior to delinquency of the asserted tax or assessment, Trustor establishes an escrow acceptable to Beneficiary adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties (which escrow shall be returned to Trustor upon payment of such taxes, assessments, interest, costs and penalties), and if Trustor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold. Trustor shall have the right to require that any such escrow established with Beneficiary be applied to the payment of any such taxes, assessments, interest, costs and penalties.

1.6 Tax and Insurance Impound Account. Upon thirty (30) days prior written notice by Beneficiary to Trustor, Beneficiary may elect to establish and maintain in effect an impound account (the "Impound Account") with Beneficiary for payment of real property taxes and assessments and insurance on the Property and as additional security for the indebtedness secured by this Deed of Trust. The Impound Account shall be in an amount initially equal to an estimate of the accrued and unpaid amount of the applicable year's taxes based on the most recent tax bill for the Property.

Trustor shall pay to Beneficiary, concurrently with and in addition to the monthly payments due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, deposits in an amount equal to the amount determined by dividing: (a) the amount of the annual real estate taxes and assessments that will next become due and payable on the Property as estimated and determined by Beneficiary, plus the amount of the annual premiums that will next become due and payable on insurance policies which Trustor is required to maintain on the Property hereunder as estimated and determined by Beneficiary, less all sums already paid therefor; by (b) the number of months to elapse before two (2) months prior to the date said taxes, assessments and insurance premiums shall become delinquent; said sums to be held by Beneficiary in the Impound Account to pay said taxes, assessments and insurance premiums before the same become delinquent. No interest or dividend shall be payable on the Impound Account. The Impound Account is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of taxes, assessments and insurance premiums in accordance with the terms hereof and beyond the allowing of due credit without interest for the sums actually received. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If the total of the Impound Account shall exceed the amount of payments actually applied by Beneficiary for the purposes of the Impound Account, such excess may be credited by Beneficiary on subsequent payments to be made by Trustor or, at the option of Beneficiary, refunded to Trustor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Trustor shall, after written notice thereof and together with the next due monthly installment under the Note, deposit with Beneficiary the full amount of such deficiency. If there is a default under this Deed of Trust, which default is not cured within any applicable grace period, Beneficiary may apply at any time the balances then remaining in the Impound Account, less such sums as will become due and payable during the pendency of the foreclosure proceedings, against the indebtedness secured hereby in whatever order Beneficiary shall direct in its absolute discretion. No such application of the Impound Account shall be deemed to cure any default of Trustor hereunder.

1.7. Casualty and Condemnation. Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting or the institution of any proceedings for eminent domain or for the condemnation of the Property, or any portion thereof. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it or for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Beneficiary. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with Trustor in adjusting any loss covered by insurance, and Trustor shall from time to time deliver to

t
r
d
E
W

r
s
a
r
c
o
t
c
i
i
A
E
t
i
s
e
r
p
p
t
b
t
cl
a
al
r
B
of
ar
at
ir
Tr
st
oi
d
p
ar
th

ar
wc
hc
ar

Beneficiary any instruments required to permit such participation. Beneficiary shall apply any sums received by it under this Section first to the payment of all its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums. In the event the Trustor is not otherwise in default hereunder, the balance of the proceeds shall be made available to Trustor for restoration or repair of the Property under such disbursement control procedures as may reasonably be prescribed by Beneficiary (including, without limitation, the deposit by Trustor with Beneficiary of any deficiency necessary in order to assure the availability of sufficient funds to pay for such repair or restoration) and in accordance with plans and specifications submitted to and approved by Beneficiary, with any remainder being applied by Beneficiary for payment of the indebtedness secured hereby in whatever order Beneficiary directs in its absolute discretion; provided, however, that if at the time of such casualty or condemnation, Trustor is otherwise in default hereunder, or under the Loan Documents, Beneficiary in its reasonable discretion after consultation with Trustor, apply the funds to the payment of the indebtedness secured hereby in whatever order Beneficiary directs in its absolute discretion, with any remainder being paid to Trustor. Any reduction in the indebtedness secured hereby resulting from Beneficiary's application of any sums received by it hereunder shall take effect only when Beneficiary actually receives such sums and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Trustor shall not be excused in the payment thereof. If Beneficiary directs Trustor to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Trustor shall promptly, at Trustor's cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions. Trustor agrees to execute and deliver, from time to time, such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation. Beneficiary is hereby irrevocably constituted and appointed the attorney-in-fact of Trustor (which power of attorney shall be irrevocable, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof), with full power of substitution to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

1.8 Mechanic's Lien. Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Property; provided, however, that Trustor shall have the right to contest in good faith any such claim or demand, provided that it does so diligently and

without prejudice to Beneficiary, and in the event Trustor shall contest any such claim or demand, Trustor shall, upon Beneficiary's request, promptly provide a bond, cash deposit or other security reasonably satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful. If Trustor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Beneficiary may do so and any and all expenses incurred by Beneficiary shall be immediately reimbursed by Trustor and, if not so reimbursed, shall be added to the outstanding principal balance of the Note (even if such addition results in the outstanding principal balance being in excess of the face amount of the Note), shall bear interest thereafter at the Default Rate (as defined in the Note) and shall be secured by this Deed of Trust.

