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2015075417

**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

Jessica Marzullo, Esq.
CMB Nebraska, LLC
7819 42nd Street West,
Rock Island, IL 61201

(Space above this line for Recorder's use)

TO BE RECORDED IN THE
RECORDS OF
DOUGLAS COUNTY, NEBRASKA

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

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (herein referred to as the "Deed of Trust"), is entered into as of August 28, 2015, by **CAPITOL DISTRICT HOTEL, LLC**, a Nebraska limited liability company, as grantor for all purposes hereunder (together with its permitted successors and assigns, "Borrower"), whose mailing address for notice hereunder is **1111 North 13th Street, Suite 101, Omaha, NE 68102**, Attn: **Michael T. Moylan**, and who has received and benefited from the Loan funds loaned to Borrower by Lender for purposes of developing and constructing the Project, to **Aaron B. Johnson**, Stinson Leonard Street LLP, a member of the Nebraska State Bar Association, as Trustee ("Trustee"), as may be amended pursuant to this Deed of Trust, whose address is 1299 Farnam Street, Suite 1500 | Omaha, NE 68102-1818, for the benefit of **CMB NEBRASKA INFRASTRUCTURE INVESTMENT GROUP 47, LP**, a Delaware limited partnership as beneficiary for all purposes hereunder (together with its permitted successors and assigns, "Lender") whose address is 7819 42nd Street West, Rock Island, Illinois 61201. For all

state law, statutory and other purposes hereunder, (i) the term "Borrower" as used herein shall be deemed to mean a trustor of the Mortgaged Property as described herein the same as if the term "trustor" were used in lieu of the term "Borrower" throughout this Deed of Trust, and (ii) the term "Lender" as used herein shall be deemed to mean the beneficiary of this Deed of Trust with respect to the Mortgaged Property with all of the rights conferred hereby the same as if the term "beneficiary" were used in lieu of the term "Lender" throughout this Deed of Trust.

WITNESSETH:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Borrower: The individual or entity described as Borrower in the initial paragraph of this Deed of Trust and any and all subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Lender's consent to any Disposition of the Mortgaged Property).

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

Construction Contracts: Collectively, the right, title and interest of Borrower in any and all contracts, subcontracts and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower in any way relating to any restoration, renovation, expansion, repair, development, or construction of all or any portion of the Improvements or the supplying of material (especially fabricated or otherwise), labor, supplies or other services therefor.

Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all: (a) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (b) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning

variances, permits, and no-action letters from each Governmental Authority required: (i) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all legal requirements applicable to the Mortgaged Property; (ii) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable (iii) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (c) any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (d) economic incentives or similar agreements or understandings; (e) agreements relating in any way to the construction, development, or rehabilitation of the Land or Improvements or provision of materials therefor including, without limitation, all Construction Contracts; (f) contracts with architects, engineers or others for the preparation or provision of any Plans, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (g) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including, without limitation, any franchise or license or similar agreement relating to the hospitality nature of the Improvements.

Default Interest Rate: The rate of interest specified in the Note to be paid by Borrower from and after the occurrence of an Event of Default but in no event in excess of the maximum rate of interest which may be contracted for, charged, taken, received or reserved in accordance with applicable law.

Disposition: Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, trade or other disposition of all or any part of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest, held directly or indirectly, in Borrower (if Borrower is a corporation, limited liability company, limited liability partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

Event of Default: Any happening or occurrence described in Article VI hereof.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, including, but not limited to, any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Guarantors (individually and/or collectively, as the context may require): Those Persons, if any, designated as Guarantors in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That instrument or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor to Lender guaranteeing the full completion of all of the development and construction activities of the Project.

Land: That certain Real Property or interest more particularly therein described in Exhibit A attached hereto, and incorporated herein by reference, together with all rights, titles, interests and privileges of Borrower, excluding the Permitted Encumbrances, in and to (a) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary or non-tributary, surface or underground, designated or undesignated; (iv) timber, crops, pertaining to such real property; and (d) all appurtenances and all reversions and remainders in or to such real property.

Leases: The right, title and interest of Borrower in any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith, whether entered into before or after the filing by or against Borrower of any petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as amended.

Lender: CMB NEBRASKA INFRASTRUCTURE INVESTMENT GROUP 47, LP, whose address for notice hereunder is 7819 42nd Street West, Rock Island, Illinois 61201, and the subsequent holder or holders, from time to time, of the Note.

Lessee: As applicable, individually or collectively, a lessee or tenant under any of the Leases.

Loan Agreement: That certain Loan Agreement of even date herewith by and between Borrower and Lender, governing advances under the Loan evidenced by the Note and secured by this Deed of Trust in addition to other collateral pledged to Lender by Borrower and Borrower's Affiliates under the Loan Agreement and related documents.

Minerals: All right, title and interest of Borrower, if any, in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable, and which now or may be in the future enjoyed through extraction or removal from the Land, including, without limitation, oil, gas, all other hydrocarbons, coal, lignite, carbon dioxide, all other non-hydrocarbon gases, uranium, all other radioactive substances, gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Rents, Plans and Construction Contracts, and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Rents, Plans and Construction Contracts, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Obligations or the performance and discharge of the Contractual Obligations, together with any and all proceeds of any of the foregoing, subject to any Permitted Encumbrances. As used in this Deed of Trust, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any part of the above and all or, where the context permits or requires, any interest therein.

