



MTG 2007102930

6  
FEE 159.00 FB see att  
BKP C/O COMP  
DEL SCAN FV



SEP 07 2007 14:46 P 31

Loan No. 100001224

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
9/7/2007 14:46:59.79



2007102930

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
AND SECURITY AGREEMENT  
(ALSO CONSTITUTING A FIXTURE FILING)**

**(Douglas County, Nebraska)**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT (this "Deed of Trust") is made this 7<sup>th</sup> day of September, 2007, by PACIFIC GARDENS ASSOCIATES, LLC, a Nebraska limited liability company, as Trustor ("Borrower"), whose address is 10730 Pacific Street, #214, Omaha, Nebraska 68114; to SPENCE TITLE SERVICES INC., as Trustee ("Trustee"), whose address is 13340 California Street, Suite 210, Omaha, Nebraska 68154; for the benefit of UNION FIDELITY LIFE INSURANCE COMPANY, an Illinois corporation, as Beneficiary ("Lender"), whose address is 707 East Main Street, Suite 1300-A, Richmond, VA 23219. For purposes of Article 9 of the Uniform Commercial Code, this Deed of Trust constitutes a security agreement and financing statement with Borrower being the Debtor and Lender being the Secured Party. This Deed of Trust also constitutes a financing statement filed as a fixture filing pursuant to Article 9 of the Uniform Commercial Code.

Lender is making a loan (the "Loan") in the original principal amount of SEVEN MILLION SIX HUNDRED THOUSAND DOLLARS (\$7,600,000) to be secured by that certain real property (the "Realty") described in Exhibit A attached hereto. The Loan, if not sooner paid, is due and payable in full on September 30, 2017.

In consideration of the Loan, Borrower hereby irrevocably GRANTS, TRANSFERS, CONVEYS and ASSIGNS to Trustee, IN TRUST, WITH POWER OF SALE, all of Borrower's estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (the "Property"):

(a) The Realty and all rights to the land lying in alleys, streets and roads adjoining or abutting the Realty;

Union Fidelity Life Ins.  
707 E Main St Ste  
1300-A  
Richmond, VA 23219

(16) TA-54196

(b) All buildings, improvements and tenements now or hereafter located on the Realty;

(c) All fixtures, equipment and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the buildings, improvements and Realty (whether such items are leased, owned or subject to any title retaining or security instrument, or otherwise used or possessed), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, panelling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Property with the right of removal at the termination of their tenancies shall not be included within the scope of this paragraph;

(d) All easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, royalties, water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;

(e) All of the rents, revenues, issues, profits and income of the Property, and all present and future leases and other agreements for the occupancy or use of all or any part of the Realty, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guaranties of tenants' or occupants' performances under such leases and agreements; SUBJECT, HOWEVER, to the assignment of rents and other property to Lender herein contained;

(f) All general intangibles relating to the development or use of the Property, including without limitation all permits, licenses and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and good will in any way relating to the Property;

(g) All water stock relating to the Property, all shares of stock or other evidence of ownership of any part of the Property that is owned by Borrower in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and

(h) All products and proceeds of all of the foregoing;

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

(1) Payment of the sum of SEVEN MILLION SIX HUNDRED THOUSAND DOLLARS (\$7,600,000), with interest thereon, according to the terms and provisions of a promissory note of even date herewith, payable to Lender, or order, and made by Borrower, and all modifications, extensions, renewals and replacements thereof (collectively the "Note");

(2) Payment of all sums advanced to protect the security of this Deed of Trust, together with interest thereon as herein provided;

(3) Payment of all other sums which are or which may become owing under the Loan Documents;

(4) Performance of all of Borrower's other obligations under the Loan Documents;  
and

(5) Payment of the principal and interest on all other future loans or advances made by Lender to Borrower when the promissory note evidencing the loan or advance specifically states that it is secured by this Deed of Trust, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

As used herein, the term "Loan Documents" means the Note, this Deed of Trust, any loan agreement and Uniform Commercial Code Financing Statement executed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith (except the Environmental Indemnity), together with all modifications, extensions, renewals and replacements thereof.

BORROWER HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

**ARTICLE I**  
**TITLE AND USE**

1.1 Warranty of Title. Borrower represents and warrants to Lender that: (a) Except as may otherwise be expressly stated in this Deed of Trust, Borrower has good and marketable title in fee simple to such of the Property as is real property and is the sole and absolute owner of all other Property; (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of property taxes and assessments, general and special, the "Permitted Exceptions" set forth in Schedule B, Part I, of the title insurance policy issued to Lender to insure the lien of this Deed of Trust (the "Title Policy"), and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Deed of Trust, and no others, whether superior or inferior to this Deed of Trust, will be created or suffered to be created by Borrower during the life of this Deed of Trust without the prior written consent of Lender; (c) no default on the part of Borrower or, to the best of Borrower's

knowledge, any other person exists under any of the Permitted Exceptions and all Permitted Exceptions are in full force and effect and in good standing, without modification except as disclosed in the Title Policy; (d) none of the Permitted Exceptions will be modified by Borrower without Lender's prior written consent; (e) Borrower will fully comply with all the terms of the Permitted Exceptions; and (f) that Borrower has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Lender against all claims and demands of any other person whomsoever, subject only to non-delinquent installments of taxes and assessments and the Permitted Exceptions.

