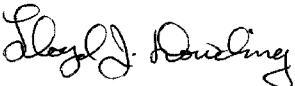


COUNTER <u>DKH</u>
VERIFY <u>DKH</u>
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SUBMITTED <u>NEBRASKA TITLE COMPANY-OM</u>

FILED SARPY CO. NE. INSTRUMENT NUMBER
<b>2014-25869</b>
2014 Nov 19 11:00:44 AM

REGISTER OF DEEDS



After Recording Return To: Jack C. Marvin, Esq., Stinson Leonard Street LLP, 1625 N. Waterfront Parkway, Suite 300, Wichita, KS 67206-6602

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**NEBRASKA DEED OF TRUST, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES  
(INCLUDING FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE)**

\_\_\_\_\_ If checked here, THIS DEED OF TRUST IS A "CONSTRUCTION SECURITY AGREEMENT" AS REFERRED TO IN THE NEBRASKA CONSTRUCTION LIEN ACT.

This Nebraska Deed of Trust, Security Agreement and Assignment of Rents and Leases (including Fixture Filing Under Uniform Commercial Code) ("Deed of Trust") is made and entered into by the undersigned borrower(s), guarantor(s) and/or other obligor(s)/pledgor(s) (collectively the "Trustor") in favor of James Pfeffer, Esq., having a mailing address at c/o Stinson Leonard Street LLP, 1299 Farnam St., Suite 1500, Omaha, Nebraska 68102-1818 (the "Trustee"), for the benefit of Fidelity Bank, whose address is 100 East English, Wichita, Kansas 67201, Attention: Commercial Loan Department (the "Beneficiary"), effective as of November 18, 2014.

**ARTICLE I. CONVEYANCE/MORTGAGED PROPERTY AND SECURITY AGREEMENT**

**Grant of Deed of Trust/Security Interest.** IN CONSIDERATION OF FIVE DOLLARS (\$5.00) cash in hand paid by Trustee to Trustor, and the financial accommodations from Beneficiary to Trustor as described below, Trustor has bargained, sold, conveyed and confirmed, and hereby bargains, sells, conveys and confirms, unto Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary, all of the hereinafter described properties, rights and interests, whether now owned or hereafter acquired (said properties, rights and interests, together with any additions thereto which may be subject to the lien of this instrument by means of supplements hereto being hereinafter called the "Property"), and insofar as the Property consists of equipment, accounts, accounts receivable, contract rights, general intangibles, inventory, fixtures, proceeds of collateral or any other personal property owned by Trustor of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code (as in effect in the appropriate jurisdiction with respect to the Property wherever located), Trustor hereby grants to Trustee and Beneficiary a

security interest in all of Trustor's right, title and interest therein (all said personal property being hereinafter sometimes referred to as the "Personal Property Collateral") namely:

1. The land as further described as follows:

Lot One (1), Hilltop Industrial Park Replat 4, a Subdivision in Sarpy County, Nebraska;

and any increases or additions thereto (the "Land"), and all air space above the surface of the Land, with the tenements, hereditaments, appurtenances, privileges, easements, franchises, rights, appendages and immunities thereunto belonging or appertaining.

2. All buildings, improvements and fixtures, and all other property constituting real property or real estate under the laws of the State now located, or hereafter erected, upon the Land (the "Improvements"), including the property constituting real property or real estate described in above, and all right, title and interest of Trustor, now owned or hereafter acquired, in and to (a) any and all strips and gores of land adjacent to or used in connection with the Land, (b) all land upon which any such buildings or Improvements may now or hereafter encroach, (c) the land within the streets, roads and alleys adjoining all such real property, and (d) all and singular the tenements, hereditaments, appurtenances, privileges, easements, franchises, rights, appendages and immunities whatsoever belonging to or in any wise appertaining to all such real property (the Land and the Improvements sometimes collectively referred to herein as the "Premises").

3. Any and all fixtures, appliances, machinery and equipment of any nature whatsoever, and other articles of property (real, personal or mixed) at any time now or hereafter installed in, attached to or situated in or upon the Land or other real estate described above or any Improvements, used, acquired for use, or intended to be used in connection with the Land or such other real estate or in the operation of such Improvements or in the operation of Trustor's business thereon, whether or not the said property is or shall be affixed thereto, including, without limiting the generality of the foregoing, (a) all building materials, fixtures, building machinery and building equipment delivered on site to the real estate acquired during the course of, or in connection with, any construction of any such Improvements, (b) all furniture, furnishings, carpeting, refrigerators, air conditioners, heating units, ranges, stoves, ovens, disposals, dishwashers and other appliances, (c) all heating, lighting, refrigeration, plumbing, electrical, lighting, ventilating, incinerating, water heating, cooking, telephonic communications, data processing, security, air conditioning and energy management equipment, and (d) any and all subsequently acquired fixtures, appliances, machinery, equipment and personal property by way of renewal, replacement, substitution, addition or otherwise.

4. Any and all accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles and other obligations of any kind, now or hereafter existing, arising out of or in connection with the sale or lease of goods or the rendering of services, or arising out of or relating to the development, ownership or operation of the Land or any of the

other Property, and all rights now or hereafter existing in and to all security agreements, leases, and other contracts securing or otherwise relating to any such accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles or obligations.

5. Any and all building materials and equipment of Trustor which is intended to be installed in or on the Property or the Premises.

6. Any and all general intangibles, including without limitation, goodwill, trademarks, trade styles, trade names, books and records, customer lists, vendor lists, accounting software, franchise rights, option rights, purchase contracts and leasehold interests.

7. Any and all inventory in all of its forms, wherever located, now or hereafter existing, including without limitation, (a) all goods held for sale or lease in the ordinary course of business of Trustor and raw materials and work in process therefor, finished goods thereof, and supplies and materials used or consumed in the manufacture or production thereof, (b) goods in which Trustor has any interest in mass or a joint or other interest or right of any kind (including, without limitation, goods in which Trustor has an interest or right as consignee), (c) goods in transit, and (d) goods which are returned to or repossessed or stopped in transit by Trustor, and all accessions thereto and products thereof and documents therefor.

8. Any and all water and water rights, ditches and ditch rights, reservoirs and reservoir rights, stock or interests in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, and lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Land or other Property or any part thereof.

9. All leases of the Land or other Property or any part thereof, whether now existing or hereafter entered into, all operating or management agreements relating to the operations of any of the Land or other Property, whether now existing or hereafter entered into, and all right, title and interest of Trustor thereunder, including cash and securities deposited under said leases.