Note: That certain promissory note of even date herewith and having a maturity date as set forth in the Loan Agreement, incorporated herein by this reference, executed by Borrower and payable to the order of Lender in the principal amount of **THIRTY-TWO MILLION AND NO/100 DOLLARS (\$32,000,000.00) or such lesser amount advanced under the Loan Agreement** and any and all renewals, modifications, reinstatements, enlargements, or extensions of such promissory note or of any promissory note or notes given in renewal, substitution or replacement therefor.

Person: Any corporation, limited liability company, limited liability partnership, general partnership, limited partnership, firm, association, joint venture, trust or any other association or legal entity, including any public or governmental body, quasi-governmental body, agency or instrumentality, as well as any natural person.

Personalty: All of the right, title, and interest of Borrower in and to; (a) furniture, furnishings, equipment, machinery, tangible personal property, and goods located within, used in the operation of or derived from the Improvements, (b) crops, farm products, timber and timber to be cut, and extracted Minerals; (c) general intangibles (including payment intangibles), money, insurance proceeds (whether or not such insurance was requested or required by Lender), accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (d) all cash funds, fees (whether refundable, returnable, or reimbursable) deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (e) the Construction Contracts, Plans and all building and construction materials and equipment; and (f) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing,

use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Plans: Any and all plans, specifications, shop drawings and other technical descriptions as may be prepared for the construction of the Improvements or, as applicable, the development of the Land and all supplements thereto and amendments and modifications thereof.

Rents: All rents, revenues, royalties, income, issues, proceeds, bonus monies, profits, security and other types of deposits (after Borrower acquires title thereto) and other benefits paid or payable by parties to the Leases and/or Contracts (other than Borrower) for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings: (a) "hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Deed of Trust or to the other documents or matters being referenced; (b) "heretofore" means before, "hereafter" means after, and "herewith" means concurrently with the date of this Deed of Trust; (c) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require; (d) "including" means including, without limitation; (e) all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and (f) all capitalized terms used herein and not defined in Section 1.1 hereof shall have the meanings ascribed to such terms in the Loan Agreement.

1.3 Not a Revolver Facility. It is expressly understood and agreed that the Loan is not intended to be a "revolver" facility and that no principal amount repaid by Borrower may be reborrowed by Borrower.

ARTICLE II

GRANT

2.1 Grant. The consideration received by Borrower to execute and deliver this Deed of Trust and the liens and security interests created herein are sufficient and will provide a direct economic benefit to Borrower. Therefore, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, WITH POWER OF SALE, for the benefit and security of Lender and its successors and assigns, under and subject to the terms and conditions hereinafter set forth, all of the Mortgaged Property for the purpose of securing the Obligations and Contractual Obligations (expressly excluding the obligations of Guarantor under the Guaranty), in the amount of Thirty-Two Million Dollars (\$32,000,000) or such lesser amount as is advanced pursuant to the Loan Agreement, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Borrower does hereby bind

itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Borrower shall pay (or cause to be paid) the Obligations as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Contractual Obligations on or before the date same are to be performed and discharged, then upon the payment of all sums secured hereby, and upon Lender's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, Lender shall cause Trustee to reconvey to Borrower, or the person or persons legally entitled thereto, without warranty, any portion of the Mortgaged Property then held hereunder. Borrower shall be responsible for the recordation of such reconveyance and the payment of any recording and filing costs. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto". Anything to the contrary herein or elsewhere notwithstanding, the obligations of the Guarantor under the Guaranty shall not be secured by this Deed of Trust, any separate assignment of leases or assignment of rents, or any other lien encumbering the Mortgaged Property, provided that the obligations of the Borrower shall be secured hereby.

ARTICLE III

WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents to Lender, as of the date hereof and at all times during the term of this Deed of Trust, as follows:

3.1 Title and Lien. Borrower has good and indefeasible title to the Land (in fee simple) and all Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases, covenants, and other rights, titles, interests, or estates of any nature whatsoever, except the Permitted Encumbrances and exceptions to title approved by Lender in its lender's policy of title insurance with respect to this Deed of Trust. This Deed of Trust constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, Rents, Construction Contracts, Plans, and, to the extent that the term "Leases" includes items covered by the Code, in and to the Leases; all in accordance with the terms hereof and all subject to the Permitted Encumbrances. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Deed of Trust, and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Mortgaged Property pursuant to any foreclosure or otherwise.

3.2 Incorporation of Warranties and Representations. All the warranties, representations, covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note, and (c) any and all of the other Loan Documents, are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

3.3 Separate Tax Parcel; Legal Lot. To the best of Borrower's actual knowledge, the Mortgaged Property is taxed separately without regard to any other real estate and the Land

constitutes a legally subdivided lot under all applicable legal requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel or independent parcels.

3.4 No Commencement of Construction. As of the date of this Deed of Trust, except as otherwise disclosed to Lender in writing by Borrower, (a) no work or construction of any kind has been commenced on the Land and (b) there are no outstanding bills for labor and materials relating to the Mortgaged Property due and owing to any contractor, subcontractor, or supplier.