## 1.2 Hazardous Substances.

(a) Representations and Warranties. Borrower represents and warrants to Lender that: (i) To the best of Borrower's knowledge, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property; (ii) no Hazardous Substance is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iii) neither Borrower nor, to the best of Borrower's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or about the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws; (iv) Borrower has not received any notice of, nor is Borrower aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and (v) neither Borrower nor the Property is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Property. Borrower further represents and warrants to Lender that the foregoing representations and warranties contained in this paragraph 1.2(a) are made after and are based upon inspection of the Property by Borrower and due inquiry by Borrower as to the prior uses of the Property.

(b) Definition. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is (A) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), (B) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), (C) defined as a "hazardous substance" in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), (D) defined or listed as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "infectious waste," "hazardous substance" or "hazardous material" under or pursuant to Nebraska law, statute or ordinance or any rule or regulation thereunder.

1.3 Principal Place of Business. Borrower represents and warrants to Lender that Borrower's principal place of business (or if there is no such place, then its chief executive office) is located at Borrower's address set forth on page 1 of this Deed of Trust. Borrower covenants that it will promptly notify Lender in writing upon any change in the location of such principal place of business.

## **ARTICLE II** **BORROWER'S COVENANTS**

2.1 Payment and Performance of Secured Obligations. Borrower will pay when due all sums which are now or which may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges.

(a) Taxes and Assessments. Except as the same may otherwise be paid under Article III, Borrower will pay prior to delinquency directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Borrower shall promptly furnish to Lender all notices of amounts due under this subparagraph and all receipts evidencing such payments. However, Borrower may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Borrower's expense. Borrower shall not be obligated to pay such taxes or assessments while such contest is pending if the Property is not thereby subjected to imminent loss or forfeiture and, if Borrower has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with Lender or provides other security satisfactory to Lender in its sole discretion.

(b) Utilities. Borrower will pay when due all utility charges and assessments for services furnished the Property.

(c) Liens and Charges. Borrower will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of paragraph 4.1, Borrower will promptly discharge any lien or other charge, whether superior or inferior to this Deed of Trust, which may be claimed against the Property.

2.3 Insurance.

(a) Coverages Required. Borrower will keep the following insurance coverages in effect with respect to the Property:

(i) Insurance against loss by fire, vandalism, malicious mischief and such other hazards as may now or hereafter be embraced by the standard "all risk" or "special

form” policy of insurance, in an amount equal at all times to the current replacement value of the improvements then located on the Property. All such insurance coverage shall contain a “replacement cost endorsement”, without deduction for depreciation.

(ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Realty, whichever is less, if the Realty is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available.

(iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to six (6) months’ aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Borrower, business interruption insurance in an amount equal to six (6) months’ net income from such portion of the Property as is so occupied. The amount(s) of such coverage(s) shall be subject to adjustment, from time to time at Lender’s request, to reflect changes in the rental and/or income levels during the term of the Loan.

(iv) Commercial general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million Dollars (\$1,000,000) combined single-limit liability coverage, or in such greater amount(s) as Lender may reasonably require.

(v) Terrorism and acts of terrorism.

(vi) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of such items, in such amounts as Lender may reasonably require.

(vii) Demolition, increased cost of construction and contingent building laws liability insurance, if and at any time the Property constitutes a legal, non-conforming use under applicable zoning or other governmental laws.

(viii) Insurance (excluding, however, earthquake insurance) against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Lender may from time to time reasonably require.

(b) Policies. Each insurance policy shall name the Borrower as the insured, include the complete address of the Property, be in form and content acceptable to Lender, and issued by a company acceptable to Lender, which company shall, among other things, be (i) duly authorized to provide such insurance in the state in which the Property is located, and (ii) rated “A-” or better with a size rating of “V” or larger by A.M. Best Company in its most recent

publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Lender shall be entitled to select replacement ratings in the exercise of its reasonable business judgment). Each policy shall include a waiver of subrogation on any policy for which Borrower is a co-insured or additional insured. Each hazard insurance policy will include a Form 438BFU or equivalent mortgagee endorsement in favor of and in form acceptable to Lender, and which endorsement provides that the policy to which it relates will survive foreclosure of this Deed of Trust. Each liability insurance policy will name Lender as an additional insured. An "agreed amount endorsement" will be included in any policy containing a co-insurance clause, and Borrower agrees that any and all co-insurance clauses and "agreed amount endorsements" must be satisfactory to Lender. If any required property insurance coverage is furnished as part of a "blanket policy," either the blanket policy will include an "agreed value endorsement" or "agreed amount endorsement," or Borrower will furnish to Lender a copy of the insurer's "statement of value" for the Property. All required policies will provide for at least thirty (30) days' written notice to Lender prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Borrower shall furnish to Lender (x) the complete original of each required insurance policy, or (y) a certified copy thereof (including all declaration pages, policy forms and endorsements), which shall include an original signature of an authorized officer or agent of the insurer, or (z) an uncertified memorandum copy thereof (including all declaration pages, policy forms and endorsements), together with an original Evidence of Commercial Property Insurance (Form Acord 28) showing all applicable policy provisions and naming Lender as first mortgagee and an original Certificate of Liability Insurance (Form Acord 25) with respect to liability coverage. As security for the Secured Obligations, Borrower hereby assigns to Lender all required insurance policies, together with all monies and proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

(c) Payment; Renewals. Borrower shall promptly furnish to Lender all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article III, Borrower will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Borrower shall furnish to Lender a renewal policy in a form acceptable to Lender, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.