10. All licenses, permits (including building permits), authorizations or approvals of any type or nature whatsoever, now owned or held or hereafter acquired, which relate to the use, development or occupancy of the Land or other Property or any part thereof.

11. All insurance proceeds and condemnation awards relating to the Land or other Property or any part thereof, and all funds, moneys, certificates of deposit, instruments, letters of credit and deposits of Trustor held by, deposited with, or paid or payable to Mortgagee.

12. All rents from, all issues, uses, profits, proceeds and products of, all replacements and substitutions for, and other rights and interests now or thereafter belonging to, any of the foregoing.

13. All other estates, easements, franchises, interests, licenses, rights, titles, powers or privileges of every kind and character which Trustor now has or may hereafter acquire in and to the property and interests described above, including without limitation: (a) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers and privileges of Trustor in and to all easements, air rights and other rights-of-way in connection

with the property and interests described above or any part thereof or as a means of ingress to, or egress from, the Land or any part thereof or any Improvements thereon, (b) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers, and privileges of Trustor in and to the Land or any part thereof or any Improvements thereon, (c) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers, and privileges, if any, of Trustor, either at law or in equity, in possession or in expectancy, in and to the real property or air space, as the case may be, lying in, under, or over the streets, highways, roads, alleys, ways, sidewalks, skywalks, tunnels, or avenues, open or proposed, in front of, above, over, under, through, or adjoining, the Land, and in and to any strips or gores of real property adjoining the Land, and (d) all present or future estates, easements, franchises, interests, leaseholds, licenses, development rights or credits, air rights, solar rights, water, water rights (whether riparian, appropriative time, or otherwise, and whether or not appurtenant), water, irrigation or ditch stock interests, rights, titles, powers, and privileges appurtenant, or incident to, the Land or the Improvements.

14. Any and all proceeds of any and all of the foregoing (including, without limitation, proceeds that constitute property of the types described above).

**1.1** This Deed of Trust is given to secure all of Trustor's Obligations (defined below) to Beneficiary, whether now or hereafter existing, between Trustor and Beneficiary or in favor of Beneficiary, including, without limitation, any note, any loan or security agreement, any lease, any other mortgage, deed of trust or other pledge of an interest in real or personal property, any guaranty, any letter of credit or reimbursement agreement or banker's acceptance, any agreement for any other services or credit extended by Beneficiary to Trustor even though not specifically enumerated herein and any other agreement with Beneficiary (together and individually, the "Loan Documents"). The parties further intend that this Deed of Trust shall operate as a security agreement with respect to those portions of the Property which are subject to Article 9 of the Uniform Commercial Code.

**1.2** "Obligations" means all loans by Beneficiary to Trustor including those loans evidenced by a note of even date herewith in the initial principal amount of \$750,000.00, and any extensions, renewals, restatements, replacements and modifications thereof and all principal, interest, fees and expenses relating thereto (the "Note") between Trustor and Beneficiary; and also means all Trustor's debts, liabilities, obligations, covenants, warranties, and duties to Beneficiary (plus its affiliates including any credit card debt, but specifically excluding any type of consumer credit), whether new or hereafter existing or incurred, whether liquidated or unliquidated, whether absolute or contingent, whether arising out of the Loan Documents or otherwise, and regardless of whether such Obligations arise out of existing or future credit granted by Beneficiary to any Trustor, to any Trustor and others, to others guaranteed, endorsed or otherwise secured by any Trustee or to any debtor-in-possession/successor-in-interest of any Trustor, and principal, interest, fees, expenses and charges relating to any of the foregoing, including, without limitation, costs and expenses of collection and enforcement or this Deed of Trust, attorneys' fees of both inside and outside counsel and environmental assessment or remediation costs. The interest rate and maturity of such Obligations are as described in the documents creating the indebtedness secured hereby.

THIS DEED OF TRUST SECURES, WITHOUT LIMITATION, EXISTING DEBTS OR OBLIGATIONS CREATED SIMULTANEOUSLY WITH THE EXECUTION OF THIS DEED OF TRUST AND ANY FUTURE ADVANCES TO BE MADE AT THE OPTION OF THE PARTIES. The total principal amount, exclusive of interest, of the Obligations, including any future debts, advances, liabilities or obligations, not including, however, any sums advanced for the protection of the Property or the Trustor's interest therein, shall not exceed the sum of \$750,000.00; PROVIDED, HOWEVER, THAT NOTHING CONTAINED HEREIN SHALL CONSTITUTE A COMMITMENT TO MAKE ADDITIONAL OR FUTURE LOANS OR ADVANCES IN ANY AMOUNT.

**1.3 Homestead.** The Premises are not the homestead of the Trustor. If so, the Trustor releases and waives all rights under and by virtue of the homestead exemption laws of the State of Nebraska.

**1.4 Security Interest.** This Deed of Trust, in addition to being a lien on real estate, is also a security agreement by and between Trustor, as debtor, and Beneficiary, as secured party, upon all Personal Property Collateral, including without limitation any collateral listed on any schedule of collateral attached hereto as Exhibit "A" and incorporated herein, and creates a valid security interest in and lien on all Personal Property Collateral until the indebtedness secured hereby is paid in full. The Personal Property Collateral shall continue to be Personal Property Collateral whether or not the same shall be attached to the Land or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Land and the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing property which is leased by Trustor. Notwithstanding the foregoing, all of the foregoing property shall be owned by Trustor and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Beneficiary. Trustor shall promptly replace all of the Personal Property Collateral subject to the lien or security interest of this Deed of Trust when worn out or obsolete with Personal Property Collateral comparable to the worn out or obsolete Personal Property Collateral when new and will not, without the prior written consent of Beneficiary, remove from the Land or the Improvements any of the Personal Property Collateral subject to the lien or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created by this Deed of Trust and the other Loan Documents or as otherwise permitted by Beneficiary in writing. All of the Personal Property Collateral shall be kept at the location of the Land except as otherwise required by the terms of the Loan Documents. Trustor shall not use any of the Personal Property Collateral in violation of any applicable statute, ordinance or insurance policy.