ARTICLE IV

AFFIRMATIVE COVENANTS

Borrower hereby unconditionally covenants and agrees that until the Obligations in their entirety shall have been paid in full and all of the Contractual Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Subject to applicable notice and cure periods in the Loan Documents, Borrower will pay the Obligations as and when specified in the Loan Documents, and will perform and discharge all of the Contractual Obligations in full and on or before the dates same are to be performed.

4.2 First Lien Status. Subject only to the Senior Loan, as described in the Loan Agreement, Borrower will protect the lien and security interest status of this Deed of Trust and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with or superior to any of the liens or security interests hereof, or any lien or security interest inferior to any of the liens or security interests hereof except for the Permitted Encumbrances.

4.3 Tax on Deed of Trust. If at any time any applicable Laws 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 Obligations or any part thereof, Borrower will immediately pay all such taxes, provided that if such law, as enacted, makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay the Obligations in full, if allowable according to the terms of the Loan Agreement.

4.4 Incorporation of Affirmative Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

4.5 Casualty; Condemnation. Borrower (a) subject to the notice and cure periods set forth in the Loan Agreement, agrees to insure, restore, maintain and repair damage to the Mortgaged Property, pay all property taxes and other impositions, and comply with the Loan

Agreement, and (b) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in accordance with the Loan Agreement and all applicable Laws.

ARTICLE V

NEGATIVE COVENANTS

Borrower hereby unconditionally covenants and agrees with Lender, until all Obligations shall have been paid in full and all of the Contractual Obligations shall have been fully performed and discharged, as follows:

5.1 Use Violations. Except to the extent permitted under the Loan Agreement, Borrower shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Borrower shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Lender. Borrower will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner that (a) materially violates any legal requirement; (b) may be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (c) constitutes a public or private nuisance; (d) makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto; (e) changes the use of the Mortgaged Property; (f) permits or suffers to occur any material waste on or to the Mortgaged Property; or (g) without notice to and the specific written consent of Lender and compliance with the Loan Agreement, converts the Mortgaged Property to a condominium or cooperative form of ownership.

5.2 No Drilling. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof; provided, however, extraction of Minerals from the subsurface of the Land shall not be deemed to violate this Section 5.2 so long as such extraction is done from an offsite location consistent with all legal requirements and in a manner such that no material negative effect or danger whatsoever occurs with respect to the surface of the Mortgaged Property.

5.3 No Disposition or Encumbrance. Except as permitted in any of the Loan Documents, neither Borrower nor any shareholder, member nor partner of Borrower will make a Disposition without obtaining Lender's prior written consent. Borrower will not create, incur, assume or suffer to exist any lien or encumbrance against all or any portion of the Mortgaged Property, other than as expressly permitted pursuant to the Loan Agreement.

ARTICLE VI

EVENTS OF DEFAULT

6.1 The term "Event of Default," as used herein shall have the same meaning described for such term in the Loan Agreement.

ARTICLE VII

REMEDIES

7.1 Lender's Remedies Upon Event of Default. Upon the occurrence of an Event of Default, Lender may, at Lender's option, and by or through Trustee, by Lender or otherwise, do any one or more of the following:

(a) Right to Perform Borrower's Covenants. If Borrower has failed to keep or perform any covenant whatsoever contained in this Deed of Trust or the other Loan Documents, Lender may, but shall not be obligated to any person to do so, 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 and become a part of the Obligations, and Borrower promises, upon demand, to pay to Lender, at the place where the Note is payable, all sums so advanced or paid by Lender, with interest from the date when paid or incurred by Lender at the Default Interest Rate. No such payment by Lender shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Lender shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Lender may make an advance, or which Lender may pay.

(b) Right of Entry. Lender may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, in its own name or in the name of Trustee, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise, without interference from Borrower, any and all rights which Borrower has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Borrower and to apply such Rents as provided in Article IX hereof. All such costs, expenses, and liabilities incurred by Lender in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as set forth in Section 9.3 hereof, shall constitute a demand obligation owing by Borrower and shall bear interest from the date of expenditure until paid at the Default Interest Rate, all of which shall constitute a portion of the Obligations. If necessary to obtain the possession provided for above, Lender may invoke any and all legal remedies to dispossess Borrower, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Lender pursuant to this subsection, Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Lender in managing the Mortgaged Property unless such loss is caused by the gross negligence or willful misconduct of Lender, its agents, employees or assigns, nor shall Lender be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. **EXCEPT AS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER OR LENDER'S AGENTS, EMPLOYEES OR ASSIGNS, BORROWER SHALL AND DOES HEREBY AGREE TO INDEMNIFY LENDER FOR, AND TO HOLD LENDER**

HARMLESS FROM, ANY AND ALL LIABILITY, LOSS, OR DAMAGE, WHICH MAY OR MIGHT BE INCURRED BY LENDER UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE. Should Lender incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Interest Rate, shall be secured hereby, and Borrower shall reimburse Lender therefor within fifteen (15) days of written demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Lender for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any hazardous or environmentally sensitive substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Borrower hereby assents to, ratifies, and confirms any and all actions of Lender with respect to the Mortgaged Property taken under this subsection.

The remedies in this subsection are in addition to other remedies available to Lender and the exercise of the remedies in this subsection (b) shall not be deemed to be an election of nonjudicial or judicial remedies otherwise available to Lender.