(i) In the event of any loss, Borrower will give prompt written notice thereof to the insurance carrier and Lender. Borrower hereby grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Lender's or Borrower's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Lender shall have no obligation to do so. If no event of default has occurred and is continuing, the immediately preceding sentence shall apply except that Lender shall not be entitled to act as Borrower's attorney-in-fact and Borrower shall be entitled to participate jointly with Lender in adjusting and compromising any claim, and appearing in any proceeding.

(ii) Except as may otherwise be required by applicable law, Lender shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:

(A) The payment of indebtedness secured hereby, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(B) The reimbursement of Borrower, under Lender's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Lender may, at its option, condition the reimbursement on Lender's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Lender may reasonably require.

(iii) Notwithstanding the provisions of paragraph 2.3(d)(ii) above, Lender agrees that the Net Proceeds from a loss described in this paragraph 2.3(d) will be made available under clause (ii)(B) above to reimburse Borrower for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:

(A) No event of default has occurred and is continuing at the time the proceeds are received;

(B) The Net Proceeds are less than the indebtedness then secured by this Deed of Trust;

(C) The proceeds are received more than one (1) year prior to the maturity date of the Note;

(D) Borrower gives Lender written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Borrower thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Lender, which approval shall not be unreasonably withheld;

(E) The Net Proceeds are sufficient, in Lender's reasonable business judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Lender's reasonable business judgment they are not, Borrower deposits with Lender funds in an amount equal to the deficiency, which funds Lender may, at its option, require be expended prior to use of the Net Proceeds; and



(F) Lender receives evidence reasonably satisfactory to Lender that the Property can lawfully be restored or repaired to its condition prior to the damage and destruction and that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.

(iv) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Borrower from restoring, repairing or maintaining the Property as provided in paragraph 2.4, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(e) Transfer of Title. If the Property is sold pursuant to Article VIII or if Lender otherwise acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

#### 2.4 Preservation and Maintenance of Property; Right of Entry.

(a) Preservation and Maintenance. Borrower (i) will not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) will not abandon the Property, (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) will generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations. No building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Lender's prior written consent, nor will any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Borrower, free and clear of any lien or security interest except such as may be approved in writing by Lender.

(c) Right of Entry. Lender is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

## 2.5 Hazardous Substances.

(a) No Future Hazardous Substances. Borrower will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance (as defined in this Deed of Trust), except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws, nor shall Borrower cause or permit, as a result of any intentional or unintentional act or omission on the part of Borrower or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any waters, except in compliance with all such laws.

(b) Notification; Clean Up. Borrower will immediately notify Lender if Borrower becomes aware of (i) any Hazardous Substance problem or liability with respect to the Property, (ii) any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or (iii) any lien or action with respect to any of the foregoing. Borrower will, at its sole expense, take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including without limitation all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Deed of Trust relating to Hazardous Substances, and the observance of all covenants contained in this paragraph 2.5, (i) Lender is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice; and (ii) if and at any time Hazardous Substances are being handled on the Property, Borrower shall furnish Lender with such information and documents as may be reasonably requested by Lender to confirm that such Hazardous Substances are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws. Borrower shall reimburse Lender upon demand for all costs and expenses, including without limitation attorneys' fees, incurred by Lender in connection with any such entry and inspection and the obtaining of such information and documents.

2.6 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are reduced for any other reason, Borrower will take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Borrower will furnish to Lender satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.7 Use of Property. Borrower will comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all fees and charges in connection therewith. Borrower shall not cause or permit the installation, operation or presence on the Realty of any underground storage tank or system used or to be used for the storage, handling or dispensing of petroleum or any other substance regulated under Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) as now or hereafter amended, or any state or local statute, ordinance, rule, regulation or other law now or hereafter in effect regulating underground storage tanks. Borrower shall not cause or permit all or any of the Realty to be used for a gasoline station, service station or other fueling facility which in whole or in part handles, sells or distributes, gasoline, diesel fuel, gasohol or any other substance used in self-propelled motor vehicles. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower will not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower will not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent. The Property may not be converted to a cooperative or condominium without Lender's prior written consent, which consent may be withheld in Lender's sole and absolute discretion.

2.8 Commercial Purpose. The proceeds of the Loan will be used exclusively for commercial, business or investment purposes.

2.9 No Agricultural Use. The Realty is not used principally for agricultural or farming purposes.

2.10 Condemnation.

(a) Proceedings. Borrower will promptly notify Lender of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Borrower will appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Lender shall have no obligation to do so. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Lender, and all proceeds of any such awards, payments, damages or claims shall be paid to Lender.

(b) Application of Proceeds. Lender shall apply any such proceeds in the manner and upon the terms and conditions set forth in paragraph 2.3(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of paragraph 2.3(d)(iii).

2.11 Protection of Lender's Security. Borrower will give notice to Lender of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Lender or Trustee therein or the rights or remedies of Lender or Trustee. If any such action or proceeding is commenced or if Lender or Trustee is made a party to any such action or proceeding by reason of this Deed of Trust, or if Borrower fails to perform any obligation on its part to be performed hereunder, then Lender and/or Trustee, each in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust, to remedy Borrower's failure to perform its obligations (without, however, waiving any default by Borrower) or otherwise to protect Lender's or Trustee's interests. Borrower will pay all losses, damages, fees, costs and expenses, including reasonable attorneys' fees, of Lender and Trustee thus incurred. This paragraph shall not be construed to require Lender or Trustee to incur any expenses, make any appearances or take any actions.

