



This Instrument Was Prepared By And After  
Recording, Return To:  
Bankers Trust Company  
Attn: Commercial Real Estate Lending  
453 7<sup>th</sup> Street – P.O. Box 897  
Des Moines, Iowa 50304-0897  
Prepared by: Emily Stork

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, AND FIXTURE FINANCING STATEMENT (as amended, amended and restated, modified, restated, substituted, replaced or otherwise supplemented from time to time, this “Deed of Trust”) is executed as of August 23, 2018, by MTC REAL ESTATE TIC, LLC, an Iowa limited liability company (“MTC”), PORTAGE DANIELS, L.L.C, a Delaware limited liability company (“PD”), PORTAGE WOLF, L.L.C., a Delaware limited liability company (“PW”), PORTAGE KAHAN, L.L.C., a Delaware limited liability company (“PK”), PORTAGE GREENFIELD, L.L.C., a Delaware limited liability company (“PG”), and PORTAGE BAER, L.L.C., a Delaware limited liability company (“PB” and, together with MTC, PD, PW, PK, and PG, the “Grantor”), with an address for purposes of this Deed of Trust of 2 Quail Creek Circle, North Liberty, Iowa 52317, to John M. Prosocki, a member of the Nebraska State Bar Association, as trustee (in such capacity, the “Trustee”), with an address for purposes of this Deed of Trust of 13625 California Street, Suite 110, Omaha, NE 68154, in favor of BANKERS TRUST COMPANY, a state banking corporation organized under the laws of the State of Iowa (“Beneficiary”), with an address for purposes of this Deed of Trust at 453 7th Street, P.O. Box 897, Des Moines, Iowa 50304-0897, Attn: Commercial Real Estate Lending.

All capitalized terms used herein but not otherwise defined herein shall have the meanings given to such terms in the Loan Agreement (defined below).

W I T N E S S E T H:

WHEREAS, Grantor, MTC HOTEL ASSOCIATES, LLC (“MTC Hotel”) and KINSETH HOSPITALITY COMPANY, INC., KINSETH HOTEL CORPORATION, RONALD L. DANIELS, ABE M. WOLF, MARC A. KAHAN, GARY A. GREENFIELD, and STEVEN K. BAER, (collectively, “Guarantor”) have

entered into a Term Loan Agreement, of even date herewith (as the same may hereafter be amended, the "Loan Agreement") with Beneficiary; and

WHEREAS, Grantor and MTC Hotel have requested that Beneficiary make a loan (the "Loan") to Grantor in the aggregate, principal sum of up to \$16,000,000.00 to be evidenced by a Promissory Note, of even date herewith, payable to Beneficiary (together with any renewals, replacements, substitutions or extensions thereof, the "Note");

WHEREAS, Grantor will obtain substantial benefits as a result of the transactions contemplated in the Loan Agreement, and accordingly, desires to execute this Deed of Trust to satisfy Beneficiary's requirement that this Deed of Trust be executed and delivered in consideration of the Loan.

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to Grantor, the receipt and sufficiency of which are hereby acknowledged, Grantor covenants and agrees with Beneficiary as follows:

#### ARTICLE I. DEED OF TRUST

1.1 Grant. For the purposes and upon the terms and conditions in this Deed of Trust, including to secure the full and prompt payment and performance of the Secured Obligations (defined below) and Grantor's obligations under the Loan Documents, Grantor irrevocably deeds, mortgages, grants, pledges, bargains, sells, assigns, transfers and conveys to Trustee, and to its successors and assigns as trustee, in trust, with power of sale and right of entry and possession as provided below, for the benefit of the Beneficiary, as security for the Secured Obligations, all of Grantor's right, title and interest, whether now owned or hereafter acquired, whether vested or contingent, in: (a) the fee simple interest in real property located in Douglas County, Nebraska, described on Exhibit A attached hereto (the "Land"); (b) all easements, rights-of-way and liberties, licenses, permits and privileges now or hereafter belonging, relating or appertaining to the Land, and rights used in connection with or as a means of access to any portion of the Land; (c) all current and future tenements, hereditaments and appurtenances of and/or to the Land; (d) any land lying within the right-of-way of any street or public place, open or proposed, adjoining the Land, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with such rights or the Land; (e) all buildings, structures, tenant improvements, other improvements, including landscaping, utility facilities, parking areas, roads, driveways, walks and other site improvements of every kind and description now or hereafter erected or located on the Land, with all additions thereto and all renewals, alterations, substitutions and replacements thereof (collectively, the "Improvements"); (f) all assignable development rights, governmental or quasi-governmental licenses, permits or approvals, zoning rights and other similar rights or interests which relate to the development, use or operation of, or that benefit or are appurtenant to, the Land; (g) all surface, subsurface and air rights, including mineral rights, oil and gas or other hydrocarbon rights, air rights, sewer rights, water rights, including all wells, canals, ditches and reservoirs of any nature and all rights thereto, appurtenant to or associated with the Land, whether decreed or undecreed, tributary or non-tributary, surface or underground, appropriated or unappropriated, and all shares of stock in any water, canal, ditch or reservoir company, and all well permits, water service contracts, drainage rights and other evidences of any such rights, vegetation and timber and emblements now or hereafter in, on or above the Land, and the reversions, remainders, rents, issues and profits thereof; (h) all fixtures, attachments, appliances, equipment, machinery, building materials and supplies, and other tangible personal property of all kinds, goods that are or are to become fixtures and goods affecting, related to, or connected with the Land and Improvements, now or hereafter attached to or located in, on or under said Improvements and/or the Land, including furnaces, boilers, oil burners, piping, plumbing, refrigeration, air conditioning, lighting, ventilation, disposal and sprinkler systems, elevators, motors, cabling, underground and overhead interconnections, and all other equipment and machinery, appliances, fittings and fixtures of every kind, attached or detached, with all additions thereto and all renewals, alterations,