(c) Right to Accelerate. Lender may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Borrower and all other parties obligated in any manner whatsoever on the Obligations, declare the entire unpaid balance of the Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Obligations shall be immediately due and payable. The failure to exercise any remedy available to Lender shall not be deemed to be a waiver of any rights or remedies of Lender under the Loan Documents, at law or in equity.

(d) Lender's Judicial Remedies. In addition to the foregoing, Lender, may proceed by suit or suits, at law or in equity, to enforce the payment of the Obligations and the performance and discharge of the Contractual Obligations in accordance with the terms hereof, of the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other judicial and nonjudicial remedies available to Lender with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not

be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Lender.

(e) Foreclosure. Immediately commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the Obligations secured hereby, pursuant to the statutes in such case made and provided, and sell the Mortgaged Property or cause the Mortgaged Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender.

(i) In the event foreclosure proceedings are instituted or filed by Lender, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the Obligations evidenced by the Note. The secured Obligations and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Mortgaged Property or any part thereof.

(ii) Lender may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Mortgaged Property and, in such event, said foreclosure shall not affect the lien of this Deed of Trust on the remaining portion of the Mortgaged Property.

(f) Foreclosure By Power of Sale. Should Lender elect to foreclose by exercise of the power of sale herein contained, Lender shall deliver to Trustee a written declaration of an Event of Default and demand for sale, and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(i) Upon receipt of such notice from Lender, Trustee shall cause to be recorded, published and delivered to Borrower a written notice of default and election to sell, as then required by law and by this Deed of Trust. Trustee shall, without demand on Borrower, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Mortgaged Property at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items as Trustee deems expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Mortgaged Property so sold, but without any covenant or warranty, express or

implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, except Trustee, Borrower, Borrower's Affiliates or Subsidiaries or any of them, may purchase at such sale and Borrower hereby covenants to warrant and defend the title to such purchaser or purchasers.

(ii) Subject to any limitations imposed by applicable law, after deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title and in connection with the sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Interest Rate; all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

(iii) Subject to applicable law, Trustee may postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter, may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(iv) The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Mortgaged Property remaining unsold, but shall continue unimpaired until all of the Mortgaged Property has been sold by exercise of the power of sale herein contained and all indebtedness of Borrower to Lender under the Deed of Trust, the Note or other Loan Documents has been paid in full.

(g) Lender's Right to Appointment of Receiver. Lender, without regard to the sufficiency of the security for repayment of the Obligations and performance and discharge of the Contractual Obligations, without notice to Borrower and without any showing of insolvency, fraud, or mismanagement on the part of Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to apply to any court having jurisdiction for the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents, and Borrower hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(h) Lender's Uniform Commercial Code Remedies. Upon the occurrence and continuance of an Event of Default, Lender may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code and, in conjunction with, in addition to or in substitution for the rights and remedies under the Code, Lender may and Borrower agrees as follows:

(i) without demand or notice to Borrower, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Lender may require Borrower to assemble the Personalty and make it available at a place designated by Lender that is mutually convenient to allow Lender to take possession or dispose of the Personalty; and

(iii) written notice mailed to Borrower as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9.604(a) of the Code; and

(v) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Lender, be sold as a whole; and

(vi) it shall not be necessary that Lender take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and the reasonable attorneys' fees and legal expenses incurred by Lender; and

(viii) after notification, if any, hereafter provided in this subsection, Lender may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Lender's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Lender, Borrower shall assemble the Personalty and make it available to Lender at any place designated by Lender that is reasonably convenient to both Borrower and Lender. Borrower agrees that Lender shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Borrower shall be liable for all expenses of retaking, holding, preparing for sale, or the like, and all attorneys' fees, legal

expenses, and all other costs and expenses incurred by Lender in connection with the collection of the Obligations and the enforcement of Lender's rights under the Loan Documents. Lender shall apply the proceeds of the sale of the Personalty against the Obligations in accordance with the provisions of Section 7.4 of this Deed of Trust. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Obligations in full. Borrower waives all rights of marshalling in respect of the Personalty; and

(ix) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder, the nonpayment of the Obligations, the occurrence of any Event of Default, Lender having declared all or a portion of such Obligations to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

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

(i) Rights Relating to Rents. Borrower has, pursuant to Article IX of this Deed of Trust, assigned absolutely to Lender all Rents. Lender, or Trustee on Lender's behalf, may at any time, and without notice, either by authorized representative, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Borrower hereby agrees that Lender shall, upon the occurrence of an Event of Default following any applicable notice and cure periods, automatically, and without further action of any kind or nature by Lender, terminate the License granted to Borrower in Section 9.2 hereof, and thereafter direct the lessees under the Leases via reasonable written notice (a "Lease Rent Notice") to pay directly to Lender the Rents due and to become due under the Leases and attorney's fees in respect of all other obligations thereunder direct to Lender, without any obligation on the part of Lender or Trustee to determine whether an Event of Default does in fact exist or has in fact occurred. It shall never be necessary for Lender to institute legal proceedings to enforce any provision of Article IX of this Deed of Trust. All Rents collected by Lender shall be applied as provided for in Article IX of this Deed of Trust; provided, however, that if the costs, expenses, and attorneys' fees incurred in connection therewith shall exceed the amount of Rents so collected, the excess shall be added to the Obligations, shall bear interest at the Default Interest Rate, and shall be immediately due and payable. The entering upon and taking possession of the Mortgaged Property, the collection of Rents, and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of Event of Default, if any, hereunder nor invalidate any act done pursuant to such notice, except to the extent any such Event of Default is fully cured. Failure or discontinuance by Lender, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Lender of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority

herein granted to Lender, or Trustee on Lender's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Borrower to Lender. In addition, Lender may from time to time elect, and notice hereby is given to each lessee under each Lease, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(j) Other Rights. Lender (i) may, in Lender's sole discretion, surrender the insurance policies maintained pursuant to the Loan Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Obligations, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such premiums; (ii) may apply the reserve for all property taxes and other impositions and insurance premiums, if any, required by the provisions of this Deed of Trust, toward payment of the Obligations; and (iii) shall have and may exercise any and all other rights and remedies that Lender may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(k) Lender as Purchaser. Lender may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under the power of sale herein vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, and Lender shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Obligations. Lender, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Lender's purchase shall be applied in accordance with Section 7.4 of this Deed of Trust.

(l) Release of and Resort to Collateral. Lender may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a prior lien and security interest in and to the Mortgaged Property. For payment of the secured Obligations, Lender may resort to any other security in such order and manner as Lender may elect.

(m) Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefit that might accrue to Borrower by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (ii) all notices of any Event of Default or of Lender's elections or Trustee's election on behalf of Lender to exercise or its actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

(n) Discontinuance of Proceedings. If Lender shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the Loan Documents, all of Borrower's Obligations thereunder, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Lender thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

7.2 Other Rights of Lender. Should any part of the Mortgaged Property come into the possession of Lender after an Event of Default, Lender may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Lender may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Lender may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Lender in respect of the Mortgaged Property. Borrower covenants to promptly reimburse and pay to Lender on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, property taxes, impositions, or other charges) incurred by Lender in connection with Lender's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Lender at the Default Interest Rate; and all such expenses, costs, taxes, interest, and other charges shall be and become a part of the Obligations. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Borrower, and Lender 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 insurance in force is adequate as to amount or as to the risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or Collateral not in Lender's possession.

7.3 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Borrower or Borrower's successors shall hold possession of said

property or any part thereof subsequent to foreclosure, Borrower and Borrower's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant to any of the Loan Documents (following any application of the proceeds in accordance with Section 8.2 hereof), or any Rents collected by Lender from the Mortgaged Property (following any application of such Rents in accordance with Section 9.3 hereof), or sums received pursuant to Section 8.1 hereof which Lender elects to apply to the Obligations in accordance with the applicable provisions of the Loan Agreement, shall be applied by Trustee, or by Lender, as the case may be, to the Obligations in the following order and priority, unless otherwise required by applicable law: (a) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including but not limited to reasonable attorneys' fees and a reasonable fee to Trustee, not to exceed five percent (5%) of the proceeds thereof or sums so received; (b) to the remainder of the Obligations as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Obligations, and third, to prepayment of the unmatured portion, if any, of principal of the Obligations applied to installments of principal in inverse order of maturity; (c) the balance, if any and to the extent applicable, remaining after the full and final payment of the Obligations and full performance and discharge of the Contractual Obligations to the holder or Lender of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Lender shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (d) the cash balance, if any, to Borrower. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Obligations like any other payment. The balance of the Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or the other Loan Documents.

7.5 Abandonment of Sale. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 7.1(e) hereof, at any time before the sale, Trustee may abandon the sale, and Lender may then institute suit for the collection of the Obligations and for the foreclosure of the liens and security interests hereof and of the Loan Documents. If Lender should institute a suit for the collection of the Obligations and for a foreclosure of the liens and security interests, Lender may, at any time before the entry of a final judgment in said suit, dismiss the same and sell the Mortgaged Property or any part thereof in accordance with the provisions of this Deed of Trust.

7.6 Payment of Fees. If the Note or any other part of the Obligations is collected or if any of the Contractual Obligations are enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or are placed in the hands of an attorney for collection after

maturity, whether matured by the expiration of time or by an option given to Lender to mature same, or if Lender becomes a party to any suit where this Deed of Trust or the Mortgaged Property or any part thereof is involved, Borrower agrees to pay Lender's attorneys' fees and expenses incurred, and such fees shall be and become a part of the Obligations and shall bear interest from the date such costs are incurred at the Default Interest Rate.

7.7 Miscellaneous.

(a) Discontinuance of Remedies. In case Lender shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Lender shall have the unqualified right so to do and, in such event, Borrower and Lender shall be restored to their former positions with respect to the Obligations, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence of an Event of Default, Lender and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Lender granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of Collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Borrower, the Mortgaged Property, or any one or more of them, at the sole discretion of Lender; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Lender exercising or pursuing any remedy in relation to the Mortgaged Property prior to Lender bringing suit to recover the Obligations or suit on the Contractual Obligations; and (vi) in the event Lender elects to bring suit on the Obligations and/or the Contractual Obligations and obtains a judgment against Borrower prior to exercising any remedies in relation to the Mortgaged Property, all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Lender's option.