2.12 Reimbursement of Lender's and Trustee's Expenses. All amounts disbursed by Lender and Trustee pursuant to paragraph 2.11 or any other provision of this Deed of Trust, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Borrower on such amounts by the payee thereof under applicable law if that is less.

2.13 Books and Records; Financial Statements. Borrower will keep and maintain at Borrower's address stated above, or such other place as Lender may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Lender. Borrower will furnish to Lender, within twenty (20) days after Lender's request therefor, the following documents, each certified to Lender by Borrower as being true, correct and complete: (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the unit or suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) a copy of the most recent real and personal property tax statements for the Property, (d) a copy of the most recent statements for the insurance coverages maintained under paragraph 2.3(a) of this Deed of Trust, and (e) a statement of income and expenses of the Property for the most recently ended fiscal year of Borrower. In addition, Borrower and any general partner therein will furnish to Lender, within twenty (20) days after Lender's request therefor, a complete and current financial statement, in reasonable detail and certified as correct by Borrower or such partner. Borrower and any general partner therein hereby irrevocably authorize Lender to obtain credit reports on Borrower and any such general partner on one or more occasions during the term of the Loan.

2.14 Prohibited Person Compliance. For purposes of this paragraph, "Debtor Entity" means Borrower, any guarantor of the Loan, any indemnitor under the Environmental Indemnity,

and their respective affiliates (including individuals and entities). Borrower warrants, represents and covenants that no Debtor Entity is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224 issued on September 24, 2001 ("EO 13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums, including, but not limited to, the OFAC website (<http://www.treas.gov/ofac/tl1sdn.pdf>); (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO 13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in subparts (i)-(iv) above are herein referred to as a "Prohibited Person"). Borrower covenants and agrees that no Debtor Entity will (A) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (B) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Upon Lender's request, Borrower further covenants and agrees to deliver to Lender any certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that no Debtor Entity is a Prohibited Person or has taken any action described in subparts (A) and (B) above.

2.15 Realty Is Not Homestead Property. The Realty is NOT AND SHALL NOT BECOME HOMESTEAD PROPERTY of the Borrower.

### **ARTICLE III** **RESERVES**

3.1 Deposits. If required by Lender, Borrower will, at the time of making each installment payment under the Note, deposit with Lender a sum, as estimated by Lender, equal to (a) the rents under any ground lease, (b) the taxes and special assessments next due on the Property, and (c) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Lender may require Borrower to deposit with Lender, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Borrower or the Property as Lender reasonably deems necessary to protect Lender's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Lender's option. If required by Lender, Borrower will promptly deliver to Lender all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Lender under this paragraph 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Lender and applied in such order as Lender elects to pay such rents, taxes, assessments, premiums and Other Impositions or, in the event of default hereunder, may be applied in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Article III is solely for the

added protection of Lender and, except as may otherwise be required by applicable law, entails no responsibility on Lender's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the transferee all rights of Borrower with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Lender shall promptly refund to Borrower the remaining balance of any deposits then held by Lender.

3.3 Adjustments to Deposits. If the total deposits held by Lender exceed the amount deemed necessary by Lender to provide for the payment of such rents, taxes, assessments, premiums and Other Impositions as the same fall due, then such excess shall, provided no event of default then exists hereunder, be credited by Lender on the next due installment or installments of such deposits. If at any time the total deposits held by Lender is less than the amount deemed necessary by Lender to provide for the payment thereof as the same fall due, then Borrower will deposit the deficiency with Lender within thirty (30) days after written notice to Borrower stating the amount of the deficiency.

#### **ARTICLE IV** **RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

##### 4.1 Restrictions on Transfer or Encumbrance of the Property.

(a) A "Transfer" is: Any sale (by contract or otherwise), encumbrance, conveyance or other transfer of the Property or any part thereof or interest therein, or Borrower's abandonment of the Property; or any change in the ownership of any stock interest in a corporate borrower, in the ownership of any membership interest or in the manager of a limited liability company borrower, in the ownership of any general partnership interest in any general or limited partnership borrower, or in the ownership of any beneficial interest in any other borrower which is not a natural person or persons (including without limitation a trust); or any change in the ownership of any such stock, membership, general partnership or other beneficial interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Borrower, or a change in the manager of a limited liability company. A change in the ownership of a limited partnership interest in a limited partnership shall not be deemed a "Transfer."

(b) In the event of a Transfer without Lender's prior written consent, Lender may, at its sole option, declare the Transfer to constitute an event of default under this Deed of Trust and invoke any remedy or remedies provided for in paragraph 8.1 hereof, or may, at its sole option, consent to such Transfer. Lender may condition its consent to a Transfer upon the payment of a fee to Lender, or an increase in the rate of interest due under the Note, or the items in paragraph 4.1(d) below, or any combination of the foregoing. None of the foregoing options shall apply, however, in the case of a Transfer under any will, trust or applicable law of descent arising because of the death of an individual, so long as Lender is given prompt notice of the Transfer and the transferee. Lender's consent to a Transfer or its waiver of an event of default by

reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Lender by reason of any subsequent Transfer.

(c) Lender will give its written consent to Transfers of interests in Borrower or of interests in an entity with an ownership interest in Borrower to the transferor's spouse or lineal descendent or to an estate planning trust whose trustees and beneficiaries are the transferor or the transferor's spouse or lineal descendant, if Borrower gives Lender prior written notice of the Transfer accompanied by a \$1,500 transfer review fee.