substitutions and replacements thereof and any assignable leasehold interests in the same (collectively, "Equipment and Fixtures"); (i) any leases, subleases, licenses, lease guaranties, and any other agreements relating to the use and occupancy of the Subject Property, including any use or occupancy arrangements created under Section 365(h) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Land and/or Improvements (collectively, and in each case, as amended, restated, supplemented, renewed, extended, substituted, or otherwise modified from time to time, the "Leases"); (j) all revenues, receipts, income, accounts receivable, issues, royalties, security deposits, accounts, money and profits of the Subject Property and other benefits now or hereafter arising from the ownership, occupancy or use of the Land, Improvements and UCC Collateral (defined below), or the renting, leasing or bailment of the same (collectively, "Rents"); (k) all assignable permits, licenses, franchises, contracts, agreements and rights held by Grantor and relating to the acquisition, use, occupancy, maintenance, enjoyment and operation of the Subject Property, or any business conducted thereon; (l) all real estate tax refunds payable to Grantor with respect to the Land or Improvements, and refunds, credits, or reimbursements payable with respect to bonds, escrow accounts, or other sums payable in connection with the use, development, or ownership of the Land and/or Improvements; (m) all general intangibles, contract rights, accounts, and proceeds arising from insurance policies required to be maintained by Grantor for the Subject Property, any claims or demands related to any proceeds of such insurance, including interest thereon; and all proceeds of any judgment, awards or settlements in eminent domain, condemnation or other proceedings related to the Subject Property, or the transfer or purchase in lieu or in anticipation of the exercise of said rights, or for any other injury to or decrease in the value of the Subject Property, together in each case, with the causes of action and claims related to the same and all general intangibles, contract rights and accounts arising therefrom; (n) any zoning lot agreements, air rights and development rights related to the Subject Property; (o) all plans and specifications, studies, tests and design materials relating to the design, construction, repair, alteration or leasing of the Subject Property; (p) all rights and interests of Grantor in and under any and all service agreements, maintenance agreements, warranty agreements, and other contracts and agreements relating to or required for the construction, operation, maintenance, and repair of the Subject Property; (q) all cash and non-cash proceeds and products of the conversion, voluntary or involuntary, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Subject Property, whether into cash, liquidated claims, or otherwise, including the right to receive excess payments in any tax sale of the Land and Improvements; (r) all interest or estate which Grantor now has or may hereafter acquire in said real property and all additions and accretions thereto, and all awards or payments made for the taking of all or any portion of the Land by eminent domain or any proceeding or purchase in lieu thereof, or any damage to any portion of said Land; and (s) all improvements, betterments, renewals, accessions, substitutes and replacements of, and all additions and appurtenances to the Subject Property, hereafter acquired by, or released to, Grantor or constructed, assembled or placed by Grantor in, on or under any other Subject Property, and all conversions of the security constituted thereby (collectively, the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limitation of general terms.

TO HAVE AND TO HOLD the Subject Property and the rights and privileges hereby granted unto Trustee, forever, in trust, with power of sale in accordance with the terms and conditions hereof, for the use and benefit of Beneficiary forever.

## ARTICLE II. OBLIGATIONS SECURED

2.1 Obligations Secured. Grantor makes this grant and assignment for the purpose of securing the following obligations (each, a "Secured Obligation" and collectively, the "Secured Obligations"):

(a) payment to Beneficiary of all sums at any time owing and performance of all other obligations arising under the Note, with interest as provided therein, executed by Grantor and with a maturity date of August 23, 2028, together with the payment and performance of any other Indebtedness or Obligations incurred in connection with the credit accommodation evidenced by the Note or such other instruments, whether or not specifically referenced therein; and

(b) payment and performance of all obligations of Grantor set forth in the Loan Agreement and any other Loan Documents, with interest thereon; and,

(c) payment and performance of all obligations of Grantor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary as or for the payment or performance of any such obligations of Grantor, with interest thereon; and

(d) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby; and

(e) payment and performance of all future advances (whether obligatory or to be made at the option of Beneficiary, or otherwise), including advances made by Beneficiary, to the same extent as if such future advances were made on the date of execution of this Deed of Trust, and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(f) all modifications, extensions, renewals and refinancings of any of the Secured Obligations (including (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension renewal or refinancing is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "obligations" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created in accordance with the Loan Documents, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation, swap obligations and expressly including any obligation of Grantor or a Guarantor to Beneficiary and the Obligations.

2.3 Maximum Amount Secured. The maximum aggregate principal amount of Indebtedness that is or may be secured by this Deed of Trust is \$32,000,000.00. All such amounts are secured by this Deed of Trust and are deemed a part of the Secured Obligations.

2.4 Incorporation. All terms of the Secured Obligations are incorporated herein by this reference. All Persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or any other Secured Obligation may permit borrowing, repayment and reborrowing; and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

### ARTICLE III. ASSIGNMENT OF LEASES AND RENTS

3.1 Assignment. Subject to the provisions of Section 3.3 below, Grantor absolutely, irrevocably and unconditionally sells, assigns, transfers and conveys to Beneficiary all of Grantor's right, title and

interest in, to and under all current and future Leases and Rents, including those now due, past due or to become due under any Lease, whether existing as of the date hereof or at any time hereafter entered into, together with all guarantees of and security for any tenant's or lessee's performance thereunder. This assignment shall not impose upon Beneficiary any duty to produce Rents from the Subject Property, nor cause Beneficiary to be: (a) a "mortgagee or lender in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; or (c) responsible for any waste committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property. This is a present and absolute assignment, not an assignment for security only and shall be a perfected interest as of recording of this Deed of Trust. To the extent permitted by applicable law, Beneficiary's right to Rents shall be enforceable against Grantor and third parties, including any debtor in possession or trustee in any case under the Bankruptcy Code and is not contingent upon and may be exercised without: taking possession of the Subject Property as a lender- or mortgagee-in-possession or otherwise; commencing a foreclosure action with respect to this Deed of Trust; furnishing notice to Grantor or tenants or lessees under the Leases; making formal demand for the Rents; obtaining the appointment of a receiver of the Rents; or taking any other affirmative action. Grantor agrees to execute and deliver to Beneficiary, within five (5) days of Beneficiary's written request, such additional documents as Beneficiary may reasonably request to further evidence the assignment to Beneficiary of any and all Leases and Rents. Beneficiary, at Beneficiary's option and without notice, may notify any lessee or tenant of this assignment of the Leases and Rents. Except as permitted by the Loan Documents or with Beneficiary's advance, written consent, Grantor shall not hereafter collect or accept payment of any Rents more than one month before the due dates of such Rents or waive, release, reduce, discount or otherwise discharge or compromise Rent. Grantor shall not assign any of the Leases or Rents to any other person without Grantor's prior, written consent. Beneficiary shall have no liability for any loss that may arise from a failure or inability to collect the Rents. Grantor shall maintain all security deposits in accordance with all applicable laws.

3.2 Protection of Security. To protect the security of this assignment, Grantor agrees:

(a) At Grantor's sole cost and expense: (i) to timely perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; (iv) not to waive or release any lessee or tenant of or from any Lease obligations; and (v) provide Beneficiary with copies of all Leases of all or any portion of the Subject Property. Grantor assigns to Beneficiary all of Grantor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Grantor to exercise any such rights or powers without Beneficiary's prior written consent shall be a Default (defined below).

(b) At Grantor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all costs of Beneficiary, including reasonable attorneys' fees, in any such action in which Beneficiary may or is required to appear.

(c) That, should Grantor fail to do any act required to be done by Grantor under a Lease, then Beneficiary may, but without obligation to do so and without notice to Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary deems necessary to protect the security hereof, and, in exercising such powers, Beneficiary may employ attorneys and other agents, and Grantor shall pay necessary costs and reasonable attorneys' fees incurred by Beneficiary, or its agents, in the exercise of the powers granted herein, with interest thereon at the Default Rate, with such amount Secured Obligations secured hereby. Grantor shall give prompt

notice to Beneficiary of any default by any lessee or tenant under any Lease, and of any notice of default on the part of Grantor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Beneficiary immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon from disbursement until payment at the Default Rate, and the same, at Beneficiary's option, may be added to any Secured Obligation and shall be secured hereby.

