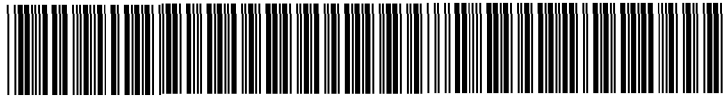




MTG 2012058043



JUN 15 2012 11:01 P 38

Fee amount: 192.00  
FB: 61-11239  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/15/2012 11:01:13.00



2012058043

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

Secured Property Address: 5002-5044 South 108<sup>th</sup> Street  
Omaha, Nebraska 68137

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS )

**KNOW ALL MEN BY THESE PRESENTS:**

**THIS DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF RENTS** ("Deed of Trust") is made effective as of June 14, 2012, by **K.V. JOINT VENTURE**, a Nebraska general partnership ("Trustor"), whose address is 11205 John Galt Boulevard, Omaha, Nebraska 68137 to **STEWART TITLE GUARANTY COMPANY**, whose address is 1603 Farnam St. #219, Omaha, Nebraska 68102, as Trustee ("Trustee") for the benefit of **AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY**, an Iowa corporation, whose mailing address is Post Office Box 71216, Des Moines, Iowa 50325, (such party, together with any holder or holders of all or any part of the "Secured Indebtedness" (as hereinafter defined) shall be referred to herein as "Beneficiary").

**ARTICLE I**

**DEFINITIONS**

Section 1.1. As used in this Deed of Trust, the following terms shall have the meanings indicated, unless the context otherwise requires:

"Beneficiary" shall have the meaning assigned to such term in the preamble to this Deed of Trust.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980(42 U.S.C. §§ 9601 et seq.), as amended from time to time, including, without limitation, the Superfund Amendments and Reauthorization Act ("SARA").

(16) 12-114894

“Code” shall mean the Uniform Commercial Code, as amended from time to time, in effect in the State where the Land is situated.

“Deed of Trust” shall have the meaning assigned to such term in the preamble hereof.

“Default” shall have the meaning assigned to such term in Section 6.1.

“Environmental Law” shall mean any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Mortgaged Property, including but not limited to, CERCLA, SARA and RCRA.

“Hazardous Substance” shall mean one or more of the following substances:

(i) Those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in CERCLA, SARA, RCRA, Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.), and in the regulations promulgated pursuant to said laws;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iii) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste or substance which is: (A) asbestos; (B) polychlorinated biphenyls; (C) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (D) petroleum or petroleum distillate; (E) explosives; or (F) radioactive materials.

“Improvements” shall mean all buildings, structures and improvements now or hereafter situated on the Land.

“Land” shall mean the tract of real property described upon Exhibit “A” attached hereto.

"Leases" shall mean all present and future leases and agreements, written or oral, for the use or occupancy of any portion of the Mortgaged Property, and any renewals, extensions or substitutions of said leases and agreements and any and all subleases thereunder.

"Lessee" shall mean the lessee, sublessee, tenant or other person having the right to occupy, use or manage the Mortgaged Property, or any part thereof, under a Lease.

"Lien" shall mean any lien, judgment lien, mortgage, deed of trust, mechanic's lien, materialmen's lien, pledge, conditional sale agreement, title retention agreement, financing lease, security interest or other encumbrance, whether arising by contract or under law.

"Loan Documents" shall mean the Note and this Deed of Trust, together with all documents, agreements, certificates, affidavits, guaranties, loan agreements, security agreements, deeds of trust, collateral pledge agreements, assignments and contracts representing, evidencing or securing any or all of the Secured Indebtedness or executed in connection therewith.

"Mortgaged Property" shall have the meaning assigned to such term in Section 2.1.

"Note" shall mean that certain Promissory Note, of even date herewith, in the original principal amount of One Million Six Hundred Fifty Thousand Dollars (\$1,650,000), executed by Trustor payable to the order of Beneficiary, and providing that the principal balance thereof shall be due and payable in 2022 on the date which is ten (10) years from the effective date of this Deed of Trust, which date is the Maturity Date, as defined in the Note.

"Obligated Party" shall mean any guarantor, surety, endorser or other party (other than Trustor) directly or indirectly obligated, primarily or secondarily, for any portion of the Secured Indebtedness.

"Permitted Exceptions" shall mean the exceptions, if any, to title described upon Exhibit "B" attached hereto.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

"Personal Property" shall mean all of the following described properties and interests, now owned or hereafter acquired by Trustor, and all accessories, attachments and additions thereto and all replacements or substitutes therefor and all products and proceeds thereof, and accessions thereto:

(i) All of the property, personal or otherwise, now or hereafter attached to or incorporated into or used in or about the Real Estate, including, without limitation, all fixtures, building materials, inventory, furniture, appliances, furnishings, goods, equipment, and machinery and all other tangible personal property now or hereafter affixed, attached or related to the Real Estate or used in connection therewith;

(ii) All accounts, inventory, instruments, chattel paper, documents, consumer goods, insurance proceeds, surveys, plans and specifications, drawings, permits, licenses, warranties, guaranties, deposits, deposit accounts, prepaid expenses, contract rights, and general intangibles now, or hereafter related to, any of the Real Estate;

(iii) All Rents and Leases;

(iv) All general intangibles relating to the development or use of the Real Estate, including but not limited to all governmental permits relating to construction on the Real Estate, all names under or by which the Real Estate may at any time be operated or known, and all rights to carry on the business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Real Estate;

(v) All water rights and water stock relating to the Real Estate that is owned by Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Estate; and

(vi) All proceeds and claims arising on account of any damage to or taking of the Real Estate or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Real Estate and all rights of the Trustor under any policy or policies of insurance covering the Real Estate or any rents relating to the Real Estate and all proceeds, loss payments and premium refunds which may become payable with respect to such insurance policies.

“RCRA” shall mean the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 et seq.), as amended from time to time.

“Real Estate” shall mean the Land and the Improvements.

“Rents” shall mean the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Trustor may now or hereafter become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Property, or any part thereof, including, without limitation, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges

(including monthly rental for parking spaces), tax and insurance premium contributions, and liquidated damages following default, premiums payable by any Lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering the loss of rent resulting from untenability caused by destruction or damage of the Mortgaged Property, together with any and all rights and claims of any kind which Trustor may have against any Lessee or against any other occupants of the Mortgaged Property.

“Rights” shall mean rights, remedies, powers, benefits and privileges.

“Sale” shall mean any sale, transfer, lease or other disposition made pursuant to Subsection 6.2(i).

“Secured Indebtedness” shall have the meaning given such term in Section 3.1.

“Trustee” shall have the meaning given such term in the preamble, and shall include each and every substitute trustee appointed pursuant to the terms hereof.

“Trustor” shall have the meaning assigned to such term in the preamble to this Deed of Trust.

“Trustor’s Successors” shall mean each and all of the heirs, executors, administrators, legal representatives, successors and assigns of Trustor, both immediate and remote.

## **ARTICLE II**

### **GRANT**

Section 2.1. Grant. For good and valuable consideration, including the debt and trust hereinafter described, the receipt and legal sufficiency of which is hereby expressly acknowledged by all parties, Trustor does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN, AND CONVEY, WITH POWER OF SALE unto Trustee, and Trustee’s successors and substitutes in trust, with power of sale hereunder, the following described property, subject to the Permitted Exceptions:

(a) The Land, together with (A) the Improvements; (B) all estates, easements, interests, licenses, Rights and titles of Trustor in and to the Land and all easements and rights-of-way used in connection with the Land or the Improvements or as a means of ingress to or egress from the Land or the Improvements; (C) all estates, easements, interests, licenses, Rights and titles, if any, of Trustor in and to the real estate lying in the streets, roads, alleys, ways, sidewalks, or avenues, open or proposed, in front of, or adjoining, the Land, and in and to any strips or gores of real estate adjoining the Land; (D) all passages, waters, water rights, water courses, riparian rights, other Rights appurtenant to the Land, as well as any after-acquired title, franchise or license, and the

reversions and remainders thereof; and (E) all estates, easements, licenses, interests, Rights and titles appurtenant or incident to the foregoing;

(b) The Personal Property; and

(c) All other estates, easements, licenses, interests, Rights and titles of every kind and character which Trustor now has, or at any time hereafter acquires, in and to the Land, the Improvements, the Personal Property, and all property which is used or useful in connection with the Land, the Improvements, and the Personal Property, including without limitation (A) all proceeds payable in lieu of or as compensation for the loss of or damage to any of the foregoing; (B) all awards made by any public body or decreed by any court of competent jurisdiction for a taking or for degradation of value in any eminent domain proceeding involving any of the foregoing; and (C) the proceeds of any and all insurance (including without limitation, title insurance) covering the Land, the Improvements, the Personal Property, and any of the foregoing.

All property and interests described or referred to in Subsections (a), (b), and (c) of this Section 2.1, together with any additional interest therein now owned, or hereafter acquired, by Trustor, are sometimes hereinafter collectively called the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular the rights, hereditaments, and appurtenances in anywise appertaining or belonging thereto, unto Trustee and Trustee's successors or substitutes in this trust, and Trustee's and its or his successors and assigns, in trust and for the uses and purposes hereinafter set forth, forever.