(d) For any Transfer permitted under this Deed of Trust or requested by Borrower, Lender may condition its consent upon: (i) the Property having been and assurances that it shall continue to be well maintained and the managerial control of the Property shall remain satisfactory to Lender; (ii) Lender's approval of the Transfer terms, documents and background materials; (iii) there being no uncured event of default under this Deed of Trust; and (iv) Borrower furnishing an endorsement to Lender's title insurance policy insuring the continued validity and priority of the lien of this Deed of Trust following the Transfer and such subordination agreements and other documents as may be required by Lender or its title company to issue the endorsement. Unless Lender in its sole discretion otherwise agrees in writing at that time, no Transfer shall release the transferor from any liability under the Loan Documents or the Environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the Environmental Indemnity to the extent the transferor has personal liability. At Lender's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Lender. Regardless whether Lender consents to a Transfer request, Borrower agrees to pay all of Lender's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and attorneys' fees and costs, and Lender may condition its willingness to consider a Transfer request upon a deposit to pay for Lender's expenses.

4.2 Loan Assumption Provision. Notwithstanding any provision of this Deed of Trust to the contrary, Lender will consent to one sale of the Property and assumption by the purchaser of the indebtedness secured hereby, provided that:

(a) No default exists under any of the Loan Documents; and

(b) The purchaser of the Property, the financial statements, financial strength, tax returns and credit history of the purchaser, the sale agreement and related documents, and all aspects of the sale are satisfactory to Lender; and

(c) The purchaser evidences a history of property management satisfactory to Lender or contracts for management of the Property with a property management firm satisfactory to Lender; and

(d) If the unpaid balance of the Loan at the time of the assumption exceeds seventy-five percent (75%) of the sale price of the Property, a prepayment of the Loan shall, if required by Lender, be made at the time of the assumption in the amount of the excess; and

(e) Lender is paid at the time of the assumption an assumption fee equal to one percent (1%) of the then outstanding Loan balance or \$5,000.00, whichever is greater, plus Lender's legal and administrative expenses, if any, incurred in connection with such sale and assumption; and

(f) Borrower furnishes Lender, at Borrower's expense, with the following:

(i) An endorsement to Lender's title insurance policy, in form and content satisfactory to Lender, insuring the continued validity, enforceability and priority of this Deed of Trust following the sale and assumption; and

(ii) Such subordination agreements and other documents, in form and content satisfactory to Lender and the title company, as may be required by the title company in order to issue the endorsement; and

(iii) Such documents required by Lender for the assumption of the Loan without modification by the transferee of the Property; and

(g) At the time of the assumption, Lender may, in its sole discretion, require the continuation or the establishment, as the case may be, of a reserve account under Article III of this Deed of Trust; and

(h) Unless Lender in its sole discretion otherwise agrees in writing at that time, no such sale or assumption shall release Borrower or any guarantor or other person from liability with respect to the Loan, or otherwise affect the liability of Borrower or any such guarantor or other person with respect thereto; and

(i) In the event that the Loan is closed with a holdback for repairs, the Loan shall not be assumed unless the repairs have been completed as agreed under the holdback agreement.

#### 4.3 Secondary Financing.

(a) Conditions. Notwithstanding any provision of this Deed of Trust to the contrary, and subject to part (ix) of this Section, Lender hereby agrees that it will consent, on a one-time only basis, to a second-lien deed of trust or mortgage (the "Subordinate Lien") against the Property, provided that each of the following conditions is satisfied with respect to the Subordinate Lien and the indebtedness secured thereby:

(i) The Subordinate Lien is at all times and in all respects unconditionally subordinate to this Deed of Trust;



(ii) The Subordinate Lien secures a loan to Borrower made or extended by a bank, savings and loan association or life insurance company, or by such other institutional lender as may be approved by Lender;

(iii) The maximum principal indebtedness to be secured by the Subordinate Lien does not exceed an amount which, when added to the then Loan balance, is greater than eighty percent (80%) of the then value of the Property. For purposes hereof, the "value" of the Property shall be determined by Lender in the exercise of its reasonable business judgment;

(iv) The combined aggregate annual payments on the Loan and on the indebtedness secured by the Subordinate Lien do not exceed eighty-three percent (83%) of the Property's net operating income at the time the Subordinate Lien is placed of record. For purposes hereof, the Property's "net operating income" shall be determined by Lender, utilizing such vacancy factors, operating expenses and reserves as Lender deems appropriate, in the exercise of its reasonable business judgment;

(v) All elements relating to the indebtedness secured by the Subordinate Lien, including without limitation the Subordinate Lien, the promissory note secured thereby and any and all other documents executed in connection therewith, are approved by Lender;

(vi) At the time the Subordinate Lien is placed of record, there is no existing event of default under this Deed of Trust or under any of the other Loan Documents;

(vii) Borrower requests and obtains Lender's written consent to the Subordinate Lien transaction prior to the recording of the Subordinate Lien; and

(viii) At the time Borrower's request for Lender's consent is made, Lender is paid a non-refundable secondary financing administrative review fee in an amount equal to the greater of one-quarter of one percent (.25%) of the amount of the principal indebtedness to be secured by the Subordinate Lien or Two Thousand Five Hundred Dollars (\$2,500), plus any out-of-pocket costs, including without limitation attorneys' fees and servicer fees, incurred in connection with the review and processing of the request for the Subordinate Lien.

(ix) Subject to the conditions to the secondary financing listed above, Lender has approved secondary financing from First National Bank of Omaha ("First National") in an amount not to exceed Five Hundred Thousand Dollars (\$500,000). In the event that the First National secondary financing is in place on the date of this Deed of Trust, the fee referenced in section 4.3 (viii) above will not be required by the Lender. Such loan shall constitute Borrower's one-time right to encumber the Property with a Subordinate Lien.

(b) General. Borrower will pay when due the indebtedness secured by the Subordinate Lien and will otherwise pay and perform all its obligations thereunder. Default

under the Subordinate Lien shall, at the option of Lender, constitute an event of default hereunder. Consent to the Subordinate Lien does not constitute consent by Lender to any other or further encumbrance or lien against the Property or any part thereof or interest therein.

**ARTICLE V**  
**UNIFORM COMMERCIAL CODE SECURITY AGREEMENT**

5.1 Grant to Lender. This Deed of Trust constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust; and

(b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust);

and Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Deed of Trust is and at all times shall be regarded for all purposes as part of the real property.

5.2 Lender's Rights and Remedies. With respect to Property subject to the foregoing security interest, Lender has all of the rights and remedies (i) of a secured party under the Uniform Commercial Code, (ii) provided herein, including without limitation the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an event of default hereunder, Borrower will assemble any items of personal property and make them available to Lender at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Borrower.

5.3 Fixture Filing. This Deed of Trust covers goods which are or are to become fixtures on the Realty, and this Deed of Trust constitutes and is filed as a "fixture filing" (as that term is defined in the Nebraska Uniform Commercial Code) upon such of the Property which is

or may become fixtures. Borrower has an interest of record in the Realty. The organizational number of the Borrower is 10048852.

5.4 Lender's Authorization to File Financing Statement. Lender shall be entitled to file any financing statements, as well as extensions, renewals and amendments thereof and reproductions of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the foregoing items or to prevent any filed financing statement from becoming misleading or losing its perfected status.

**ARTICLE VI**  
**ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY; APPOINTMENT**  
**OF RECEIVER; LENDER IN POSSESSION**

6.1 Assignment of Rents and Leases. As security for the Secured Obligations, Borrower hereby assigns and transfers to Lender all right, title and interest of Borrower in and to (a) any and all present and future leases, licenses, rental and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (collectively "Leases"), including without limitation the leases, if any, described on Exhibit B attached hereto, (b) all cash or security deposits, advance rentals and deposits or payments of similar nature under the Leases, (c) any and all guaranties of tenants' or occupants' performances under any and all Leases, and (d) all rents, issues, profits and revenues (collectively "Rents") now due or which may become due or to which Borrower may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages. This assignment is present and absolute and includes all rights conferred by Neb. Rev. Stat. § 52-1701, et. Seq., and all related laws, statutes and cases, as amended.

6.2 Collection of Rents. Prior to written notice given by Lender to Borrower of an event of default hereunder, Borrower shall collect and receive all Rents of the Property as trustee for the benefit of Lender and Borrower, and apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Borrower under the Leases, and fourth to the indebtedness secured hereby, with the balance, if any, so long as no such event of default has occurred, to the account of Borrower. Upon delivery of written notice by Lender to Borrower of an event of default hereunder and stating that Lender exercises its rights to the Rents, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Lender shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including without limitation Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Borrower as trustee for the benefit of Lender only. Upon delivery of such written notice by Lender, Lender may make written demand upon all or some of the tenants and occupants of the Property to pay all Rents to Lender, and Borrower hereby agrees that each such tenant and occupant shall have no liability to inquire further as to the existence of a default by

Borrower. Upon written demand by Lender, Borrower hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Lender. Payments made to Lender by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Borrower. Lender may exercise, in Lender's or Borrower's name, all rights and remedies available to Borrower with respect to collection of Rents. Nothing herein contained shall be construed as obligating Lender to perform any of Borrower's obligations under any of the Leases.

6.3 Borrower's Representations and Warranties. Borrower represents and warrants to Lender that Borrower has not executed and will not execute any other assignment of said Leases or Rents, that Borrower has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Lender from exercising its rights under this Article VI, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Borrower further represents and warrants to Lender that all existing Leases are in good standing and there is no default thereunder, whether by Borrower or lessee, nor to Borrower's knowledge any event or condition which, with notice or the passage of time or both, would be a default thereunder.

6.4 Leases of the Property. Borrower will comply with and observe Borrower's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. All Leases hereafter entered into will be on the form heretofore furnished to Lender and certified by or on behalf of Borrower as the form used in leasing units in the Property, or will be on such other form as may hereafter be approved by Lender in writing. Without Lender's written consent, Borrower will not collect or accept payment of any Rents of the Property more than two (2) months prior to the due dates thereof, will not enter into, execute, modify or extend any Lease now existing or hereafter made providing for a term (assuming that all renewal options, if any, are exercised) of more than one (1) year, or request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust.

6.5 Lender in Possession; Appointment of Receiver. In any event of default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Lender to protect the security of this Deed of Trust. From and after the occurrence of any such event of default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an event of default hereunder, Lender shall be entitled (without notice and regardless of the adequacy of Lender's security) to

the appointment of a receiver, Borrower hereby consenting to the appointment of such receiver, and the receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Lender in this Article VI. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

6.6 Application of Rents. All Rents collected subsequent to delivery of written notice by Lender to Borrower of an event of default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including without limitation attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the indebtedness secured hereby. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this Article VI.