**1.5 Security Agreement.** This Deed of Trust constitutes both a real property deed of trust and a "security agreement" between Trustor and Beneficiary with respect to the Personal Property Collateral in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Trustor hereby authorizes Beneficiary to prepare, file of record or otherwise effectuate new financing statements or financing statement amendments which describe all or any portion of the assets of Trustor as Personal Property Collateral thereunder without further action by Trustor. Trustor

specifically agrees that Beneficiary may cause such financing statements and financing statement amendments to be filed without any signature of a representative of the Trustor appearing thereon, where such filings are permitted by applicable law. Trustor hereby further agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Beneficiary's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Rate (as defined in the Note) from the date incurred by Beneficiary until actually paid by Trustor, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with a foreclosure permitted by applicable law upon giving the same notice with respect to the sale of the Property hereunder as is required under applicable law, if any. Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to any applicable Uniform Commercial Code:

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

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

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

Trustor will not change the principal place of business or chief executive office set forth below, or change the state of its organization or registration, or change its name, without in each instance the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, delayed or conditioned. Beneficiary's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Beneficiary's security interest in the Personal Property Collateral as a result of such changes, and

shall be at Trustor's expense. The name, principal place of business and chief executive office of Trustor (as Debtor under any applicable Uniform Commercial Code), as of the date hereof, are:

R Jeter Family Trust  
1004 Commercial Avenue, Suite 1112  
Anacortes, WA 98221

ATTN: Russ Jeter, Trustee

The name and address of Beneficiary (as Secured Party under any applicable Uniform Commercial Code), as of the date hereof, are:

Fidelity Bank  
100 East English  
Wichita, Kansas 67201

ATTN: Commercial Loan Department

**1.6 Fixture Filing.** From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing under the Uniform Commercial Code with respect to the improvements and for this purpose the name and address of the debtor is the name and address of Trustor as set forth in this Deed of Trust and the name and address of the secured party is the name and address of Beneficiary as set forth in this Deed of Trust. The Property includes goods which are or may become so affixed to real property as to become fixtures and products and proceeds of the Property. If any of the Property is of a nature such that a security interest therein can be perfected under the Uniform Commercial Code, this Deed of Trust shall also constitute the grant of a security interest to the beneficiary and serve as a Security Agreement, and Trustor authorizes the filing of any financing statements and agrees to execute other instruments that may be required for the further specification, perfection or renewal of such security interest.

## ARTICLE II. WARRANTIES AND COVENANTS

In addition to all other warranties and covenants of Trustor under the Loan Documents which are expressly incorporated herein as part of this Deed of Trust, including the covenants to pay and perform all Obligations, and while any part of the credit granted Trustor under the Loan Documents is available or any Obligations of Trustor to Beneficiary are unpaid or outstanding, Trustor continuously warrants to Beneficiary and Trustee and agrees as follows:

**2.1 Warranty of Title/Possession.** Trustor warrants that it has sole and exclusive title to and possession of the Premises, excepting only the following "Permitted Encumbrances": restrictions and assessments of record, and zoning ordinances (the terms of which are and will be complied with, and in the case of easements, are and will be kept free of encroachments), taxes and assessments not yet due and payable and those Permitted Encumbrances set forth on Exhibit B attached hereto (except that if no Exhibit "B" is attached, there will be no additional Permitted Encumbrances). The lien of this Deed of Trust, subject only to Permitted Encumbrances, is and will continue to be a valid first and only lien upon all of the Property.

**2.2 Maintenance; Waste; Alteration.** Trustor will maintain the Premises in good and tenable condition and will restore or replace damaged or destroyed improvements with items of at least equal utility and value. Trustor will not commit or permit waste to be committed on the Premises. Trustor will not remove, demolish or materially alter any part of the Premises without Beneficiary's prior written consent, except Trustor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility. The replacement fixture will be subject to the priority lien and security of this Deed of Trust.

**2.3 Transfer and Liens.** Trustor will not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole and absolute discretion, either voluntarily or involuntarily (a) sell, assign, lease or transfer, or permit to be sold, assigned, leased or transferred, any part of the Premises, or any interest therein; or (b) pledge or otherwise encumber, create or permit to exist any mortgage, pledge, lien or claim for lien or encumbrance upon any part of the Premises or interest therein, except for the Permitted Encumbrances. Beneficiary has not consented and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this Deed of Trust.

**2.4 Escrow.** After written request from Beneficiary, Trustor will pay to Beneficiary sufficient funds at such time as Beneficiary designates, to pay (a) the estimated annual real estate taxes and assessments on the Premises; and (b) all property or hazard insurance premiums when due. Interest will not be paid by Beneficiary on any escrowed funds. Escrowed funds may be commingled with other funds of Beneficiary. All escrowed funds are hereby pledged as additional security for the Obligations.

**2.5 Taxes, Assessments and Charges.** To the extent not paid to Beneficiary under 2.4 above, Trustor will pay before they become delinquent all taxes, assessments and other charges now or hereafter levied or assessed against the Premises, against Beneficiary based upon this Deed of Trust or the Obligations secured by this Deed of Trust, or upon Beneficiary's interest in the Premises, and deliver to Beneficiary receipts showing timely payment.

**2.6 Insurance.**

(a) Trustor will continually insure the Premises against such perils or hazards as Beneficiary may require, in amounts, not less than the unpaid balance of the Obligations. The policies will contain an agreement by each insurer that the policy will not be terminated or modified without at least 30 days' prior written notice to Beneficiary and will contain a mortgage clause acceptable to Beneficiary and Trustor will take such other action as Beneficiary may reasonably request to ensure that Beneficiary will receive (subject to no other interests) the insurance proceeds from the Improvements. Trustor hereby assigns all insurance proceeds to and irrevocably directs, while any Obligations remain unpaid, any insurer to pay to Beneficiary the proceeds of all such insurance and any premium refund; and authorizes Beneficiary to endorse Trustor's name to effect the same, to make, adjust or settle, in Trustor's name, any claim on any insurance policy relating to the Premises. The proceeds and refunds will be applied in such manner as Beneficiary in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.



(b) In the event of any casualty, Trustor will give immediate notice by mail to Beneficiary, and will commence proof of loss with the casualty insurer. Beneficiary reserves the right to direct and approve all proof of loss and claims procedures. If proof of loss is not made promptly by Trustor, Beneficiary is authorized by Trustor to do so. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary and not to Trustor and Beneficiary jointly. The insurance proceeds shall be applied to restoration and repair of the damaged Property provided that (i) Beneficiary determines, in its sole discretion, that such restoration and repair is economically feasible and reasonable, (ii) Beneficiary determines, in its sole discretion, that its security will not be lessened or impaired thereby, (iii) no Event of Default has occurred, and (iv) Beneficiary determines, in its sole discretion, that the insurance proceeds shall be adequate to pay all estimated costs of restoration and repair, or Trustor shall deposit with Beneficiary sums sufficient, in Beneficiary's opinion, when added to such proceeds, to pay all such estimated costs; otherwise such proceeds shall be applied to the reduction of the Obligations (such reductions applicable to such portions of the Obligations, and in such order, as Beneficiary may elect), whether matured or unmatured. If such proceeds are to be applied to restoration and repair, Trustor covenants and agrees to promptly commence the restoration and repair of such damaged Property to as nearly as possible the same condition as existed prior to such casualty, except as otherwise approved in writing by Beneficiary, and to diligently prosecute such restoration and repair to completion, paying all costs thereof that the insurance proceeds and other sums deposited by Trustor with Beneficiary may be insufficient to pay. If at any time or times Beneficiary determines, in its sole discretion, that the proceeds and such sums deposited by Trustor may be insufficient to pay in full all estimated costs of restoration and repair, Trustor shall on demand deposit with Beneficiary such additional sums as Beneficiary deems necessary to pay all such estimated costs. Trustor will submit plans and design and construction contracts for such restoration and repair to Beneficiary for Beneficiary's prior written approval. The proceeds of insurance and any sums deposited by Trustor with Beneficiary as aforesaid shall be held by Beneficiary and disbursed in payment of the costs of such restoration and repair in accordance with such procedures and subject to such conditions as Beneficiary shall require. Any proceeds of insurance in excess of the costs of restoration and repair shall, at the option of Beneficiary, be applied to the reduction of the Obligations or paid to the person legally entitled thereto.

**2.7 Condemnation.** Any compensation received for the taking of the Premises, or any part thereof, by a condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Premises, or any part thereof, shall be applied in such manner as Beneficiary, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

**2.8 Environmental Matters.** Except as specifically disclosed by Trustor to Beneficiary in writing prior to the execution of this Deed of Trust, Trustor represents and warrants as follows. There exists no uncorrected violation by Trustor of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined, whether such laws currently exist or are enacted in the future (collectively "Environmental Laws"). The term "Hazardous Substances" will mean any hazardous or toxic wastes, chemicals or other substances,

the generation, possession or existence of which is prohibited or governed by any Environmental Laws. Trustor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding, which asserts that Trustor (a) has violated any Environmental Laws; (b) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "Remedial Action"); or (c) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party. Except as disclosed by Trustor in writing to Beneficiary on or before execution of this Deed of Trust, there are not now, nor to Trustor's knowledge after reasonable investigation have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at any real estate owned or occupied by Trustor during the periods that Trustor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action. To Trustor's knowledge, there are no proposed or pending changes in Environmental Laws which would adversely affect Trustor or its business, and there are no conditions existing currently or likely to exist while the Loan Documents are in effect which would subject Trustor to Remedial Action or other liability. Trustor currently complies with and will continue to timely comply with all applicable Environmental Laws; and will provide Beneficiary, immediately upon receipt, copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by Trustor or Remedial Action or other response by or on the part of Trustor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from Trustor for an alleged violation of Environmental Laws. In the event of any such circumstance or condition, Trustor agrees, at its expense and at the request of Beneficiary, to permit an environmental audit solely for the benefit of Beneficiary, to be conducted by Beneficiary or an independent agent selected by Beneficiary which may not be relied on by Trustor for any purpose. This provision shall not relieve Trustor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws.

**2.9 Assignments.** Trustor will not assign, in whole or in part, without Beneficiary's prior written consent, which consent may be withheld at Beneficiary's sole and absolute discretion, the rents, issues or profits arising from the Premises.

**2.10 Right of Inspection.** Beneficiary may at all reasonable times enter and inspect the Premises.

**2.11 Waivers by Trustor.** To the greatest extent that such rights may then be lawfully waived, Trustor hereby agrees for itself and any persons claiming under the Deed of Trust that it will waive and will not, at any time, insist upon or plead or in any manner whatsoever claim or take any benefit or advantage of (a) any exemption, stay, extension or moratorium law now or at any time hereafter in force; (b) any law now or hereafter in force providing for the valuation or appraisal of the Premises or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained or pursuant to the decree, judgment or order of any court of competent jurisdiction; (c) to the extent permitted by law, any law now or at any time hereinafter made or enacted granting a right to redeem from foreclosure or any other rights of redemption. In connection with foreclosure of, or exercise of any power of sale under, this Deed of Trust; (d) any statute of limitations now or at any time hereafter in force; or (e) any right to require marshalling of assets by Beneficiary.

**2.12 Assignment of Rents and Leases.** Trustor hereby assigns to Beneficiary all leases, including but not limited to all rights, options and interest of Trustor, written or oral, now in existence or hereafter arising, for the use or occupancy of all or any portion of the Premises (the "Leases"), and all of the rents, issues and profits of the Premises and every part thereof (the "Rents"), as further security for the payment and performance of the Obligations, and Trustor grants to Beneficiary the right to enter upon and to take possession of the Premises and every part thereof for the purpose of collecting the Rents and to let the Premises or any part thereof, and to apply the Rents, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are paid in full. Notwithstanding the foregoing, Trustor shall have the right under a license granted hereby from Beneficiary to collect and receive the Rents, until the occurrence of any default hereunder, and Trustor agrees to use the Rents in payment of the Obligations and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against the Premises, but such right of Trustor shall be revoked automatically upon the occurrence of any default hereunder.

**2.13 Covenants Respecting Leases and Rents.** Trustor will not, without the written consent of Beneficiary, enter into any Leases, nor receive or collect Rents from any tenant of the Premises or any part thereof for a period of more than one month in advance. After the occurrence of any default Trustor will pay monthly in advance to Beneficiary, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of Trustor or any other party or parties claiming through or under Trustor, and upon failure to make any such payment will, at the option of Beneficiary, vacate and surrender the possession of the Premises to Beneficiary or to such receiver, and in default thereof may be evicted by summary proceedings. Trustor covenants and agrees that it will not, without the prior written consent of Beneficiary in each case, (a) assign, pledge, hypothecate or otherwise encumber any of the Leases or the Rents, (b) enter into any Leases which are not at then-market rates or which are not by their terms expressly subordinate to this Mortgage, (c) enter into any Leases which are not in form approved by Beneficiary, or (d) amend, modify, cancel or terminate any Leases or accept a voluntary surrender thereof. Trustor will fully perform all of the covenants and agreements of the landlord under the Leases, and will take all such necessary actions (short of termination) as may be necessary or appropriate to enforce the covenants and agreements of the tenants under the Leases.

**2.14 Schedule of Leases.** At any time, and from time to time, on notice from Beneficiary, Trustor shall deliver to Beneficiary a schedule of all Leases then in effect, which schedule shall include the following: (a) the name of the tenant; (b) a description of the leased space in form satisfactory to Beneficiary, including but not limited to the approximate number of square feet so leased and the type of activity performed under such Lease; (c) the rental rate, including escalations, if any; (d) the term of the Lease; and (e) such other information as Beneficiary may reasonably request. If requested by Beneficiary, Trustor shall also deliver photocopies of all Leases accompanied by the certificate of Trustor that such copies are true, complete and accurate.

**2.15 Management.** The management of the Property shall be by either: (a) Trustor or an entity affiliated with Trustor approved by Beneficiary for so long as Trustor or said affiliated

entity is managing the Property in a first class manner, or (b) a professional property management company approved by Beneficiary (any such person or entity which manages the Property, other than Trustor, is hereinafter referred to as the "Manager"). Any such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Beneficiary. In no event shall any Manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Beneficiary. In the event (a) of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, or (b) of a change in control (fifty percent or more) of the ownership of Manager or if Manager provides cause for termination, including, without limitation, gross negligence, willful misconduct or fraud, or (c) of the Manager becoming insolvent or a debtor in any bankruptcy or insolvency proceeding, Beneficiary shall have the right to terminate, or direct Trustor to terminate, such management contract at any time and, in any such event of termination of the management contract, to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. Any such successor manager shall be a reputable management company.

**2.16 Demand Upon Tenants.** Written demand by Beneficiary delivered to any tenant for payment of Rents by reason of the occurrence of any Default claimed by Beneficiary shall be sufficient evidence of each such tenant's obligation and authority to make all future payments of Rents to Beneficiary without the necessity for further consent by Trustor. Trustor hereby indemnifies and agrees to hold each tenant free and harmless from and against all liability, loss, cost, damage, or expense suffered or incurred by such tenant by reason of its compliance with any demand for payment of Rents made by Beneficiary contemplated by the preceding sentence.

**2.17 No Liability.** Neither Trustee nor Beneficiary shall be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify Trustee and Beneficiary for, and to save them harmless from, any and all liability arising from any Lease or from this assignment, and this assignment shall not place responsibility for the control, care, management or repair of the Premises upon Trustee or Beneficiary, or make Trustee or Beneficiary responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, lessee, licensee, employee or stranger, and nothing herein contained shall constitute Trustee or Beneficiary as a "mortgagee-in-possession" of the Premises.

**2.18 Defense of Title.** If, while this Deed of Trust is in force, the title to the Property or the interest of Beneficiary shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Trustor, at Trustor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest.

### **ARTICLE III. RIGHTS AND DUTIES OF BENEFICIARY**

In addition to all other rights (including setoff) and duties of Beneficiary under the Loan Documents which are expressly incorporated herein as a part of this Deed of Trust, the following provisions will also apply:

**3.1 Beneficiary Authorized to Perform for Trustor.** If Trustor fails to perform any of Trustor's duties or covenants set forth in this Deed of Trust, Beneficiary may perform the duties or cause them to be performed, including, without limitation, signing Trustor's name or paying any amount so required, and the cost, with interest at the default rate set forth in the Loan Documents, will immediately be due from Trustor to Beneficiary from the date of expenditure by Beneficiary to date of payment by Trustor, and will be one of the Obligations secured by this Deed of Trust. All acts by Beneficiary are hereby ratified and approved, and Beneficiary will not be liable for any acts of commission or omission, nor for any errors of judgment or mistakes of fact or law.

#### **ARTICLE IV. DEFAULTS AND REMEDIES**

Beneficiary may enforce its rights and remedies under this Deed of Trust upon default. A default will occur if: (a) Trustor fails to comply with the terms of any Loan Documents (including but not limited to this Deed of Trust, any Note or any guaranty by or for the benefit of Trustor) or a demand for payment is made under a demand loan, or Trustor defaults on any other trust deed or mortgage affecting the Land or Premises, or if any other obligor fails to comply with the terms of any Loan Documents which Trustor has given Beneficiary; or (b) Trustor fails to pay the Note or any other Obligation or the interest thereon as and when the same become due and payable, or fails to pay any other sums, amounts, charges, costs and expenses when the same become due and payable by Trustor as provided for herein, in the Note or in any of the other Loan Documents; or (c) any representation or warranty of Trustor contained herein or in any of the other Loan Documents is false or fails to remain a true representation or warranty; or (d) Trustor defaults in the performance of, or as respects, any of the terms, provisions, covenants, conditions and requirements imposed upon it herein, in the Note or in any of the other Loan Documents; or (e) Trustor or any guarantor shall (1) consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, or (2) become bankrupt or insolvent, or file any debtor proceeding or file in any court pursuant to any law either of the United States or of any state, a petition in bankruptcy, insolvency or for reorganization, or (3) make a general assignment for the benefit of creditors, or (4) file a petition or answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or (5) file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceedings, or (6) take any action for the purpose of effecting any of the foregoing, or (7) generally not pay its debts as such debts become due, or shall admit in writing its inability to pay debts generally; or (f) any order, judgment or decree shall be entered upon an application of a creditor of Trustor or any guarantor by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of Trustor's or such guarantor's assets and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days; or (g) any assignment (by operation of law or otherwise), transfer, mortgage, lease or conveyance of the Property or Personal Property Collateral or any part thereof or any right, title or interest therein (including, without limitation, any oil, gas or other mineral interest) is made or contracted for without the prior written consent of Beneficiary; if, at any time prior to the release of this Deed of Trust of record, Trustor shall merge, consolidate or dissolve, or shall sell all or substantially all of its assets; or (h) if all or any substantial portion (as determined by Beneficiary in its sole discretion) of the Premises or Personal Property Collateral is damaged by fire or other casualty or is subject to any taking by

exercise of the power of eminent domain. Upon the occurrence of a default, Beneficiary may declare the Obligations to be immediately due and payable.

**4.1 Remedies.** In addition to the remedies for default set forth below and in the other Loan Documents, including but not limited to acceleration, Beneficiary upon default will have all other rights and remedies for default available by law or equity. Upon a default, Beneficiary may exercise the following remedies:

(a) **Enforcement of Assignment of Rents and Leases.** Beneficiary may:

(i) terminate the license granted to Trustor to collect the Rents (regardless of whether Beneficiary or Trustee shall have entered into possession of the Property), give such notice to parties obligated to pay Rents as Beneficiary deems appropriate and necessary, collect and sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees, apply the net proceeds thereof to any Obligations as Beneficiary may elect;

(ii) make, modify, enforce, cancel or accept surrender of any leases, evict tenants, adjust Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary reasonably deems advisable in connection with the Property;

(iii) apply the Rents so collected to the operation and management of the Property, including the payment of reasonable management, brokerage and attorneys' fees, or to the Obligations; and

(iv) require Trustor to transfer and deliver possession of all security deposits and records thereof to Beneficiary.

(b) **Power of Sale.** Beneficiary may require Trustee, and Trustee is hereby authorized and empowered, to enter and take possession of the Premises and to sell all or part of the Property in accordance with the Nebraska Trust Deeds Act, as the same may be hereafter amended or modified. Trustee may sell all or any portion of the Property, together or in lots or parcels, and may execute and deliver to the purchaser or purchasers of such property a conveyance in fee simple or as authorized by applicable law. Trustee shall receive the proceeds thereof and, subject to the requirements of the Nebraska Trust Deeds Act, shall apply the same as follows: (a) First, the payment of the expenses of making, maintaining and executing this trust, protection of the Property, including the expense of any litigation and reasonable attorneys' fees, and compensation to Trustee comprised of actual fees plus an administrative fee of no less than \$750.00; (b) second, to any advancements made by Trustee or Beneficiary pursuant hereto, with interest thereon; (c) third, to the payment of the Obligations herein secured or intended so to be, in such order as Beneficiary shall elect, and any balance of said Obligations may be the subject of immediate suit; (d) and, fourth, should there be any surplus, Trustee will pay it to Trustor, or to such person as may be legally entitled thereto. The sale or sales by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the property shall be sold; and if the proceeds of such sale or sales of less than the whole of the

Premises shall be less than the aggregate of the Obligations and the expenses thereof, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion at the Property; provided, however, that Trustor shall never have any right to require the sale or sales of less than the whole of the Property, but Beneficiary shall have the right at its sole election, to request Trustee to sell less than the whole of the Property. Beneficiary may bid and become the purchaser of all or any part of the Property at any such sale, and the amount of Beneficiary's successful bid may be credited on the Obligations.

(c) **Judicial and Other Relief.** Beneficiary or Trustee may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(d) **Entry on Premises; Tenancy at Will.**

(i) Beneficiary may enter into and upon and take possession of all or any part of the Property, and may exclude Trustor, and all persons claiming under Trustor, and its agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary may use, administer, manage, operate, and control the Property and may exercise all rights and powers of Trustor in the name, place and stead of Trustor, or otherwise, as Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Trustor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(ii) In the event of a trustee's or other foreclosure sale hereunder and if at the time of such sale Trustor or any other party (other than a tenant under a lease as to which Beneficiary shall have expressly subordinated the lien of this Deed of Trust as hereinabove set out) occupies the portion of the Property so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of such purchaser, at a reasonable rental per day based upon the value of the portion of the Premises so occupied (but not less than any rental theretofore paid by such tenant, computed on a daily basis). An action of forcible detainer shall lie if any such tenant holds over a demand in writing for possession of such portion of the Premises.

(e) **Receiver.** Beneficiary may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Trustor or regard to the adequacy of the Property for the repayment of the Obligations, for appointment of a receiver of the Property, and Trustor does hereby irrevocably consent to such appointment. Any such receiver shall have all necessary and proper powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Property upon such terms as may be approved by the court.

(f) **Right to Accelerate.** Beneficiary may, without notice (except as provided by the applicable laws of the State), 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 Trustor 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.

(g) **Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor or the principals, members or general partners in Trustor, or their respective creditors or property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

(h) **Remedies Cumulative, Concurrent and Nonexclusive.** If the Obligations are now or hereafter further secured by chattel mortgages, other deeds of trust, security agreements, pledges, contracts of guaranty, assignments of leases, or other security, Beneficiary may, at its option, exhaust its remedies under any one or more of said instruments and this Deed of Trust, either concurrently or independently, and in such order as Beneficiary may determine. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available to it at law or equity (including, without limitation, those granted by the Uniform Commercial Code), and the same (a) shall be cumulative, concurrent, and nonexclusive, (b) may be pursued separately, successively or concurrently against Trustor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Property, at the sole discretion of Beneficiary, and (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise of 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.

(i) **Waiver by the Beneficiary.** Beneficiary may permit Trustor to attempt to remedy any default without waiving its rights and remedies hereunder, and Beneficiary may waive any default without waiving any other subsequent or prior default by Trustor. Furthermore, delay on the part of Beneficiary in exercising any right, power or privilege hereunder or at law will not operate as a waiver thereof, nor will any single or partial exercise of such right, power or privilege preclude other exercise thereof or the exercise of any other right, power or privilege. No waiver or suspension will be deemed to have occurred unless Beneficiary has expressly agreed in writing specifying such waiver or suspension.

(j) **Attorneys' Fees and Other Costs.** Attorneys' fees and other costs incurred in connection with this Deed of Trust may be recovered by Beneficiary and included in any sale made hereunder or by judgment of foreclosure.

**4.2 Request for Notice.** Trustor hereby requests that, unless otherwise prescribed by law, a copy of any notice of default and a copy of any notice of sale pursuant to the Nebraska Trust Deeds Act be mailed to each Trustor at Trustor's mailing address set forth in this Deed of Trust.

## ARTICLE V. ACTION BY TRUSTEE

**5.1 Action by Trustee.** Trustee named herein shall be permitted and authorized to act with full power to act when action hereunder shall be required. The term "Trustee" shall be



construed to mean "Trustees" whenever the sense requires. The necessity of Trustee herein named, or any successor in trust, making oath or giving bond, is expressly waived.

**5.2 Employment of Agents.** Trustee, or anyone acting in its stead, shall have, in its discretion, authority to employ all property agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Property, should any be realized; and if no sale be made or if the proceeds of sale be insufficient to pay the same, then Trustor hereby undertakes and agrees to pay the cost of such services rendered to said Trustee. Trustee may rely on any document believed by it in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon.

**5.3 Indemnification of Trustee.** If Trustee shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto, or the interest of Trustee or Beneficiary under this Deed of Trust, Trustee and Beneficiary shall be reimbursed by Trustor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by them or either of them in any such case, and the same shall be secured hereby as a further charge and lien upon the Property.

**5.4 Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary 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, Beneficiary 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 Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor 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. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Land is located, and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder.

## ARTICLE VI. MISCELLANEOUS

In addition to all other miscellaneous provisions under the Loan Documents which are expressly incorporated as a part of this Deed of Trust, the following provisions will also apply:

**6.1 Term of Deed of Trust.** This Deed of Trust shall continue in full force and effect until this Deed of Trust is duly released.

**6.2 Time of the Essence.** Time is of the essence with respect to payment of the Obligations, the performance of all covenants of Trustor and the payment of taxes, assessments, and similar charges and insurance premiums.

**6.3 Subrogation.** Beneficiary will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the Note or other advances by Beneficiary. In which event any sums otherwise advanced by Beneficiary shall be immediately due and payable, with interest at the default rate set forth in the Loan Documents from the date of advance by Beneficiary to the date of payment by Trustor, and will be one of the Obligations secured by this Deed of Trust.

**6.4 Choice of Law.** This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Kansas, except to the extent that the law of the jurisdiction in which the Property is located is held to be applicable to the attachment and perfection of Beneficiary's lien and the enforcement of its rights and remedies with respect thereto.

**6.5 Severability.** Invalidity or unenforceability of any provision of this Deed of Trust shall not affect the validity or enforceability of any other provision.

**6.6 Entire Agreement.** This Deed of Trust is intended by Trustor and Beneficiary as a final expression of this Deed of Trust and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Deed of Trust. No parol evidence of any nature shall be used to supplement or modify any terms.

**6.7 Joint Liability; Successors and Assigns.** If there is more than one Trustor, the liability of the Trustors will be joint and several, and the reference to "Trustor" shall be deemed to refer to each Trustor and to all Trustors. The rights, options, powers and remedies granted in this Deed of Trust and the other Loan Documents shall extend to Beneficiary and to its successors and assigns, shall be binding upon Trustor and its successors and assigns, and shall be applicable hereto and to all renewals, amendments and/or extensions hereof.

**6.8 Indemnification.** Except for harm arising from Beneficiary's or Trustee's willful misconduct, Trustor hereby indemnifies and agrees to defend and hold Beneficiary and Trustee harmless from any and all losses, costs, damages, claims and expenses (including, without limitation, attorneys' fees and expenses) of any kind suffered by or asserted against Beneficiary or Trustee relating to claims by third parties arising out of the financing provided under the Loan Documents or related to the Property (including, without limitation, Beneficiary's failure to perform its obligations relating to Environmental Matters described in Section 2:8 above) or the exercise by Beneficiary or Trustee of any of their respective powers, rights and remedies under this Deed of Trust. This indemnification and hold harmless provision will survive the termination of the Loan Documents and the satisfaction of this Deed of Trust and Obligations due Beneficiary.

**6.9 Notices.** Notice of any record shall be deemed delivered when the record has been (a) deposited in the United States Mail to the last known address of the receiving party, postage

pre-paid, (b) received by overnight delivery service, (c) received by telex, (d) received by telecopy or facsimile, (e) received through the Internet, or (f) when personally delivered.

**6.10 Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Property and waives all rights of exemption as to any of the Property.

**6.11 Copy.** Trustor hereby acknowledges the receipt of a copy of this Deed of Trust, together with a copy of each promissory note secured hereby, and all other documents executed by Trustor in connection herewith.

**6.12 Usury Savings Clause.** Notwithstanding anything herein or in the Note to the contrary, no provision contained herein or in the Note which purports to obligate Trustor to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent that it calls for the payment of any interest or other sums in excess of such maximum. All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the indebtedness secured hereby or otherwise, shall the interest contracted for, charged or received by Beneficiary exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall at Beneficiary's option, be refunded to Trustor or be applied to the reduction of the principal balance of the indebtedness secured hereby and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal indebtedness secured hereby, such excess shall be refunded to Trustor. This paragraph shall control all agreements between Trustor and Beneficiary.

**6.13 Protection of Beneficiary's Security.** Beneficiary may, at its option, and without waiving its right to accelerate the indebtedness hereby secured and to foreclose the same, pay either before or after delinquency any or all of those certain obligations required by the terms hereof to be paid by Trustor for the protection of the Property or for the collection of any of the Obligations. All sums so advanced or paid by Beneficiary shall become Obligations and shall bear interest from the date thereof at the Default Rate specified in the Note or Loan Documents and become an integral part thereof, subject in all respects to the terms, conditions and covenants of the Note and Loan Documents, and this Deed of Trust, as fully and to the same extent as though a part of the original indebtedness evidenced by the Note and the Loan Documents and secured by this Deed of Trust, excepting, however, that said sums shall be repaid to Beneficiary upon demand by Beneficiary to Trustor for said payment.

**6.14 Costs and Expenses.** Trustor agrees to pay all fees and charges incurred in the procuring and making of this Deed of Trust or in the perfection of the lien and security interest hereof, including without limitation fees and expenses relating to the examination of title to the Property; title insurance premiums, costs and expenses; surveys; mortgage recording, documentary, transfer, revenue stamps; architects' and engineers' services; and attorneys' fees.

Trustor further agrees to pay all and singular the costs, charges and expenses, including attorneys' fees and abstract costs, reasonably incurred or paid at any time by Beneficiary because of the failure of Trustor to perform, comply with, and abide by each and every of the agreements, conditions and covenants of the Note, Loan Documents and this Deed of Trust.

**6.15 Corrections and Future Acts.** Trustor will, upon request of Beneficiary, promptly correct any defect, error, or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out more effectively the purpose of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights, or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

TRUSTOR:

THE R. JETER FAMILY TRUST UNDER TRUST AGREEMENT DATED JANUARY 29, 1999

By *Russell D. Jeter*  
Russell D. Jeter, as Trustee

STATE OF California )  
 ) ss.  
COUNTY OF Santa Barbara

The foregoing instrument was acknowledged before me on November 14, 2014, by Russell D. Jeter, as Trustee of R. JETER FAMILY TRUST UNDER TRUST AGREEMENT DATED JANUARY 29, 1999.

*see attached acknowledgment*  
Notary Public

My appointment expires: 03-19-18

**ACKNOWLEDGMENT**

State of California  
County of Santa Barbara

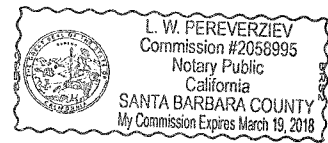
On 14 Nov 2014 before me, LW Pereverziev, Notary Public  
(insert name and title of the officer)

personally appeared Russell D. Seter  
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



*Nebraska Deed of Trust, Security Agreement  
and Assignment of Rights and Interests*

## EXHIBIT "A"

All personal property now owned or hereafter acquired, including but not limited to the hereinafter described equipment, accounts, accounts receivable, contract rights, general intangibles, inventory, fixtures, proceeds of collateral or any other personal property of any kind or character, Trustor (Debtor under any applicable uniform commercial code) hereby grants to Beneficiary (Secured Party under any applicable uniform commercial code) a security interest in all of Trustor's right, title and interest therein (all said personal property being hereinafter sometimes collectively referred to as the "Personal Property Collateral") namely:

1. All personal property now located, or hereafter located on the real estate described in deed of trust to which this exhibit is attached (the "Land"), and all right, title and interest of Trustor, now owned or hereafter acquired, in and to (a) any and all strips and gores of land adjacent to or used in connection with the Land, (b) all land upon which any such buildings or improvements may now or hereafter encroach, (c) the land within the streets, roads and alleys adjoining all such property, and (d) all and singular and tenements, hereditaments, appurtenances, privileges, easements, franchises, rights, appendages and immunities whatsoever belonging to or in any wise appertaining to all such Land.

2. Any and all fixtures, appliances, machinery and equipment of any nature whatsoever, and other articles of property (real, personal or mixed) at any time now or hereafter installed in, attached to or situated in or upon the Land or other real estate described above or the improvements, or used or intended to be used in connection with the Land or such other real estate or in the operation of the improvements or in the operation of Trustor's business thereon, whether or not the said property is or shall be affixed thereto, including, without limiting the generality of the foregoing, (a) all building materials, fixtures, building machinery and building equipment delivered on site to the real estate during the course of, or in connection with, any construction of any Improvements, (b) all furniture, furnishings, carpeting, refrigerators, air conditioners, heating units, ranges, stoves, ovens, disposals, dishwashers and other appliances, (c) all heating, lighting, refrigeration, plumbing, electrical, ventilating, incinerating, water heating, cooking, telephonic communications, data processing, security, air conditioning and energy management equipment, and (d) any and all subsequently acquired fixtures, appliances, machinery, equipment and personal property by any of renewal, replacement, substitution, addition or otherwise, but excluding any furniture, fixtures, equipment, appliances and equipment not owned by Trustor.

3. Any and all accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles and other obligations of any kind, now or hereafter existing, arising out of or in connection with the Land or improvements, including without limitation all plans and specifications for the improvements.

4. Any and all building materials and equipment of Trustor which is intended to be installed in or on the Land or improvements.

5. Any and all water and water rights, ditches and ditch rights, reservoirs and reservoir rights, stock or interests in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, and lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Land.

6. All leases of the Land or any part thereof, whether now existing or hereafter entered into, (collectively, the "Leases"), and all right, title and interest of Trustor thereunder, including cash and securities deposited under said Leases, and any and all guaranties of such Leases.

7. All licenses, permits (including building permits), authorizations or approvals of any type or nature whatsoever, now owned or held or hereafter acquired, which relate to the use, development or occupancy of the Land or any part thereof.

8. All insurance proceeds and condemnation awards relating to the Land and improvements or any part thereof, and all funds, moneys, certificates of deposit, instruments, letters of credit and deposits of Trustor held by, deposited with, or paid or payable to Beneficiary.

9. All rents from, all issues, uses, profits, proceeds and products of, all replacements and substitutions for, and other rights and interests now or hereafter belonging to, any of the foregoing, including, without limitation, all fees, charges, accounts or other payments for the use or occupancy of rooms, meeting and banquet facilities and other public facilities.

10. All other contracts, estates, easements, franchises (to the extent permitted by franchisors), interests, licenses, rights, titles, powers or privileges of every kind and character which Trustor now has or may hereafter acquire in and to the property and interests described above, including without limitation: (a) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers and privileges of Trustor in and to all easements, all rights and other rights-of-way in connection with the property and interests described above or any part thereof or as a means of ingress to, or egress from, the Land or the Improvements or any part thereof, (b) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers, and privileges of Trustor in and to the Land or the Improvements or any part thereof, (c) all present or future estates, easements, franchises, interests, leaseholds, licenses, rights, titles, powers, and privileges, if any, of Trustor, either at law or in equity, in possession or in expectancy, in and to the real property or air space, as the case may be, lying in, under, or over the streets, highways, roads, alleys, ways, sidewalks, skywalks, tunnels, or avenues, open or proposed, in front of, above, over, under, through, or adjoining, the Land, and in and to any strips or gores of real property adjoining the Land, and (d) all present or future estates, easements, franchises, interests, leaseholds, licenses, development rights or credits, air rights, solar rights, water, water rights (whether riparian, appropriative time, or otherwise, and whether or not appurtenant), water, irrigation or ditch stock interests, rights, titles, powers, and privileges appurtenant, or incident to, the Land or the Improvements.

11. Any and all proceeds of any and all of the foregoing.

Exhibit "B"

PERMITTED ENCUMBRANCES

Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 16, 2007, filed November 30, 2007 as Document No. 2007-35717 by UTF Omaha LLC to Chicago Title Insurance Company as Trustee for GE Commercial Finance Business Property Corporation, which states that it secures a debt in the principal sum of \$4,500,000.00.

Assignment of Rents and Leases dated November 16, 2007, filed November 30, 2007 as Document No. 2007-35718 by and between UTF Omaha LLC and GE Commercial Finance Business Property Corporation.

Financing Statement executed by Russell D. Jeter, as trustee of the R. Jeter Family Trust under Trust Agreement dated January 29, 1999, & not individually, to GE Commercial Finance Business Property Corporation, filed November 30, 2007 under Document No. 2007-35722, affecting the items therein described, which have become or may become affixed to the land.