Section 2.2. Warranty of Title. Trustor, for Trustor and Trustor's Successors, hereby agrees to warrant and forever defend, all and singular, good and marketable unencumbered fee simple title to the Mortgaged Property unto Trustee, and Trustee's successors or substitutes in this trust, forever, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof, subject, however, to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure of, or the exercise of the power of sale contained in, this Deed of Trust and shall inure to the benefit of and be enforceable by any person who may acquire title to the Mortgaged Property pursuant to such foreclosure or power of sale.

### **ARTICLE III**

#### **SECURED INDEBTEDNESS**

Section 3.1. Secured Indebtedness. This Deed of Trust, and all Rights, and all titles, interests and Liens created hereby, or arising by virtue hereof, are given to secure payment and performance of the following indebtedness, liabilities, and obligations (herein collectively called the "Secured Indebtedness"):

(a) All loans, principal, interest, late charges, fees, premiums, expenses, obligations and liabilities owing by Trustor to Beneficiary arising pursuant to or represented by the Note;

(b) All indebtedness, liabilities, and obligations arising under this Deed of Trust or under any of the other Loan Documents; and

(c) Any and all renewals, increases, extensions, modifications, rearrangements, or restatements of the Note or all or any part of the loans, advances, future advances, indebtedness, liabilities, and obligations described or referred to in Subsections 3.1(a) and (b), together with all costs, expenses, and reasonable attorneys' fees incurred in connection with the enforcement or collection thereof.

#### ARTICLE IV

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF TRUSTOR

Section 4.1. Representations and Warranties. Trustor expressly represents and warrants to Beneficiary and Trustee as follows:

(a) Organization. Trustor (i) is a Nebraska general partnership duly organized and validly existing under applicable state laws and is qualified to own its properties and conduct its business under the laws of the state where the Land is situated, (ii) has complied with all conditions prerequisite to its lawfully doing business in the state where the Land is situated, and (iii) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease and operate its properties and to conduct its business as now being, and as proposed to be, conducted.

(b) Authority. Trustor has full and lawful authority and power to execute, acknowledge, deliver, and perform this Deed of Trust and the other Loan Documents executed by Trustor and such Loan Documents constitute the legal, valid, and binding obligations of Trustor and any other party thereto, enforceable against Trustor and such other parties in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws of general application affecting creditors' rights generally.

(c) Place of Business. Trustor's principal place of business, chief executive office, location of its account records, mailing address and address for notices hereunder is set forth in the preamble hereof.

(d) Title. Trustor is the lawful record owner of good and marketable title to the Mortgaged Property, subject only to the Permitted Exceptions. No Liens exist in or against the Mortgaged Property, other than those Liens which have been identified in writing in the title insurance commitment delivered to Beneficiary, all of which will be

satisfied and released contemporaneously with the closing under the Note and Loan Documents. All portions of the Mortgaged Property have full and free access to and from public streets and utilities' services and connections.

(e) Conflicts. Neither the execution and delivery of the Loan Documents, nor consummation of any of the transactions therein contemplated, nor compliance with the terms and provisions thereof, will contravene or conflict with any provision of law, statute or regulation to which Trustor is subject or any judgment, license, order or permit applicable to Trustor or any indenture, mortgage, deed of trust, agreement or other instrument to which Trustor is a party or by which Trustor or the Mortgaged Property may be bound, or to which Trustor or the Mortgaged Property may be subject, or violate or contravene any provision of the partnership or joint venture agreement, as appropriate, forming Trustor.

(f) Information Provided. All reports, statements, financial statements, cost estimates and other data, furnished by or on behalf of Trustor or any Obligated Party including, without limitation, any surveys, as-built plans and specifications, and commitments for title insurance are true and correct in all material respects.

(g) Defaults. No event has occurred and is continuing which constitutes a Default or would, with the lapse of time or giving of notice or both, constitute a Default.

(h) Taxes. All taxes, assessments and other charges levied against the Mortgaged Property have been paid in full.

(i) Flood Hazards. Neither the Land nor any portion thereof is located within an area that has been designated or identified as an area having special flood hazards by the Secretary of Housing and Urban Development or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended, or pursuant to any other national, state, county or city program of flood control.

(j) Performance of Covenants Under Leases. Trustor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the existing Leases on Trustor's part to be kept, observed and performed up to the date hereof.

(k) Collection of Advance Rents. Any Rents due for occupancy for any period subsequent to the date hereof have not been collected for more than one (1) month in advance of accrual and payment of any Rents has not otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(l) No Defaults. No Lessee under any existing Lease is in default of any of the terms thereof.



(m) Homestead. No part of the Mortgaged Property constitutes a part of a business or residential homestead.

(n) Commercial Loan. The Secured Indebtedness constitutes a contract under which credit is extended for business, commercial, investment, or other similar purpose, and is not for personal, family, household, or agricultural use. Trustor represents and certifies that the extension of credit secured by this Deed of Trust is exempt from any and all provisions of the Federal Consumer Credit Protection Act (Truth-in-Lending Act) and Regulation "Z" of the Board of Governors of the Federal Reserve System.

Section 4.2. Covenants. So long as this Deed of Trust shall remain in effect, Trustor covenants and agrees with Beneficiary as follows:

(a) Taxes. To pay, or cause to be paid (not later than ten (10) days before the date upon which such items would become delinquent), all lawful taxes and assessments of every character in respect of any of the Mortgaged Property, and to furnish to Beneficiary (not later than ten (10) days prior to the date upon which such taxes or assessments would become delinquent) evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments, provided that so long as Trustor has timely paid all taxes and assessments into the reserve fund required under Section 9.4, Trustor shall not be required to provide such evidence, and, provided further, Trustor shall not be required to pay any such tax or assessment if and so long as the amount, applicability or validity thereof is being contested in good faith by appropriate legal proceedings and appropriate cash reserves therefor have been deposited with Beneficiary in an amount equal to the amount being contested plus a reasonable additional sum to cover costs, legal fees and expenses, interest and penalties.

(b) Insurance.

(i) Mortgaged Property. To carry insurance with respect to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Beneficiary, including, without limitation, insurance against loss or damage by fire, extended coverage, lightning, hail, windstorm, explosion, riot, hazards, casualties, and other contingencies; provided, that in the absence of written direction from Beneficiary, the insurance shall not be less than the full replacement cost of the Improvements. Such insurance shall be sufficient to prevent Trustor from being or becoming a "co-insurer" of the Mortgaged Property and shall include the standard non-contributory mortgage clause.

(ii) Public Liability. To carry liability insurance covering occurrences that may arise in the Mortgaged Property as a result of the operations thereon, with such insurers and in such amounts as shall be acceptable to Beneficiary; and to carry workers' compensation insurance sufficient to meet all statutory requirements, as may be amended from time to time.

(iii) Loss of Rents. To carry insurance covering loss of rents and/or business interruption with respect to the Mortgaged Property for a period of not less than one year.

(iv) Delivery of Policies. To deliver to Beneficiary each original policy of insurance covering the Mortgaged Property.

(v) Beneficiary as Named Insured; Payment of Insurance Proceeds. To cause all insurance carried by Trustor covering the Mortgaged Property to name Beneficiary as an insured and to be payable to Beneficiary as its interest may appear, and, in the case of all policies of insurance carried by each Lessee for the benefit of Trustor, to cause all such policies to be payable to Beneficiary as its interest may appear.

(vi) Payment of Premiums; Proof. To cause to be paid, pursuant to Section 9.4 hereof, all premiums for such insurance before such premiums become due and to deliver all renewal policies to Beneficiary at least fifteen (15) days before the expiration date of each expiring policy and to cause such policies to require the insurer to give written notice to Beneficiary of any amendment or termination of any such policy at least thirty (30) days before such termination or amendment is to be effective.

(vii) Review of Values. Upon the written request of Beneficiary, not more than once during each thirty-month period following the date of this Deed of Trust, to increase the amount of insurance covering the Mortgaged Property to its then full insurable value.

(viii) Notice of Casualty. To immediately deliver written notice to Beneficiary of any casualty loss affecting the Mortgaged Property that would cost more than Ten Thousand Dollars (\$10,000) to repair or replace.

(c) Compliance with Laws. To comply with all valid governmental laws, ordinances, rules, and regulations applicable to the Mortgaged Property and its ownership, use, and operation, and to comply with all, and not violate any, easements, restrictions, agreements, covenants, and conditions with respect to or affecting the Mortgaged Property, or any part thereof; provided, however, Trustor shall not be required to comply with such items if and so long as the applicability or validity thereof is being contested diligently in good faith by appropriate legal proceedings and appropriate reserves satisfactory to Beneficiary have been set aside by Trustor.

(d) Condition of Mortgaged Property. To maintain, preserve, and keep the Mortgaged Property in good repair and condition at all times and, from time to time, to make all necessary and proper repairs, replacements, and renewals, to complete or repair any Improvements in a good and workmanlike manner, and not to abandon or commit or

permit any waste on or of the Mortgaged Property, and not to do anything to the Mortgaged Property that may impair its value.

(e) Payments for Labor and Materials. To pay promptly all bills for labor, materials and equipment incurred in connection with the Mortgaged Property and never to permit to be affixed against the Mortgaged Property, or any part thereof, any Lien, even though inferior to the liens and security interests hereof, for any such bill which may be legally due and payable; provided, however, Trustor shall not be required to pay any such bill if the amount, applicability or validity thereof is being contested in good faith by appropriate legal proceedings and Trustor has furnished to Beneficiary a bond in form and substance acceptable to Beneficiary with corporate surety satisfactory to Beneficiary or other security satisfactory to Beneficiary, in an amount equal to the amount being contested plus a reasonable additional sum to cover possible costs, legal fees and expenses, interest and penalties, and provided further that Trustor shall pay any amount adjudged by a court of competent jurisdiction to be due, with all costs, interest and penalties thereon, in order to release any such Lien on the Mortgaged Property, or any part thereof.

(f) Further Assurances. To execute and deliver forthwith to Beneficiary, at any time and from time to time upon request by Beneficiary, any and all additional instruments (including, without limitation, deeds of trust, mortgages, security agreements, assignments and financing statements) and further assurances, and to do all other acts and things at Trustor's expense, as may be necessary or proper, in Beneficiary's reasonable opinion, to effect the intent of these presents, to more fully evidence and to perfect, the rights, titles and Liens, herein created or intended to be created hereby and to protect the Rights of Beneficiary hereunder.

(g) Maintenance of Existence: Authority To Do Business. To maintain continuously Trustor's existence and Trustor's right to do business in the state where the Real Estate is located under all applicable laws.

(h) Prohibition Against Liens. Without the prior written consent of Beneficiary, not to create, incur, permit or suffer to exist in respect of the Mortgaged Property, or any part thereof, any other or additional Lien on a parity with or superior or inferior to the liens and security interests hereof; provided, however, if any such Lien now or hereafter affects the Mortgaged Property or any part thereof, Trustor covenants to timely perform all covenants, agreements and obligations required to be performed under or pursuant to the terms of any instrument or agreement creating or giving rise to such Lien.

(i) Limitation on Dispositions.

(i) Prohibition on Sale or Transfer. Trustor acknowledges that Beneficiary has examined both the creditworthiness of Trustor and Trustor's experience in owning and operating properties such as the Mortgaged Property in

determining whether or not to make the loan secured hereby, that Beneficiary has relied on Trustor's creditworthiness and experience in deciding to make the loan secured hereby, and that Beneficiary will continue to rely on Trustor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Secured Indebtedness. Trustor acknowledges that Beneficiary has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Trustor default in the repayment of the Note, Beneficiary can recover the balance of the Note by a sale of the Mortgaged Property. Trustor shall not, without the prior written consent of Beneficiary, (A) sell, trade, transfer, assign, exchange, or otherwise dispose of the Mortgaged Property, or any part thereof or any interest therein (whether legal or equitable in nature), except items of Personal Property which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new, or (B) permit the sale, trade, transfer, assignment, pledge, encumbrance, exchange or other disposition of any interest in Trustor or the right to receive distributions or profits from Trustor or the Mortgaged Property, or (C) permit the change in control (by way of transfers of stock ownership, partnership interest, membership interest or otherwise) in any entity constituting or included within the Trustor which directly or indirectly controls any entity constituting or included within the Trustor that results in a material change in the identity of the person(s) in control of such entity, in each case whether any such sale, trade, transfer, assignment, exchange, or other disposition is effected directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise. In the event Trustor violates the terms of this prohibition, the entire indebtedness owing under the Note and any other Loan Document shall immediately become due and payable at the option of Beneficiary. Notwithstanding the foregoing, and provided that no Default exists hereunder, Beneficiary agrees to permit one (1) transfer of the Mortgaged Property to, and assumption of the Note and Loan Documents by, another person or entity; provided, however, that no such transfer shall be valid or permitted hereunder unless: (i) Beneficiary receives prior written notice at least thirty (30) days in advance of such proposed transfer, (ii) such proposed transferee has been approved in writing by Beneficiary, taking into consideration transferee's creditworthiness and real estate experience, (iii) approval by Beneficiary of the proposed new property management of the Mortgaged Property, (iv) Beneficiary shall be paid a transfer and assumption fee in the amount of one percent (1%) of the then-outstanding principal balance of the Note, including accrued interest at the time of such transfer, (v) Trustor pays all fees and expenses incurred by Beneficiary in connection with such transfer and assumption, including without limitation, inspection and investigation fees, title insurance charges and reasonable attorneys' fees, and (vi) such proposed transferee and any guarantor required by Beneficiary in connection therewith assumes all obligations of Trustor and any Obligated Party under the Note, this Deed of Trust and other Loan Documents with the same degree of liability of Trustor and any such Obligated Party. Subsequent to the closing of a transfer and assumption approved by

Beneficiary, each Obligated Party and Trustor shall be released from all liability under all Loan Documents to which each is a party, except for those liabilities or obligations contained in any guaranty or indemnification agreement issued in connection with the Note which are owing or existing as of the date of such transfer. This one-time right of transfer and assumption shall apply only to the Trustor named herein and not to any subsequent owner of the Mortgaged Property. Furthermore, and notwithstanding the foregoing provisions of this Section 4.2(i)(i), provided that Trustor gives Beneficiary written notice within thirty (30) days following a transfer described below and Trustor is not in Default under any of the Loan Documents, the following transfers of ownership interests in Trustor shall be permitted without Beneficiary's consent and without the payment of a transfer fee to Beneficiary: (a) transfers between and among existing partners of Trustor; (b) for presently-existing members who are individuals, transfers (i) upon the death of such partner; (ii) to such existing partner's immediate family (defined as spouse, children and grandchildren) for estate planning purposes, or a trust set up for their benefit or to an entity controlled by such family member; and (iii) to an entity in which the transferor owns a majority interest or has the power to control such entity; and (c) for any existing owner of an entity that is a partner of Trustor, transfers of the type described in (i), (ii) and (iii) above by such individuals of their ownership interest in such entity. No change in any of the terms of the Loan Documents shall occur as a result of any such transfers, and any costs or expenses incurred by Beneficiary as a result of any such transfers described immediately above shall be paid by Trustor.

(ii) Operation. The provisions hereof shall be operative with respect to, and be binding upon any persons who, in accordance with the terms hereof or otherwise, shall acquire any part or interest in or encumbrance upon the Mortgaged Property, or such beneficial interest in, share of stock of, or partnership or joint venture interest in the Trustor or any beneficiary of a trustee Trustor. Any waiver by the Beneficiary of the provisions hereof shall not be deemed to be a waiver of the right of the Beneficiary in the future to insist upon strict compliance with the provisions hereof.

(j) Financial Statements. To deliver to Beneficiary, within ninety (90) days after the end of each calendar year and within ninety (90) days of the end of the first half of each calendar year, the respective then-current annual and semi-annual financial statements of Trustor, in form and substance acceptable to Beneficiary, certified as true and correct by an individual authorized to sign on behalf of, and bind, Trustor. At a minimum, such financial statements shall include a balance sheet and income statement for Trustor, a report itemizing the income and expenses for the operation of Mortgaged Property, and a current rent roll, all in form and detail as shall be satisfactory to Beneficiary. Trustor shall also deliver to Beneficiary, within ten (10) days of the filing thereof, a copy of Trustor's most recent federal income tax return. Trustor shall also cause each Obligated Party to deliver to Beneficiary, within ninety (90) days after the end of each calendar year and within ninety (90) days of the end of the first half of each

calendar year, then-current annual and semi-annual financial statements of such Obligated Party prepared in a form acceptable to Beneficiary, certified as true and correct by such Obligated Party. Provided, however, that *during the continuation of a Default*, Trustor shall (a) deliver to Beneficiary (i) within sixty (60) days of the end of each calendar quarter, then-current financial statements in the form outlined above and, (ii) within sixty (60) days of the end of each calendar year, an annual financial statement certified by an independent certified public accountant; and (b) cause each Obligated Party to deliver to Beneficiary, (i) within sixty (60) days of the end of each calendar quarter, then-current financial statements of such Obligated Party, in the form outlined above and, (ii) within sixty (60) days of the end of each calendar year, a financial statement certified by an independent certified public accountant.

(k) Tax on Liens. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Secured Indebtedness, or any part thereof, to pay immediately all such taxes to the extent permitted by law; provided that, if it is unlawful for Trustor to pay such taxes, then Trustor shall, if Beneficiary so requires, prepay the Secured Indebtedness in full within sixty (60) days after demand therefor by Beneficiary.

(l) Statement of Balance of Secured Indebtedness. At any time and from time to time, to furnish promptly upon request, a written statement or affidavit, in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the Secured Indebtedness and that there are no offsets or defenses against full payment of the Secured Indebtedness and the terms hereof, or, if there are any such offsets and defenses, specifically describing such offsets to the satisfaction of Beneficiary.

(m) Inspections; Books, Records. During all business hours to allow any representative of Beneficiary to inspect the Mortgaged Property and all books and records of Trustor, and to make and take away copies of such books and records. Trustor shall maintain complete and accurate books and records in accordance with good accounting practices.

(n) Removal of Personalty. Not to cause or permit any of the Personal Property to be removed from the Land, except items of Personal Property which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to, or greater than, the replaced items when new.