(d) Partial Release; Etc. Lender may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Deed of Trust or the other Loan Documents or affecting the obligations of Borrower or any other party to pay the Obligations or perform and discharge the Contractual Obligations. For payment of the Obligations, Lender may resort to any of the Collateral therefor in such order and manner as Lender may elect. No Collateral heretofore, herewith, or hereafter taken by Lender shall in any manner impair or affect the Collateral given pursuant to the Loan Documents, and all Collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Borrower. Borrower hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default, Lender's exercise of any right, remedy, or recourse provided for under the Loan Documents or Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents on behalf of Lender and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Borrower and Lender mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

(g) Real Property Laws Govern at Lender's Election. Following an Event of Default subject to any notice and cure periods, any sale of any personal property under this Article VII shall be conducted in any manner permitted by Section 9-604 of the Code or any other applicable section of the Code. Where the Mortgaged Property consists of real and personal property or fixtures, whether or not such personal property is located on or within the Real Property, Lender may elect in its discretion to exercise its rights and remedies against any or all of the Real Property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law. Without limiting the generality of the foregoing, Lender may, in its discretion and without regard to the adequacy of its security, elect to proceed against any or all of the Real Property, personal property and fixtures in any manner permitted under Section 9-604(a)(1) of the Code; and if Lender elects to proceed in the manner permitted under Section 9-604(a)(1)(B) of the Code, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, personal property and fixtures covered hereby, as designated by Lender, and Trustee is hereby authorized and empowered to conduct and such sale of any Real Property, personal property and fixtures in accordance with the applicable procedures.

ARTICLE VIII

SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Lender shall be entitled to receive any and all sums which may be awarded and become payable to Borrower for condemnation of the Mortgaged Property or any part thereof, 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 Borrower for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Lender, and Borrower shall, upon request of Lender, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Lender to collect and receive any such sums. Lender 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 received by Lender as a result of condemnation shall be applied or disbursed in accordance with the terms of the Loan Agreement.

8.2 Insurance Proceeds. The proceeds of any and all insurance upon the Mortgaged Property shall be collected by Trustee and disbursed to Borrower to be applied or disbursed only for the development, construction or rebuilding of the Project in accordance with the terms of the Loan Agreement (whether or not such insurance was required or requested by Lender); provided that if such disbursement for the development of the Project cannot be reasonably accomplished at least six (6) months prior to the Maturity Date of the Loan, then such proceeds shall be paid to Lender as repayment of the Loan.

ARTICLE IX

ASSIGNMENT OF RENTS

9.1 Present Assignment. In consideration of the Obligations and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower absolutely and unconditionally GRANTED, BARGAINED, SOLD, and CONVEYED, and by these presents does absolutely and unconditionally GRANT, BARGAIN, SELL, and CONVEY the Rents unto Lender, in order to provide a source of future payment of the Obligations and the Contractual Obligations, subject only to the Permitted Encumbrances applicable thereto and the License, it being the intention of Borrower and Lender that this conveyance be presently and immediately effective; and is neither conditional nor security for the repayment of the Obligations and the Contractual Obligations, TO HAVE AND TO HOLD the Rents unto Lender, forever, and Borrower does hereby bind itself, its successors, and assigns to warrant and forever defend the title to the Rents unto Lender against every Person whomsoever lawfully claiming or to claim the same or any part thereof.

9.2 Limited License. Lender hereby grants to Borrower license (“License”) subject to termination of such License and the other terms and provisions of Section 7.1(i) hereof, to exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Borrower hereby agrees to receive all Rents and hold the same as Lender's Agent to be applied, and to apply the Rents so collected, first to the payment of the Obligations, and next to the performance and discharge of the Contractual Obligations. Thereafter, Borrower may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Deed of Trust nor the receipt of Rents by Lender shall effect a *pro tanto* payment of the Obligations, and such Rents shall be applied as provided in this Section 9.2. Furthermore, and notwithstanding the provisions of this Section 9.2, no credit shall be given by Lender for any Rents until the money constituting the Rents collected is actually received by Lender, and no such credit shall be given for any Rents collected or released after termination of the License, after foreclosure or other transfer of the Mortgaged Property (or part thereof from which Rents are derived pursuant to this Deed of Trust) to Lender or any other third party.

9.3 Reliance Upon Lease Rent Notice. Upon receipt from Lender of a Lease Rent Notice (as defined in Section 7.1(i) hereof), each lessee under the Leases is hereby authorized and directed to pay directly to Lender all Rents thereafter accruing and the receipt of Rents by Lender shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Lease Rent Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Lender and each such lessee shall be entitled to rely on such Lease Rent Notice and shall have no liability to Borrower for any Rents paid to Lender after receipt of such Lease Rent Notice. Rents so received by Lender for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Lender to the payment of the following (in such order and priority as Lender shall determine): (a) all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (b) the Obligations. In no event will this Article IX reduce the Obligations except to the extent, if any, that Rents are actually received by Lender and applied upon or after said receipt to such Obligations in accordance with the preceding sentence. Without impairing its rights hereunder, Lender may, at its option, at any time and from time to time, release to Borrower, Rents so received by Lender. As between Borrower and Lender, and any Person claiming through or under Borrower, other than any lessee under the Leases who has not received a Lease Rent Notice, this Deed of Trust of Rents is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and the Lease Rent Notice hereof is intended solely for the benefit of each such lessee and shall never inure to the benefit of Borrower or any Person claiming through or under Borrower, other than a lessee who has not received such Lease Rent Notice. It shall never be necessary for Lender to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. BORROWER SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO LENDER HEREUNDER.

