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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/3/2010 14:31:15.37



2010115066

This instrument was prepared by and upon recordation should be returned to:  
Robert W. Ricke, 500 Energy Plaza, 409 South 17<sup>th</sup> Street, Omaha NE 68102, #402-341-6000

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

This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement (this "Deed of Trust") is made and executed the 1<sup>st</sup> day of December, 2010, by EAST CAMPUS REALTY, LLC, a Nebraska limited liability company ("Grantor"), whose mailing address is Mutual of Omaha Plaza, Omaha, Nebraska 68175, to MUTUAL OF OMAHA BANK, whose mailing address is 3333 Farnam Street, Omaha, Nebraska 68131 ("Trustee"), for the benefit of MUTUAL OF OMAHA INSURANCE COMPANY, a Nebraska mutual insurance company ("Lender"), whose mailing address is Mutual of Omaha Plaza, Omaha, Nebraska 68175, and pertains to the real estate (the "Real Estate") described on Exhibit "A" attached hereto and made a part hereof.

**CONSTRUCTION SECURITY AGREEMENT**

**This Deed of Trust is a Construction Security Agreement and secures obligations incurred by Trustor for the purpose of making an improvement of the real estate described herein and constitutes a construction security interest under the Nebraska Construction Lien Act.**

**ARTICLE ONE  
RECITALS**

**1.1 Note.** Grantor has executed and delivered to Lender a Promissory Note (the "Note") of even date herewith. In the Note, Grantor promises to pay to the order of Lender the principal sum of Two Hundred Seventy-Three Million Four Hundred Thousand Dollars (\$273,400,000.00) (the "Loan"). This Deed of Trust secures the Loan. From the date hereof, the Loan shall be repaid with interest thereon, in monthly installments as set forth in the Note, and the entire unpaid principal balance and all accrued interest thereon shall be due and payable on December 1, 2011 (the "Maturity Date").

**1.2 Indebtedness.** As used herein, the term "Indebtedness" means (a) the indebtedness evidenced by the Note, including principal, interest and prepayment premium, if any; and (b) all other sums which may at any time be due, owing or required to be paid under the Note, this Deed of Trust and the other Loan Documents (as defined in Section 1.3) including, without limitation, sums owing from or required to be paid by Grantor as a result of the breach or non-performance of any of the Obligations (as defined in Article Two).

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**1.3 Loan Documents.** In addition to this Deed of Trust and the Note, there have been executed and delivered to and in favor of Lender certain other loan documents (the Note, this Deed of Trust and all other documents and instruments, whether now or hereafter existing, which secure or guarantee payment of the Note or are otherwise executed in connection with the Loan, as the same may hereafter be amended, modified, supplemented or replaced from time to time, are collectively referred to herein as the "Loan Documents").

## **ARTICLE TWO THE GRANT**

In order to secure (i) the payment of the Indebtedness; and (ii) the performance of all of the terms, provisions, covenants, agreements, representations, warranties, certifications and obligations contained herein or under the other Loan Documents (collectively, the "Obligations"), and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Lender to Grantor, the Recitals hereinabove stated in Article One and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, bargains, sells, assigns, warrants, transfers, conveys and mortgages to Trustee, in trust WITH POWER OF SALE, for the benefit of Lender and its successors and assigns, a present and continuing lien upon and security interest in and to all of the following rights, interests, claims and property (collectively, the "Secured Property"):

(a) all the Real Estate;

(b) all buildings, structures and other improvements now or hereafter constructed, erected, installed, placed or situated upon the Real Estate (collectively, the "Improvements");

(c) all estate, claim, demand, right, title and interest of Grantor now owned or hereafter acquired, including, without limitation, any after-acquired title, franchise, license, remainder or reversion, in and to (i) any land or vaults lying within the right-of-way of any street, avenue, way, passage, highway or alley, open or proposed, vacated or otherwise, adjoining the Real Estate; (ii) any and all alleys, sidewalks, streets, avenues, strips and gores of land adjacent, belonging or appertaining to the Real Estate and Improvements; (iii) all rights of ingress and egress to and from the Real Estate and all adjoining property; (iv) storm and sanitary sewer, water, gas, electric, railway, telephone and all other utility services relating to the Real Estate and Improvements; (v) all land use, zoning, developmental rights and approvals, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Real Estate or any part thereof; and (vi) each and all of the tenements, hereditaments, easements, appurtenances, other rights, liberties, reservations, allowances and privileges relating to the Real Estate or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity (collectively, the "Appurtenances");

(d) all leasehold estates and the right, title and interest of Grantor in, to and under any and all leases, subleases, management agreements, arrangements, concessions or agreements, written or oral, relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (individually, a "Lease" and collectively, the "Leases");

(e) all rents, issues, profits, proceeds, income, revenues, royalties, advantages, avails, claims against guarantors, security and other deposits (whether in the form of cash, letters of credit or other forms), advance rentals and any and all other payments or benefits now or hereafter derived, directly or indirectly, from the Real Estate and Improvements, whether under the Leases or otherwise (collectively, the "Rents"); subject, however, to the right, power and authority (the "License") granted Grantor to collect and apply the Rents until the occurrence of an Event of Default (as defined in Section 4.1);

(f) all right, title and interest of Grantor in and to any and all contracts, written or oral, express or implied, now existing or hereafter entered into or arising, in any manner related to the improvement, use, operation, sale, conversion or other disposition of any interest in the Secured Property, including, without limitation, all options to purchase or lease the Real Estate or Improvements or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Secured Property, now owned or hereafter acquired by Grantor (collectively, the "Contract Rights");

(g) all general intangibles of Grantor, including, without limitation, goodwill, trademarks, trade names, option rights, permits, licenses, insurance policies and proceeds therefrom, rights of action and books and records relating to the Real Estate and Improvements (collectively, the "Intangible Personal Property");

(h) all right, title and interest of Grantor in and to all fixtures, equipment and tangible personal property of every kind, nature or description attached or affixed to or situated upon or within the Real Estate or Improvements, or both, provided the same are used, usable or intended to be used for or in connection with any present or future use, occupation, operation, maintenance, management or enjoyment of the Real Estate or Improvements (collectively, the "Tangible Personal Property");

(i) all rights of Grantor to the payment of money, whether such right to payment arises out of a sale, lease or other disposition of goods or property by Grantor, out of the rendering of services by Grantor, out of a loan by Grantor, out of the overpayment of taxes or other liabilities of Grantor, or otherwise arising under any contract or agreement, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all other rights and interests (including all liens and security interests) which Grantor may at any time have by law or agreement against any account debtor or other obligor obligated to make such payment or against any of the property of such account debtor or obligor, including all instruments, chattel paper, accounts and contract rights and specifically including, without limitation, that certain \$37,439,000.00 Redevelopment Promissory Note made by the City of Omaha to Grantor dated March 6, 2008 (collectively the "Accounts");

(j) all raw materials, work in progress, finished goods and other tangible property held for sale or lease, or furnished or to be furnished under contracts of service, or used or consumed in Grantor's business ("Inventory");

(k) all proceeds of the conversion, voluntary or involuntary, of any of the Secured Property into cash or other liquidated claims or that are otherwise payable for injury to, or the taking or requisitioning of the Secured Property, including all insurance and condemnation proceeds as provided in this Deed of Trust (collectively, the "Proceeds");

(l) all Tax and Insurance Deposits (as defined in Section 3.3);

(m) all of Grantor's right, power or privilege to further hypothecate or encumber all or any portion of the property, rights and interests described in this Article Two as security for any debt or obligation, it being intended by this provision to divest Grantor of the right, power and privilege to hypothecate or encumber, or to grant a Deed of Trust upon or security interest in any of the property hypothecated in or encumbered by this Deed of Trust, as security for the payment of any debt or performance of any obligation without Lender's prior written consent (collectively, the "Right to Encumber"); and

(n) all other assets, property, rights, interests, estates or claims of every name, kind, character or nature, both in law and in equity, which Grantor now has or may hereafter acquire (collectively, the "Other Rights and Interests").

Grantor agrees that without the necessity of any further act of Grantor or Lender, the lien of and the security interest created in and by this Deed of Trust shall automatically extend to and include any and all renewals, replacements, substitutions, accessions, products or additions to and proceeds of the Secured Property.

To have and to hold the Secured Property unto Trustee for the benefit of Lender, its successors and assigns, forever, free from all rights and benefits under and by virtue of any homestead exemption laws or similar laws of the state or other jurisdiction in which the Secured Property is located (the "State") (which rights and benefits are hereby expressly released and waived) for the uses and purposes herein set forth.

Grantor hereby covenants with and warrants to Lender and with the purchaser at any foreclosure sale that at the execution and delivery hereof, Grantor owns the Secured Property and has a good and indefeasible estate therein in fee simple; that the Secured Property is free from all encumbrances whatsoever (and any claim of any other Person (as defined below) thereto) other than those encumbrances expressly permitted by Lender in writing (or as set forth in a commitment for title insurance marked up by Lender or its attorney in anticipation of the recording of this Deed of Trust); that Grantor has good and lawful right to sell, convey, mortgage and encumber the Secured Property; and that Grantor and its successors and assigns shall forever warrant and defend the title to the Secured Property against all claims and demands whatsoever. As used herein, "Person" means any natural person, corporation, limited liability company, partnership, firm, association, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

PROVIDED, HOWEVER, that if and when Grantor has paid all of the Indebtedness and has strictly performed and observed all of the agreements, terms, conditions, provisions and warranties contained in this Deed of Trust and in all of the other Loan Documents, the estate, right, title and interest of Trustee and Lender in and to the Secured Property shall cease and shall be released at the cost of Grantor, but otherwise shall remain in full force and effect.

### **ARTICLE THREE GENERAL AGREEMENTS**

To protect the security of this Deed of Trust, Grantor further covenants and agrees as follows:

**3.1 Recitals.** The recitals set forth above are true and correct and are material provisions of this Deed of Trust.

**3.2 Payment of Indebtedness.** Grantor shall pay promptly the Indebtedness at the times and in the manner provided in the Loan Documents. All such sums payable by Grantor shall be paid without demand, counterclaim, offset, deduction or defense. Grantor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

**3.3 Other Payments.**

(a) In addition to the monthly installment payments required by the Note, Grantor shall, at Lender's option, pay to Lender (or its designee) the following sums on a monthly basis until the Indebtedness is fully paid (collectively, the "Tax and Insurance Deposits"):

(i) a sum equal to one-twelfth (1/12th) of the annual Taxes (as defined in Section 3.5) next due on the Secured Property, all as estimated by Lender (the "Tax Deposits"); and

(ii) a sum equal to one-twelfth (1/12th) of the annual premium or premiums next payable for the insurance herein required to be maintained on or with respect to the Secured Property (the "Insurance Deposits").

(b) Should the total Tax and Insurance Deposits on hand not be sufficient to pay all of the Taxes and insurance premiums, together with all penalties and interest thereon, when the same become due and payable, Grantor shall pay to Lender promptly on demand any amount necessary to make up the deficiency. If the total of such Tax and Insurance Deposits exceeds the amount required to pay the Taxes and insurance premiums, such excess shall be credited on subsequent payments to be made for such items.

(c) All such Tax and Insurance Deposits (i) shall be held by Lender or a depository designated by Lender with no obligation to segregate such payments and without any obligation arising for the payment of any interest thereon; (ii) shall be applied by Lender for the purposes for which made (as herein provided) subject, however, to the security interest granted Lender therein pursuant to Article Two; and (iii) shall not be subject to the direction or control of Grantor.

(d) *Provided that no Event of Default exists and there are sufficient funds in the Tax and Insurance Deposits*, Lender agrees to make the payment of the Taxes or insurance premiums with reasonable promptness following its receipt of appropriate tax and/or insurance bills therefor, or, alternatively, upon presentation by Grantor of receipted (*i.e.*, paid) tax and/or insurance bills therefor, Lender shall reimburse Grantor for such Taxes and insurance premium payments made by Grantor.

(e) Upon the occurrence of an Event of Default, Lender may, at its option, without being required to do so, apply any Tax and Insurance Deposits on hand to the payment of any of the Indebtedness, in such order and manner as Lender may elect. When the Indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Grantor.

(f) If Lender does not require the Tax and Insurance Deposits, Grantor shall pay all Taxes before the same become delinquent, shall pay all insurance premiums before the date when due, and shall deliver evidence of such payment to Lender.

**3.4 Maintenance, Repair, Restoration, Prior Liens, Parking.** Grantor shall and hereby agrees to:

(a) promptly repair, restore, replace or rebuild any portion of the Improvements which may become damaged or destroyed, provided the proceeds of insurance are made available to Grantor pursuant to Section 3.10 hereof, with all replacements being at least equal in quality and condition as existed prior thereto, free from any security interest therein, encumbrances thereon or reservation of title thereto;

(b) keep the Improvements in good condition and repair, without waste and free from mechanics', materialmen's, construction or similar or other liens or claims of lien unless expressly permitted by Lender;

(c) complete, within a reasonable time, any Improvements now or hereafter in the process of construction upon the Real Estate;

(d) comply with all statutes, rules, regulations, orders, decrees and other requirements of any governmental body, whether federal, state or local, having jurisdiction over the Secured Property and the use thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Secured Property or its use and occupancy;

(e) make no material alterations in or to the Improvements, except (i) those currently under construction, and (ii) as required in subsection (d) hereof, and (iii) otherwise with the prior written consent of Lender and in conformity with all applicable laws; provided, however, upon written notice to Lender, Grantor may make (iv) such alterations required by the terms of any Lease provided that Lender has previously reviewed and approved such Lease; and (v) non-structural repairs costing in the aggregate less than \$200,000.00 in any calendar year;

(f) not suffer nor permit any change in the general nature of the occupancy of the Improvements without the prior written consent of Lender;

(g) pay when due all operating costs of the Improvements;

(h) not initiate nor acquiesce in any zoning reclassification with respect to the Secured Property without the prior written consent of Lender;

(i) provide, improve, grade, surface and thereafter maintain, clean, repair and adequately light all parking areas upon the Real Estate, such parking areas being of sufficient size to accommodate the greater of the amount of standard-size vehicles required (i) by law, ordinance or regulation; or (ii) by the terms of any Leases, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and rights-of-way to and from the adjacent thoroughfares necessary or desirable for the use thereof; and

(j) forever warrant and defend its title to the Secured Property and the validity, enforceability and priority of the lien and security interests granted in and by this Deed of Trust and the other Loan Documents against the claims and demands of all Persons.

**3.5 Property Taxes and Contest of Liens.** Notwithstanding the Tax and Insurance Deposits required by Section 3.3, Grantor shall be responsible for the payment, when first due and owing and before delinquency and before any penalty attaches, of all real estate and personal property taxes and assessments (general or special), water charges, sewer charges and any other charges, fees, taxes, claims, levies, charges, expenses, liens and assessments, ordinary or extraordinary, governmental or nongovernmental, statutory or otherwise, that may be levied, assessed or asserted against the Secured Property or any part thereof or interest therein (collectively, "Taxes"). Notwithstanding anything contained herein to the contrary, Grantor may, in good faith and with reasonable diligence, contest the validity or amount of any Taxes as well as any mechanics', materialmen's, construction or other liens or claims of lien upon the Secured Property (collectively, the "Contested Liens"), provided that (a) such contest shall have the effect of preventing the collection of the Contested Liens and the sale or forfeiture of the Secured Property or any part thereof or interest therein to satisfy the same; and (b) Grantor shall first notify Lender in writing of the intention of Grantor to contest the same before any Contested Liens have been increased by any interest, penalties or costs.

### **3.6 Tax and Lien Payments by Lender.**

(a) Upon the failure of Grantor to pay the Tax Deposits as required in Section 3.3 or, in the event said payments are waived by Lender, to pay the Taxes required to be paid in Section 3.5

above (unless Grantor is contesting the Taxes as provided in Section 3.5 above), Lender is authorized, in its sole discretion, to make any payment of Taxes in accordance with any tax bill or statement from the appropriate public office without inquiry into the accuracy or validity of any Taxes, sales, forfeiture of title or claim relating thereto.

(b) Lender is also authorized, in the place and stead of Grantor, to make any payment relating to any apparent or threatened adverse title, lien, claim of lien, encumbrance, claim, charge or payment otherwise relating to any other purpose but not enumerated in this Section, whenever, in Lender's judgment and discretion, such payment seems necessary to protect the full security intended to be created by this Deed of Trust.

(c) All such payments authorized by this Section 3.6 that are not promptly reimbursed by Grantor shall constitute additional Indebtedness and shall be immediately due and payable by Grantor to Lender upon demand with interest at the Default Rate (as defined in the Note) from the date of such payment.

### **3.7 Insurance.**

(a) Grantor shall insure and keep insured the Secured Property and each and every part thereof against such perils and hazards as Lender may from time to time require, and in any event including:

(i) Property insurance insuring against all risks of loss to the Secured Property customarily covered by "Causes of Loss—Special Form" policies (also known as "all risk" insurance) in an amount at least equal to the full replacement cost of all Improvements, without deduction for physical depreciation and with (A) a standard mortgagee's endorsement clause; (B) a maximum deductible of \$100,000.00; and (C) either an agreed amount endorsement (to avoid the operation of any coinsurance provisions) or a waiver of any coinsurance provisions.

(ii) Commercial general liability insurance on an occurrence basis to afford protection for bodily injury, death and property damage in an amount of not less than the greater of (A) One Million Dollars (\$1,000,000.00); or (B) the highest amount of coverage required to be carried by the landlord under the terms of the Leases. The policy shall name Lender as an additional insured.

(iii) Steam boiler, machinery and pressurized vessel insurance (if applicable to the Improvements).

(iv) Rent loss insurance in an amount sufficient to cover loss of rents from the Secured Property for a minimum of twelve (12) months.

(v) If any building or other structure on the Secured Property is situated in an area now or hereafter designated by the Federal Emergency Management Agency as a "Special Flood Hazard Area" (Zone A or Zone V), evidence of flood insurance in an amount equal to the least of (A) the minimum amount required under the terms of the coverage to compensate for any damage or loss on a full replacement cost basis; (B) the unpaid principal balance of the Indebtedness; or (C) the maximum limit of coverage available for the Secured Property under the National Flood Insurance Program; provided, however, that, in the event the unpaid principal balance of the Indebtedness is less than 80% of the replacement cost under subsection (A), the flood insurance coverage shall be in an amount equal to the lesser of the amounts set forth in subsections (A) or (C). The policy shall name Lender as the first mortgagee under a standard mortgagee's endorsement clause.

(vi) Unless waived by Lender, either affirmative coverage for acts of terrorism in its property and liability insurance or evidence that coverage for acts of terrorism is not excluded from its property and liability insurance.

(vii) Unless waived by Lender, either affirmative coverage for windstorm in its property insurance or evidence that coverage for windstorm is not excluded from its property insurance.

(viii) Such other insurance coverages on the Secured Property as required by Lender.

(b) Insurance policies required by this Section 3.7 shall:

(i) be in amounts and form and issued by companies satisfactory to Lender and shall comply with all provisions of this Deed of Trust;

(ii) contain endorsements naming Lender as first mortgagee under a standard mortgagee clause under the required property, steam boiler and rent loss insurance policies and as an additional insured for the commercial general liability insurance policy;

(iii) contain endorsements providing for not less than thirty (30) days written notice to Lender prior to any cancellation, non-renewal or termination;

(iv) permit Lender to pay any premium within fifteen (15) days after its receipt of notice stating that such premium has not been paid when due;

(v) require that settlement of any claim under any of the referenced policies shall require Lender's prior written approval; and

(vi) contain exclusions to coverage acceptable to Lender.

(c) The policy or policies of such insurance or certificates of insurance evidencing the required coverage shall be delivered to Lender.

(d) Grantor shall not purchase separate insurance policies concurrent in form or contributing in the event of loss with those policies required to be maintained under this Section 3.7.

### **3.8 Insurance Premium Payment by Lender, Use of Proceeds.**

(a) In the event Grantor fails to make the Insurance Deposits as required by Section 3.3, or if such Insurance Deposits have been waived, upon Lender's receipt of written notice (i) of an unpaid insurance premium; (ii) of a termination or cancellation of any required insurance policy; or (iii) that a required insurance policy is not to be renewed and Grantor fails to provide replacement coverage at least fifteen (15) days prior to the termination of existing coverage, Lender may, at its option, procure and substitute another policy of insurance in the amount required pursuant to the foregoing terms of this Deed of Trust with such companies as Lender may select, the cost of which shall be paid by Grantor upon demand should the amount available from the Insurance Deposits be insufficient to pay the premium therefor. All sums paid by Lender in procuring said insurance that are not promptly reimbursed by Grantor shall be additional Indebtedness and shall be immediately due and payable without notice, with interest thereon at the Default Rate from the date of such payment.



(b) In the event of any damage to or destruction of the Improvements or any part thereof, Grantor shall promptly notify Lender and take such action necessary to preserve the undamaged portion of the Improvements. If at the time of such damage and destruction,

(i) no Event of Default is in existence and no event shall have occurred as of such date which, with the passage of time, the giving of notice or both, would constitute an Event of Default;

(ii) the damage is such that it can be reasonably repaired within the time provided in the Leases so as to preclude a material reduction in the rental income from the Secured Property (after application of any rental insurance proceeds), or Grantor obtains written commitments in form and substance reasonably satisfactory to Lender from tenants to lease space, upon completion of repairs, in the Secured Property at aggregate rentals equal to or exceeding the debt service of the Loan and the general operating expenses of the Secured Property;

(iii) the Proceeds are less than the outstanding Indebtedness under the Loan;

(iv) the casualty insurer has not denied liability for payment of Proceeds as a result of any act, neglect, use or occupancy of the Secured Property by Grantor or any tenant of the Secured Property;

(v) the Real Estate and/or Improvements can be restored to the condition at least equal to the condition in which they existed at the closing of the Loan (with any post-closing improvements included in such Restoration (as defined in this Section 3.8)); and

(vi) if required by Lender, a satisfactory report addressed to Lender from an environmental engineer or other qualified professional satisfactory to Lender certifies that no adverse environmental impact to the Secured Property has resulted from the casualty;

then, any Proceeds paid to Lender in connection with such damage or destruction, after deducting therefrom any expenses, including without limitation reasonable attorney fees, incurred by Lender in protecting the undamaged portion of the Improvements and in the collection of the Proceeds (the "Collection Expenses"), shall be applied by Lender to the cost of restoring, repairing, replacing or rebuilding (herein generally called "Restoration") the Real Estate and/or Improvements or any part thereof as set forth in Section 3.10. Otherwise, in Lender's sole discretion, all Proceeds, less Collection Expenses, shall be applied (A) to the installments of the Indebtedness in the inverse order of their maturity; or (B) to the cost of Restoration as set forth in Section 3.10.

### **3.9 Condemnation.**

(a) Grantor shall give Lender prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (a "Taking") of all or any part of the Real Estate or Improvements including any easement thereon or appurtenance thereto (including severance of, consequential damage to or change in grade of streets) and shall deliver to Lender copies of any and all papers served in connection with any such proceeding.

(b) Grantor hereby assigns, transfers and sets over unto Lender the entire Proceeds of any and all awards resulting from any Taking. Lender is hereby authorized to collect and receive from the condemnation authorities the entire Proceeds and is further authorized to give appropriate receipts and acquittances therefor.

(c) In the event of any such Taking, any and all such Proceeds shall be applied, after deducting therefrom any Collection Expenses, in Lender's sole discretion but subject to the further terms of this Section 3.9, to: (i) the installments of the Indebtedness in the inverse order of their maturity; or (ii) the cost of Restoration pursuant to Section 3.10.

(d) If (i) the Proceeds of any Taking exceed five percent (5%) of the then value of the Secured Property (as determined by an M.A.I. Appraisal obtained by Lender at the cost and expense of Grantor) but are less than the outstanding Indebtedness under the Loan as of the date of such Taking; (ii) the requirements stated in Sections 3.8(b)(i), (ii) and (v) above are satisfied; and (iii) in Lender's reasonable judgment, the remainder of the Secured Property can be operated (A) as an economically viable project at substantially the same level of operations which existed immediately prior to the Taking; and (B) at the functional equivalent of its condition (considering, without limitation, the effect of the Taking on the remaining leasable area, parking and access) prior to the Taking (the "Viability Requirements"); then, such Proceeds, after deducting therefrom the Collection Expenses, shall be applied to the cost of Restoration pursuant to Section 3.10.

(e) If (i) the Proceeds of any Taking do not exceed five percent (5%) of the then value of the Secured Property (as determined by an M.A.I. Appraisal obtained by Lender at the cost and expense of Grantor); (ii) no Event of Default is in existence on the date of such Taking and no event shall have occurred as of such date which, with the passage of time, the giving of notice or both, would constitute an Event of Default; and (iii) the Viability Requirements are met; then, such Proceeds, after deducting therefrom the Collection Expenses, shall be applied to the cost of Restoration pursuant to Section 3.10.

(f) Notwithstanding anything contained herein to the contrary, in the event that the Taking is, in Lender's determination, of such a nature that the Real Estate and the Improvements will not require Restoration, all Proceeds, after deducting therefrom the Collection Expenses, shall be applied in Lender's sole discretion to installments of Indebtedness in the inverse order of their maturity, and provided no Event of Default is in existence and no event shall have occurred as of such date which, with the passage of time, the giving of notice or both, would constitute an Event of Default, no premium or fee shall be payable in connection with any prepayment of the Indebtedness from the Proceeds.

### **3.10 Restoration Using Proceeds.**

(a) In the event Lender elects (or is required hereby) to make any Proceeds available for Restoration, Grantor shall complete, in form and with supporting documentation reasonably required by Lender, an estimate of the cost to repair or to restore the Real Estate and Improvements to the condition at least equal to the condition in which they existed prior to such damage, destruction or Taking, free from any security interest in, lien or encumbrance on, or reservation of title to, such Real Estate and Improvements.

(b) The Proceeds and, if applicable, other amounts payable by Grantor to Lender necessary to complete Restoration shall be held by Lender or if Lender so desires, a disbursing agent selected by Lender. Said Proceeds may be invested using Grantor's taxpayer identification number in an interest bearing account mutually acceptable to Grantor and Lender. The costs and expenses of administering disbursements shall be paid by Grantor. In the event the amount of the Proceeds are insufficient to cover the cost of Restoration, Grantor shall pay to Lender upon demand the cost of Restoration in excess of the Proceeds, such excess to be held by Lender with the Proceeds.

(c) Subject to Lender's right to limit the number of disbursements, the Proceeds shall be disbursed from time to time upon Lender's receipt of architect's certificates, waivers of lien, contractor's sworn statements and such other evidence as Lender or any disbursing agent may reasonably

require to verify the cost and fact of the completion of the work included in said disbursement. Under no circumstances shall any portion of the Proceeds be released until Lender has been reasonably assured that the Proceeds remaining after the requested disbursement will be sufficient to complete Restoration. No payment of Proceeds made prior to the final completion of Restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Any Proceeds remaining after Restoration shall be applied against the installments of Indebtedness in the inverse order of their maturity.

### **3.11 Restrictions on Transfer.**

(a) Without the prior written consent of Lender:

(i) Grantor shall not create, effect, contract for, commit or consent to, nor shall Grantor suffer or permit, any sale, conveyance, transfer, assignment, collateral assignment, lien, pledge, mortgage, security interest or other hypothecation, encumbrance or alienation (or any agreement to do any of the foregoing) (the foregoing being herein collectively, called a "Transfer") of the Secured Property, or any interest therein or title thereto (excepting, however, the sale or other disposition of Collateral (as defined in Section 6.1) no longer useful in connection with the operation of the Secured Property ("Obsolete Collateral"); provided, however, that prior to the sale or other disposition of Obsolete Collateral, such Obsolete Collateral shall have been replaced by Collateral of at least equal value and utility which is subject to the first and prior lien of this Deed of Trust, and further provided that nothing herein shall affect Grantor's rights with respect to Contested Liens;

(ii) Grantor shall not fail to pay when the same shall become due all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Real Estate or Improvements or on the Rents arising therefrom except as permitted under Sections 3.4 and 3.5; or

(iii) if Grantor is a corporation or limited liability company, any shareholder of such corporation or member of such limited liability company shall not Transfer any such shareholder's shares of such corporation or member's membership interest in such limited liability company (provided, however, that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, this subsection (iii) shall be inapplicable), it being specifically agreed that any such shareholder or member may not obtain mezzanine financing secured by such shareholder's shares or member's membership interest or otherwise.

(b) The foregoing provisions of this Section 3.11 shall not apply (i) to liens securing the Indebtedness; or (ii) to the lien of current Taxes not delinquent. The provisions of this Section 3.11 shall be operative with respect to, and shall be binding upon, any Person who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Secured Property, or such beneficial interest (whether stock, membership interest, partnership or joint venture interest or other beneficial interest) in Grantor. Any waiver by Lender of the provisions of this Section 3.11 must be in writing and shall not be deemed to be a waiver of the right of Lender in the future to insist upon strict compliance with the provisions of this Section 3.11.

(c) Upon the Transfer, without the prior written consent of Lender, of (i) all or any part of the Secured Property; or (ii) any beneficial interest in Grantor if such Transfer is prohibited by this Section 3.11 above, Lender may, at its option, declare all of the sums secured by this Deed of Trust to be immediately due and payable.

(d) Notwithstanding anything contained herein to the contrary, prior written consent shall not be required for any Transfer of an interest in Grantor by any partner, member shareholder or beneficiary, as applicable, of Grantor where such Transfer: (i) results from death; (ii) is a Transfer made among the present partners, members, shareholders or beneficiaries, as applicable; or (iii) which is made to immediate family members (spouses and children) or family trusts solely for the benefit of such family members for estate planning purposes. Any such Transfer shall be subject to the following conditions:

(i) except for death, thirty (30) days prior written notice of such proposed Transfer shall be delivered to Lender, together with (A) a description of the proposed sale or Transfer, including a description of the nature and amount(s) of beneficial ownership interests proposed to be sold or transferred and a description of who owns the remainder not being transferred; (B) documentation related to the proposed transferee as required by Lender in its sole and absolute discretion including, without limitation, organizational documents, certificates of existence and final ownership allocations; (C) copies of the Transfer documents pursuant to which the proposed Transfer is to be effected; and (D) any additional information reasonably requested by Lender regarding the proposed Transfer and/or transferee;

(ii) any such proposed sale or Transfer shall not be permitted to any Person who or which on the date of the proposed Transfer is in a bankruptcy, insolvency, reorganization or any other similar court or administrative proceeding;

(iii) no Event of Default shall be in existence under any of the Loan Documents on the date of such proposed sale or Transfer and no event shall have occurred or be in existence as of such date which, with the passage of time, the giving of notice or both, would constitute an Event of Default under any of the Loan Documents;

(iv) any such sale or Transfer, if and when consummated, shall not release any Person from any liability or obligation to which it is otherwise liable or obligated, if any, under the terms of the Loan Documents; and

(v) Grantor shall pay all of Lender's expenses relating to the review and/or preparation of any documentation related to the proposed Transfer, including, without limitation, the fees and expenses of Lender's outside counsel.

(e) As used in Section 3.11(d) above and if Grantor is comprised of more than one entity, a "Transfer of an interest in Grantor" shall also include a Transfer of undivided interests in the Secured Property to other entities comprising Grantor, subject to the same qualifications and limitations, and satisfaction of the same requirements, set forth in Section 3.11(d) with respect to Transfers of beneficial interests in entities.

**3.12 Lender's Dealings with Transferee.** In the event Lender gives its written consent to a Transfer of all or any part of the Secured Property, whether by operation of law, voluntarily or otherwise, Lender shall be authorized and empowered to deal with the Person to whom the Secured Property or any part thereof shall have been transferred with regard to the Secured Property, the Indebtedness and any of the terms or conditions of this Deed of Trust as fully and to the same extent as it might with the original Grantor, without in any way releasing or discharging the original Grantor from any of its covenants under this Deed of Trust and without waiving Lender's right of acceleration of the maturity of the Indebtedness as provided in this Deed of Trust or the Note.

**3.13 Change in Tax Laws.** In the event of any change in, or change in the interpretation of, any applicable law regarding (a) the taxation of mortgages, deeds of trust or other security instruments or the debts secured thereby; or (b) the manner in which such taxes are collected, which change adversely

affects Lender, this Deed of Trust or any other Loan Document or the Indebtedness, Grantor shall promptly pay any such tax and otherwise compensate Lender to the extent of such detriment; provided, however, that if Grantor fails to make such payment or if any such law prohibits Grantor from making such payment or would penalize Lender in the event of such payment, Lender may elect, by notice in writing given to Grantor, to declare all of the Indebtedness secured hereby to be and become due and payable, without any prepayment premium or fee, within sixty (60) days from the giving of such notice.

**3.14 Inspection of Secured Property.** Grantor hereby grants to Lender, its agents, employees, consultants and contractors the right to enter upon the Secured Property upon reasonable prior notice (except in the case of emergencies) for the purpose of making any and all inspections, reports, tests, inquiries and reviews as Lender (in its sole and absolute discretion) deems necessary to assess the then current condition of the Secured Property or for the purpose of performing any other acts which Lender is authorized to perform under this Deed of Trust or under the Environmental Indemnification Agreement executed by Grantor in connection with the Loan (the "Environmental Indemnification Agreement"). Grantor will cooperate with Lender to facilitate each such entry and the accomplishment of such purposes.

**3.15 Operating and Financial Statements.** Within one hundred twenty (120) days after the close of each fiscal year of Grantor, Grantor shall deliver, or cause to be delivered, to Lender: (a) annual operating statements showing all elements of income and expense of the Secured Property; (b) a current rent roll, showing all items set forth in the rent roll delivered to Lender in connection with the closing of the Loan, as well as gross sales of each tenant, if any, paying percentage rental; and (c) financial statements (consisting of a balance sheet and an income and expense statement) for Grantor and any tenant under a Lease approved by Lender that provides that such tenant may self-insure on any insurance otherwise required to be obtained by Grantor under this Deed of Trust. Grantor shall promptly deliver to Lender such other information (financial or otherwise) concerning the condition of the Secured Property, Grantor that Lender may reasonably request. All such statements and information shall be prepared in accordance with generally accepted accounting principles, shall otherwise be satisfactory to Lender and shall be certified by an authorized Person, partner or officer of Grantor approved by Lender. Lender and its representatives shall have the right, at all reasonable times and upon reasonable notice, to examine and make copies of Grantor's plans, books, records, income tax returns and all supporting data concerning Grantor or the Secured Property. Grantor will assist Lender and its representatives in conducting any such examination.

**3.16 Declaration of Subordination.** At the option of Lender, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award) to any and all Leases of all or any part of the Secured Property upon the execution by Lender and recording thereof, at any time hereafter and in the appropriate official records of the county wherein the Real Estate is situated, of a unilateral declaration to that effect.

**3.17 Usury.** Lender intends that Grantor shall not be required to pay, and Lender shall not be entitled to receive or collect, interest in excess of the maximum legal rate permitted under applicable usury laws. In the event Lender or any court determines that any charge, fee or interest paid or agreed to be paid in connection with the Loan may, under applicable usury laws, cause the interest rate on the Loan to exceed the maximum rate permitted by law, such charges, fees or interest shall be reduced to the maximum rate permitted by law and any amounts actually paid in excess of such maximum rate permitted by law shall, at Lender's option, be applied by Lender to reduce the outstanding principal balance of the Loan or repaid by Lender directly to Grantor.

### 3.18 Lease Obligations.

(a) As further security for the payment of the Indebtedness, Grantor has, pursuant to this Deed of Trust, sold, transferred and assigned to Lender, its successors and assigns, all of Grantor's right, title and interest, as landlord, in, to and under the Leases.

(b) Lender shall have the right to impose a Servicing Fee (as defined in Section 7.14) in connection with the review of any documentation submitted for Lender's approval hereunder. Grantor shall also be responsible for the payment of all fees and expenses of Lender's outside counsel in the event Lender, in its sole discretion, shall determine that the assistance of outside counsel is necessary or appropriate.

(c) Grantor covenants and agrees to keep, observe and perform and to require all tenants of the Secured Property to keep, observe and perform all the covenants, agreements and provisions of any present or future Leases of the Secured Property on their respective parts to be kept, observed and performed. If Grantor shall neglect or refuse to so perform or fail to require such tenants to so perform, Lender may, at its option, itself perform and comply or require performance or compliance by such tenants with any such Lease covenants, agreements and provisions. Any sums expended by Lender in performance of or compliance with such Leases or in enforcing performance of or compliance with such Leases by the tenants, including costs and expenses and attorney fees, shall be paid to Lender by Grantor upon demand with interest thereon at the Default Rate from the date of such payments and, in the absence of such payment, all such sums shall be deemed to be and become part of the Indebtedness secured by this Deed of Trust.

(d) Grantor expressly covenants and agrees that if Grantor, as landlord under the Leases:

(i) fails to perform and fulfill any material term, covenant, condition or provision in any Lease on its part to be performed or fulfilled, at the times and in the manner provided in such Lease;

(ii) does or permits to be done anything to impair the value of any Lease as security for the Indebtedness, including, without limitation, voluntary surrender or termination;

(iii) fails to enforce all of the material terms, covenants and conditions required to be performed by a tenant under any Lease;

(iv) fails to pursue its remedies under any Lease (short of voluntary surrender or termination) following a breach or default by the tenant thereunder; or

(v) without Lender's prior written consent, permits or approves an assignment by any tenant under any Lease or a subletting of all or any part of the Secured Property demised in any Lease (other than in accordance with the terms of the applicable Lease previously approved by Lender);

then, upon the occurrence of any such actions or inactions referenced in (i) through (v) above, at the option of Lender, and with written notice to Grantor, an Event of Default shall be deemed to have occurred hereunder and at the option of Lender, all unpaid Indebtedness secured by this Deed of Trust shall, notwithstanding anything in the Note, this Deed of Trust or the other Loan Documents to the contrary, become due and payable as in the case of other Events of Default.

**3.19 Environmental Compliance.** Grantor hereby agrees to comply and cause all tenants of the Secured Property to comply with any and all federal, state or local laws, rules and regulations relating to environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 and such other legislation, rules and regulations as are in or may hereafter come into effect and apply to Grantor, Lender, the Loan or the Secured Property or any occupants thereof, whether as lessees, tenants, licensees or otherwise. Grantor shall defend, indemnify and save and hold Lender harmless from and against any and all claims, costs or expenses relating to such environmental protection provisions notwithstanding any exculpatory or limitation of liability provisions contained in this Deed of Trust and the other Loan Documents.

**3.20 Further Assurances.**

(a) Grantor shall do all acts necessary to keep valid and effective the liens and security interests created by this Deed of Trust and the security intended to be afforded by the Loan Documents and to carry into effect their objectives.

(b) Without limiting the generality of the foregoing, Grantor shall promptly and, insofar as not contrary to applicable law, at Grantor's expense, execute, record, rerecord, file and refile in such offices, at such times and as often as may be necessary, this Deed of Trust, additional Deed of Trusts, security agreements and every other instrument in addition to or supplemental hereto, including applicable financing statements, continuation statements, affidavits or certificates as may be necessary to create, perfect, maintain, continue, extend and/or preserve the liens, encumbrances and security interests intended to be granted and created in and by the Loan Documents and the rights and remedies of Lender and Grantor thereunder. Upon request of Lender, Grantor shall promptly supply evidence of fulfillment of the foregoing acts and further assurances.

**3.21 Change of Name, Identity or Structure.** Except as may be expressly set forth in this Deed of Trust, without giving Lender at least thirty (30) days prior written notice, Grantor shall not change: (a) its jurisdiction of organization; (b) the location of its place of business (or chief executive office if more than one place of business); or (c) its name or identity (including its trade name or names). In addition, if Grantor is an entity, Grantor shall not change its structure or legal status without first obtaining the prior written consent of Lender.

**3.22 Management of Secured Property.** The Secured Property shall be managed in a first-class manner by either: (a) Grantor or an entity affiliated with Grantor and approved by Lender; or (b) a professional property management company approved by Lender. The management of the Secured Property by a Grantor-affiliated entity or a professional property management company (in either case, a "Manager") shall be pursuant to a written agreement approved by Lender (the "Management Agreement"). 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 Lender. Following an Event of Default, Lender shall have the right to terminate the Management Agreement or to direct Grantor to retain a new Manager approved by Lender.

**ARTICLE FOUR  
EVENTS OF DEFAULT**

**4.1 Defaults.** It shall constitute an event of default ("Event of Default") of and under this Deed of Trust and, at the option of Lender, under the other Loan Documents, if any of the following events shall occur:

(a) Grantor shall fail to perform on the dates or within the times required any of the Indebtedness, including the payment of principal and/or interest under the Note;

(b) Grantor shall fail to timely observe, perform or discharge any of the non-monetary Obligations, other than a non-monetary obligation described in any other clause in this Article Four, and any such failure shall remain uncured for thirty (30) days or such lesser period as may be otherwise specified in the applicable Loan Document (the "Grace Period") after notice to Grantor of the occurrence of such failure; provided, however, that Lender may, at its option, extend any applicable Grace Period up to ninety (90) days if Lender determines in good faith that: (i) such default cannot reasonably be cured within such Grace Period but can be cured within ninety (90) days; (ii) no lien or security interest created by the Loan Documents shall be impaired prior to the anticipated completion of such cure; and (iii) Lender's immediate exercise of any remedies provided in this Deed of Trust or by law is not necessary for the protection or preservation of the Secured Property or Lender's security interest therein or lien thereon, and Grantor shall immediately commence and diligently pursue the cure of such default;

(c) Grantor, as landlord or sub-landlord, as the case may be, shall assign or otherwise encumber the Rents or any interest therein without first obtaining the written consent of Lender;

(d) Grantor shall, after the expiration of all applicable grace or cure periods, default or be in default under any agreement, other than the Loan Documents, which (i) is secured by a lien on the Secured Property that is junior and subordinate to this Deed of Trust (regardless of whether such lien was obtained with the prior written consent of Lender); (ii) is secured by a lien on the respective interests of the constituent entities in Grantor (regardless of whether such lien was obtained with the prior written consent of Lender); or (iii) would, as a result of such default, subject the Secured Property to any mechanics', materialmen's, construction or other lien or claim of lien, other than a lien that is permitted under Section 3.4 or constitutes a Contested Lien pursuant to Section 3.5 above;

(e) should any representation or warranty made by Grantor in, under or pursuant to any of the Loan Documents be false or misleading in any material respect as of the date on which such representation or warranty was made or deemed remade;

(f) should any of the Loan Documents cease to be in full force and effect or be declared null and void, or cease to constitute valid and subsisting liens and/or valid and perfected security interests in, to or upon the Secured Property;

(g) should any violation of Section 3.11 occur or should any other event occur which, under the terms of the Loan Documents, would permit Lender to accelerate the maturity of the Indebtedness;

(h) should Grantor fail at any time to satisfy the requirements of Section 3.7 and such failure shall continue for fifteen (15) days after written notice thereof;

(i) should Grantor (A) generally not pay its debts as they become due; (B) admit in writing its inability to pay its debts; or (C) make a general assignment for the benefit of creditors;

(j) should Grantor commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it and its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking to have an order for relief entered against it as debtor, or seeking appointment of a receiver for it or for all or any substantial part of its property (collectively, a "Proceeding");



(k) should any Proceeding be commenced against Grantor, and such Proceeding result in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or remain undismissed for a period of forty-five (45) days; or

(l) should (i) a final judgment, other than a final judgment in connection with any condemnation, including any judgment or other final determination of any contest permitted by Section 3.5 of this Deed of Trust, be entered against Grantor that (A) adversely affects the value, use or operation of the Secured Property; or (B) adversely affects, or reasonably may tend to adversely affect, the validity, enforceability or priority of the liens or security interests created in and by this Deed of Trust, or the other Loan Documents, or both; or (ii) execution or other final process issue on any judgment with respect to the Secured Property, and Grantor shall fail to discharge the same, or provide for its discharge in accordance with its terms, or procure a stay of execution thereon in any event within thirty (30) days from entry, or should Grantor not within such period, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom or from the order, decree or process upon or pursuant to which such judgment shall have been entered and cause its execution to be stayed during such appeal, or if on appeal, such order, decree or process shall be affirmed and Grantor shall not discharge such judgment or provide for its discharge in accordance with its terms within thirty (30) days after the entry of such order or decree of affirmation, or if any stay of execution on appeal is released or otherwise discharged.

## ARTICLE FIVE REMEDIES

### 5.1 Remedies.

(a) Upon the occurrence of an Event of Default, Lender, at its option, may at any time thereafter declare the entire Indebtedness to be immediately due and payable and the same shall thereupon become immediately due and payable, without any further presentment, demand, protest or notice of any kind being required and Lender, at its option and in its sole discretion, shall also be entitled to do any of the following:

(i) (A) in person, by agent or by a receiver, without regard to the adequacy of security, the solvency of Grantor or the condition of the Secured Property, without obligation to do so and without notice to or demand upon Grantor, enter upon and take possession of the Secured Property or any part thereof in its own name or in the name of a trustee and do any acts which Lender deems necessary to preserve the value or marketability of the Secured Property; (B) sue for or otherwise collect the Rents and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, against the Indebtedness, all in such order as Lender may determine; (C) appear in and defend any action or proceeding purporting to affect, in any manner whatsoever, the Indebtedness, the security hereof or the rights or powers of Lender; (D) pay, purchase or compromise any encumbrance, charge or lien that in the judgment of Lender is prior or superior hereto; and (E) in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorney fees;

(ii) as a matter of strict right and without notice to Grantor or anyone claiming under Grantor, and without regard to: (A) the solvency of Grantor; (B) whether there has been or may be any impairment of or diminution in the value of the Secured Property; or (C) whether the amount of the Indebtedness exceeds the then value of the Secured Property, apply *ex parte* to any court having jurisdiction to appoint a receiver to enter upon and take possession of the Secured Property and Grantor hereby waives notice of any application therefor, provided, if required by law, a hearing to confirm such appointment with notice to Grantor is set within the time required by law (any such receiver shall have all the powers and duties of receivers in

similar cases and all the powers and duties of Lender in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale, unless such receivership is sooner terminated);

(iii) commence an action to judicially foreclose this Deed of Trust in the manner provided in this Deed of Trust or by law;

(iv) commence the non-judicial foreclosure of this Deed of Trust under the power of sale contained herein in the manner provided in this Deed of Trust or by law; and

(v) with respect to any Collateral, proceed as to both the real and personal property in accordance with Lender's rights and remedies in respect of the Real Estate and Improvements, or proceed to sell said Collateral separately and without regard to the Real Estate and Improvements in accordance with Lender's rights and remedies with respect to the Collateral.

(b) In (i) any action to foreclose the lien of this Deed of Trust or enforce any other remedy of Lender under any of the Loan Documents; or (ii) any other proceeding whatsoever in connection with any of the Loan Documents or the Secured Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree for sale or non-judicial sale resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender including, without limitation, Trustee's fees, attorney and paralegal fees, appraiser fees, outlays for documentary and expert evidence, stenographer charges, publication costs, land and environmental survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title certificates, title searches and examinations, title insurance policies, and any similar data and assurances with respect to the title to the Secured Property as Lender may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Secured Property. All expenses and fees of the foregoing nature and such expenses and fees as may be incurred in the protection of the Secured Property and the maintenance of the lien of this Deed of Trust thereon in any litigation affecting the Loan Documents or the Secured Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall upon demand of Lender be immediately due and payable by Grantor with interest thereon at the Default Rate from the date of prepayment of such expenses and fees and shall become a part of the Indebtedness secured by this Deed of Trust.

(c) Unless otherwise provided herein, if Grantor shall at any time fail to perform or comply with any of the terms, covenants and conditions required on Grantor's part to be performed and complied with under any of the Loan Documents or any other agreement that, under the terms of this Deed of Trust, Grantor is required to perform, Lender may, at its option and in its sole discretion (i) make any payments hereunder or thereunder payable by Grantor; and/or (ii) after the expiration of any applicable grace period and subject to Grantor's right to contest certain Obligations specifically granted in this Deed of Trust, perform any such other acts thereunder on part of Grantor to be performed and enter upon the Secured Property for such purpose.

(d) In any foreclosure sale of the Secured Property, the Secured Property, including the Real Estate and Improvements, may be sold in one parcel (i.e., as a single entity) or in two or more parcels and, otherwise, in such manner or order as Lender, in its sole discretion, may elect or as the court having jurisdiction over such foreclosure sale may otherwise order or direct.

(e) The proceeds of any foreclosure sale of the Secured Property shall be distributed and applied in accordance with the applicable law of the State or as otherwise directed by order of the court in which this Deed of Trust is foreclosed.

(f) All remedies of Lender provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided in the other Loan Documents or by law, including any right of offset. The exercise of any right or remedy by Lender hereunder shall not in any way constitute a cure or waiver of any default or Event of Default hereunder or under the Loan Documents, invalidate any act done pursuant to any notice of default or prejudice Lender in the exercise of any of its rights hereunder or under the Loan Documents.

(g) To the extent permitted by law, Grantor hereby waives its right of redemption in the event of foreclosure.

## **ARTICLE SIX SECURITY AGREEMENT AND FIXTURE FILING**

**6.1 Security Agreement.** Grantor hereby assigns and grants to Lender a first priority present security interest in and to the Rents, Contract Rights, Intangible Personal Property, Tangible Personal Property, Accounts, Inventory, Tax and Insurance Deposits, Proceeds, Right to Encumber and Other Rights and Interests described in Article Two and in and to any other part or component of the Secured Property which may not be deemed real property or which may not constitute a "fixture" (within the meaning of the Code as defined in this Section 6.1), and all replacements, substitutions and additions of, for and to the same and the proceeds thereof (collectively, the "Collateral") in order to secure payment of the Indebtedness and performance by Grantor of the other Obligations. This Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State.

**6.2 Fixture Filing.** This Deed of Trust, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code with respect to any and all fixtures included within the foregoing description and definition of the Secured Property and any Collateral that may now be or hereafter become "fixtures" within the meaning of the Code.

**6.3 Remedies.** If any Event of Default occurs under this Deed of Trust, Lender, in addition to its other rights and remedies provided under this Deed of Trust, shall have all the rights and remedies available to a secured party under the Code as well as all other rights and remedies available at law or in equity. Grantor upon request by Lender will assemble the Collateral and make it available to Lender at a place Lender designates to allow Lender to take possession or dispose of the Collateral. Grantor agrees that five (5) days prior written notice of the time and place of the sale of the Collateral, sent to Grantor in the manner provided for the mailing of notices herein, is reasonable notice to Grantor. The sale of the Collateral may be conducted by an employee or agent of Lender and any Person, including both Grantor and Lender, shall be eligible to purchase any part or all of the Collateral at the sale. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Lender shall include, without limitation, attorney and paralegal fees and legal expenses incurred by Lender, and shall be paid by Grantor.

**6.4 Waivers.** Grantor waives any right to require Lender to (a) proceed against any Person; (b) proceed against or exhaust any Collateral; or (c) pursue any other remedy in its power. Grantor further waives any defense arising by reason of any power and any defense arising by reason of any disability or other defense of Grantor or any other Person, or by reason of the cessation from any cause whatsoever of the liability of Grantor or any other Person. Until the Indebtedness shall have been paid in full, Grantor shall not have any right to subrogation and Grantor waives any right to enforce any remedy which Grantor now has or may hereafter have against Lender or against any other Person and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Lender for or with respect to the Indebtedness and/or the Obligations.

**6.5 Authorization.** Grantor hereby authorizes Lender at any time and from time to time during the life of the Loan to file in any filing office in any Code jurisdiction any financing statements, amendments or addendums thereto and continuation statements (the "UCC Documents") in order to perfect or continue the perfection of any security interest granted under this Deed of Trust or any of the other Loan Documents and, in such financing statement, file against "all assets" of Grantor. Grantor agrees to provide any information needed to complete such UCC Documents to Lender promptly upon request. Grantor shall pay to Lender, within five (5) business days of written demand, any and all costs and expenses incurred by Lender in connection with the preparation, processing and filing of any such UCC Documents, including reasonable attorney fees and all disbursements. Such costs and expenses shall bear interest at the Default Rate from the date paid by Lender until the date repaid by Grantor and such costs and expenses, together with such interest, shall be part of the Indebtedness and shall be secured by this Deed of Trust.

**6.6 Preservation of Grantor's Existence.** Grantor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and of the State.

**6.7 Notice of Change of Location of Collateral.** Without giving at least thirty (30) days prior written notice to Lender, Grantor shall not add to or change any location at which any of the Collateral is stored, held or located.

## **ARTICLE SEVEN MISCELLANEOUS**

**7.1 Notices, Consents, and Approvals.** Except as otherwise required by law, any notice, consent or approval that Lender or Grantor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address set forth below or at such other address as such intended recipient may from time to time by notice in writing designate to the sender pursuant hereto. Any such notice, consent or approval shall be deemed effective if given (a) by nationally recognized overnight courier for next day delivery one (1) business day after delivery to such courier; (b) by United States mail (registered or certified), two (2) business days after such communication is deposited in the mails; or (c) in person, when written acknowledgment of receipt thereof is given. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Deed of Trust is not required to be given.

If to Lender:                      Mutual of Omaha Insurance Company  
   Mutual of Omaha Plaza  
   Omaha, Nebraska 68175

If to Grantor:                      East Campus Realty, LLC  
   Mutual of Omaha Plaza  
   Omaha, Nebraska 68175

**7.2 Time of Essence.** It is specifically agreed that time is of the essence for all of the terms and provisions contained in this Deed of Trust.

**7.3 Covenants of Deed of Trust Run with Title to the Real Estate.** The Obligations set forth in this Deed of Trust are intended as, shall be deemed and are hereby declared to be covenants running with the title to the land which constitutes the Real Estate and any and all portions(s) thereof, and such Obligations shall be binding upon and enforceable by the owner and holder of this Deed of Trust personally against Grantor and any successor in title to Grantor who or which shall acquire and/or hold

title to the Real Estate while the same is subject to and encumbered by this Deed of Trust. Every Person that shall have, claim, own, hold, accept or otherwise acquire title to the Real Estate, whether or not such title is reflected in the Public Records of the State and County in which the Real Estate is located, shall be conclusively presumed and deemed to have consented and agreed to personally perform each and every covenant and obligation of Grantor contained in this Deed of Trust, to the same extent as the original Grantor, whether or not any reference to this Deed of Trust is contained in the document or instrument pursuant to which such Person shall have acquired title to the Real Estate and whether or not such Person shall have expressly agreed in writing to assume or perform the Obligations of Grantor contained in this Deed of Trust.

**7.4 Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State. To the extent that this Deed of Trust may operate as a security agreement under the Code, Lender shall have all rights and remedies conferred therein for the benefit of a Secured Party.

**7.5 Severability.** If any provision of this Deed of Trust, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Deed of Trust shall be construed as if such invalid part were never included herein.

**7.6 Headings.** The headings of articles, sections, paragraphs and subparagraphs in this Deed of Trust are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

**7.7 Grammar.** As used in this Deed of Trust, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

**7.8 Deed in Trust.** If title to the Secured Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Secured Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

**7.9 Successors and Assigns.** This Deed of Trust and all provisions hereof shall be binding upon and enforceable against Grantor, its successors, assigns, legal representatives and all other Persons claiming under or through Grantor and the word "Grantor" when used herein shall include all such Persons and any others liable for the payment of the Indebtedness or any part thereof, whether or not they have executed the Note or this Deed of Trust. The word "Lender" when used herein shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

**7.10 No Oral Change.** This Deed of Trust may only be modified, amended or changed by an instrument in writing signed by Grantor and Lender and may only be released, discharged or satisfied of record by an instrument in writing signed by Lender. No waiver of any term, covenant, condition or provision of this Deed of Trust shall be effective unless given in writing by Lender, and if so given by Lender shall only be effective in the specific instance in which given.

**7.11 Entire Agreement.** This Deed of Trust and the other Loan Documents supersede, in all respects, all prior written or oral agreements between Grantor and Lender relating to the Loan, this Deed of Trust and the other Loan Documents (including, without limitation, the Loan Application submitted by Grantor to Lender in connection with the Loan) and there are no agreements, understandings, warranties or representations between the parties except as set forth in this Deed of Trust and the other Loan Documents.

**7.12 Construction.** Grantor acknowledges that Grantor and Grantor's counsel have reviewed this Deed of Trust and the other Loan Documents and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the construction or interpretation of this Deed of Trust or the other Loan Documents or any amendments or schedules to any of the foregoing.

**7.13 Waiver of Trial by Jury.** Grantor hereby waives, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Deed of Trust or any acts or omissions of Grantor in connection therewith or contemplated thereby.

**7.14 Servicing Fees and Expenses.** Grantor acknowledges and agrees that Lender shall impose certain reasonable administrative processing fees (the "Servicing Fees") in connection with (a) the extension, renewal, modification, amendment and termination of the Loan Documents; (b) the release or substitution of collateral therefor; (c) the consideration of any consents, waivers and approvals with respect to the Secured Property or Grantor; (d) the review of any Lease or proposed Lease or the preparation or review of any tenant estoppel certificate or any subordination, nondisturbance and attornment agreement; or (e) any other services provided by Lender or any of its agents to or on behalf of Grantor in connection with the Secured Property, the Loan Documents or the Indebtedness secured thereby (the occurrence of any of the foregoing shall hereafter be referred to as a "Servicing Action"). Grantor hereby acknowledges and agrees to pay, immediately, upon demand, all such Servicing Fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature that may be imposed by Lender from time to time in connection with a Servicing Action. Grantor shall also be responsible for the payment of all fees and expenses of Lender's outside counsel in the event that Lender, in its sole discretion, shall determine that the assistance of an outside attorney is necessary or appropriate to accomplish the Servicing Action.

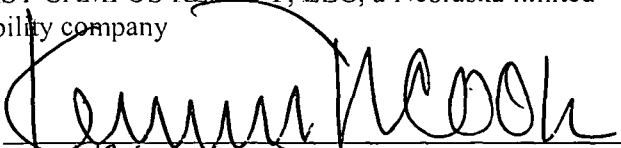
**7.15 Subrogation.** To the extent the proceeds of the Indebtedness are used to pay any outstanding lien, charge or encumbrance affecting the Secured Property (including, without limiting the generality of the foregoing, any prior lien), Lender shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, the terms and provisions hereof shall govern the rights and remedies of Lender and, to the extent permitted by law without impairing any of Lender's rights of subrogation, shall supersede the terms, provisions, rights and remedies under the lien or liens to which Lender is subrogated hereunder.

**7.16 Modifications and Extensions.** Grantor and Lender may agree to (a) extend the time for payment of all or any part of the Indebtedness; (b) reduce, rearrange or otherwise modify the terms of payment thereof; (c) accept a renewal note or notes therefor; and (d) otherwise deal with the Secured Property or the Loan Documents, all without notice to or the consent of any junior lienholder or any other Person having an interest in the Secured Property and/or Collateral subordinate to the lien of this Deed of Trust and without the consent of Grantor if Grantor has then parted with title to the Secured Property and/or Collateral. No such extension, reduction, modification, renewal or dealing shall affect the priority of this Deed of Trust or release any liability of Grantor or any other Person or impair the security hereof in any manner whatsoever.

**7.17 Request for Notice.** Each party to this Deed of Trust requests that a copy of any notice of default and notice of sale be sent to them at their respective mailing addresses set forth above.

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed as of the date first written above.

EAST CAMPUS REALTY, LLC, a Nebraska limited liability company

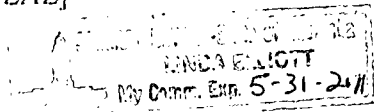
By   
Title: President


STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 17 day of November, 2010, before me, a notary public in and for said county and state, personally came Kenneth R. Cook, President of EAST CAMPUS REALTY, LLC, a Nebraska limited liability company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]



  
Notary Public

**Exhibit "A"**

Lots 2 through 5, inclusive and Outlots 2 through 4, inclusive, Midtown Crossing at Turner Park, an Addition to the City of Omaha, Douglas County, Nebraska

16-25435

Lot 1, Midtown Crossing at Turner Park, an Addition to the City of Omaha, Douglas County, Nebraska except that part of Lot 1, Midtown Crossing at Turner Park set forth in the Declaration of Midtown Crossing Building 200 Condominium filed February 11, 2010 at Instrument No. 2010012980, records of Douglas County, Nebraska.

16.25435

The following described Units in Midtown Crossing Building 200 Condominium as filed February 11, 2010 at Instrument 2010012980, records of Douglas County, Nebraska: 4200, 4201, 4202, 4203, 4205, 4206, 4207, 4208, 4209, 4210, 4300, 4301, 4302, 4303, 4304, 4306, 4308, 4309, 4400, 4402, 4403, 4404, 4405, 4408, 4409, 4410, 4411, 4412, 4413, 4500, 4501, 4503, 4504, 4505, 4508, 4509, 4510, 4511, 4512, 4513, 4514, 4600, 4601, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4610, 4611, 4613, 4614, 4615, 4700, 4701, 4702, 4703, 4704, 4705, 4706, 4707, 4708, 4709, 4710, 4711, 4713, 4714, 4715, 4800, 4801, 4802, 4803, 4805, 4806, 4807, 4808, 4809, 4810, 4811, 4814, and 4815.

16-25436