(o) Warrant and Defend Title. To protect, warrant and forever defend title to the Mortgaged Property unto Beneficiary, its successors and assigns, against all persons whomsoever lawfully having or otherwise claiming an interest therein or a lien thereon, but Beneficiary shall have the right, at any time, to intervene in any suit affecting such title and to employ independent counsel in connection with any such suit to which it may be a party by intervention or otherwise; and upon demand Trustor agrees to pay Beneficiary all reasonable expenses paid or incurred by Beneficiary in respect of any

such suit affecting title to any such property or affecting Beneficiary's lien or rights hereunder, including reasonable fees to Beneficiary's attorneys, and Trustor will indemnify and hold harmless Beneficiary from and against any and all costs and expenses, including, but not limited to, any and all cost, loss, damage or liability which Beneficiary may suffer or incur by reason of the failure of the title to all or any part of the Mortgaged Property or by reason of the failure or inability of Trustor, for any reason, to convey the rights, titles and interests which this Deed of Trust purports to mortgage or assign, and all amounts at any time so payable by Trustor hereunder shall be secured by the lien hereof and by the said assignment.

(p) Payment of Expenses. To promptly pay and hold Beneficiary harmless from all appraisal fees, survey fees, recording fees, abstract fees, title policy fees, escrow fees, attorneys' fees, brokers' fees and all other costs of every kind incurred by Beneficiary in connection with the Secured Indebtedness, the collection thereof and the exercise by Beneficiary of its rights and remedies hereunder and under the other Loan Documents.

(q) Obligations Under Personal Property. Trustor shall perform fully all obligations imposed upon it by the agreements and instruments constituting part of the Personal Property (including, without limitation, the Leases) and maintain in full force and effect all such agreements and instruments.

(r) Notice of Claims. Trustor shall promptly notify Beneficiary of any claim, action or proceeding affecting any Lease or title to the Mortgaged Property, or any part thereof, or the Liens herein granted.

(s) Leases.

(i) Defense of Actions Respecting Leases. Trustor shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with, the Leases or the obligations, duties or liabilities of Trustor and any Lessee thereunder, and, upon request by Beneficiary, shall do so in the name and on behalf of Beneficiary but at the expense of Trustor, and Trustor shall pay all costs and expenses of Beneficiary, including reasonable attorneys' fees, in any action or proceeding in which Beneficiary may appear.

(ii) Receipt of Future Rents. Trustor shall not receive or collect any Rents from any of the Leases for a period of more than one (1) month in advance.

(iii) Waivers, Releases of Lessees. Except in the ordinary course of business, Trustor shall not waive, discount, set-off, compromise, or in any manner release or discharge any Lessee, of and from any obligations, covenants, conditions and agreements by said Lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time

specified in any Lease, or in any manner impair the value of the Mortgaged Property or the security of this Deed of Trust.

(iv) Termination of Leases. Except in the ordinary course of business, Trustor shall not terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof, without the prior written consent of Beneficiary, and shall use all reasonable efforts to maintain each of the Leases in full force and effect during the term of this Deed of Trust.

(v) No Subordination. Trustor shall not subordinate any Lease to any mortgage or other encumbrance (other than the Lien of this Deed of Trust), or permit, consent or agree to such subordination.

(vi) Form of Leases, Side Agreements. Unless otherwise consented to in writing by Beneficiary, Trustor shall, (A) prior to the execution of any new Leases, obtain Beneficiary's approval as to the form and substance of each Lease or amendment thereto; (B) deliver to Beneficiary true and complete copies of the Leases and any amendments thereto; (C) not enter into any oral leases or any side agreements with respect to a Lease with any Lessee, except upon notice to and approval in writing by Beneficiary; (D) not execute any Lease except for actual occupancy by the Lessee thereunder; (E) from time to time upon request of Beneficiary, furnish to Beneficiary a written certification signed by Trustor describing all then existing Leases and the names of the Lessees and Rents payable thereunder, and (F) not enter into any Lease with Trustor or an affiliate of Trustor.

(t) Alterations. To make no material structural alterations in the Mortgaged Property, except as required by law or municipal ordinance, without Beneficiary's prior written consent.

(u) Payment of Utilities. To pay promptly all charges for utilities or services related to the Mortgaged Property, including, without limitation, electricity, gas, sewer and water.

## **ARTICLE V**

### **PROVISIONS REGARDING ENVIRONMENTAL LAWS**

Section 5.1. Covenants Regarding Environmental Compliance. Trustor covenants and agrees with Beneficiary as follows:

(a) Hazardous Substance Use, Manufacture. Trustor shall not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous



Substance or allow any other person or entity to do so except under conditions permitted by applicable laws (including all Environmental Laws).

(b) Compliance with Environmental Laws. Trustor shall keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Law.

(c) Notices. Trustor shall give prompt written notice to Beneficiary of:

(i) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Mortgaged Property or the migration thereof from or to other property;

(ii) all claims made or threatened by any third party against Trustor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance; and

(iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law.

(d) Filings with Agencies. Trustor shall provide to Beneficiary copies, contemporaneously with filing same, of all reports, inventories, notices or other forms filed or submitted to the Environmental Protection Agency, or any state or local agency having responsibility for overseeing or enforcing any Environmental Laws.

(e) Legal Proceeding. Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law and have Beneficiary's attorneys' fees in connection therewith paid by Trustor.

(f) Indemnity. Trustor shall protect, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the Mortgaged Property whether known or unknown, fixed or contingent, occurring prior to the termination of this Deed of Trust, including, but not limited to: (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Property and the preparation and implementation of any closure, remedial or other

required plans. This indemnity shall survive the release of the lien of this Deed of Trust, or the extinguishment of the lien by foreclosure or action in lieu thereof, and this covenant shall survive such release or extinguishment; provided, however, this indemnity shall terminate upon the payment in full of the Secured Indebtedness without Default, except as to matters identified and existing at the time of such payment.

(g) Remedial Work. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary under any applicable local, state or federal law or regulation, any judicial order, or by any governmental entity because of, or in connection with, the current or future presence or release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Mortgaged Property (or any portion thereof), Trustor shall within such period of time as may be required under any applicable law, regulation, order or agreement, commence and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by competent contractors. All costs and expenses of such Remedial Work shall be paid by Trustor including, but not limited to, Beneficiary's reasonable attorneys' fees and costs incurred in connection with such Remedial Work. In the event Trustor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Beneficiary may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby.

Section 5.2. Representations and Warranties Relating to Environmental Matters.  
Trustor represents and warrants to Beneficiary that:

(a) No Existing Violation. Neither the Mortgaged Property nor the Trustor is in violation of or subject to any existing, pending or threatened investigation by any governmental authority under any Environmental Law.

(b) No Permits Required. Trustor has not and is not required by any Environmental Law to obtain any permits or license to construct or use any improvements, fixtures or equipment forming a part of the Mortgaged Property.

(c) Previous Uses. Trustor or its environmental advisors has made diligent inquiry into previous uses and ownership of the Mortgaged Property, and, based on such inquiry, has determined that no Hazardous Substance has been disposed of or released on or to the Mortgaged Property.

(d) Use by Trustor. Trustor's prior, current and intended future use of the Mortgaged Property will not result in the disposal or release of any Hazardous Substance on or to the Mortgaged Property except as permitted by applicable law.

(e) Underground Storage. No underground storage tanks, whether or not containing any Hazardous Substances, are located on or under the Mortgaged Property.

Section 5.3. Environmental Risk Assessment. At any time that Beneficiary reasonably believes that Hazardous Substances have been disposed of on, or have been released to or from the Mortgaged Property, or at any time after a Default hereunder, within thirty (30) days after a written request therefor by Beneficiary, Trustor shall deliver to Beneficiary an environmental audit prepared at Trustor's cost and expense by an environmental consultant acceptable to Beneficiary, detailing the results of an environmental investigation of the Mortgaged Property, including an inspection of and results of soil and ground water samples.

## **ARTICLE VI**

### **RESPECTING DEFAULTS AND REMEDIES OF BENEFICIARY**

Section 6.1. Defaults. The term "Default," as used herein, shall mean the occurrence of any one or more of the following events:

(a) Defaults in Loan Documents. A default or event of default as such terms are defined in the Note or any of the other Loan Documents.

(b) Payment. The failure of Trustor to pay the Secured Indebtedness, or any part thereof, within five (5) days after the date it becomes due in accordance with the terms of the Note or any other Loan Documents or when accelerated pursuant to any power to accelerate contained in this Deed of Trust or any of the other Loan Documents, provided however, that on the first two such occurrences during a calendar year, it shall not be a Default unless Beneficiary gives written notice to Trustor and Trustor fails to make such payment within five (5) days of the giving of such notice.

(c) Covenants. The failure of Trustor or any Obligated Party to perform punctually and properly any covenant, agreement, obligation, or condition contained in any of the Loan Documents to which such Person is a party and the continuation of such failure for a period of fifteen (15) days after written notice thereof from Beneficiary to Trustor provided, however, that if such default is non-monetary and is of the type which cannot reasonably be cured within such time period, it shall not be a Default if Trustor commences the cure within fifteen (15) days of receipt of such notice and diligently pursues the cure thereof to completion, which shall be no later than ninety (90) days from the date of such notice.

(d) Representations and Warranties. Any statement, representation, or warranty in any of the Loan Documents is false, misleading, or erroneous in any material respect.

(e) Condemnation or Eminent Domain. Condemnation or taking by eminent domain of all or any material part (as determined by Beneficiary in its sole discretion) of the Mortgaged Property.

(f) Voluntary Bankruptcy. Trustor or any Obligated Party shall (i) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor or liquidator of such Person or of all or a substantial part of such Person's assets, (ii) file a voluntary petition in bankruptcy, admit in writing that such Person is unable to pay such Person's debts as they become due or generally not pay such Person's debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, (v) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against such Person in any bankruptcy, reorganization or insolvency proceeding, or (vi) take any action for the purpose of effecting any of the foregoing.

(g) Involuntary Bankruptcy. An involuntary petition or complaint shall be filed against Trustor or any Obligated Party seeking bankruptcy or reorganization of such Person or the appointment of a receiver, custodian, trustee, intervenor or liquidator of such Person, or of all or substantially all of such Person's assets, and such petition or complaint shall not have been dismissed within forty-five (45) days of the filing thereof; or an order, order for relief, judgment or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition or complaint seeking reorganization of such Person or appointing a receiver, custodian, trustee, intervenor or liquidator of such Person, or of all or substantially all of such Person's assets.

(h) Payment of Judgments. The failure of Trustor or any Obligated Party to pay any money judgment(s) against such Person within ten (10) days after such judgment becomes final and is no longer appealable.

(i) Attachment. The failure to have discharged within a period of ten (10) days after the commencement thereof any attachment, sequestration, or similar proceedings against any of Trustor's or any Obligated Party's assets.

(j) Priority of Liens. Beneficiary's Liens created hereby should become unenforceable, or cease to be first priority Liens.

(k) Death of Obligated Party. The death or incapacitation of any Obligated Party, unless within ninety (90) days after such event the following are satisfied: (i) Trustor notifies Beneficiary in writing of such event; (ii) Trustor provides a substitute Obligated Party, satisfactory to Beneficiary, and (iii) such substitute Obligated Party assumes in writing (by execution of guaranty agreements) all of the obligations and liabilities of the deceased or incapacitated Obligated Party under the Loan Documents; and for this purpose the personal representative of a deceased Obligated Party or the

trustee of a testamentary trust executing a guaranty on behalf of the estate or such trust shall be satisfactory, provided the estate or trust has succeeded to sufficient assets of the deceased Obligated Party and such assets cannot be distributed without making provision for the satisfaction of the liabilities evidenced by the guaranty agreements.

Section 6.2. Remedies. Upon the occurrence of a Default, Beneficiary may, at Beneficiary's option, do any one or more of the following:

(a) Acceleration. Beneficiary may, without notice, demand, presentment, notice of intention to accelerate or acceleration, protest or notice of protest, all of which are hereby waived by Trustor and all Obligated Parties, declare the entire unpaid balance of the Secured Indebtedness immediately due and payable, and upon such declaration the entire unpaid balance of the Secured Indebtedness shall be immediately due and payable and Beneficiary may rescind such acceleration without waving any future rights to accelerate the Secured Indebtedness .

(b) Foreclosure. Beneficiary may request Trustee to foreclose the lien of this Deed of Trust and to sell the Mortgaged Property, or any part thereof, at the location, at such time and in such manner as may be permitted by applicable law. After such sale, Trustee shall make to the purchaser or purchasers thereunder good and sufficient assignments, deeds, bills of sale, and other instruments, in the name of Trustor, conveying the Mortgaged Property, or part thereof, so sold to the purchaser or purchasers with general warranty of title by Trustor. The sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Secured Indebtedness is paid and performed in full. Title to all insurance policies and the proceeds thereof shall vest in and become the property of the purchaser at any such sale.

(c) Sale of Mortgaged Property. Beneficiary may elect to cause the Mortgaged Property or any part thereof to be sold under the power of sale, and, in such event, Beneficiary or Trustee shall give notice of default and notice of sale as may be then required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Mortgaged Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America.

(d) Appointment of Receiver. To the extent permitted by law, Beneficiary shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property, or any part thereof, and of the income, rents, issues, and profits thereof, and Trustor hereby expressly consents to any such appointment.

(e) Possession. To the extent permitted by law and without being deemed a mortgagee in possession, Beneficiary may enter upon the Land, take possession of the Mortgaged Property and remove the Personal Property or any part thereof, with or without judicial process, and, in connection therewith, without any responsibility or

liability, including, without limitation, liability for consequential damages of any kind on the part of Beneficiary, and Beneficiary may take possession of any property located on or in the Real Estate which is not a part of the Mortgaged Property and hold or store such property at Trustor's expense.

(f) Performance of Covenants. If Trustor has failed to keep or perform any covenant whatsoever contained in the Loan Documents or in the Leases, Beneficiary may, but shall not be obligated to, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be a part of the Secured Indebtedness, and Trustor promises, upon demand, to pay to Beneficiary all sums so advanced by Beneficiary, with interest at the default rate set forth in the Note from the date when paid by Beneficiary. No such payment by Beneficiary shall constitute a waiver of any Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all Liens securing the payment of any debt, claim, tax, or assessment which Beneficiary may pay.

(g) Right to Make Repairs, Improvements. Should any part of the Mortgaged Property come into the possession of Beneficiary, whether before or after Default, Beneficiary may use, operate, and/or make repairs, alterations, additions and improvements to the Mortgaged Property for the purpose of preserving it or its value and Beneficiary shall not be deemed a mortgagee in possession. Trustor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, or at such other place as may be designated by Beneficiary in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Beneficiary in connection with its custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by Beneficiary at the then current rate of interest applicable to the principal balance of the Note, and all such expenses, cost, taxes, interest, and other charges shall be a part of the Secured Indebtedness. It is agreed, however, that the risk of accidental loss or damage to the Mortgaged Property is undertaken by Trustor, and, except for Beneficiary's willful misconduct or gross negligence, Beneficiary shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

(h) Surrender of Insurance. Beneficiary may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Indebtedness, and, in connection therewith, Trustor hereby appoints Beneficiary (or any officer of Beneficiary), as the true and lawful agent and attorney-in-fact for Trustor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

(i) Sale of Personalty. After notification, if any, hereafter provided in this Subsection, Beneficiary may, or the Trustee may, upon request of Beneficiary, sell, lease,

or otherwise dispose of (herein a "Sale") all or any part of the Personal Property in conjunction with or separately from any sale of the Real Estate. The Personal Property may be sold in its then condition, or following any commercially reasonable preparation or processing, and each Sale may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale, it shall not be necessary to exhibit the Personal Property being sold. In order to dispose of the Personal Property Beneficiary may advertise the Personal Property for sale under any and all trade names or service names attached to, fixed upon or made part of, any of the Personal Property. The Sale of any part of the Personal Property shall not exhaust Beneficiary's power of sale, but Sales may be made, from time to time, until the Secured Indebtedness is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection, or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection, shall be sent to Trustor and to any other person entitled to notice under the Code; provided, that if the Personal Property being sold is perishable, or threatens to decline speedily in value, or is of a type customarily sold on a recognized market, Beneficiary may sell, lease, or otherwise dispose of such Personal Property without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates, is reasonable notice for the purposes of this Subsection.

(j) Assemble Personal Property. Beneficiary may require Trustor to assemble the Personal Property, or any part thereof, and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to Beneficiary.

(k) Retention of Personalty. Beneficiary may at its option retain the Personal Property in satisfaction of the Secured Indebtedness whenever the circumstances are such that Beneficiary is entitled to do so under the Code.

(l) Collection of Personal Property. Beneficiary may, in its own name or the name of Trustor, notify any or all parties obligated on any of the Personal Property to make all payments due or to become due thereon directly to Beneficiary, whereupon the power and authority of Trustor to collect the same in the ordinary course of its business shall be deemed to be immediately revoked and terminated. With or without such general notification, Beneficiary may take or bring in Trustor's name or that of Beneficiary all steps, actions, suits or proceedings deemed by Beneficiary necessary or desirable to effect possession or collection of the Personal Property, including sums due or paid thereon, may complete any contract or agreement of Trustor in any way related to any of the Personal Property, may make allowances or adjustments related to the Personal Property, may compromise any claims related to the Personal Property, may issue credit in its own name or the name of Trustor, may remove from Trustor's premises all documents, instruments, records, files or other items relating to the Personal Property, and Beneficiary may, without cost or expense to Beneficiary, use Trustor's personnel, supplies and space to take possession of, administer, collect and dispose of the Personal Property. Regardless of any provision hereof, however, Beneficiary shall never be liable

for its failure to collect or for its failure to exercise diligence in the collection, possession, or any transaction concerning, all or part of the Personal Property or sums due or paid thereon, nor shall it be under any obligation whatsoever to anyone by virtue of this Deed of Trust, except to account for the funds that it shall actually receive hereunder.

(m) Issuance of Receipts; Endorsements; Power of Attorney. Issuance by Beneficiary of a receipt to any person, firm, corporation or other entity obligated to pay any amounts to Trustor shall be a full and complete release, discharge and acquittance to such person, firm, corporation or other entity to the extent of any amount so paid to Beneficiary. Beneficiary is hereby authorized and empowered on behalf of Trustor to endorse the name of Trustor upon any check, draft, instrument, receipt, instruction or other document or items, including, but not limited to, all items evidencing payment upon any indebtedness of any person, firm, corporation or other entity to Trustor coming into Beneficiary's possession, and to receive and apply the proceeds therefrom in accordance with the terms hereof. Beneficiary is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute all checks, drafts, receipts, instruments, instructions or other documents, agreements or items on behalf of Trustor, after Default, as shall be deemed by Beneficiary to be necessary or advisable, in the sole discretion of Beneficiary, to protect its security interest in the Personal Property or the repayment of the Secured Indebtedness, and Beneficiary shall not incur any liability in connection with or arising from its exercise of such power of attorney.

(n) Purchase of Personal Property By Beneficiary. Beneficiary may buy the Personal Property, or any part thereof, at any public sale or judicial sale and, if the Personal Property being sold is of a type customarily sold in a recognized market or a type which is the subject of widely distributed standard price quotations, Beneficiary may also buy the Personal Property, or any part thereof, at any private sale.

(o) Foreclosure of Personal Property with Real Property. Notwithstanding anything contained herein to the contrary, pursuant to applicable provisions of Article 9 of the Code dealing with default procedures when a security agreement covers both real and Personal Property, Beneficiary may proceed under the Code as to all Personal Property covered hereby or, at Beneficiary's election, Beneficiary may proceed as to both the real and Personal Property covered hereby in accordance with Beneficiary's rights and remedies in respect of real property, in which case the provisions of the Code (and Subsection 6.2(i) hereof) shall not apply.

(p) Other Rights. Beneficiary shall have and may exercise the rights of a secured party under the Code and any and all other rights and remedies which Beneficiary may have at law or in equity.

(q) Collect Rents. Beneficiary may terminate the license granted to Trustor in Section 7.1 hereof to collect the Rents, and, without taking possession, in Beneficiary's own name, Beneficiary may demand, collect, receive, sue for, attach and levy the Rents, and give proper receipts, releases and acquittances therefor.



(r) Manage Leases. From and after the occurrence of a Default, Beneficiary may make, modify, enforce, cancel or accept the surrender of any Lease, remove or evict any Lessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any costs or expenses that Beneficiary shall deem proper to protect the security hereof, as fully and to the same extent as Trustor could do if in possession of the Mortgaged Property.

Section 6.3. Acts of Trustee; Prima Facie Evidence. Trustor and Beneficiary agree that, in any assignments, deeds, bills of sale, notices of sale, or postings, given by Trustee or Beneficiary, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any Default, or as to the acceleration of the maturity of the Secured Indebtedness, or as to the request to sell, posting of notice of sale, notice of sale, time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee and without being limited by the foregoing, as to any other act or thing having been duly done by Beneficiary or by Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further questions to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

Section 6.4. Effect of Foreclosure on Leases; Possession; Tenant at Sufferance. Upon exercise of the power of sale contained in this Deed of Trust, or following foreclosure, any lease of the Mortgaged Property or a portion thereof shall remain in effect, the purchaser thereby being subrogated to the lessor's interest therein, unless the purchaser elects to treat such lease as terminated by virtue of the sale under Beneficiary's prior lien. If the assignments, liens, or security interests hereof shall be foreclosed or otherwise enforced by a Trustee's sale, or by any other judicial or non-judicial action, then the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of that portion of the Mortgaged Property purchased, and if Trustor or Trustor's Successors or Lessees shall hold possession of any of said portion of the Mortgaged Property subsequent to such foreclosure, Trustor and Trustor's Successors or Lessees in possession shall be considered as tenants at sufferance of the purchaser at such foreclosure sale, and anyone occupying the Mortgaged Property (or any part thereof) after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, with or without process of law, and all damages by reason thereof are hereby expressly waived; provided, however, that any rights granted herein are subject to the rights of any Lessee which may exist under separate written subordination and non-disturbance agreements between such Lessee and Beneficiary.

Section 6.5. Application of Proceeds. Except as may be otherwise required by law, including Neb. Rev. Stat. § 76-1011, all amounts received by Beneficiary hereunder shall be applied as follows: FIRST, to the payment of all expenses arising out of or in connection with the Mortgaged Property, the foreclosure thereof, and the collection of the Secured Indebtedness including, without limitation, the commissions, fees and expenses of Beneficiary's attorneys, accountants, real estate brokers, property managers, receivers and of the Trustee; SECOND, to accrued or unpaid interest on the Secured Indebtedness; THIRD, to principal on the matured

portion of the Secured Indebtedness; FOURTH, to prepayment of the unmatured portion, if any, of the Secured Indebtedness applied to installments of principal in inverse order of maturity; and FIFTH, the balance, if any, remaining after the full and final payment and performance of the Secured Indebtedness, to Trustor or to such other party entitled thereto.

Section 6.6. Mortgage. This instrument shall be effective as a mortgage as well as a deed of trust, and upon the occurrence of a Default may be foreclosed as to the Mortgaged Property in any manner permitted by the laws of any state in which any part of the Mortgaged Property is situated. Any foreclosure suit may be brought by Trustee or Beneficiary. If a foreclosure hereunder is commenced by Trustee, Beneficiary may, at any time before the sale, direct the Trustee to abandon the sale, and may then institute suit for the collection of the Secured Indebtedness, and for the foreclosure or enforcement of the assignments, liens, and security interests hereof. If Beneficiary should institute a suit for the collection of the Secured Indebtedness, and for a foreclosure or enforcement of the assignments, liens, and security interests hereof, it may, at any time before the entry of a final judgment in said suit, dismiss the same, and require Trustee to sell the Mortgaged Property, or any part thereof, in accordance with the provisions of this Deed of Trust.

## **ARTICLE VII**

### **ASSIGNMENT OF LEASES AND RENTS**

Section 7.1. Assignment. Trustor does hereby grant, transfer and assign unto Beneficiary (i) the Leases; (ii) any and all guaranties of payment or performance of the obligations of any Lessee; and (iii) the Rents; provided, however, that Beneficiary hereby grants to Trustor a license to collect and receive all Rents. Such license shall be revocable by notice from Beneficiary to Trustor at any time after the occurrence and during the continuation of a Default.

Section 7.2. No Liability on Beneficiary. Beneficiary shall not be liable for any loss sustained by Trustor resulting from Beneficiary's failure to let the Mortgaged Property, or any part thereof, after Default or from any other act or omission of Beneficiary in managing the Mortgaged Property, or any part thereof. Beneficiary shall not be obligated to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Deed of Trust, and Trustor shall indemnify Beneficiary for, and hold Beneficiary harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Deed of Trust, 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 the Leases. Should Beneficiary incur any such liability under the Leases or under or by reason of this Deed of Trust or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and Trustor shall reimburse Beneficiary therefor immediately upon demand, and upon the failure of Trustor to do so Beneficiary may, at its option, declare the Secured Indebtedness immediately due and payable. It is further understood that this Deed of Trust shall not operate to place responsibility for the control, care,

management or repair of the Mortgaged Property upon Beneficiary, or for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the Lessees or any other parties, or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property, resulting in loss, injury or death to any Lessee, licensee, employee or stranger.

## **ARTICLE VIII**

### **SECURITY AGREEMENT**

Section 8.1. Grant of Security Interest. Trustor hereby transfers, assigns, delivers and grants to Beneficiary a security interest in and right of set-off against the Personal Property as security for payment of the Secured Indebtedness, and authorizes Beneficiary to file such financing statements, as permitted by the Code, to evidence the security interest granted herein and to perfect such security interest.

Section 8.2. Assignment of Non-Code Personal Property. To the extent that any of the Personal Property is not subject to the Code, Trustor hereby assigns to Beneficiary all of Trustor's right, title, and interest in and to the Personal Property to secure the Secured Indebtedness, together with the right of set-off with regard to such Personal Property (or any part hereof). Release of the lien of this Deed of Trust shall automatically terminate this assignment.

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.1. Release of this Deed of Trust. If the Secured Indebtedness is paid and performed in full in accordance with the terms of the instruments evidencing the Secured Indebtedness, and if Trustor shall well and truly perform all of Trustor's covenants contained herein, then this conveyance shall become null and void and be released at Trustor's request, and, to the extent permitted by law, at Trustor's expense; otherwise, it shall remain in full force and effect, provided that no release hereof shall impair Trustor's warranties and indemnities contained herein. Beneficiary shall comply with the provisions of Neb. Rev. Stat. § 76-1014.01.

Section 9.2. Successors. If Trustor, or any of Trustor's Successors, conveys its interest in any of the Mortgaged Property to any other party, then Beneficiary may, without notice to Trustor, or its successors and assigns, deal with any owner of any part of the Mortgaged Property with reference to this Deed of Trust and the Secured Indebtedness, either by way of forbearance on the part of Beneficiary, or extension of time of payment of the Secured Indebtedness, or release of all or any part of the Mortgaged Property, or any other property securing payment of the Secured Indebtedness, without in any way modifying or affecting Beneficiary's Rights and Liens hereunder or the liability of Trustor, or any other party liable for payment of the Secured Indebtedness, in whole or in part. This Subsection shall not be interpreted as giving any rights to Trustor or Trustor's Successors to convey the Mortgaged Property.

Section 9.3. Marshaling. Trustor hereby waives all Rights of marshaling in the event of any foreclosure of the Liens hereby created.

Section 9.4. Reserve for Taxes, Insurance and Other Expenses. Trustor shall pay to Beneficiary, together with and in addition to the monthly payments of principal and interest payable under the terms of the Note secured hereby, on the date set forth therein for the making of monthly payments, until the Note is fully paid, a sum as estimated by Beneficiary, equal to all ground rentals, insurance premiums, taxes and assessments next due against the Mortgaged Property, less all sums already paid therefor, divided by the number of months to elapse before two (2) months prior to the date when each such ground rental, insurance premium, tax and assessment will become due. Such sums shall be held by Beneficiary to pay said ground rentals, insurance premiums, taxes and assessments. Such payments received by Beneficiary from Trustor are to be held without any allowance of interest or dividend to Trustor and need not be kept separate and apart from other funds of Beneficiary. Trustor shall initially fund the reserve on the date of the execution of this Deed of Trust by depositing such sums as are necessary, as reasonably determined by Beneficiary, so that the amount of the initial funding, plus the additional monthly payments contemplated herein, will be sufficient to pay all ground rentals, insurance premiums, taxes and assessments sixty (60) days prior to their respective due dates. For purposes of this Subsection, if taxes and assessments are payable in installments with a six-month interval between due dates, then the due date for such taxes and assessments is that date upon which each installment would first become delinquent and a penalty and/or interest would be assessed if such installment of taxes or assessments were not paid. After the occurrence and during the continuation of a Default, Beneficiary may, in its sole discretion, apply such sums to the payment of such expenses or to the Secured Indebtedness. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent payments to be made on the Secured Indebtedness by Trustor, and any deficiency shall be paid by Trustor to Beneficiary on or before the date when such ground rentals, premiums, taxes, and assessments, shall have become due. Beneficiary may, from time to time, require an increase in the monthly payments to be made under this Subsection, so that such payments in the aggregate will be sufficient in amount for the payment of all ground rentals, premiums, taxes and assessments sixty (60) days before they are due. Beneficiary may designate a third party to collect and hold payments made under this Section 9.4 and to make payments from the funds received in accordance with the terms set forth above. Notwithstanding the foregoing, and provided Grantor is not in Default under any of the Loan Documents, Grantor shall not be required to deposit insurance premium payments with Beneficiary if Grantor otherwise fully complies with Section 4.2(b) hereof and provides Beneficiary with evidence of payment of premiums on all required insurance policies.

Section 9.5. Condemnation and Eminent Domain. Beneficiary shall be entitled to receive any and all sums which may be awarded or become payable to Trustor for the condemnation of, or taking upon exercise of the right of Eminent Domain with respect to, any of the Mortgaged Property for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Trustor for damages caused by public works or construction on or near the Mortgaged Property. Trustor shall give immediate written notice to Beneficiary of any such proceedings affecting the Mortgaged Property, and shall afford Beneficiary an opportunity to participate in any proceeding or settlement of awards with respect

thereto. All such sums are hereby assigned to Beneficiary, and Trustor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to collect and receipt for any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums so collected shall be applied by Beneficiary, first, to the expenses, if any, of collection, and then in accordance with Section 6.5 hereof. Notwithstanding the foregoing, if, after such proceedings or private sale in lieu thereof, Beneficiary determines in its reasonable judgment that the remainder of the Mortgaged Property can be restored in such a manner as to preserve substantially the economic value thereof and Trustor is not then otherwise in Default, upon request of Trustor such sums so held by Beneficiary shall be made available for such restoration and disbursed by Beneficiary during the course of such restoration under safeguards reasonably satisfactory to Beneficiary. Any sums remaining after completion of restoration shall be applied in accordance with Section 6.5. In the event of any partial taking of the Mortgaged Property under this Subsection, Beneficiary may, at its sole discretion, apply the funds received first to the expenses, if any, of collection; second, to any unpaid interest which is due and delinquent and, third, to principal of the Secured Indebtedness, in lieu of applying Section 6.5.

Section 9.6. Insurance Proceeds. Beneficiary is authorized and empowered to collect and receive the proceeds of any and all insurance that may become payable with respect to any of the Mortgaged Property. So long as no Default has occurred and is continuing, such proceeds (together with any other amounts deposited by Trustor with Beneficiary) are sufficient to rebuild and restore the Improvements, such rebuilding and restoration can be completed within six (6) months and prior to the maturity of the Note, and the value of the Mortgaged Property after restoration will be the same as or greater than the value of the Mortgaged Property on the date hereof, Beneficiary shall make such proceeds available to rebuild or restore the Improvements in accordance with disbursement procedures established by Beneficiary or, if such conditions are not met, Beneficiary may apply the same to the Secured Indebtedness in the order and manner set forth in Section 6.5 hereof, whether then matured or to mature in the future, or at Beneficiary's option, first to unpaid interest which is due and delinquent, and second, to principal of the Secured Indebtedness, and prior to such application, may deduct therefrom any expenses incurred in connection with the collection or handling of such proceeds, it being understood that Beneficiary shall not be, under any circumstances, liable, or responsible for failure to collect, or exercise diligence in the collection of, any of such proceeds.

Section 9.7. Subrogation. It is understood and agreed that the proceeds of the Note, to the extent that the same are utilized to pay or renew or extend any indebtedness of Trustor, or any other indebtedness, or take up or release any outstanding Liens against the Mortgaged Property, or any portion thereof, have been advanced by Beneficiary at Trustor's request and at the request of the obligors thereof and upon their representation that such amounts are due and payable. Beneficiary shall be subrogated to any and all Rights and Liens owned or claimed by any owner or beneficiary of said outstanding Rights and Liens, however remote, regardless of whether said Rights and Liens are acquired by assignment or are released by the beneficiary thereof upon payment.

Section 9.8. Illegality. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Deed of Trust, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the Rights and Liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Indebtedness, then the unsecured portion of the Secured Indebtedness shall be completely paid prior to the payment of the remaining and secured portion of the Secured Indebtedness, and all payments made on the Secured Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Indebtedness.

Section 9.9. Maximum Interest Rate. Notwithstanding anything contained in this Deed of Trust or in any of the Loan Documents to the contrary, Beneficiary shall never be deemed to have contracted for or be entitled to receive, collect or apply as interest on the Secured Indebtedness, any amount in excess of the amount permitted and calculated at the highest lawful nonusurious rate, and, in the event Beneficiary ever receives, collects or applies as interest any amount in excess of the amount permitted and calculated at the highest lawful nonusurious rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of the Secured Indebtedness, and, if the principal balance of the Secured Indebtedness is paid in full, any remaining excess shall forthwith be paid to Trustor. In determining whether or not the interest paid or payable under any specific contingency exceeds the amount of interest permitted and calculated at the highest lawful nonusurious rate, Trustor and Beneficiary shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense, fee, or premium, rather than as interest, (ii) exclude voluntary prepayments and the effect thereof, and (iii) spread the total amount of interest throughout the entire contemplated term of the Secured Indebtedness.

Section 9.10. Obligations Binding Upon Trustor's Successors. This Deed of Trust is binding upon Trustor and Trustor's Successors, and shall inure to the benefit of Beneficiary, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and Trustor's Successors.

Section 9.11. Counterparts. If this Deed of Trust has simultaneously been executed in a number of identical counterparts, each of which, for all purposes, shall be deemed an original.

Section 9.12. Exhibits. All exhibits attached hereto are by this reference made a part hereof. The term "Deed of Trust" shall include all such exhibits.

Section 9.13. Indemnity. Trustor hereby assumes all liability to any third party for the Mortgaged Property and for any development, use, possession, maintenance, and management of, and construction upon, the Mortgaged Property, or any part thereof, and agrees to assume

liability to any third party for, and to indemnify and hold Beneficiary harmless from and against, any and all losses, damages, claims, costs, penalties, causes of action, liabilities and expenses, including court costs and attorneys' fees, howsoever arising (including, without limitation, for injuries to or deaths of persons and damage to property), from or incident to such ownership of the Mortgaged Property and development, use, possession, maintenance, management, and construction thereof.

Section 9.14. Vendor's Lien. If all or any portion of the proceeds of the loan evidenced by the Note has been advanced for the purpose of paying the purchase price for all or a part of the Mortgaged Property, then: (i) Beneficiary shall have, and is hereby granted, a vendor's lien on the Mortgaged Property to further secure the Secured Indebtedness; and (ii) Beneficiary shall be subrogated to all rights, titles, interests, liens, and security interests owned or claimed by the holder of any indebtedness which has been directly or indirectly discharged or paid from the proceeds of the loan evidenced by the Note.

Section 9.15. Section References. All references to "Article," "Articles," "Section," "Sections," "Subsection," or "Subsections" contained herein are, unless specifically indicated otherwise, references to articles, sections, and subsections of this Deed of Trust.

Section 9.16. Singular; Plural. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

Section 9.17. Headings. The captions, headings, and arrangements used in this Deed of Trust are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

Section 9.18. Notices. Whenever this Deed of Trust requires or permits any consent, approval, notice (except for notices of a foreclosure which, if any such notices are required by law, shall be in accordance with such law), request, or demand from one party to another, the consent, approval, notice, request, or demand shall be effective only if it is in writing, referring to this Deed of Trust, signed by the party giving such notice or its attorney, and delivered either personally to such other party, or sent prepaid by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by written notice to the other party specify):

To Trustor:                   K.V. Joint Venture  
                                  11205 John Galt Blvd.  
                                  Omaha, NE 68137  
                                  Attention: Milo P. Vacanti

To Beneficiary:           American Equity Investment Life Insurance Company

Mailing address: P. O. Box 71216  
Des Moines, IA 50325  
Attention: Mortgage Loan Department

Delivery address: 6000 Westown Parkway  
West Des Moines, IA 50266  
Attention: Mortgage Loan Department

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered; (ii) if delivered by nationally recognized overnight courier delivery service, on the next business day following the day such material is sent, and (iii) if by certified mail, three (3) days after such material is deposited in the United States Mail.

REQUEST FOR NOTICE. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

Section 9.19. Resignation; Removal of Trustee. Trustee may resign at any time with prior written notice to the Beneficiary. In the event of the resignation or death of Trustee, or Trustee's failure, refusal or inability, for any reason, to make any sale or to perform any of the trusts herein declared, or, at the option of Beneficiary, without cause, Beneficiary may appoint, orally or in writing, in the manner set forth in Neb. Rev. Stat. § 76-1004, a substitute trustee, who shall thereupon succeed to all the estates, titles, rights, powers, and trusts herein granted to and vested in Trustee. Such appointment may be made on behalf of Beneficiary by any person who is then the president, or a vice-president, assistant vice-president, treasurer, cashier, secretary, or any other authorized officer or agent of Beneficiary. In the event of the resignation or death of any substitute trustee, or such substitute trustee's failure, refusal or inability to make any sale or perform such trusts, or, at the option of Beneficiary, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used, the same shall mean the person who is the duly appointed trustee in the first paragraph of this Deed of Trust or substitute trustee hereunder at the time in question.

Section 9.20. Governing Laws. The substantive laws of the State of Nebraska shall govern the validity, construction, enforcement, and interpretation of this Deed of Trust, and the other Loan Documents, unless otherwise specified therein.

Section 9.21. Time of Essence. Time is of the essence of this Deed of Trust.

Section 9.22. Fixture Filing. This Deed of Trust shall also constitute a security agreement with respect to the Personal Property and a "fixture filing" for purposes of the Code. Portions of the Personal Property are or may become fixtures. Information concerning the security interests herein granted may be obtained at the addresses stated in the preamble hereof.

Section 9.23. Financing Statement. Beneficiary shall have the right at any time to file this Deed of Trust as a financing statement, but the failure to do so shall not impair the validity



and enforceability of this Deed of Trust in any respect whatsoever. A photographic, or other reproduction of this Deed of Trust, or any financing statement relating to this Deed of Trust, shall be sufficient as a financing statement.

Section 9.24. Entire Agreements; Amendments. This Deed of Trust, the Note and the other documents executed in connection herewith represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Deed of Trust cannot be amended except by agreement in writing by the party against whom enforcement of the amendment is sought.

Section 9.25. Remedies Cumulative and Non-Waiver. No remedy or right of the Beneficiary hereunder or under the Note, or any of the Loan Documents, or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Default shall impair any such remedy or right or be construed to be a waiver of any such Default or an acquiescence therein, nor shall it affect any subsequent Default of the same or a different nature, nor shall it extend or affect any grace period. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by the Beneficiary. All obligations of the Trustor and all rights, powers, and remedies of the Beneficiary expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any of the Loan Documents or any other written agreement or instrument relating to any of the Secured Indebtedness or any security therefor.

Section 9.26. No Right of Setoff. No setoff or claim that Trustor may now or in the future have against Beneficiary shall relieve or excuse Trustor from paying the installments under the Note or performing any other obligation secured hereby when the same is due.

Section 9.27. Trustee Liability. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable to Trustor under any circumstances whatsoever, nor shall Trustee be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted, upon the Mortgaged Property or for debt contracted or 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 Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to be reimbursed for expenses incurred by Trustee in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor, from time to time, will pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in performance of its duties hereunder.

Section 9.28. Right to Modify. Without affecting the obligation of Trustor to pay and perform as herein required, without affecting the personal liability of any person for payment of the Secured Indebtedness, and without affecting the lien or priority of the lien hereof on the Mortgaged Property, Beneficiary may, at its option, extend the time for payment of the Secured Indebtedness or any portion thereof, reduce the payments thereon, release any person liable on any portion of the Secured Indebtedness, accept a renewal note or notes therefor, modify the terms of the Secured Indebtedness, release or reconvey any part of the Mortgaged Property, take or release other or additional security, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or agreement subordinating the lien hereof. Any such action by Beneficiary may be taken without Trustor's consent and without the consent of any subordinate lienholder, and shall not affect the priority of this Deed of Trust over any subordinate lien.

Section 9.29. Additional Security. The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered as a waiver of, or in any way affecting or impairing any other security which Beneficiary may have or acquire simultaneously herewith or may hereafter acquire for the payment of the Secured Indebtedness, nor shall the taking at any time by Beneficiary of any such additional security be construed as a waiver of, or in any way affecting or impairing the security of this Deed of Trust; and Beneficiary may resort, for the payment of the Secured Indebtedness, to any security therefor in such order and manner as it may deem fit.

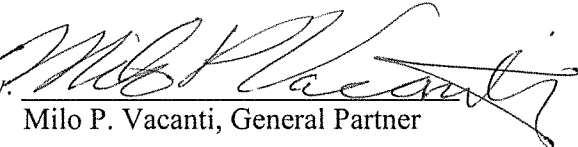
Section 9.30. Expenses of Recording. Trustor agrees to pay all mortgage recording taxes, revenue stamps, charges and filing, registration and recording fees imposed upon this Deed of Trust, the recording or filing thereof, or upon the Beneficiary by reason of its ownership of this Deed of Trust, or its enforcement thereof, or imposed upon any security instrument with respect to any fixture or personal property owned by Trustor at the Mortgaged Property, or imposed upon any instrument of further assurance.

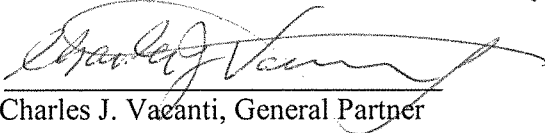
*(Signature page follows)*

**IN WITNESS WHEREOF**, this Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents has been executed effective as of the date and year first set forth above.

TRUSTOR:  
K.V. JOINT VENTURE,  
a Nebraska general partnership

By: K. V. COMPANY,  
a Nebraska general partnership, a General Partner

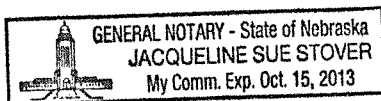
By:   
Milo P. Vacanti, General Partner

By:   
Charles J. Vacanti, General Partner

*(Notary page follows)*

STATE OF NEBRASKA, COUNTY OF DOUGLAS, ss:

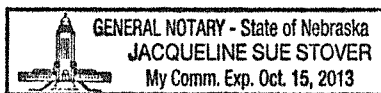
On this 24<sup>th</sup> day of May, 2012, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Milo P. Vacanti, to me personally known, who being by me duly sworn or affirmed did say that he is a General Partner of K. V., Company, a Nebraska general partnership, a General Partner of K.V. Joint Venture, a Nebraska general partnership; that said instrument was signed on behalf of said general partnership by authority of its partners; and that the said Milo P. Vacanti, as such General Partner, acknowledged the execution of said instrument to be the voluntary act and deed of said general partnership, by it and by said General Partner voluntarily executed.



*Jacqueline Sue Stover*  
Notary Public in and for said county and state

STATE OF NEBRASKA, COUNTY OF DOUGLAS, ss:

On this 24<sup>th</sup> day of May, 2012, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Charles J. Vacanti, to me personally known, who being by me duly sworn or affirmed did say that he is a General Partner of K. V., Company, a Nebraska general partnership, a General Partner of K.V. Joint Venture, a Nebraska general partnership; that said instrument was signed on behalf of said general partnership by authority of its partners; and that the said Charles J. Vacanti, as such General Partner, acknowledged the execution of said instrument to be the voluntary act and deed of said general partnership, by it and by said General Partner voluntarily executed.



*Jacqueline Sue Stover*  
Notary Public in and for said county and state

Exhibit A - Description of Land  
Exhibit B - Permitted Exceptions to Title

## **EXHIBIT "A"**

### **Legal Description**

The East 6 feet of Lots 34 and 37 and all of Lots 35 and 36, in Empire Park Replat II, an addition to the City of Omaha, Douglas County, Nebraska, EXCEPT for that part conveyed to the City of Omaha, Nebraska, a Municipal Corporation, by Warranty Deed filed March 22, 2010 at Instrument No. 2010024121, records of Douglas County, Nebraska and more fully described as follows: Beginning at the Southeasterly corner of Lot 36, Empire Park Replat II, an addition to the City of Omaha; thence S 79°48'19" W, a distance of 8.00 feet; thence N 38°25'01" E, a distance of 12.00 feet; thence S 02°58'17" E, a distance of 8.00 feet to the point of beginning.

## **EXHIBIT “B”**

### **Permitted Exceptions**

Those exceptions contained in Schedule B of the Policy of Title Insurance issued by Stewart Title Guaranty Company in favor of American Equity Investment Life Insurance Company covering the Mortgaged Property.