9.4 Collection of Rent. At any time during which Borrower is receiving Rents directly from any of the lessees under the Leases, Borrower shall, upon receipt of written direction from Lender, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Lender, as it becomes due and payable, including Rents which are past due and unpaid. If Borrower fails to timely take such action, or at any time during which Borrower is not receiving Rents directly from lessees under the Leases, Lender shall have the right (but shall be under no duty or obligation) to demand, collect and sue for, in its own name or in the name of Borrower, all Rents due and payable under the Leases, as same becomes due and payable, including Rents which are past due and unpaid.

9.5 Termination. Upon payment in full of the Obligations, the delivery and recording of a release, satisfaction or discharge of the Deed of Trust duly executed by Lender and a re-assignment of the Rents to Borrower, the assignment in Section 9.1 of this Deed of Trust shall terminate, become null and void and shall be of no further force and effect.

ARTICLE X

SECURITY AGREEMENT

10.1 Security Interest. This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute, until the grant of this Deed of Trust shall terminate as provided in Section 12.1 hereof and subject only to the Senior Loan, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Rents and Leases, and Construction Contracts and Plans. To this end, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Lender, subject only to the Senior Loan, a first and prior security interest in all of Borrower's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Rents and Leases, and Construction Contracts and Plans, to secure the full and timely payment of the Obligations and the full and timely performance and discharge of the Contractual Obligations. It is the intent of Borrower, Lender and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of "Leases" which are included within the Code be covered by the security interest granted in this Article; and all items contained in the definition of "Leases" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 Financing Statements. Borrower hereby agrees to execute, authenticate and deliver to Lender, in form and substance satisfactory to Lender, such financing statements and such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect, and preserve Lender's security interest herein granted, and Lender may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest. Without limiting the foregoing, Borrower hereby specifically authorizes Lender to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments and financing statement continuations which describe all or any portion of the Mortgaged Property as Collateral thereunder and Borrower specifically agrees that Lender may cause same to be filed without any signature of a representative of the Borrower appearing thereon where such filings are permitted by applicable law.

10.3 Construction Mortgage and Fixture Filing. This Deed of Trust secures future advances to be used for construction of Improvements on the Land pursuant to the Loan Agreement. Accordingly, this Deed of Trust constitutes a "construction mortgage" under the Code. This Deed of Trust shall also constitute a "fixture filing" for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of the debtor (Borrower) and the address of the secured party (Lender) is set forth in the first paragraph of this Deed of Trust.

ARTICLE XI

CONCERNING THE TRUSTEE

11.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Lender and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Lender.

11.2 Certain Rights. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (d) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or 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 reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Borrower will, from time to time, 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 the performance of Trustee's duties.

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

11.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Lender. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Lender shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Lender shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Lender, and if such appointment be executed on Lender's behalf by any officer or managing general partner of Lender, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the partners of the Lender. Borrower hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

11.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Borrower by Trustee to more fully and certainly vest in and confirm to the Trustee such estates, rights, powers, and duties, then, upon request by the Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

11.6 Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

11.7 No Representation by Trustee or Lender. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Lender pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Neither Trustee nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Lender.

ARTICLE XII

MISCELLANEOUS

12.1 Reconveyance by Trustee. Upon payment of all sums secured hereby, Lender shall surrender this Deed of Trust and the Note to Trustee for cancellation and retention and Trustee shall reconvey to Borrower, or the person or persons legally entitled thereto, without warranty, any portion of the Mortgaged Property then held hereunder. Borrower shall be responsible for the recordation of such reconveyance and the payment of any recording and filing costs. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Notwithstanding the foregoing, Borrower may obtain partial releases of lien subject to, and in accordance with, the Loan Agreement.

12.2 Performance at Borrower's Expense. Borrower shall (a) pay all reasonable legal fees incurred by Lender in connection with the preparation of any amendments to or consents, releases, or waivers granted under the Loan Documents; (b) reimburse Lender, within fifteen (15) days of written demand, for all amounts expended, advanced, or incurred by Lender to satisfy any obligation of Borrower under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Lender in connection with any such matters; and (c) any and all other costs and expenses of performing or complying with any and all of the Contractual Obligations. Except to the extent that costs and expenses are included within the definition of "Obligations," the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Obligations.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the Loan called for therein and shall continue in full force and effect until the Obligations shall have been paid in full; provided, however, that nothing contained in this section shall limit the obligations of Borrower as otherwise set forth herein.

12.4 Recording and Filing. Borrower will cause the Loan Documents (requested by the Lender) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Trustee or Lender shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given if provided in a manner consistent with the notice provisions in the Loan Agreement. Borrower hereby requests that a copy of any notice of default and a copy of any notice of sale required by the Nebraska Trust Deeds Act (Neb. Rev. Stat. §§ 76-1001 et seq.) be mailed to Borrower in the manner provided in the Nebraska Trust Deeds Act at the address set forth in the introductory paragraph to this Deed of Trust.

12.6 Covenants Running with the Land. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Borrower, Lender and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Lender.