6.7 Deficiencies. To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes shall be indebtedness secured by this Deed of Trust. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Borrower therefor under applicable law if that is less.

6.8 Lender Not Mortgagee in Possession. Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

6.9 Enforcement. Lender may enforce this assignment without first resorting to or exhausting any security or collateral for the indebtedness. As used in this Article VI, the word "lease" shall mean "sublease" if this Deed of Trust is on a leasehold. This assignment shall terminate at such time as this Deed of Trust ceases to secure payment of indebtedness held by Lender.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

7.1 Events of Default. The occurrence of any one or more of the following shall constitute an event of default hereunder:

(a) Borrower's failure to make any payment when due under the Note, this Deed of Trust or any of the other Loan Documents, followed by Borrower's failure to make such payment within ten (10) days after written notice thereof given to Borrower by Lender; provided, however, that Lender shall not be obligated to give Borrower written notice prior to exercising its

remedies with respect to such default if Lender had previously given Borrower during that calendar year a notice of default for failure to make a payment of similar type.

(b) Borrower's failure to perform any other covenant, agreement or obligation under the Note, this Deed of Trust or any of the other Loan Documents, followed by Borrower's failure to cure such default within thirty (30) days after written notice thereof given to Borrower by Lender (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Borrower to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Lender's notice of default).

(c) Borrower or any trustee of Borrower files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief; or such a petition is filed against Borrower or any trustee of Borrower and the petition is not dismissed within forty-five (45) days after filing.

(d) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Borrower or Borrower's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.

(e) Borrower commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Borrower and the proceeding is not dismissed within forty-five (45) days after the date of commencement.

(f) Borrower makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) There is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten (10) days.

(h) Any representation or disclosure made to Lender by Borrower or any guarantor in connection herewith proves to be materially false or misleading when made, whether or not that representation or disclosure is contained in the Loan Documents.

7.2 Form of Notice. At Lender's option, any written notice of default required to be given to Borrower under paragraph 7.1 may be given in the form of a statutory notice of default under the laws of the State of Nebraska relating to non-judicial foreclosures of deeds of trust.

## **ARTICLE VIII** **REMEDIES**

8.1 Acceleration Upon Default; Additional Remedies. In the event of default hereunder, Lender may, at its option and without notice to or demand upon Borrower, take any one or more of the following actions:

(a) Declare any or all indebtedness secured by this Deed of Trust to be due and payable immediately.

(b) Bring a court action to enforce the provisions of this Deed of Trust or any of the indebtedness or obligations secured by this Deed of Trust.

(c) Bring a court action to foreclose this Deed of Trust.

(d) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.

(e) Exercise any or all of the rights and remedies provided for under this Deed of Trust and the other Loan Documents.

(f) Exercise any other right or remedy available under law or in equity.

8.2 Exercise of Power of Sale. For any sale under the power of sale granted by this Deed of Trust, Lender or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Lender and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. If the Property includes several lots or parcels, Lender in its discretion may designate their order of sale or may elect to sell all of them as an entirety. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by Trustee is personal property, Trustee shall be acting as the agent of Lender in selling such Property. Any person permitted by law to do so may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property sold, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value.

8.3 Application of Sale Proceeds. The proceeds of any sale under this Deed of Trust will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including without limitation Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee, together with interest on all advances made by Trustee from date of disbursement at the applicable interest rate under the Note from time to time or at the maximum rate permitted to be charged by Trustee under the applicable law if that is less.

SECOND: Payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest on such sums from date of disbursement at the applicable interest rate under the Note from time to time or the maximum rate permitted by applicable law if that is less.

THIRD: Payment of all other indebtedness secured by this Deed of Trust in any order that Lender chooses.

FOURTH: The remainder, if any, to the person or persons legally entitled to it.

8.4 Waiver of Order of Sale and Marshalling. Lender shall have the right to determine the order in which any and all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies provided herein. Borrower, any person who consents to this Deed of Trust and any person who now or hereafter acquires a security interest in the Property hereby waives, to the extent permitted by law, any and all right to require marshalling of assets in connection with the exercise of any of the remedies provided herein or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

8.5 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.6 Expenses During Redemption Period. If this Deed of Trust is foreclosed through court action and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the default rate of interest stated in the Note or the highest lawful rate if that is less shall be added to and become a part of the amount required to be paid for redemption from such sale.

8.7 Foreclosure Subject to Tenancies. Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

8.8 Evasion of Prepayment Terms. If an event of default hereunder has occurred and is continuing, a tender of payment of the indebtedness secured hereby at any time prior to or at a judicial or nonjudicial foreclosure sale of the Property by Borrower or anyone on behalf of Borrower shall constitute an evasion of the prepayment terms of the Note and shall constitute voluntary prepayment thereunder and any such tender shall to the extent permitted by law include the additional payment required under the prepayment privilege, if any, contained in the Note or, if at that time there is no prepayment privilege, then such payment shall to the extent permitted by law include an additional payment of five percent (5%) of the then principal Loan balance.

8.9 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Lender and Borrower, and may be exercised concurrently, independently or successively, in any order whatsoever.



Lender may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.10 Lender's and Trustee's Expenses. Borrower will pay all of Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Borrower secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Borrower under applicable law if that is less.

## **ARTICLE IX** **GENERAL**

9.1 Application of Payments. Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Lender under the Note or this Deed of Trust shall be applied by Lender in the following order of priority: (a) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust; (b) amounts payable to Lender by Borrower under Article III for reserves; (c) interest and late charges payable on the Note; (d) principal of the Note; (e) interest payable on advances made to protect the security of this Deed of Trust; (f) principal of such advances; and (g) any other sums secured by this Deed of Trust in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Deed of Trust prior to applying such payments to interest on or principal of the Note.

9.2 Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

9.3 Successor Trustee. Lender may remove Trustee or any successor Trustee at any time or times and appoint a successor Trustee by recording a written substitution in the county where the Property is located, or in any other manner permitted by law. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

9.4 Lender's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations, or any of Lender's rights or remedies, or the priority of this Deed of Trust, Lender, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of

the indebtedness, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

9.5 Subrogation. Lender shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

9.6 Limitation on Interest and Charges. Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Borrower is entitled to the benefit of such law, then: (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and (b) any sums already paid to Lender which exceeded the permitted maximum will be refunded. Lender may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Deed of Trust or the Note or any other Loan Documents.

9.7 Additional Documents; Power of Attorney. Borrower, from time to time, will execute, acknowledge and deliver to Lender upon request, and hereby grants Lender a power of attorney, which power of attorney is coupled with an interest and is irrevocable, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Borrower will pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

9.8 Waiver of Statute of Limitations. To the full extent Borrower may do so, Borrower hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

9.9 Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Lender of any particular default by Borrower shall constitute a waiver of any other default or of any similar default in the future.

Without limiting the generality of the foregoing, the acceptance by Lender of payment of any sum secured by this Deed of Trust after the due date thereof shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 2.3 and 2.10 hereof operate to cure or waive Borrower's default in payment of sums secured by this Deed of Trust.

9.10 Modifications and Waivers. This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

9.11 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, addressed to the address set forth at the beginning of this Deed of Trust. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

9.12 Governing Law; Severability; Captions. This Deed of Trust shall be governed by the laws of the State of Nebraska. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

9.13 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

9.14 Definitions. As used herein: the term "Borrower" means the Borrower herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "Trustee" means the Trustee herein named, together with any successor Trustee; and the term "Lender" means the Lender herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

9.15 Successors and Assigns; Joint and Several Liability; Agents. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article IV hereof. Each person executing this Deed of Trust as Borrower shall be jointly and severally liable for all obligations of Borrower hereunder. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee.

9.16 Number; Gender. This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.17 Attorneys' Fees. As used in this Deed of Trust, the terms "legal fees" and "attorney fees" shall include without limitation attorneys' fees incurred at or in preparation for any trial appeal or review or in any proceeding under any present or future federal bankruptcy act or state receivership law.

9.18 Indebtedness May Exceed Note's Face Amount. The Borrower's successors or assigns are hereby placed on notice that the Note contains late charge, prepayment and other provisions which may result in the outstanding principal balance exceeding the face amount of the Note.

9.19 Time. Time is of the essence in connection with all obligations of Borrower herein.

9.20 Request for Notice. Pursuant to California Government Code Section 27321-5(b), Borrower hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this Deed of Trust be mailed to Borrower at the address set forth at the beginning of this Deed of Trust. Borrower hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

9.21 Power of Sale. The Borrower agrees and acknowledges that this Deed of Trust contains the power of sale, which creates substantially different rights and obligations for the Borrower from those contained in a mortgage in the case of a default or breach of any obligation hereunder.

9.22 Spouse's Separate Property. Any Borrower who is a married person expressly agrees that recourse may be had against his or her separate property, community property and quasi-community property.

## ARTICLE X

10.1 Environmental Assessment. At any time or times during the term of the Loan, Lender shall have the right to order and obtain, from an individual or firm selected by Lender in its sole discretion, a then-current environmental assessment of the Property in form and content satisfactory to Lender. The cost of each such environmental assessment shall be borne by Borrower; provided, however, that unless an event of default shall have occurred and be continuing hereunder, Borrower shall only be obligated to bear the cost of one such environmental assessment under this paragraph 10.1.

**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.**

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust as of the day and year first above written.

BORROWER:

PACIFIC GARDENS ASSOCIATES, LLC,  
a Nebraska limited liability company

By: Robert Hancock & Co., a  
Nebraska corporation  
Its Manager

By:   
Robert I. Hancock, IV  
Its Managing Director

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF DOUGLAS )

On August 31, 2007, before me, JANET J. CLARK, a Notary Public in and for said State, personally appeared Robert I. Hancock, IV, to me known to be the Managing Director of Robert Hancock & Co., a Nebraska corporation, and the Manager of Pacific Gardens Associates, LLC, the Nebraska limited liability company that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF I have hereto set my hand and affixed my official seal the day and year first above written.



Signature: *Janet J. Clark*  
Name (Print) JANET J. CLARK  
NOTARY PUBLIC in and for the State of  
Nebraska, residing at OMAHA, NEB.  
My appointment expires: 8-21-2008

EXHIBIT A

TO

DEED OF TRUST

PROPERTY SCHEDULE

LEGAL DESCRIPTION:

The property which is the subject of this Deed of Trust is situated in the County of Douglas, State of Nebraska, and is legally described as follows:

LOTS A, B, C, D, E, F AND G, IN PACIFIC GARDENS, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, TOGETHER WITH VACATED PORTIONS OF MARBEE CIRCLE AND POPPLETON CIRCLE ADJACENT THERETO;

49-29120

AND

LOT 1, IN PACIFIC GARDENS REPLAT, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

49-29121