3.3 License. Beneficiary confers upon Grantor a license (the "License") to collect and retain, as trustee of Beneficiary, the Rents as, but not before, they come due and payable and apply the same to the Secured Obligations and to the costs of operating and maintaining the Subject Property, with the balance payable to Grantor, until the occurrence of any Default. Upon the occurrence of any Default, the License shall be automatically and immediately revoked, without further notice, and, Beneficiary shall immediately and automatically be entitled to receive, collect and possess Rents (whether or not Beneficiary enters upon or takes control of the Subject Property or has a receiver appointed for the Subject Property or takes any other action), and Grantor shall, immediately upon written notice from Beneficiary, notify, in writing, all tenants or lessees under the Leases that all Rents due thereunder and after the date of such notice shall be paid to Beneficiary at its address as set forth in this Deed of Trust, or such other address provided by Beneficiary to Grantor or said tenants or lessees, with any portion of Rents then or thereafter received or held by Grantor to be held in trust by Grantor for the sole and exclusive benefit of Beneficiary and paid to Beneficiary within 10 Business Days of Grantor's receipt. Further, after a Default, Beneficiary, to the extent permitted by applicable law, at Beneficiary's option and without notice, and without waiving other rights or remedies hereunder, at law or in equity, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) make, cancel, enforce or modify any Lease; (b) obtain and evict tenants or lessees, fix or modify Rents, and do any acts which Beneficiary deems proper to protect the security hereof; (c) notify any tenant, lessee or other person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary; (d) settle, compromise, release, extend the time of payment for, and make allowances, adjustments and discounts of, any Rents or other obligations in, to and under the Leases; (e) lease all or any part of the Subject Property; and/or (f) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Deed of Trust. None of the foregoing shall cure or waive any Default, nor waive, modify or affect any notice of Default hereunder, nor invalidate any act done pursuant to any such notice. All Rents received by Beneficiary hereunder shall be applied first to Beneficiary's reasonable costs, if any, of taking control of and managing the Subject Property and collecting amounts due under the Leases, including reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Subject Property, premiums on insurance policies, taxes, assessments, and other charges on the Subject Property, and the costs of discharging any obligation or liability of Grantor as lessor or landlord and then, at Beneficiary's discretion, to the Secured Obligations, with the remaining balance, if any, due Grantor. However, if the Rents collected are insufficient to cover the reasonable costs contemplated herein, such deficiency shall become additional Secured Obligations, with interest thereon at the Default Rate from disbursement until paid. Notwithstanding anything to the contrary set forth in Sections 3.1, 3.2 and 3.3 above, Beneficiary agrees that the Grantor may (a) remain in possession and control of the Subject Property, (b) use, operate or manage the Subject Property, and (c) collect the Rents from the Subject Property so long as there is no Default which has occurred. Nothing herein shall be construed to deem Beneficiary a mortgagee in possession in the absence of its taking of actual possession of the Subject Property leased under the Leases in accord with the terms and conditions of this Deed of Trust.

3.4 Bankruptcy Provisions. Without limiting the provisions of this Article III or the absolute nature of the assignment of the Rents hereunder, to the extent the assignment of the Rents hereunder is

deemed to be other than an absolute assignment, (a) this Deed of Trust shall constitute a “security agreement” for the purposes of Section 552(b) of the Bankruptcy Code; (b) the security interest created by this Deed of Trust extends to the property of Grantor acquired before the commencement of a bankruptcy case and to all amounts paid as Rents; and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any bankruptcy case. Without limiting the absolute nature of the assignment of the Rents hereunder, to the extent Grantor (or its bankruptcy estate) shall be deemed to hold any interest in the Rents after the commencement of a voluntary or involuntary bankruptcy case, to the extent provided by or allowed by applicable law, such Rents are and shall be deemed to be “cash collateral” under Section 363 of the Bankruptcy Code. Further, at Beneficiary’s option, Beneficiary, not Grantor, shall be deemed the creditor of each tenant or lessee of each Lease for all assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting each tenant or lessee, with an option to apply, in accordance with the Loan Documents, any money received to the reduction of the Secured Obligations. In such case, Grantor, at Beneficiary’s direction, or Beneficiary shall file and make timely filings of claims in such proceedings and to otherwise pursue creditor’s rights in such proceedings.

3.5 Instructions to Tenants. At Beneficiary’s request from time to time during the term of this Deed of Trust, Grantor shall promptly (a) notify each tenant or lessee under any Lease of the existence of this assignment of Leases and Rents and the rights and obligations of Grantor, Beneficiary and tenant or lessees hereunder, (b) provide such tenant or lessee with a copy of this Deed of Trust, and (c) use commercially reasonable efforts to obtain each such tenant’s or lessee’s agreement to be bound and comply with the provisions hereof that apply to tenants or lessees under the Leases.

3.6 Leases Subject and Subordinate. To the extent permitted by applicable law, and subject to the terms of any and all Leases currently in existence, any Lease now or hereafter affecting all or any portion of the Subject Property is and will be subject and subordinate to this Deed of Trust, and each party thereto shall be bound by and required to comply with the provisions of this Deed of Trust. Grantor may, at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien and security interest of this Deed of Trust to any Lease, without joinder or consent of or notice to Grantor, any tenant or any other person, and notice is hereby given to each such party of such right to subordinate. No such subordination shall constitute subordination to any lien, security interest or other encumbrance, whenever arising, or improve the right of any junior lienholder. All Leases hereafter executed with respect to the Subject Property shall contain a reference to this Deed of Trust and shall state that the parties thereto are bound by and shall comply with the provisions hereof.

#### ARTICLE IV. SECURITY AGREEMENT

4.1 Security Agreement. This Deed of Trust shall also be deemed a “Security Agreement” as defined by the Iowa Uniform Commercial Code (as amended from time to time, the “UCC”) or within the meaning of the common law with respect to those parts of the Subject Property classified as personal property (including, and to the extent they are personal property, Equipment and Fixtures and all proceeds and products thereof, whether now owned or hereafter acquired) (the “UCC Collateral”), and Grantor, as debtor, hereby grants and pledges to Beneficiary, as secured party, a first and prior, continuing security interest in and to all UCC Collateral of Grantor. Upon a Default, and in addition to any other remedy under this Deed of Trust, any other Loan Document, at law or in equity, Beneficiary shall be entitled to exercise any and all rights that it may, as a secured party, have under the UCC with respect to the UCC Collateral. In exercising any of said remedies, to the extent permitted by applicable law, Beneficiary may proceed against the UCC Collateral separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary’s remedies under the UCC or this Deed of Trust. Grantor and Beneficiary agree that the filing of such a financing statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that

everything used in connection with the production of income from the Subject Property or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be regarded as part of the Land irrespective of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (c) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (i) the rights in or the proceeds of any fire or hazard insurance policy, or (ii) any award in eminent domain proceedings for a taking or for loss of value, or (iii) Grantor's interest as lessor in any present or future Leases and Rents shall never be construed as in any way altering any of the rights of Beneficiary under this Deed of Trust or impugning the priority of Beneficiary's Lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Beneficiary in the event any court or judge shall at any time hold with respect to (i), (ii) and (iii) that notice of Beneficiary's priority of interest to be effective against a particular class of persons, including, but not limited to, a Governmental Body, must be filed in the UCC records.

4.2 Fixture Filing. Beneficiary may file this Deed of Trust, or a reproduction hereof, in the real estate records or other appropriate index, as a financing statement for any of the UCC Collateral. Any reproduction of this Deed of Trust or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Beneficiary may file, and Grantor shall execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, continuations, renewals and amendments thereof, and reproductions of this Deed of Trust, in such form as Beneficiary may require to perfect a security interest with respect to the UCC Collateral. Grantor shall execute, acknowledge and deliver to Beneficiary, within ten (10) days after request by Beneficiary, any and all security agreements, financing statements and any other similar security instruments reasonably required by Beneficiary, in form and of content reasonably satisfactory to Beneficiary, covering all the UCC Collateral. Grantor agrees to cooperate and join with Beneficiary in taking such steps as are necessary, in Beneficiary's judgment, to perfect or continue the perfected status of the security interests granted under this Article IV, including the execution and delivery of any financing statements, amendments thereto, continuation statements, affidavits, certificates or other documents as Beneficiary may request in order to perfect, preserve, maintain, continue and extend such security instruments. Grantor hereby irrevocably authorizes and appoints Beneficiary as the agent and attorney-in-fact of Grantor to take the foregoing actions, which appointment shall be irrevocable and coupled with an interest, but Beneficiary, before the occurrence of a Default, shall not take such action until the above-referenced 10 days have expired. Grantor further agrees to pay to Beneficiary all fees, costs and expenses (including all record search fees, reasonable attorneys' fees and expenses and court costs) incurred by Beneficiary in connection with the preparation, execution, recording, filing and refiling of any document referenced in this Section. Beneficiary may, at any time and from time to time, file financing statements, continuation statements and amendments thereto that describe the UCC Collateral in particular or as all assets, to the extent of UCC Collateral, of Grantor or words of similar effect and which contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification numbers issued to Grantor. Grantor agrees to furnish any such information to Beneficiary promptly upon request. Any such financing statements, continuation statements or amendments may be signed by Beneficiary on behalf of Grantor, and may be filed at any time in any jurisdiction whether or not UCC is then in effect in that jurisdiction with or without Grantor's signature.

Grantor shall, at any time and from time to time, take such steps as Beneficiary may require for Beneficiary to insure the continued perfection and priority of Beneficiary's security interest in the UCC Collateral and of the preservation of its rights therein. Grantor shall not create or suffer to be created pursuant to the UCC any other security interest or other Lien in said UCC Collateral, including proceeds,



replacements, and additions thereto, other than and except for Permitted Encumbrances and Liens which are approved by Grantor in writing.

For the purposes set forth herein, and in accordance with the UCC, (a) Grantor shall be deemed the “Debtor”, with the address set forth in the opening recital, which address Grantor certifies is accurate; (b) Beneficiary shall be deemed to be the “Secured Party” with the address set forth in the opening recital and shall have all of the rights of a secured party under the UCC; (c) this Deed of Trust covers tangible personal property and goods which are or are to become fixtures; (d) the name(s) of the record owner(s) of the Land, if different from Grantor, are as set forth in Exhibit A; (e) Grantor are those types of entities set forth in the opening recital; and (f) the legal names of the Grantor are set forth in the opening recital. Grantor shall give Beneficiary at least 30 days’ advance, written notice of any change in Grantor’s state of organization and address.

#### ARTICLE V. RIGHTS AND DUTIES OF THE PARTIES

5.1 Title. Grantor represents and warrants that (a) Grantor lawfully possesses and holds good and marketable fee simple title to, the Subject Property without limitation on the right to encumber, as herein provided, subject only to Permitted Encumbrances, (b) that this Deed of Trust is a valid first priority lien on the Subject Property, subject only to Permitted Encumbrances, (c) it has full right, power, and authority to execute and deliver this Deed of Trust and to encumber the Subject Property in the manner set forth herein, (d) the Improvements and Equipment are located within the boundaries of the Land; (e) there are no defenses or offsets to this Deed of Trust or to the Secured Obligations, (f) Grantor is not acting, directly, or indirectly for or on behalf of any person or nation named by any Executive Order of the United States Treasury Department as a terrorist, “Specially Designated and Blocked Person” or any other banned or blocked person, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Asset Control, and is not engaged in this transaction, or instigating or facilitating this transaction, directly or indirectly on behalf of any such person or nation, and Grantor shall defend, indemnify and hold harmless Grantor and its Indemnified Parties from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys’ fees and costs) arising from or related to any breach of the foregoing certification, and (g) this Deed of Trust, when executed and delivered by Grantor, will constitute the legal, valid and binding obligation of Grantor, in accordance with its terms, subject only to laws affecting creditors.

5.2 Taxes and Assessments. Subject to the right, if any, of Grantor to contest payment of the following pursuant to Section 5.4, below, or any other agreement between Grantor and Beneficiary, and, after a Default, as required in Section 5.6, below, Grantor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a Lien upon or cause a loss in value of the Subject Property, or any interest therein; or (b) by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation (collectively, the “Impositions”); provided however, that Grantor shall have no obligation to pay any income taxes of Beneficiary. Promptly upon request by Beneficiary, Grantor shall furnish to Beneficiary satisfactory evidence of the payment of all Impositions within thirty (30) days after payment thereof. Beneficiary is hereby authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of any Impositions.

5.3 Performance of Secured Obligations. Grantor shall promptly and timely pay and perform each Secured Obligation when due.

5.4 Liens, Encumbrances and Charges. Grantor shall take no action, nor fail to take any action, that could result in the impairment of the Lien of this Deed of Trust or that could form the basis for any

Person(s) to claim an interest in the Subject Property, other than Permitted Encumbrances. Except as otherwise provided in any Secured Obligation or other agreement with Beneficiary, Grantor shall pay when due all obligations secured by, or reducible to Liens and encumbrances which shall now or hereafter encumber, the Subject Property, whether senior or subordinate hereto, including any mechanics' Liens. If any Lien is asserted against the Subject Property, Grantor shall promptly, at its expense, (a) provide Beneficiary with written notice of such Lien, including information relating to the amount of the Lien asserted; and (b) pay the Lien in full or take such other action to cause the Lien to be released, or if no Default has occurred and continues, contest, in good faith, the existence, amount and validity of the Lien by appropriate proceedings that operate during the pendency thereof to prevent (x) the collection of, or other realization upon the Lien so contested, (y) the sale, forfeiture, or loss of the Subject Property, and (z) any interference with the use or occupancy of the Subject Property, or Beneficiary's rights in and to the same. From and after a Default, Beneficiary may, but shall not be obligated, to pay any such asserted Lien if not timely paid by Grantor. All amounts advanced hereunder shall draw interest, from disbursement until paid, at the Default Rate, are payable upon demand and are Secured Obligations secured by this Deed of Trust.

5.5 Insurance. Grantor shall insure the Subject Property as provided in Section 6.11 of the Loan Agreement, such provision hereby incorporated by this reference.

5.6 Tax and Insurance Impounds. At Beneficiary's demand, and if a Default exists and is continuing, Grantor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all Impositions which are or may become a Lien upon the Subject Property and will become due for the tax or other current (i.e. calendar, fiscal, etc.) year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that amounts paid by Grantor are insufficient for the payment in full of such Impositions and/or insurance premiums, Beneficiary shall notify Grantor of the increased amount required for the payment thereof when due, and Grantor shall pay to Beneficiary such additional amount within thirty (30) days after notice from Beneficiary. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. Beneficiary shall apply said amounts to the payment of, or at Beneficiary's sole option release said funds to Grantor for application to and payment of, such Impositions and insurance premiums. Grantor hereby grants and transfers to Beneficiary a security interest in all amounts so paid by Grantor to Beneficiary and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the Liens and security interests securing any Secured Obligation), or at such earlier time as Beneficiary in its discretion may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Grantor, and no other party shall have any right of claim thereto.

5.7 Damages; Insurance and Condemnation Proceeds.

(a) In the case of any casualty loss to or action or proceeding, actual or threatened, in condemnation, eminent domain or similar proceedings affecting the Subject Property, Grantor shall immediately (and in no case later than the lesser of 5 Business Days or notice period provided under any insurance policy) give Beneficiary and the insurance company(ies) that have insured against such risks, notice of such loss and Grantor is authorized, with Beneficiary's prior written consent, which shall be granted in Beneficiary's sole and absolute discretion, to settle and adjust any claim under insurance policy(ies) covering the Subject Property or any action or proceeding with a condemning authority. (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation

or proposed condemnation (or transfer in lieu thereof) for public or private use affecting the Subject Property; (ii) all other claims and awards for damages to or decrease in value of the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property; and (iv) all interest which may accrue on any of the foregoing, are all absolutely and irrevocably assigned to and shall be paid to Beneficiary, unless otherwise provided herein or agreed to by Beneficiary, and are part of the Subject Property. At the absolute discretion of Beneficiary, whether or not its security is or may be impaired or a Default has occurred, but subject to applicable law, if any, and without regard to any requirement contained in any other Section hereof, Beneficiary may apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any such claim and apply the balance to the Secured Obligations in any order, whether or not the same are due, and release all or any part of the proceeds to Grantor upon any conditions Beneficiary may impose, in Beneficiary's sole discretion, including requiring the Subject Property to be restored to an equivalent condition as of the date of the loss (or such other condition Beneficiary requires) and approval of related construction and design plans and agreements. If the proceeds are applied to the payment of Secured Obligations, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in the Note or change the amounts of such installments, nor shall such application trigger any prepayment penalty imposed under the Note. If the proceeds are insufficient to reimburse Beneficiary as required hereunder, Grantor shall promptly reimburse Beneficiary on demand for the same, with interest thereon from disbursement until paid at the Default Rate, the same to be deemed Secured Obligations secured by this Deed of Trust. Beneficiary as attorney-in-fact for Grantor may commence, appear in, defend or prosecute any assigned claim or action, and may make proof of loss and adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided however, that in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure. Notwithstanding the foregoing, Beneficiary agrees to allow the Grantor the discretion to first use any insurance or condemnation proceeds to reconstruct or repair the Subject Property as long as no Default then exists and is continuing. Should the Grantor not opt to reconstruct the Improvements or build replacement Subject Property, the Beneficiary shall apply the insurance or condemnation proceeds to the reduction of the Secured Obligations.

(b) Reserved.

(c) Notwithstanding anything herein to the contrary, in case of any loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Beneficiary's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Deed of Trust, the court in its decree may provide that the Beneficiary's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redelector may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of foreclosure sale, Beneficiary is hereby authorized, without the consent of Grantor, to further assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Beneficiary may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

5.8 Maintenance and Preservation of Subject Property. Grantor covenants:

(a) to keep the Subject Property in good condition and repair, and replace the Subject Property when necessary to keep the same in good condition and repair;

(b) except with Beneficiary's prior written consent (but excluding repairs or alterations not exceeding \$100,000), not to remove or demolish the Subject Property, nor materially alter, restore or add to the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;

(c) to pay, directly to the applicable carrier, all premiums and other amounts due to procure and maintain the insurance required under this Deed of Trust or any other Loan Document when due and restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed to the equivalent condition as of the date of any loss, or such other condition required by Beneficiary, unless Beneficiary requires that all of the insurance proceeds be used to reduce the Secured Obligations as provided in the Section hereof entitled Damages; Insurance and Condemnation Proceeds (Section 5.7);

(d) to comply in all material respects with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders by any federal, state or local authority, including the ADA and other Accessibility Regulations and Environmental Laws; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability; and (iv) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that are applicable to the Subject Property or that have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of the Subject Property or any part thereof. Grantor shall not initiate or acquiesce in any changes to or termination of any of the foregoing or of zoning design actions affecting the use of the Subject Property or any part thereof without the prior written consent of Beneficiary;

(e) not to commit or permit waste of the Subject Property, nor abandon the same; and

(f) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

Grantor shall use commercially reasonable efforts to ensure that all Persons claiming under Grantor comply with the provisions of this Deed of Trust.

5.9 Hazardous Substances; Environmental Provisions. Those provisions related to Environmental Laws and Hazardous Substances, as set forth in the Loan Documents, including Sections 4.15, 7.10 and 7.11 of the Loan Agreement, are hereby incorporated by this reference.

5.10 Protection of Security. Grantor shall, at Grantor's sole expense: (a) protect, preserve and defend the Subject Property and Grantor's title and right to possession of the Subject Property against all adverse claims, and (b) protect, preserve and defend the security of this Deed of Trust and the rights and powers of Beneficiary under this Deed of Trust against all adverse claims and pay all obligations incurred as a result of the creation, preservation or protection of this Lien on, and security interest in, the Subject Property. Grantor shall give Beneficiary prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property in any material respect. The recording of this Deed of Trust shall not be deemed a waiver of any right provided under this Deed of Trust in favor of Beneficiary, or constitute Beneficiary's consent to any Lien on the Subject Property, whether known or unknown at the time of recording, other than Permitted Encumbrances.

5.11 Powers and Duties of Beneficiary. Beneficiary may, upon written request, without obligation to do so or liability therefor and without notice: (a) release all or any part of the Subject Property from the

Lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the Lien or charge of this Deed of Trust. Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the exercise or enforcement of its rights and remedies available under this Deed of Trust, any other Loan Document, at law or in equity, and may obtain orders or decrees directing, confirming or approving acts in the exercise or enforcement of said rights and remedies. Beneficiary has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Grantor or Beneficiary shall be a party) unless held or commenced and maintained by Beneficiary under this Deed of Trust.

5.12 Compensation; Exculpation; Indemnification.

(a) Grantor shall pay Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including the providing of any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Grantor or any other Person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under this Deed of Trust or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Grantor or any third party as a result of Beneficiary's failure to lease the Subject Property after any Default or from any other act or omission of Beneficiary in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Beneficiary and not otherwise expressly permitted under any Loan Document; and no such liability shall be asserted or enforced against Beneficiary, and all such liability is hereby expressly waived and released by Grantor.

(b) Grantor shall indemnify Beneficiary and its Indemnified Parties against, and hold Beneficiary and such Indemnified Parties harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which Beneficiary may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the performance of any act required or permitted hereunder or by applicable law; (iii) as a result of any failure of Grantor to perform Grantor's obligations; or (iv) by reason of any alleged obligation or undertaking of Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including the payment of any Impositions, rents or other lease obligations, Liens, encumbrances or other obligations of Grantor under this Deed of Trust. Grantor's duty to indemnify Beneficiary shall survive the payment, discharge or cancellation of the Secured Obligations and the release or satisfaction, in whole or in part, of this Deed of Trust.

(c) Grantor shall pay all indebtedness arising under this Section immediately upon demand by Beneficiary, together with interest thereon from the date of disbursement until paid in full at the Default Rate. Beneficiary may, at its option, add any such indebtedness to any Secured Obligation. The indemnity provided herein shall be in addition to, not in lieu of, any indemnity provided by Grantor or another Person to Beneficiary under any other Loan Document.

5.13 Due on Sale or Encumbrance. Except as permitted by the provisions of any Secured Obligation or applicable law, if the Subject Property or any interest therein shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether voluntarily, involuntarily or by operation of law, and including, where applicable, through sale or transfer of a majority or controlling interest of the corporate stock, or any general partnership, limited liability company or other similar interests, of Grantor (each of which actions and events is called a "Transfer"), without Beneficiary's prior written consent, which consent Beneficiary may withhold in its sole discretion, then such Transfer shall be deemed a Default. Grantor shall notify Beneficiary in writing of each proposed Transfer at least ten (10) Business Days before the date thereof. Any waiver by the Beneficiary of the provisions of this Section 5.13 shall not be deemed to be a

waiver of the right of Beneficiary in the future to insist upon strict compliance with the provisions hereof.

5.14 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any Persons having any interest at any time in the Subject Property or in any manner obligated under any Secured Obligation (each, an “Interested Party”), Beneficiary may, from time to time, release any Interested Party from liability for the payment of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any other Interested Party, nor release or impair the priority of the Lien of this Deed of Trust upon the Subject Property.

5.15 Release of Deed of Trust. Upon satisfaction in full of the Secured Obligations, Beneficiary, without warranty, and at Grantor’s expense, shall deliver for recording in the appropriate real property records a satisfaction or release of Deed of Trust and any UCC-1 Financing Statement to release the UCC Collateral or Subject Property, or that portion thereof then covered hereby, from the Lien of this Deed of Trust and such UCC-1 Financing Statement. No release from the Lien of this Deed of Trust of any part of the Subject Property by Beneficiary shall in any way alter, vary or diminish the force or effect of this Deed of Trust on the Subject Property remaining or the priority of the Lien of this Deed of Trust on the same.

5.16 Subrogation. This Deed of Trust shall be subject and subrogated to the Lien of all encumbrances, whether or not released of record, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any Secured Obligation.

5.17 Change in Tax Laws. In the event of the enactment, after the date of this Deed of Trust, of any law of the state in which the Subject Property is located deducting from the value of the Subject Property, for the purpose of taxation, the amount of any Lien thereon, or imposing upon Beneficiary the payment of all or any part of the Impositions or other taxes, assessments, charges or Liens hereby required to be paid by Grantor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Grantor’s interest in the Subject Property, or the manner of collection of taxes, so as to affect this Deed of Trust or the Indebtedness and Secured Obligations secured hereby or the holder thereof, then Grantor, upon demand by Beneficiary, shall pay such Impositions and other taxes, assessments, charges or Liens, or reimburse Beneficiary therefor upon Beneficiary’s written demand; provided, however, that if, in the opinion of counsel for Beneficiary, it might be unlawful to require Grantor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Beneficiary may elect, by notice in writing given to Grantor, to declare all of the Indebtedness and Secured Obligations secured hereby, with interest thereon at the Default Rate from the date disbursed until paid, to become due and payable thirty (30) days after the giving of such notice, or pay any portion that renders such amounts unlawful and require Grantor, concurrently therewith, to pay the remaining lawful balance. Nothing contained in this Section 5.17 shall be construed as obligating Grantor to pay any portion of Beneficiary’s federal, state and local income tax.

5.18 Financial Information. Grantor shall deliver to Beneficiary any and all financial information required to be so delivered by Grantor pursuant to the terms of the Loan Agreement.

## ARTICLE VI. DEFAULT PROVISIONS

6.1 Default. The occurrence of an Event of Default under the Loan Agreement and continuance of the same beyond any applicable cure period, and if any representation or warranty of Grantor herein shall prove to be incorrect, false or misleading in any material respect when made, shall constitute a “Default” under this Deed of Trust.

6.2 Rights and Remedies. Upon the occurrence of any Default, and at any time thereafter, Beneficiary shall, in addition to any other right or remedy provided in any other Loan Document, at law or in equity, with or without notice, personally or by its agents, nominees or attorneys, have all of the following rights and remedies:

(a) Declare all Secured Obligations immediately due and payable in full, and, thereafter, institute proceedings to foreclose this Deed of Trust by judicial action, or to enforce its provisions or any of the Secured Obligations.

(b) Without releasing Grantor from any Secured Obligation, becoming a mortgagee in possession and posting of a bond, (i) enter upon and take possession of the Subject Property, and all books, records and accounts relating thereto or located thereon, and to do such acts and things as Beneficiary deems necessary or desirable to preserve the value of the Subject Property or protect Beneficiary's interest therein and protect the security of this Deed of Trust; (ii) appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary hereunder; (iii) to pay, purchase, contest or compromise any Imposition, encumbrance, charge, Lien or claim of Lien which, in the judgment of Beneficiary, is senior in priority to this Deed of Trust or adversely impacts the validity or priority of Beneficiary's Lien and security interest in the Subject Property, the judgment of Beneficiary being conclusive; (iv) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; (v) enforce any provisions of the Leases and collect Rents thereunder, or take such other actions related thereto and permitted under Article III, above; and (vi) with or without taking possession of the Subject Property, hold, develop, manage, operate, control or otherwise use, make such repairs, alterations, additions and improvements to, and take such other actions Beneficiary deems necessary with respect to, the Subject Property, upon such terms and conditions as Beneficiary deems reasonable under the circumstances, do any and all acts and perform any and all work that Beneficiary reasonably deems necessary to complete any unfinished construction on the Subject Property, and exercise all rights of Grantor with respect to the Subject Property, whether in the name of the Grantor, or otherwise, and to employ counsel, accountants, contractors and other appropriate Persons to assist in the foregoing. Beneficiary shall not incur any personal liability because of anything it may do or omit to do hereunder.

(c) To commence and maintain an action or actions, concurrently or successively and in one or several consolidated or independent actions, in any court of competent jurisdiction at law or in equity or by any other appropriate remedy and/or lawfully taken non-judicial proceedings, to (i) protect and enforce Beneficiary's rights and otherwise exercise any remedies available to Beneficiary, under any Loan Document, at law or in equity, including the right of specific performance of any covenant or agreement contained herein or any other Loan Document, (ii) to collect any sum then due hereunder, (iii) to aid in the execution of any power herein granted, (iv) to foreclose this Deed of Trust and at any time after the commencement of an action in foreclosure, or during the period of redemption, if any, the court having jurisdiction of the case shall at the request of Beneficiary appoint, without the posting of any bond, a receiver to take immediate possession of the Subject Property, including any Rents accruing there from, and to rent or cultivate the same as such receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to Grantor only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Secured Obligations, and/or (v) to the extent permitted by applicable law and in furtherance of the foregoing, to take possession of the UCC Collateral and dispose of the same by sale or otherwise in one or more parcels, with ten (10) days' notice deemed commercial reasonable, if such notice is required by applicable law before disposition of the UCC Collateral. Grantor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Grantor waives the defenses of laches and any applicable statute of limitations.

Grantor, if requested by Beneficiary, shall ratify and confirm any sale(s) made under or by virtue of this Article by executing and delivering to Beneficiary or to such purchaser(s) all such instruments as may be advisable for such purpose, in Beneficiary's reasonable judgment. Unless expressly prohibited by a non-waivable provision of applicable law, any such sale(s) shall divest all of Grantor's estate, right, title, interest, claim and demand whatsoever, in and to the Subject Property sold, and shall be a perpetual bar, both at law and in equity, against Grantor and any Person claiming under Grantor.

Upon sale of the Subject Property at any judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Substances clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Grantor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Grantor and Beneficiary or previously discussed by Grantor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

If Grantor retains possession of the Subject Property after a foreclosure sale beyond the time period allowed under the Deed of Trust or applicable law, Grantor shall be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, will be subject to eviction and removal in accordance with applicable law and all damages to Grantor by reason thereof are hereby expressly waived by Grantor.

(d) Exercise any or all of the remedies available to a secured party under the UCC, with 10 days' notice deemed commercially reasonable, if such notice is required by applicable law before the disposition of the UCC Collateral.

(e) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Grantor consents to such appointment.

(f) Pay, perform or observe any term, covenant or condition of this Deed of Trust, with all payments made or costs or expenses incurred by Beneficiary in connection therewith, with interest thereon from disbursement until paid at the Default Rate, secured hereby and shall be, without demand, immediately repaid by Grantor to Beneficiary. Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Beneficiary is hereby empowered to enter the Subject Property for the purposes of performing or observing any such defaulted term, covenant, or condition without becoming liable to Grantor or any person in possession holding under the Grantor. Notwithstanding



anything to the contrary herein, Beneficiary shall have no obligation to pay, perform, or observe as contemplated hereby.

(g) If permitted by applicable law, Beneficiary may sue for and obtain a judgment for any deficiency remaining on the Secured Obligations, after application of all amounts received on account of sale of the Subject Property.

(h) If permitted by applicable law, Beneficiary may, with or without taking possession of the Subject Property, after giving notice of the time, place and terms of sale, together with a description of the Subject Property to be sold in the manner required by law in the state where the Subject Property is located, sell the Subject Property (or such part or parts thereof as Beneficiary may from time to time elect to sell) at the location for public foreclosure sales in the county where the Subject Property is located to the highest bidder for cash. If the Subject Property to be sold under this Deed of Trust is located in more than one county, publication of the notice of sale shall be made in all counties where the Subject Property to be sold is located as prescribed by applicable law. The sale shall be held during the hours required by applicable law, or, if no law governs the time of sale, between the hours of 8 a.m. CST and 5 p.m. CST on the day designated for the exercise of the power of sale under this Deed of Trust or under applicable law. Beneficiary may bid at any sale under the terms of this Deed of Trust, may purchase the Subject Property if Beneficiary is the highest bidder therefor, and in lieu of paying cash may make settlement for all or a portion of the purchase price by crediting the net sale proceeds (after deducting therefrom all costs and expenses including, without limitation, the costs and fees of any loan servicer, reasonable attorneys' fees and expenses and other amounts contemplated under Section 6.7 below) against the Secured Obligations.

(i) Exercise any or all remedies available to Beneficiary at law or in equity or under any other Loan Document.

6.3 No Marshaling. In exercising its rights and remedies hereunder, Beneficiary shall have no obligation to marshal assets, or to realize upon all of the Subject Property. Beneficiary shall have the right to realize upon all or any part of the Subject Property from time to time as Beneficiary deems appropriate. Grantor hereby waives any right to have any of the Subject Property marshaled in connection with any sale or other exercise of Beneficiary's rights, remedies, and powers hereunder.

6.4 Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of sale, including costs of evidence of title and attorneys' fees in connection with a sale and those contemplated under Section 6.7, below, all proceeds of any foreclosure sale, collection, recovery, receipt, appropriation, realization or sale or disposition of the Subject Property shall be applied first, to payment of all Secured Obligations (including all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the Default Rate, in such order and amounts as Beneficiary in its sole discretion shall determine; and the remainder, if any, to the Person or Persons legally entitled thereto.

6.5 Application of Other Sums. All Rents or other sums received by Beneficiary or any agent or receiver hereunder, less all costs and expenses incurred by Beneficiary or such agent or receiver as a result of its rights under this Deed of Trust, including reasonable attorneys' fees and other amounts contemplated under Section 6.7, below, shall be applied to payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary. If the amounts collected are insufficient to cover Beneficiary's expenses as contemplated herein, such deficiency shall become additional Secured Obligations secured by this Deed of Trust, with interest thereon from disbursement until paid at the Default Rate.

6.6 No Cure or Waiver. Neither Beneficiary's or any receiver's entry upon and taking possession of the Subject Property, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary or any receiver, whether under this Deed of Trust, any other Loan Document, at law or in equity, shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full, Grantor has cured all other Defaults and Beneficiary is otherwise required to release this Deed of Trust), or prejudice Beneficiary in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Subject Property or a subordination of the Lien of this Deed of Trust.

6.7 Costs, Expenses and Attorneys' Fees. Grantor agrees to pay to Beneficiary immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Beneficiary's in-house counsel), expended or incurred by Beneficiary pursuant to this Article VI, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) relating to Grantor or in any way affecting any of the Subject Property or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Grantor with interest from the date of disbursement until paid in full at the Default Rate, and shall constitute additional Indebtedness and Secured Obligations secured by this Deed of Trust. Grantor's statutory rights of reinstatement, if any, are expressly conditioned upon Grantor's payment of the foregoing and of all sums required under any applicable reinstatement statute and performance of all required acts thereunder.

6.8 Remedies Cumulative; No Waiver. All rights, powers and remedies of Beneficiary hereunder are cumulative and are in addition to all rights, powers and remedies provided by law, in equity or in any other agreements between Grantor and Beneficiary, including any other Loan Document. Beneficiary shall be entitled to enforce the payment and performance of the Secured Obligations in such order and manner as it may, in its absolute and sole discretion and election, determine. Every power or remedy to which Beneficiary is entitled may be exercised concurrently or independently, from time to time, and as often as may be deemed expedient by Beneficiary, and Beneficiary may pursue inconsistent remedies. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy.

6.9 Discontinuance of Proceedings. If Beneficiary commences the enforcement of any right, power, or remedy, whether afforded under this Deed of Trust or otherwise, and including foreclosure or entry upon the Subject Property, and such enforcement is then discontinued or abandoned for any reason, or is determined adverse to Beneficiary, then and in every such case Grantor and Beneficiary shall be restored to their former positions and rights hereunder, without waiver of any Default and without novation, and all rights, powers, and remedies of Beneficiary shall continue as if no such enforcement had been commenced.