1.9 Rents and Profits. As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Trustor hereby absolutely and presently assigns to Beneficiary all existing and future Rents and Profits and, with respect to said existing and future Rents and Profits, Trustor hereby grants to Beneficiary the sole, exclusive and immediate right to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Trustor does hereby irrevocably make, constitute and appoint Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any liability or incapacity suffered by Trustor subsequent to the date hereof); it being understood that Beneficiary shall be without liability for any loss which may arise from uncollectible Rents and Profits, proceeds or other payments so long as Beneficiary shall act on the Property with ordinary prudence. Trustor irrevocably consents that the respective payors of the Rents and Profits shall, upon demand and notice from Beneficiary of Trustor's default hereunder, pay said Rents and Profits to Beneficiary without liability to such payor for the determination of the actual existence of any default claimed by Beneficiary. However, upon the occurrence of an event of default by Trustor hereunder, which default is not cured within any applicable grace period, Beneficiary, to the extent otherwise permitted by law may terminate Trustor's license in its discretion at any time without notice to Trustor and may thereafter collect the Rents and Profits itself or by an agent or receiver. No action taken by Beneficiary to collect any Rents and Profits shall make Beneficiary a "mortgagee-in-possession" of the Property, unless Beneficiary personally or by agent enters into actual possession of the Property. Possession by a court-appointed receiver shall not be considered possession by Beneficiary. All Rents and Profits collected by Beneficiary or a receiver shall be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the payment of the indebtedness secured hereby in accordance with the terms of the Note. Trustor has executed an Assignment of Rents and Leases dated

of even date herewith (the "Assignment of Rents and Leases") in favor of Beneficiary covering all of the right, title and interest of Trustor, as landlord, lessor or licensor, in and to any leases, licenses and occupancy agreements relating to all or portions of the Property. All rights and remedies granted to Beneficiary under the Assignment of Rents and Leases shall be in addition to and cumulative of all rights and remedies granted to Beneficiary hereunder.

1.10 Leases and Licenses

(a) Prior to the execution of any lease of space in the Property after the date hereof, Trustor shall submit to Beneficiary, for Beneficiary's prior approval, a copy of the Form of Lease or Form of Master Lease that the Trustor plans to use in leasing space in the Property, together with the rental per unit type, additional rental items, any rent concessions and security deposit amounts. Trustor shall also submit to Beneficiary for Beneficiary's approval prior to the execution thereof any proposed lease, license or occupancy agreement of the Property or any portion thereof that materially differs from the form lease approved by Beneficiary. Trustor shall not execute any lease, license or occupancy agreement of all or a substantial portion of the Property, except for an actual occupancy by the tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases, licenses and occupancy agreements of the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Trustor shall furnish to Beneficiary, within thirty (30) days after a written request by Beneficiary to do so, a written statement containing the names of all tenants, of the Property, the commencement and expiration dates of their respective leases, the space occupied and the rentals or fees payable thereunder. In addition, Trustor shall promptly forward to Beneficiary copies of any notices of default received from any tenant or lessee under any such lease, license, tenancy or occupancy agreement and shall not do or suffer to be done any act that might result in a default by the Landlord, under any such lease or occupancy agreement or allow the tenant or lessee thereunder to withhold payment or rent and shall not further assign any such lease, tenancy or occupancy agreement or any such rents.

(b) Unless Beneficiary agrees otherwise, each lease and occupancy agreement executed after the date hereof affecting any of the Property must provide, in a manner approved by Beneficiary, that the tenant or lessee as appropriate, will recognize as its landlord or lessor any person succeeding to the interest of Trustor upon any foreclosure of this Deed of Trust.

(c) To the extent otherwise permitted by law, upon the occurrence of any event of default under this Deed of Trust which continues uncured beyond any applicable grace period, forthwith, upon demand of Beneficiary, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Deed of Trust, Trustor shall surrender to Beneficiary

and Beneficiary shall be entitled to take actual possession of the Property, or any part thereof, personally or by its agents or attorneys. In such event, Beneficiary shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into leases of the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as such mortgagee in possession may deem desirable, and Trustor expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any sale of the Property pursuant to decree rendered in such judicial proceedings; it being the intention of Trustor that while Beneficiary is a mortgagee in possession of the Property pursuant to an order or decree entered in such judicial proceedings, Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Beneficiary and with like effect as if such leases had been made by Trustor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest and shall not be revocable by Trustor. In connection with any action taken by Beneficiary pursuant to this Section 1.10(c), Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property unless such loss is caused by the gross negligence or willful misconduct of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any lease or tenancy agreement covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, agree to indemnify Beneficiary for, and to hold Beneficiary harmless from, any and all liabilities, loss or damage which may or might be incurred by Beneficiary under any such lease or tenancy agreement or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease agreement except those arising from the gross negligence or willful misconduct of Beneficiary. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, shall be added to the outstanding principal balance of the Note (even if such addition results in the outstanding principal balance being in excess of the face amount of the Note), shall bear interest at the Default Rate (as defined in the Note), shall be secured hereby and shall be immediately due and payable to Beneficiary by Trustor. Nothing in this Section 1.10(c) shall impose any duty, obligation or responsibility upon Beneficiary for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such lease agreement, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties or

for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger, except during the period of Beneficiary's actual possession and operation of the Property pursuant hereto. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this Section 1.10(c).

1.11 Alienation and Further Encumbrances: In the event Trustor shall sell, convey, transfer, dispose of, alienate, hypothecate, lease for a term in excess of ten (10) years (except in the ordinary course of business) or substitute or transfer the interest of its general partner or fifty percent (50%) or more of its limited partnership interests or further encumber the Property, or any part thereof or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first obtained, which consent will not be unreasonably withheld, Beneficiary shall have the right at its option to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable.

1.12 Payment of Utilities, Assessments, Charges, Etc. Trustor shall pay when due all utility charges which are incurred by Trustor or which may become a charge or lien against the Property for gas, electricity, water and sewer services furnished to the Property and which are not otherwise the responsibility of the lessees or tenants, and all other assessments or charges of a similar nature, and all assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

1.13 Access Privileges and Inspections. Representatives of Beneficiary and, during construction on the Property, an independent architect or engineer for Beneficiary shall have full and free access to the Property at all reasonable times for the purposes of inspecting the Property and the constructions being performed thereon and of examining the books and records of Trustor relating to the Property. Trustor shall lend assistance to all such representatives of Beneficiary and shall pay the fees of Beneficiary's independent inspecting architect or engineer.

1.14 Waste. Trustor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Trustor shall maintain the Property in good condition and repair less reasonable wear and tear excepted. No Improvements may be removed, demolished or, after completion of the original construction thereof, materially altered, without the prior written consent of Beneficiary. No personal property in which Beneficiary has a security interest may be removed from the Property unless it is immediately replaced by similar property of at least equivalent value on which Beneficiary will immediately have a valid first lien and security interest.

1.15 Zoning. Without the prior written consent of Beneficiary which will not be unreasonably withheld, Trustor shall not seek, make, suffer or consent to or acquiesce in any change in the zoning or conditions of use of the Property. Trustor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property. Trustor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. If, under applicable zoning provisions, the use of all or any portion of the Property is or becomes a nonconforming use, Trustor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Beneficiary.

1.16 Books and Records. Trustor shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Beneficiary and its duly authorized representatives shall have the right to examine, copy and audit Trustor's records and books of account at all reasonable times, at Beneficiary's cost and expense. Further, Trustor shall furnish to Beneficiary such financial information as to Trustor, any general partner of Trustor and any person or entity executing a contract of guaranty in connection with the loan evidenced by the Note and secured hereby as Beneficiary may reasonably require. Without limiting the generality of the foregoing, so long as this Deed of Trust continues in effect, Trustor shall, on a quarterly basis, on or before the twentieth (20th) day after the end of each calendar quarter obtain and deliver to Beneficiary a copy of Trustor's internal monthly operating statement pertaining to the Property for the preceding quarter, which quarterly operating statement shall be certified to Beneficiary by Trustor. In addition, from and after the date hereof and within seventy-five (75) days after the end of each year of the loan evidenced by the Note and secured hereby, Trustor shall obtain and deliver to Beneficiary a certified statement of the income and expenses relating to the Property for the preceding year of the loan evidenced by the Note and secured hereby, which statement shall be compiled by and certified to Beneficiary by Trustor's certified public accountant, as approved by Beneficiary. If any of the items required above are not furnished to Beneficiary within the applicable time periods set forth above, or if Beneficiary shall be reasonably dissatisfied with any of the same, or in the event of a default hereunder, in addition to any other rights and remedies of Beneficiary contained herein and in the other Loan Documents, Beneficiary shall have the right, but not the obligation, to obtain any of the same by means of an audit by an independent certified public accountant selected by Beneficiary, in which event Trustor agrees to pay, or to reimburse Beneficiary for, any expense of said accountant and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Additionally, Trustor shall deliver to Beneficiary copies of Trustor's annual informational tax returns within thirty (30) days after filing the same with the Internal Revenue Service.

r
r
F
H
a
F
E
a
f
i
O
E

e.
o.

aj
co
of
w.
N.
Tr
su
p.
B.
B.
d.
su
di
ad
ad
ex
in
Tr
li
af
en
Be
ot
to

of
all
in
all
of
y.
of
y.
any
tor
ned

oks
irs
its
ing
es
ds
st
ch
or
in
as
ty
t,
th
er
ng
r,
to
of
he
in
nd
an
be
ed
ms
he
e
a
of
s,
in
ed
or
id
on
ch
of
s

1.17 Further Documentation. Trustor shall, on the written request of Beneficiary: (a) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents and to, subject to the liens and security interest hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Beneficiary to protect the lien or the security interest hereunder against the rights or interests of third persons; and (d) promptly furnish to Beneficiary, upon Beneficiary's request, a duly acknowledged written statement setting forth all amounts due on the indebtedness secured by this Deed of Trust and stating whether any offsets or defenses exist, and containing such other matters as Beneficiary may reasonably require.

1.18 Defense of Actions. Trustor shall, at its own expense, appear in and defend any action or proceeding that might affect Beneficiary's security or the rights or powers of Beneficiary or that purports to affect any of the Property.

1.19 Reimbursement to Beneficiary. Trustor shall pay all appraisal fees, recording fees, title policy fees, uniform commercial code search fees, escrow fees, attorneys' fees and all other costs and expenses of every character incurred in connection with the closing and the administration of the loan evidenced by the Note and secured hereby or otherwise attributable or chargeable to Trustor as owner of the Property, and if Trustor defaults in any such payment, which default is not cured within any applicable grace period, Beneficiary may pay the same and Trustor shall reimburse Beneficiary for all such costs and expenses incurred or paid by Beneficiary, together with interest thereon at the Default Rate (as defined in the Note) from and after the date of Beneficiary's making such payment until reimbursement thereof by Trustor. Any such sums disbursed by Beneficiary, together with interest thereon, shall be added to the outstanding principal balance of the Note (even if such addition results in the outstanding principal balance being in excess of the face amount of the Note) and shall be additional indebtedness of Trustor secured by this Deed of Trust. Further, Trustor shall promptly notify Beneficiary in writing of any litigation or threatened litigation of which it has actual knowledge affecting the property, or any other demand or claim which, if enforced, could materially impair or threaten to impair Beneficiary's security hereunder. Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if Trustor fails to perform any of its covenants or agreements contained in this Deed

of Trust, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Beneficiary's interest in the Property or Beneficiary's right to enforce its security, then Beneficiary may, at its option and upon written notice to Trustor, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants (without, however, waiving any default of Trustor). Trustor agrees to pay upon written demand all reasonable out-of-pocket expenses of Beneficiary thus incurred (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Rate (as defined in the Note) from and after the date of Beneficiary's making such payment until reimbursement thereof by Trustor. Any sums disbursed by Beneficiary together with interest thereon, shall be added to the outstanding principal balance of the Note (even if such addition results in the outstanding principal balance being in excess of the face amount of the Note) and shall be additional indebtedness of Trustor secured by this Deed of Trust. Trustor shall indemnify and hold Beneficiary harmless from and against all loss, cost and expenses with respect to any default hereof, any liens (i.e., judgments, mechanics' and materialmen's liens, or otherwise), charges and encumbrances filed against the Property, and from any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Property or any nuisance made or suffered thereon, including, in any case, attorneys' fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level. This Section shall not be construed to require Beneficiary to incur any expenses, make any appearances or take any actions.

1.20 Personal Property. This Deed of Trust is also intended to encumber and create a security interest in any and all of the Property which is personal property owned by Trustor and now or hereafter located on or used in connection with the Property, including, but not limited to, all equipment, fixtures, furniture, appliances and articles of personal property owned by Trustor and now or hereafter located on, attached to or used in and about the Improvements which are necessary to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended and such other goods and chattels and personal property owned by Trustor as are ever to be used or furnished in operating the Improvements, or the activities conducted therein, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same shall be attached to the Improvements. It is hereby agreed that to the extent permitted by law, all of the foregoing property and fixtures are to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing items which are leased by Trustor. Trustor shall promptly replace all worn out or obsolete fixtures or personal property subject to the lien and/or security interest of this Deed of Trust with fixtures or personal

property comparable to the worn out or obsolete fixtures or personal property when new and will not, without the prior written consent of Beneficiary remove from the Property any fixtures or personal property subject to the lien and/or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created this time Deed of Trust and the other Loan Documents. Trustor shall, from time to time, upon the written request of Beneficiary, supply Beneficiary with a current inventory of all of the personal property in which Beneficiary is granted a security interest hereunder, in such detail as Beneficiary may require.

1.21 Security Agreement. This Deed of Trust constitutes a Security Agreement and fixture filing between Trustor and Beneficiary with respect to all personal property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under the Nebraska Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of any default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted by applicable law, including at a sale held in conjunction with the sale of the Property by Beneficiary as provided for in this Deed of Trust, and Beneficiary shall further have all other rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary. Any person, including both Trustor and Beneficiary, shall be eligible to purchase any part or all of such personal property at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by the Trustor and shall include Beneficiary's attorneys' fees and legal expenses. Beneficiary shall have the right to enter upon the Real Estate and Improvements or any real property where any personal property which is the subject to the security interest granted herein is located to take possession of, assemble and collect such personal property or to render it unusable, or Trustor, upon demand of Beneficiary, shall assemble such personal property or to render it unusable, or Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at the Property, a place which is hereby deemed to be reasonably convenient to Beneficiary and Trustor. If notice is required by law, Beneficiary shall give Trustor at least five (5) days' prior written

notice of the time and place of any public sale or other disposition of such personal property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this Section 1.21 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale under Section 3.2 hereof upon giving the same notice with respect to the sale of the personal property hereunder as is required under said Section 3.2.

Furthermore, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to the Nebraska Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Beneficiary, be sold as a whole; and

(b) It shall not be necessary that Beneficiary take possession of the aforementioned personal property or any part thereof prior to the time that any sale pursuant to the provisions of this Section 1.21 is conducted and it shall not be necessary that said personal property or any part thereof be present at the location of such sale; and

(c) Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness secured hereby or as to the occurrence of any default, or as to Beneficiary having declared all of the indebtedness secured hereby to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(d) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

1.22 Easements and Rights-of-Way. Trustor shall not grant any easement or right-of-way with respect to all or any portion of the property without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way.

1.23 Construction of the Improvements; Compliance with Laws. Trustor shall diligently construct to completion, as defined in the

t
c
F
t
F
t
c
o
c
a
E
E
r
c
r
p
m
B
d
a

B
s
o
ar
Be
m
wi
tc

ion
any
be
ded
uch
ade
to
le
ier
the
aid

in
ary

ty

ake
rt
ns
at
he

ls
nt
he
t,
ed
nd
ily
he

re
to
nd
of

ny
he
ch
ny
ny
he
on
of

3.
ne

Construction Loan Agreement, the improvements to be constructed on the Real Estate in substantial accordance with the Plans and Specifications, as defined in the Construction Loan Agreement, and, in accordance with the terms and provisions of the Construction Loan Agreement. Trustor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use or operation of the Real Estate and/or the Improvements, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Real Estate and the Improvements and any environmental or ecological requirements; provided, however, that, so long as Trustor is not otherwise in default hereunder, Trustor may, upon providing Beneficiary with security satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement. Trustor will not use or occupy, or allow the use of occupancy of, the Real Estate or the Improvements in any manner which violates any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

1.24 Additional Taxes. In the event of the enactment after this date of any law of the State of Nebraska or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the Beneficiary or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust or the indebtedness secured hereby or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary: (a) it might be unlawful to require Trustor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable in full ninety (90) days from the giving of such notice.

1.25 Management. Unless otherwise agreed in writing by Beneficiary during the term of the loan evidenced by the Note and secured hereby, the management of the Property shall be by Trustor or an affiliate of Trustor or by a professional management company approved by Beneficiary and pursuant to an agreement approved by Beneficiary. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management

contract in accordance with its terms and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. All Rents and Profits generated by or derived from the Property shall be utilized in the first instance solely for current expenses directly attributable to the Property, including, without limitation, for current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the Property have been fully paid and satisfied.

c
t

t
d
h

1.26 Secured Indebtedness. It is understood and agreed that this Deed of Trust shall secure payment of not only the indebtedness evidenced by the Note secured hereby but also any and all renewals, extensions, substitutions and replacements of said Note, any and all indebtedness and obligations arising pursuant to the terms hereof, any and all future advances made under the Note, this Deed of Trust and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, including, without limitation, the Assignment. The lien of any future advances shall relate back to the date of this Deed of Trust.

w
u
a
d
d

T

1.27 Trustor's Waivers. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, and Trustor, for Trustor and Trustor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of election or intention to mature or declare due the whole of the secured indebtedness, and all rights to a marshalling of the assets of Trustor, including the Property, to a sale in inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created. Trustor shall not have or assert any right under any statute or rule of law pertaining to the marshalling of assets, sale in inverse order of alienation, the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Beneficiary under the terms of this Deed of Trust to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. Trustor further waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust or to collect any indebtedness secured hereby to the fullest extent permitted by law. If any law referred to in this Section 1.27 and now in force, of which Trustor or Trustor's representatives, successors and assigns, and such other persons claiming any interest in the Property might take advantage

t
b
t
w
e
i

d
a

g
f
a
t
t
T
p
p
r
ar

g
ar
Ti
or
ar
cc

despite this Section 1.27, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 1.27.

ARTICLE II
EVENTS OF DEFAULT

2.1 Events of Default. Trustor shall be in default under this Deed of Trust if any of the following events occur (unless such default is cured within any applicable grace period specified herein):

(a) Nonpayment. Trustor shall delay in the payment when due of any monthly installment of principal and/or interest due under the Note, whether due on the date provided for therein or by acceleration or otherwise (unless cured within ten (10) days of such default), or Trustor shall fail to pay when due any other amounts due hereunder.

(b) Other Defaults For Which There is No Grace Period. The occurrence of any of the following events:

(1) any representation or warranty made in writing to Beneficiary by Trustor or by any guarantor of the loan evidenced by the Note in connection with the making of the loan evidenced by the Note or any certificate, statement or report made in compliance with this Deed of Trust by Trustor or any guarantor of the loan evidenced by the Note shall prove at any time to have been incorrect in any material respect when made; or

(2) there shall occur a default or an event of default under the terms of any of the other Loan Documents or any other document executed in connection herewith (unless cured within any applicable grace period as herein or therein provided); or

(3) Trustor, any general partner of Trustor or any guarantor of the loan evidenced by the Note shall make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt or admit in writing the inability to pay debts as they mature, petition or apply to any tribunal for the appointment of a receiver or any trustee or similar officer for Trustor, any such general partner of Trustor, any such general partner of Trustor or any such guarantor, or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or

(4) Trustor, any general partner of Trustor or any guarantor of the loan evidenced by the Note shall allow the appointment of a receiver or any trustee or similar officer for Trustor, any such general partner of Trustor or any such guarantor or for any substantial part of any of the properties of Trustor, of any such general partner of Trustor or of any such guarantor to continue undischarged for a period of sixty (60) days or more; or

st
.
y
es
ut
es
er
or
ed
le

at
ss
s,
ll
f,
st
ne
ut
ll

do
n,
or
y,
's
ns
ed
n,
to
ll
he
he
of
d.
le
se
on
t,
er
ms
on
rt
is
he
er
re
he
ss
aw
:or
er
ge

(5) there shall be a sale, conveyance, transfer, disposition, alienation, hypothecation, leasing (except in the ordinary course of business) or further encumbrancing of the Property, or any portion thereof or any interest therein, by Trustor in violation of Section 1.11 hereof; or

(6) Trustor abandons all or a portion of the Property (such abandonment shall constitute an assignment to Beneficiary, at Beneficiary's option, of Trustor's interest in any lease or contract now or hereafter affecting the Property or any part thereof so abandoned); or

(7) the Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Beneficiary, in its reasonable determination, is not adequately protected from any loss, damage or risk associated therewith; or

(8) the holder of any lien or security interest on the Property (without implying the consent of Beneficiary to the existence or creation of any such lien or security interest), whether superior or subordinate to this Deed of Trust, declares a default thereunder and accelerates the loan secured thereby and/or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

(9) this Deed of Trust or any of the other Loan Documents shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void.

(c) Defaults For Which There Is A Grace Period. The occurrence of any of the following events unless cured within thirty (30) days of the giving of written notice to Trustor thereof:

(1) any litigation or proceeding is pending or threatened which may affect the validity or priority of any lien or security interest of Beneficiary for the loan evidenced by the Note or which may materially adversely affect the ability of Trustor or of any guarantor of the loan evidenced by the Note to perform its obligations under the Note, this Deed of Trust or the other Loan Documents; or

(2) any action shall be taken by any governmental authority that would materially and adversely affect the use or occupation of the Property for its intended purpose; or

(3) a mechanic's, materialmen's or other similar lien shall be filed against the Property, or any part thereof, unless adequate security is posted therefor as herein provided; or

(4) Trustor's failure to comply with any other covenants or agreements contained herein, in the Note or in any of the other Loan Documents and not herein specifically referenced,

c
c
c
I
i
E
t
m
s
t
o

D
a

h
d

b:
c:
a
a
c
t
t
P
o
P
l
w:
s
ir
w:
B
Tr
p
ma
or
t
ar
e
h
ha
mi

including, without limitation, Trustor's failure to perform or observe any covenant contained in Article I hereof; or

r,
the
the
:or

(5) there shall be any attachment, execution or other judicial seizure of, or affecting, the properties and assets of Trustor or of any guarantor of the loan evidenced by the Note, or affecting the Property or any part thereof.

the
to
any
ny

In the event of any default under this Section 2.1(c), Trustor may, in lieu of curing such default, make provisions acceptable to Beneficiary in its sole discretion for the payment of money required to cure the default or, if the default cannot be cured by payment of money, provide Beneficiary with such other assurances as Beneficiary shall reasonably require that the default will be timely cured or that Beneficiary is not jeopardized in any manner by the continuance of the default.

is
or
ly
on,
ed

ARTICLE III
REMEDIES

on
the
),
a
or
of

3.1 Remedies Available. If Trustor is in default under this Deed of Trust and such default has not been cured within any applicable grace period, Beneficiary may, at its option:

(a) Declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest or notice of any kind;

an
ce

(b) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, and do any and all acts which may be desirable in Beneficiary's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and, with or without taking possession of the Property, sue for, or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorney's fees, against the indebtedness secured hereby in such order as Beneficiary may determine, without in any way curing or waiving any default of Trustor. In connection with any action taken by Beneficiary pursuant to this subparagraph, Beneficiary shall not be liable to Trustor for any loss sustained by Trustor resulting from any failure to let the Improvements, or any part thereof, or from any other act or omission of Beneficiary in managing the Property; nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any lease or tenancy agreement covering the Real Estate or the Improvements, or any part thereof, or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, agree to indemnify Beneficiary for, and to hold Beneficiary harmless from, any and all liabilities, loss or damage which may or might be incurred by Beneficiary under any such lease or tenancy

the
ty

or
or
te
or
ts
an

al
or

ar
f,

er
of
d,

agreement or under this Deed of Trust or the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease agreement. Should Beneficiary incur any such liability, the amount thereof, including costs, expenses and attorney's fees, shall be secured hereby and shall be a demand obligation hereunder. Nothing in this subparagraph shall impose on Beneficiary any duty, obligation or responsibility to Trustor for the control, care, management or repair of the Property, or for the carrying out or any of the terms and conditions of any such lease agreement; nor shall it operate to make Beneficiary responsible or liable to Trustor for any waste committed on the Real Estate or the Improvements by the tenants or by any other parties or for any dangerous or defective condition of the Real Estate or the Improvements, or for any negligence in the management, upkeep, repair or control of the Real Estate or the Improvements. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the the Property taken under this subparagraph. Any sums expended by Beneficiary under this Section, including, without limitation, sums expended with respect to completion of any construction on the Real Estate shall be a demand obligation hereunder owing by Trustor and if not paid on demand, shall be added to the principal balance of the Note and shall bear interest thereafter at the Default Interest Rate;

(c) Commence a judicial action to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, or to specifically enforce its provisions or any of the obligations secured by this Deed of Trust;

(d) Elect to foreclose by the exercise of the power of sale and deliver to Trustee a written declaration of default and demand that Trustee exercise the power of sale and cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law; and/or

(e) Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

3.2 Construction of Improvements. Without limiting the foregoing, upon the occurrence of an Event of Default hereunder which has not been cured within any applicable grace period, Beneficiary shall have the right to take possession of the Property and to perform any and all work Beneficiary deems advisable or necessary to protect said improvements and complete construction of the improvements to be constructed thereon pursuant to the terms of the Construction Loan Agreement in such manner and on such terms, subject to anything hereinafter expressly set forth to the contrary, as Beneficiary shall determine in its sole subjective discretion. All sums expended by Beneficiary for such construction shall be added to the outstanding principal balance of the Note and shall bear interest from and after the date so advanced until paid at the

F
c
F

F
a
t

i
a
a
c

c
T

a
w

o
T

Default Interest Rate. Trustor hereby irrevocably constitutes and appoints Beneficiary its attorney-in-fact with full power and authority upon the occurrence of a default hereunder, under the Note, the Construction Loan Agreement or any of the other Loan Documents, which has not been cured within any applicable grace period to:

(1) take possession of, protect and complete construction of said improvements;

(2) make such additions, changes and corrections in the plans and specifications as deemed necessary or desirable by Beneficiary, in its sole subjective discretion, to complete said improvements without loss to Beneficiary or to effect a reduction of the costs of any item therein which Beneficiary determines to be necessary in order to provide for a sale of all or portions of the Property;

(3) employ such contractors, subcontractors, agents, architects and other persons that Beneficiary deems necessary or desirable, in its subjective judgment, to complete said improvements;

(4) employ watchmen to protect the Property from injury;

(5) pay, settle or compromise all existing invoices, charges or claims relating to said improvements as Beneficiary deems necessary, in its sole subjective discretion, for completion of said improvements, the clearing of title to the Real Estate and for protection of Beneficiary's interest in the Property;

(6) prosecute and defend all actions and proceedings in connection with construction of said improvements and apply the proceeds of any judgment in any such action against any of the indebtedness secured hereby;

(7) execute, acknowledge and deliver all instruments and documents in the name of Trustor and do and perform all acts in the name of Trustor that Beneficiary deems necessary or appropriate, in its sole subjective discretion, to complete the construction of said improvements; and

(8) do any and every act with respect to the construction of said Improvements which Trustor may do and in Trustor's behalf.

It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked.

3.3 Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee as above provided and shall deposit with Trustee this Deed

or
ids
of
or
ny
y,
s,
r.
y,
e,
ny
ll
or
he
ve
ny
al
nd
he
by
ms
al
nd
of
st

ed
of
ts

of
nd
ll
is

le
in

he
ar
d,
y
or
of
of
s,
,
ne
de
l
ne

of Trust, the Note, all other notes, if any, secured hereby and all documents evidencing expenditures secured hereby.

(a) Trustee shall cause written notice of default to be filed for record. After the lapse of such time as may then be required by law following the recordation of said notice of default, Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. Trustee or the attorney for Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in said notice of sale, either as a whole or in separate parcels, and in such order as Trustee may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale. Trustee shall deliver to such purchaser its deed conveying the Property, or portion thereof, so sold, but without any covenant or warranty, express or implied. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale.

(b) The proceeds of any sale under this Deed of Trust shall be applied in the following manner:

(1) Payment of the costs and expenses of the sale, including, but not limited to, Trustee's fees in an amount not to exceed one half of one percent (.5%) of the sales price or fair market value of the Property at the time of sale, whichever is greater, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee.

(2) Payment of all sums expended by Beneficiary under the terms of this Deed of Trust and any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate (as defined in the Note).

(3) Payment of the secured indebtedness and all other obligations of Trustor secured by this Deed of Trust, including, without limitation, interest at the Default Rate (as defined in the Note). The secured indebtedness and all other obligations of Trustor secured by this Deed of Trust may be bid by Beneficiary in the event of a foreclosure sale hereunder, including, without limitation, interest at the Default Rate, and any and all prepayment charge, fee or provision required to be paid under the Note in order to prepay principal, and attorneys' fees, if permitted by applicable law, and any other amounts due and unpaid to Beneficiary under the Loan Documents.

(4) Payment of junior trust deeds, mortgages or other lien holders having an encumbrance on the Property.

(5) The remainder, if any, to the person or persons legally entitled thereto.

F
I
F
F
C
E
f
h
w
n
c
h
c
c
p
a
m
r
E
(
i
u
s
t
e
p
l
a
e
m
t
r
C
m
e
w
m
r
a
r
f
t
i
o
f
c
T
r
u
o
b
w

all

be
be
lt,
the
for
che
s a
may
in
e.
rty
all
or
cy,
or

ist

e,
to
ir
is
er
of

ry
its
the

ll
t,
as
er
by
g,
ll
the
ed
to

or

or

3.4 Receiver. In addition to all other remedies herein provided for, Trustor agrees that upon the occurrence of a default hereunder or under the Note or under any of the other Loan Documents, and if the same is not cured within any applicable grace period, Beneficiary shall, as a matter of right, be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of the Property or otherwise, and without regard to the value of the Property or the solvency of Trustor or any person or persons liable for the payment of the indebtedness secured hereby. Trustor does hereby consent to the appointment of such receiver or receivers, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege it may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any money advanced by Beneficiary in connection with any such receivership shall be a demand obligation owing by Trustor to Beneficiary, shall be added to the outstanding principal balance (being in excess of the face amount of the Note), shall bear interest from the date of making such advancement by Beneficiary until paid at the Default Rate (as defined in the Note) and shall be secured by this Deed of Trust and by every other instrument securing the secured indebtedness. The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Property to the same extent and in the same manner as Trustor might lawfully do. The receiver, personally or through its agents or attorneys, may exclude Trustor and its agents, servants and employees wholly from the Property and may have, hold, use, operate, manage and control the same and each and every part thereof, and in the name of Trustor or Trustor's agents, may exercise all of their rights and powers and use all of the then existing materials, current supplies, stores and assets and, at the expense of Trustor, maintain, restore, insure and keep insured the properties, equipment, and apparatus provided or required for use in connection with the business or businesses operated on the Property and may make all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as the receiver may deem judicious. Such receivership shall, at the option of Beneficiary, continue until full payment of all indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Deed of Trust and expiration of any applicable redemption period.

3.5 Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Trustor, or Trustor's representatives, successors or assigns, are occupying or using the Property, or any part thereof, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the

will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of the Property upon the exercise of such option, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county of the State of Nebraska in which the Property is located.

3.6 Notice to Account Debtors. Beneficiary may, at any time after default by Trustor hereunder, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Trustor included in the Property to pay Beneficiary directly.

3.7 Cumulative Remedies. All remedies contained in this Deed of Trust are cumulative, and Beneficiary also has all other remedies provided at law or in equity or in any other of the Loan Documents. No act of Beneficiary shall be construed as an election to proceed under any particular provision of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default by Trustor. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.8 Payment of Expenses. Trustor shall pay all of Beneficiary's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges.

ARTICLE IV
MISCELLANEOUS TERMS AND CONDITIONS

4.1 Time of Essence. Time is of the essence with respect to all provisions of this Deed of Trust.

4.2 Charge for Statement. Trustor agrees to pay Beneficiary a reasonable charge for giving any statement as to the status of the indebtedness secured hereby.

4.3 Certain Powers of Trustee. At any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may: (a) reconvey any part of the Property; (b) consent in writing to the making of any subdivision map or plat thereof; (c) join in granting any easement thereon; or (d) join in any extension agreement or any agreement subordinating the lien hereof.

w
F
t
c
r

t
r
p
a
b

t
t
e
o
s
s
t
p
a

t
a
c
l
s
d
r
e

cc
ur
p
de
de
F
de
r
ir
D
ac
he
d
b

ar

4.4 Certain Rights of Beneficiary. Without affecting Trustor's liability for the payment of any of the obligations secured by this Deed of Trust, Beneficiary may from time to time and without notice to Trustor: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of said indebtedness; or (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby

4.5 Acceptance by Trustee. 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 hereof of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

4.6 Substituted Trustee. Beneficiary 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 Beneficiary and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name and address of the new Trustee.

4.7 Late Charge. As provided in the Note there shall be due to Beneficiary a late charge of five percent (5%) of the amount of any payment which is received by Beneficiary so as to incur late charge as set forth in the Note and all such late charges are secured hereby. Trustor acknowledges that it would be extremely difficult or impracticable to determine Beneficiary's actual damages resulting from any late payment and this late charge is a reasonable estimate of those damages.

4.8 Notices. Any notice, request, demand or other communication required or permitted hereunder, under the Note or under any of the other Loan Documents (unless otherwise expressly provided therein) shall be in writing and shall be effective upon delivery of the same in person to the intended addressee, or upon deposit of the same with an overnight courier service (such as Federal Express) for delivery to the intended addressee or upon deposit of the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address shown on the first page of this Deed of Trust, or to such different address as the intended addressee shall have designated by written notice sent in accordance herewith and actually received by the other party at least ten (10) days in advance of the date upon which such change of address shall be effective.

4.9 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Trustor and the

representatives, successors and assigns of Trustor, including all successors in interest of Trustor in and to all or any part of the Property, and shall insure to the benefit of Beneficiary and their respective successors, substitutes and assigns and shall constitute covenants running with the land. All references in this Deed of Trust to Trustor or Beneficiary shall be deemed to include all such parties' representatives, successors and assigns, and the term "Beneficiary" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants, of any of the indebtedness secured hereby. If Trustor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Trustor.

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

4.11 Gender. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the context otherwise requires.

4.12 Waiver. Beneficiary shall not be deemed to have waived any provision of this Deed of Trust, of the Note secured hereby or of any of the other Loan Documents unless such waiver is in writing and is signed by Beneficiary. Without limiting the generality of the preceding sentence, Beneficiary's acceptance of any payment with knowledge of a default by Trustor shall not be deemed a waiver of such default. No waiver by Beneficiary of any default on part of Trustor or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and every such right and power may be exercised from time to time.

4.13 Section Headings. The heading of the sections and paragraphs of this Deed of Trust are for convenience only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.14 Governing Law. This Deed of Trust will be governed by and construed in accordance with the laws of the State of Nebraska.

4.15 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the State of Nebraska, the period shall be deemed to end on the next succeeding business day.

i
I
i
h
t
E
F
R
a
w
c
c
t
b
d
I
T
a
d
a

4.16 Relationship of the Parties. The relationship between Trustor and Beneficiary is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.17 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

4.18 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Deed of Trust.

4.19 Cross Default. A default hereunder which has not been cured within any applicable grace period shall be a default under each of the other Loan Documents.

4.20 Construction Loan Agreement. This Deed of Trust secures advances of funds to be used primarily in the construction of improvements on the Real Estate in accordance with the Construction Loan Agreement, and is intended to create a construction security interest in the Property in favor of Beneficiary.

4.21 Signs. Beneficiary shall, from and after the date hereof, have the right to erect and continuously maintain a sign on the Real Estate stating that financing is being provided by Beneficiary (provided that any such sign shall comply with all applicable laws, statutes, regulations and covenants affecting the Property) or, alternatively, Beneficiary shall have the right to require Trustor to include such information, in form and substance approved by Beneficiary, in any sign being erected by Trustor on, or with respect to, the Real Estate. Further, Beneficiary may, at its option, publicize the financing of the Property by the placing of advertisements in newspapers or other media.

4.22 Personal Liability. Notwithstanding anything to the contrary contained herein, Trustor shall have personal liability for the obligation to pay any principal, interest or other sums secured by this Deed of Trust or for the obligation to observe, perform or discharge any of the terms, covenants or conditions contained in the Loan Documents. Beneficiary shall have full recourse against Trustor and Trustor shall be personally liable for and will promptly account to Beneficiary for all rents, issues, profits and income derived from the Property and received by Trustor that accrue from and after, or were in existence at the time of, the occurrence of a

default under any of the Loan Documents, which default is not cured and results in the ultimate foreclosure of the liens and/or security interests under this Deed of Trust and/or other acquisition of the Property in lieu of foreclosure and/or any other enforcement by Beneficiary of any remedy hereunder or under any of the other Loan Documents, notwithstanding any delay on the part of Beneficiary in the exercise of any of such rights. Nothing herein contained shall be construed to: (a) be a release or impairment of the indebtedness secured hereby or of the lien of this Deed of Trust; (b) prevent Beneficiary from exercising and enforcing any other remedy allowed at law or in equity or by any statute or by the terms of any of the Loan Documents; (c) prevent Beneficiary from enforcing any personal liability or other available remedy against Trustor for any separate certificate, indemnity, bond, guaranty or affidavit issued by Trustor to Beneficiary concurrently with the execution of the Note; (d) prevent Beneficiary from recovering any funds, damages or costs (including, without limitation, reasonable attorneys' fees) incurred by Beneficiary as a result of fraud or intentional misrepresentation by or on behalf of Trustor, as a result of waste committed on the Property or as a result of damages to the Property caused by Trustor's negligence; and/or (e) prevent Beneficiary from recovering any condemnation or insurance proceeds, or other similar funds or payments attributable to the Property, which under the terms of this Deed of Trust or any of the other Loan Documents should have been paid to Beneficiary but which may have been misappropriated by Trustor.

4.23 Interest. All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of any of the indebtedness secured hereby or otherwise, will the interest contracted for, charged, received paid or agreed to be paid to Beneficiary exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary will be reduced to the maximum amount permitted under applicable law; and if from any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest will be applied to the reduction of the principal balance of the indebtedness secured hereby and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of the indebtedness secured hereby, such excess will be refunded to Trustor. All interest (including any amounts or payments deemed to be interest) paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal balance of the indebtedness secured hereby (including the period of any renewal or extension thereof) so that the interest thereon for such full period will not exceed the maximum amount permitted by applicable law. This Paragraph shall control all agreements between Trustor and Beneficiary.

EXHIBIT "A"

LEGAL DESCRIPTION

Part of Tax Lot 10 located in the Southwest Quarter (SW1/4) of Section 4, Township 14 North, Range 13 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, described as follows:

Beginning at the point of intersection of the Northerly right-of-way line of Edward Babe Gomez Avenue and the Easterly right-of-way line of 33rd Street; thence North 07°00'14" East (assumed bearing), along the Easterly right-of-way line of said 33rd Street, a distance of 205.23 feet; thence South 88°52'32" East, along the Easterly right-of-way line of 33rd Street, as dedicated and recorded in Book 823, Page 100 of the Douglas County Register of Deeds, a distance of 46.52 feet; thence South 01°07'28" West, a distance of 20.00 feet; thence South 88°52'32" East, a distance of 145.11 feet; thence North 01°07'28" East, a distance of 293.55 feet; thence South 89°02'07" East, along the proposed South right-of-way line of "L" Street, a distance of 229.95 feet; thence South 84°26'48" East, along said right-of-way line, a distance of 70.26 feet; thence South 01°07'28" West, a distance of 198.76 feet; thence South 88°52'32" East, a distance of 171.00 feet; thence North 01°07'28" East, a distance of 192.86 feet; thence South 89°02'07" East, along the proposed South right-of-way line of "L" Street, a distance of 50.00 feet; thence South 01°07'28" West, a distance of 339.00 feet; thence North 88°52'32" West, a distance of 264.81 feet; thence South 01°07'28" West, a distance of 225.72 feet; thence North 78°25'46" West, along the proposed Northerly right-of-way line of Edward Babe Gomez Avenue, a distance of 457.29 feet; thence North 51°24'31" West, along said right-of-way line, a distance of 24.10 feet, to the Point of Beginning.

NOTE: The above premises is to be known as Lot 3, in STOCKYARDS PLAZA II.

EXHIBIT B

(Permitted Exceptions to Title)

NONE

p 14

rd

rd

of

of

nce

ance

h

of

ne

f

of