12.7 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives and all other Persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Trustee or Lender to insist, or any election by Trustee or Lender not to insist, upon strict performance by Borrower or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Lender shall have the right at any time or times thereafter to insist upon strict performance by Borrower or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable legal requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 **APPLICABLE LAW.** **THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK FROM TIME TO TIME IN EFFECT EXCEPT TO THE EXTENT PREEMPTED BY UNITED STATES FEDERAL LAW; PROVIDED, HOWEVER, IF THE LAND AND IMPROVEMENTS ARE SITUATED IN A STATE OTHER THAN NEW YORK, THE LIEN AND REMEDIAL RIGHTS PURSUANT TO THIS DEED OF TRUST AND APPLICABLE ENVIRONMENTAL RESTRICTIONS AGAINST THE MORTGAGED PROPERTY SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE LAND AND IMPROVEMENTS ARE LOCATED.**

12.11 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Lender shall be subrogated to all of the rights,

claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations and the performance and discharge of the Contractual Obligations.

12.12 Rights Cumulative. Lender shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively, or concurrently against Borrower or others obligated for the Obligations or any part thereof, or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. All rights and remedies of Lender hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

12.13 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.14 Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Lender and Borrower pertaining to the construction of Improvements on the Land and the funding of the principal amount of the Note. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.15 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

12.16 ENTIRE AGREEMENT; AMENDMENT. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF

THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

12.17 WAIVER OF RIGHT TO TRIAL BY JURY. TO THE EXTENT PERMITTED BY LAW, BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

12.18 NOTICE OF INDEMNIFICATION: BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO SECTIONS 7.1 AND 9.3 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY BORROWER OR OTHERS AGAINST LENDER'S OWN NEGLIGENCE (BUT NOT LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT).

12.19 Cooperation. Trustee and Lender shall do any and all of the following, upon written request from Borrower and certification of Borrower that such actions are required to further the development of the Land and Mortgaged Property and are consistent with the terms of the Loan Agreement, and at no expense to Lender or Trustee, and without the payment of any release price or any consideration to Lender or Trustee: (i) to consent to, execute, and join, in all subdivision plats, deeds of subdivision, record plats, conceptual site plans, detailed site plans, special purpose detailed site plans, other plans, declarations, applications and the like required for Borrower's desired use and/or development of the Land or Mortgaged Property, provided that such use or development has been approved by Lender in its discretion; (ii) to execute and join in the granting of such easements, rights-of-way, and dedications as may be required by any applicable governing authority or public utility companies, for the purpose of acquiring and obtaining public utilities, sanitary sewer, storm sewer, water, gas, electric and/or telephone and/or other utility facilities, upon, under and over the Land or the Mortgaged Property; (iii) to execute and join in the granting of any slope, grading or drainage easements required in connection with the development of the Land or the Premise; and (iv) in the event that any applicable governing authority requested that, as a condition to the approval and/or recordation of any subdivision plats, deeds of subdivision, site plans, or other development proposals of all or any part of the Land, portions of the Land be reserved for public use (including, without limitation, common green areas, park areas, open spaces, roads, rights-of-way, sidewalks and gutters) or be conveyed to such governing authority for such purposes, to release such portions of the Land and Mortgaged Property from the lien of this Deed of Trust and to join in the execution of any deeds of dedication of such portions of the Land and Mortgaged Property. If reasonable and consistent with and in contemplation of the Loan Agreement, Borrower may obtain the release of portions of the Land and Mortgaged Property for "common areas" to be used by the public, residents or occupants or homeowner's association; easements and rights-of-way; land to be dedicated for public use such as, but not limited to, for streets (public and private), public and private utilities, sanitary sewer, water, storm sewer, tot lots, commuter lots, parkland or open

space; association documents, documents establishing Covenants, Conditions and Restrictions, UOA documents and similar development documents; from the lien of the Deed of Trust without the requirement of curtailment or payment. Additionally, upon the request of Borrower, the Trustee and Lender shall join in the execution of easements, licenses or other transfer documents for any sanitary sewers, storm sewers, water, electricity, grading, cable television, telecommunications and other utilities; rights-of-way; proffers; site plans; consents; approvals; subdivision plats and/or dedications; and other documents and instruments which may be required by Borrower or the appropriate governmental authorities and in connection with the subdivision and/or development of the Land or Mortgaged Property in order to subordinate or release the lien of this Deed of Trust to such easements and other matters, without the requirement of curtailment or payment in order to obtain such joinder and subordination.

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EXECUTED as of the date first above written.


BORROWER:

CAPITOL DISTRICT HOTEL, LLC,
a Nebraska limited liability company

By: Capitol District Hotel Manager, LLC,
a Nebraska limited liability company,
its Member and Managing Member

By: The Capitol District, LLC,
a Nebraska limited liability company,
its Sole Member

By: MTM Capitol District, LLC,
a Nebraska limited liability company,
its Administrative Member

By: 
Name: Michael T. Moylan
Title: Sole Member

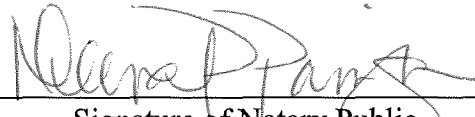
STATE OF NEBRASKA

DOUGLAS COUNTY

On August 28, 2015, before me, Deena P Parrish, Notary Public,
personally appeared Michael T. Moylan, personally known to me (or proved to
me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



 (SEAL)
Signature of Notary Public

List of Exhibits:

Exhibit A - Land Description

EXHIBIT A

Land Description

LOT 2, THE CAPITOL DISTRICT REPLAT 1, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA