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Register of Deeds, Douglas County, NE
06/02/2015 11:48:46.00



2015042747

WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
First National Bank of Omaha
Third Floor, First National Plaza
11404 West Dodge Road
Omaha, Nebraska 68154

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

THIS DEED OF TRUST IS A CONSTRUCTION SECURITY AGREEMENT WITHIN THE MEANING OF NEB. REV. STAT. SECTION 52-127 AND SECURES AN OBLIGATION WHICH THE TRUSTOR INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GIVEN THAT IS A CONSTRUCTION SECURITY INTEREST.

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Deed of Trust") is executed as of May 29, 2015, by and among CAPITOL DISTRICT HOTEL, LLC, a Nebraska limited liability company ("Trustor"), whose address is 1111 N. 13th Street, Suite 101, Omaha, NE 68102; FIRST NATIONAL BANK OF OMAHA, a national banking association ("Beneficiary"), whose address is 1620 Dodge Street, Omaha, Nebraska 68102; and FIRST NATIONAL BANK OF OMAHA, a national banking association, as deed trustee ("Trustee"), whose address is 1620 Dodge Street, Omaha, Nebraska 68102.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged and in order to secure the indebtedness and other obligations of Trustor hereinafter set forth, Trustor does hereby irrevocably warrant, grant, bargain, sell, convey, assign, transfer, and set over unto Trustee and the successors and assigns of Trustee IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following described land and interests in land, estates, easements, rights, improvements, property, fixtures, equipment, furniture, furnishings, appliances, and appurtenances (hereinafter collectively referred to as the "Mortgaged Property"):

- (a) All of Trustor's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in the

(a) All of Trustor's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in the City of Omaha, County of Douglas, State of Nebraska described on Exhibit A attached hereto and incorporated herein (hereinafter collectively referred to as the "Property"); and

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Property and owned by Trustor, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said building, structures, or improvements (collectively, the "Improvements") and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Trustor and located in, on, or about or used or intended to be used with or in connection with the use, operation, or enjoyment of the Property (including any furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property that Trustor stores off of the Property), including all extensions, additions, improvements, betterments, renewals, and replacements of any of the foregoing and all the right, title, and interest of Trustor in any such furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Trustor or on behalf of Trustor, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Deed of Trust.

(c) All of the rents, royalties, issues and profits of the Property and 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, including amounts paid as rents, fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, and all right, title and interest of Trustor in and to all leases, licenses and occupancy agreements of the Property or of 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 tenants, lessees or licensees, as applicable, of their obligations thereunder and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Trustor of, in and to the same (the "rents").

(d) All contracts, agreements, licenses, permits, inventory, supplies, other documents, and all other personal property, not heretofore covered but owned by Trustor

and located on the Mortgaged Property or used in connection with the use and enjoyment of the Property and businesses operated therefrom to the extent transferable by Trustor.

TOGETHER WITH all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Trustor and the reversion and reversions, remainder and remainders, the rents, issues, profits and revenues of the Mortgaged Property, and the businesses operated thereon or in connection therewith, from time to time accruing, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Trustor of, in, and to the same, reserving only the right to Trustor to collect the same so long as Trustor is not in default hereunder.

TOGETHER WITH all and any unexpired warranties, guarantees, and indemnities with respect to any or all of the foregoing.

TOGETHER WITH the proceeds of all of the foregoing.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Secured Obligations (as defined below) shall be indefeasibly paid in full and fully satisfied, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee, its successors and assigns, shall reconvey and release the Mortgaged Property.

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

(i) Payment of indebtedness evidenced by that certain Promissory Note dated of even date herewith (as amended, restated and otherwise modified from time to time, the "Promissory Note"), executed by Trustor in favor of Beneficiary in the principal amount of \$32,000,000, bearing interest and being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, presently scheduled to mature October 1, 2018, subject to an extension to May 1, 2022 pursuant to the terms of the Promissory Note;

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

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents and all sums advanced by Beneficiary to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property or for taxes, assessments, or insurance premiums as hereinafter provided (whether or not the original Trustor remains the owner of the Mortgaged Property at the time of such advances), with interest thereon at the Default Rate as set forth in the Promissory Note from the date of

advance by Beneficiary to the date of payment by Trustor;

(iv) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether expressed or implied, direct or indirect, absolute or contingent, or due or to become due, including, without limitation, any obligation or other indebtedness owing by Trustor to Beneficiary under any interest rate swap agreement; and

(v) All renewals, modifications, consolidations, replacements and extensions of any of the foregoing indebtedness and obligations.

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

The Secured Obligations are further evidenced and secured by certain agreements including the following documents, executed by Trustor, dated of even date herewith, which, with this Deed of Trust, the Promissory Note and any amendments or supplements thereto and any related documents or modifications thereof are hereinafter referred to collectively as the "Loan Documents":

- (A) Building Loan Agreement;
- (B) Promissory Note;
- (C) Assignment of Rents and Leases;
- (D) Assignment of Plans, Specifications and Architect's Contract;
- (E) Assignment of Construction Contracts;
- (F) Assignment of Contracts and Agreements Affecting Real Estate;
- (G) Consent and Certification of Architect and General Contractor;
- (H) Security Agreement;
- (I) Deposit Account Control Agreement(s) with each depository bank;
- (J) UCC Financing Statements;
- (K) Tri-Party Agreement with Manager;
- (L) Franchisor Comfort Letter;

(M) Environmental Indemnity Agreement; and

(N) Intercreditor Agreement;

and are guaranteed by Michael T. Moylan (“Individual Guarantor”) and Capitol District Hotel Manager, LLC, a Nebraska limited liability company (“Company Guarantor”); together with Individual Guarantor, “Guarantors”) pursuant to a Guaranty of Payment dated as of even date herewith.

ARTICLE I
REPRESENTATIONS, WARRANTIES, COVENANTS
AND AGREEMENTS OF TRUSTOR

Trustor hereby represents, warrants, covenants and agrees:

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

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

Section 1.03. **Construction of Improvements.** To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any mechanic’s or materialmen’s lien against the Property. Trustor also agrees, anything in this Deed of Trust to the contrary notwithstanding:

(a) to promptly commence work and to complete the proposed improvements promptly;

(b) to complete same in accordance with plans and specifications as approved by Beneficiary;

(c) to comply with all of the terms of any Building Loan Agreement between Trustor and Beneficiary;

(d) to allow Beneficiary to inspect the Property at all times during construction; and

(e) to cause the replacement or correction of any work or materials which do not comply with the plans and specifications as approved by the Beneficiary and which

are reasonably unsatisfactory to Beneficiary, within fifteen (15) days after written notice from Beneficiary.

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

Section 1.05. **Required Insurance.** Trustor shall provide, maintain and keep at all times in force the policies of insurance as required by the Building Loan Agreement.

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

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

In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or make the deposits required hereunder, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly

upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the Default Rate provided by the Promissory Note, shall be secured by this Deed of Trust.

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

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

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

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

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

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

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

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Mortgaged Property, or any part thereof or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify and hold Beneficiary harmless from all liability by reason of such litigation, including all attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such

litigation is prosecuted to judgment. Upon an Event of Default, Beneficiary may employ an attorney to protect its rights hereunder, and in the event of such employment following an Event of Default, Trustor shall pay all attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of an Event of Default.

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

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

Section 1.10. Taxes and Impositions.

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

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

(c) Trustor shall deposit, in an account with a depository approved by Beneficiary and subject to Beneficiary's control (the "Deposit Account"), on the first (1st) day of each month (A) an amount equal to one-twelfth (1/12) of the annual real property and similar taxes next to become due upon the Mortgaged Property; and (B) an amount equal to one-twelfth (1/12) of the annual premiums coming due on the insurance required to be maintained under the Building Loan Agreement (the "Insurance"). The amount of such periodic deposits (the "Deposits") shall be set by Beneficiary on the basis of its estimate as to the amount and schedule of taxes and premiums for Insurance next to be payable. Notwithstanding the preceding sentence, in the case of the first Deposit, there shall be deposited, in addition to the specified periodic Deposit, an amount which, when added to the aggregate amount of the periodic sums next payable under this Section 1.10, will result in a sufficient reserve to pay the taxes and premiums on the Insurance next becoming due at least one month prior to the date when such taxes or premiums are due and payable. Any interest accruing on the funds in the Deposit Account shall be added to the Deposit Account. The aggregate Deposits shall be accrued until the next date on which an installment of taxes or premium for Insurance is due and shall be applied by Beneficiary, so long as no Event of Default has occurred and is continuing, to the payment of taxes and premiums for Insurance. Trustor shall furnish to Beneficiary with evidence of the taxes and premiums for Insurance no later than thirty (30) days prior to the last date on which the same are due and payable without penalty or premium of any kind. If the Deposits then in the Deposit Account shall not be sufficient to pay all the taxes and premiums for the Insurance when the same shall become due, then Trustor shall immediately deposit in the Deposit Account an amount equal to the deficiency. If the total of the Deposits exceeds the amount required to pay the taxes and premiums for the Insurance, such excess shall be held and credited against the obligation to make subsequent Deposits.

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

payment thereof.

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

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

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

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

Section 1.12. **Actions Affecting Mortgaged Property.** Trustor shall (a) provide Beneficiary with prior written notice of any action or proceeding purporting to affect the title of Trustor in the Mortgaged Property or security hereof or the rights or powers of Beneficiary or Trustee, (b) appear in and contest any such action or proceeding, and (c) pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

Section 1.13. **Actions by Beneficiary and/or Trustee to Preserve Mortgaged Property.** Should Trustor fail to make any payment or to do any act as and in the manner provided in this Deed of Trust, Beneficiary, in its sole discretion, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any Secured Obligation, may make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. In connection therewith (without limiting its

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

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

Section 1.15. **Eminent Domain.** Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary may participate in any such Condemnation proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by Beneficiary to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings and shall consult with Beneficiary and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property or any part thereof or interest therein shall be paid to Beneficiary and shall be applied first to all costs and expenses incurred by Beneficiary in obtaining the proceeds. Provided no Event of Default has occurred hereunder and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, the balance of the proceeds, if any, shall be applied at the option of Beneficiary (i) toward altering, restoring or rebuilding the Mortgaged Property, or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Beneficiary may in its absolute discretion elect. If Beneficiary elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Property, Trustor shall not be required to repair or restore that portion of the Mortgaged Property affected by Beneficiary's election and the failure to do so shall not constitute a breach by Trustor of its obligation to maintain the Mortgaged Property set forth in Section 1.04 hereof.

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

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

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

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

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

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

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

affecting title to the Mortgaged Property.

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

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

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

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

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

(ii) that the Mortgaged Property and Trustor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976 ("RCRA"), and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property. If any such investigation or inquiry is subsequently initiated, Trustor will promptly notify

Beneficiary;

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

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

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

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

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

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

Section 1.26. **Organization; Due Authorization.** Trustor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Nebraska, duly authorized and qualified to transact business in the State of Nebraska, and has

the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents to which it is a party. The execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Trustor.

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

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

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

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

Section 1.30. **Compliance With Law.** That Trustor is in compliance with all laws,

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

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

Section 1.32. **Transfer of Interests in Mortgaged Property.** Trustor shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Property or any interest therein, without the consent of Beneficiary.

Section 1.33. **Lease Provisions.** Any lease and/or occupancy agreement of all or part of the Mortgaged Property by Trustor permitted under this Deed of Trust, except for those occupancy or rental agreements which occur in the normal course of Trustor's business as a full-service hotel and which are for a term shorter than 20 days, shall contain a provision obligating such lessee or occupant to enter into a subordination, attornment and non-disturbance agreement with Beneficiary in form and substance satisfactory to Beneficiary.

ARTICLE II
BENEFICIARY'S POWERS

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

ARTICLE III
ASSIGNMENT OF RENTS, ISSUES AND PROFITS

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

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

response to such default or pursuant to such notice of default.

ARTICLE IV SECURITY AGREEMENT

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

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

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. For this purpose, the following information is provided:

- (a) The name and address of the Secured Party is Beneficiary, whose address is stated in Section 6.05 of this Deed of Trust;
- (b) The name and address of the Debtor is Trustor, whose address is stated in Section 6.05 of this Deed of Trust;

(c) The collateral covered by this Deed of Trust, as a financing statement, is all goods constituting part of the Mortgaged Property (as more particularly described in the granting clause of this Deed of Trust) which are or are to become fixtures;

(d) The real estate to which the property covered by this Deed of Trust is attached or upon which it is located is the land described in Exhibit A to this Deed of Trust; and

(e) The name of the record owner of the real estate is Trustor.

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

(a) except for the security interest granted hereby, Trustor is, and as to any of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever, except for Permitted Encumbrances. Trustor will notify Beneficiary of, and will defend the Personal Property against, all prohibited claims and demands of all persons at any time claiming the same or any interest therein;

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

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

(d) the Personal Property will be kept on or at the Property and Grantor will not remove the Personal Property from the Property without the prior written consent of Grantee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with new items of equal or greater quality; and

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

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 5.01. **Events of Default.** The occurrence of any one or more Events of Default (as defined in the Building Loan Agreement) shall constitute an Event of Default

hereunder.

Section 5.02. Judicial Foreclosure or Trustee's Sale on Default.

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

(b) In the event that the Mortgaged Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property as required by law. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, not to exceed five percent of the principal balance unpaid at the time of recording the notice of default, second, to the payment of the obligation secured by this trust deed, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto.

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

Section 5.03. Beneficiary's Right to Enter and Take Possession, Operate, and Apply

Revenues.

(a) If an Event of Default shall have occurred and be continuing, Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession of the Mortgaged Property; and if and to the extent permitted by law, Beneficiary itself or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property without the appointment of a receiver or an application therefor and may exclude Trustor and its agents and employees wholly therefrom, and may have joint access with Trustor to the books, papers, and accounts of Trustor with respect to the Mortgaged Property.

(b) If Trustor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Beneficiary, Beneficiary may obtain a judgment or decree conferring upon Beneficiary the right to immediate possession or requiring Trustor to deliver immediate possession of the Mortgaged Property to Beneficiary, to the entry of which judgment or decree Trustor hereby specifically consents. Trustor will pay to Beneficiary, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Beneficiary, its attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Deed.

(c) Upon every such entering upon or taking of possession, Beneficiary may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof and from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Trustor to the same extent as Trustor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Beneficiary: All as Beneficiary from time to time may determine to be in its best interest. Beneficiary may collect and receive all the rents, issues, profits, and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter; and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including reasonable compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments, and other similar charges as Beneficiary may at its option pay, (E) other proper charges upon the Mortgaged Property or any part thereof and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of Beneficiary, Beneficiary shall apply the remainder of the moneys and proceeds so received by Beneficiary in the order specified in the Promissory Note.

(d) Upon the indefeasible payment in full and performance of all Secured Obligations, Beneficiary shall surrender possession of the Mortgaged Property to Trustor,

its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

Section 5.04. **Performance by Beneficiary of Defaults by Trustor.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, pay, perform, or observe the same; and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Trustor to Beneficiary with interest thereon at the Default Rate (as defined in the Promissory Note). Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant, or condition without thereby becoming liable to Trustor or any person in possession holding under Trustor.

Section 5.05. **Receiver.** If an Event of Default shall have occurred and be continuing, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the indebtedness secured hereby or the solvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits, and revenue thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Property is situated. Trustor will pay to Beneficiary upon demand all expenses, including receiver's fees, attorney's fees, costs, and rental agent's compensation, incurred pursuant to the provisions of this Paragraph 5.05; and all such expenses shall be secured by this Deed of Trust.

Section 5.06. **Waiver of Appraisal, Valuation, Stay, Extension, and Redemption Laws.** Trustor agrees to the fullest extent permitted by law, that in case of an Event of Default on the part of Trustor hereunder, neither Trustor nor anyone claiming through or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension, homestead, exemption, or redemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat; and Trustor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws and any and all right to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

Section 5.07. **Leases.** Beneficiary, at its option, is authorized to foreclose this Deed of Trust subject to the rights of any tenants and/or occupants of the Mortgaged Property, and the failure to make any such tenant and/or occupant parties to any such foreclosure proceedings and to foreclose their rights will not be and will not be asserted by Trustor to be a defense to any proceedings instituted by Beneficiary to collect the Secured Obligations.

Section 5.08. **Discontinuance of Proceedings and Restoration of the Parties.** In case Beneficiary shall have proceeded to enforce any right, power, or remedy under this Deed of Trust by foreclosure, entry, or otherwise and such proceedings shall have been determined adversely to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to

their former positions and rights hereunder; and all rights, powers, and remedies of Beneficiary shall continue as if no such proceeding had been taken subject, however, to any order or rule resulting from such proceeding which is promulgated by a court having proper jurisdiction.

Section 5.09. **Remedies Not Exclusive.** Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents, or the provisions of the Nebraska Trust Deeds Act, as now enacted or subsequently amended, any other laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

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

ARTICLE VI

MISCELLANEOUS

Section 6.01. **Governing Law.** This Deed of Trust shall be governed by the laws state in which the Mortgaged Property is located. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts shall not affect other provisions of

this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. **Waiver of Rights.** To the extent permitted by law, Trustor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Mortgaged Property, and (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting the Secured Obligations. To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Trustor, for Trustor, Trustor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section 6.02 and now in force, of which Trustor, Trustor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section 6.02, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 6.02. Trustor expressly waives and relinquishes any and all rights, remedies and defenses that Trustor may have or be able to assert by reason of the laws of the state in which the Property is located pertaining to the rights, remedies and defenses of sureties.

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

Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Trustor, or the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Trustor, and Beneficiary.

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

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

If to Trustor: Capitol District Hotel, LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, Nebraska 68102

If to Beneficiary: First National Bank of Omaha
1620 Dodge Street
Omaha, Nebraska 68102
Attn: Senior Officer, Mortgage Loan Department

With a copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, Nebraska 68102
Attn: Andrew Romshek, Esq.

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change. Trustor hereby requests a copy of any notice of default and any notice of sale hereunder or under any other deed of trust recorded against the Mortgaged Property be mailed to Trustor at Trustor's address set forth above in this Section 6.05. While hereby expressly reserving the priority of this Deed of Trust as established by law, Trustee and Beneficiary hereunder request that a copy of any notice of default and any notice of sale under any deed of trust recorded against the Property either prior to, or subsequent to the date this Deed of Trust is recorded, be mailed to each at the addresses set forth above in this Section 6.05.

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

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

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

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

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

Section 6.11. **Time Is of the Essence.** Time is of the essence under this Deed of Trust and the other Loan Documents.

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

Section 6.13. **Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon this Deed of Trust for debts contracted or liability for damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder or believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor will, from time to time, pay compensation due Trustee hereunder and reimburse Trustee for and save and hold it harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by it in the performance of its duties.

All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law) and Trustee shall be under no liability for interest on any moneys received by it hereunder.

Section 6.14. **Future Advances.** Upon request of Grantor, and at Grantee's option prior to release of this Deed, Grantee may make future advances to Grantor. Such future advances, with interest thereon, shall be secured by this Deed unless the parties shall agree otherwise in writing.

[Space Below Intentionally Left Blank –
Signature Page to Follow]

EXHIBIT A

Legal Description

Lot 2, in THE CAPITOL DISTRICT REPLAT 1, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

EXHIBIT B

Permitted Encumbrances

1. The lien of the general taxes for 2014/2015, due and payable in 2015 but not yet delinquent.

2. Terms and provisions of Post Construction Stormwater Management Plan Maintenance Agreement and Easement dated October 6, 2014 and recorded October 6, 2014, as Instrument No. 2014078756 of the Records of Douglas County, Nebraska.

The following is a Permitted Encumbrance only to the extent such lien and the terms and provisions thereof remains subordinate to the lien and the terms and provisions of this Deed of Trust:

3. Deed of Trust, executed by Capitol District Hotel, LLC, a Nebraska limited liability company, in favor of the deed trustee named therein, and CMB Nebraska Infrastructure Investment Group 47, LP, a Delaware limited partnership, Beneficiary, securing the sum of \$32,000,000.00 and any other amounts payable under the terms thereof.