6.10 Indemnification. Grantor will indemnify and hold Beneficiary and its Indemnified Parties harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys' fees, expenses and court costs) incurred by or asserted against Beneficiary or any such Indemnified Party by reason of (a) the ownership of the Subject Property or any interest therein or receipt of any Rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Subject Property or any

part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, non-use or condition in, on or about the Subject Property or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Subject Property or any part thereof; unless arising due to the gross negligence or willful misconduct of Beneficiary after Beneficiary's receipt of title to the Subject Property. Any amounts owed to Beneficiary by reason of this Section 6.10 shall constitute additional Indebtedness and a Secured Obligation which is secured by this Deed of Trust and shall become immediately due and payable upon demand therefor, and shall bear interest from the date such loss or damage is sustained by Beneficiary until paid at the Default Rate. The obligations of Grantor under this Section 6.10 shall survive any termination or satisfaction of this Deed of Trust and are in addition to, not in lieu of, any other indemnity provided hereunder or any other Loan Document.

6.11 Grantor's Waivers. To the fullest extent permitted by applicable law, Grantor, for Grantor and its successors and assigns, and for any and all Persons ever claiming any interest in the Subject Property, except as otherwise provided herein or in the other Loan Documents, hereby:

(a) Waives any and all rights which it may have to notice prior to seizure by Beneficiary of the Subject Property or any part thereof under the provisions of this Deed of Trust, whether such seizure is by writ of possession or otherwise.

(b) Waives and renounces all right of homestead exemption in the Subject Property and any other right to designate all or any portion of the Subject Property as exempt from forced sale under any provision of the United States Constitution or laws of the United States, the state where the Land and Improvements are located, or any other state in the United States.

(c) Acknowledges the right to accelerate the Secured Obligations and the power given to Beneficiary to sell the Subject Property by foreclosure without any notice other than such notice (if any) as is specifically required to be given hereunder or under applicable law and waives presentment, demand for payment, protest, notice of dishonor, notice of protest, or nonpayment, notice of intent to accelerate, notice of acceleration of maturity and diligence in connection with the enforcement of the Secured Obligations or the taking of any action to collect sums owing under the Loan Documents.

(d) Waives the benefit of all laws now or subsequently in effect providing for: (i) any appraisal before sale of any portion of the Subject Property; (ii) any extension of the time for the enforcement of the collection of the Secured Obligations or the creation or extension of a period of redemption from any sale made in collecting such debt; and (iii) exemption of the Subject Property from attachment, levy, or sale under execution or exemption from civil process.

(e) Agrees not at any time to insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, exemption, extension or redemption, or requiring foreclosure of this Deed of Trust before exercising any other remedy granted hereunder.

(f) Waives any right to retain possession of the Subject Property during the continuation of a Default, and all rights of redemption from sale under any order or decree of full or partial foreclosure.

#### ARTICLE VII. TRUSTEE PROVISIONS

7.1 Trustee. The Trustee shall be deemed to have accepted this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The trust hereby created shall be irrevocable by Grantor.

7.2 Substitution of Trustee. Beneficiary, at Beneficiary's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed and acknowledged by Beneficiary and recorded in the manner required by law, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Property. The instrument shall contain the names of the original Grantor, Trustee, and Beneficiary under this Deed of Trust, the book and page or instrument or document number at which, and the county or counties in which, this Deed of Trust is recorded, and the name and address of the substitute Trustee. If any notice of Default has been recorded under this Deed of Trust, this power of substitution cannot be exercised until all costs, fees, and expenses of the then acting Trustee have been paid. On such payment, the then acting Trustee shall endorse receipt of the payment on the instrument of substitution.

7.3 Power of Trustee. At any time, without liability and without notice to Grantor, on Beneficiary's written request and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting (a) the personal liability of Grantor or any other person for the payment of the Secured Obligations, or (b) the lien of this Deed of Trust on the remainder of the Subject Property as security for the repayment of the full amount of the Secured Obligations, or (c) any right or power of Beneficiary or Trustee with respect to the remainder of the Subject Property, Trustee may (i) reconvey or release any part of the Subject Property from the lien of this Deed of Trust, (ii) approve the preparation or filing of any map or plat of the Subject Property, (iii) join in the granting of any easement burdening the Subject Property; or (iv) enter into any extension or subordination agreement affecting the Subject Property or the lien of this Deed of Trust.

7.4 Reconveyance by Trustee. Upon written request of Beneficiary stating that the Indebtedness has been paid in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person legally entitled thereto, without warranty, any portion of the Subject Property then held hereunder. The recitals in such reconveyances of any matters or facts shall be conclusive proof of the truthfulness thereof. Such request and reconveyance shall operate as a reassignment of the Rents assigned to Beneficiary in this Deed of Trust.

7.5 Compensation and Indemnification. Trustee shall be entitled to reasonable compensation for all services rendered or expenses incurred in the administration or execution of the trust hereby created and Grantor hereby agrees to pay same. Trustee shall be indemnified, held harmless and reimbursed by Grantor for any liability, damage or expense, including attorneys' fees and amounts paid in settlement, which Trustee may incur or sustain in the execution of this Deed of Trust or in the doing of any act that Trustee is required or permitted to do by the terms hereof or by law.

#### ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 No Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary specifically consents to a merger in writing.

8.2 Right of Inspection. Beneficiary or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Grantor's compliance with the terms hereof. Nothing herein, however, shall impose a duty upon Beneficiary to inspect the Subject Property. Further, any inspection of the Subject Property made by Beneficiary is entirely for Beneficiary's benefit and Grantor shall in no way rely or claim reliance therein. These inspection rights are in addition to, not in lieu of, the inspection rights under any other Loan

Document.

8.3 Notices; Consents. All notices, requests and demands which Grantor or Beneficiary are required or may desire to give to the other party shall be given in the same manner contemplated under Section 12.2 of the Loan Agreement. Any time the consent of Beneficiary is required hereunder, such consent may be withheld or granted, unless otherwise specified herein, in Beneficiary's sole discretion.

8.4 Successors; Assignment. This Deed of Trust shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto; provided however, that this Section does not waive the provisions of the Section hereof entitled Due on Sale or Encumbrance or restrictions on assignment or transfer contained in any other Loan Document. Beneficiary reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, Beneficiary's rights and benefits under the Note, any and all other Secured Obligations, this Deed of Trust or any other Loan Document. In connection therewith, Beneficiary may disclose all documents and information which Beneficiary now has or hereafter acquires relating to the Subject Property, all or any of the Secured Obligations and/or Grantor and, as applicable, any partners, joint venturers or members of Grantor, whether furnished by any Grantor or otherwise.

8.5 Rules of Construction. (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the terms "Subject Property" or the "UCC Collateral" means all and any part of or interest in the Subject Property or the UCC Collateral, as applicable; (c) all Section headings herein are for convenience of reference only, are not a part of this Deed of Trust, and shall be disregarded in the interpretation of any portion of this Deed of Trust; (d) if more than one Person has executed this Deed of Trust as "Grantor," the obligations of Grantor hereunder shall be joint and several; (e) all terms of Exhibit A, and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Deed of Trust by this reference; (f) the words "herein", "hereof" and "hereunder" and words of similar import appearing in this Deed of Trust shall be construed to refer to such document as a whole and not to any particular section, paragraph or other subpart thereof unless expressly so stated; and (g) the words "include," "includes," and "including" will be deemed to be followed by "without limitation."

8.6 Severability of Provisions. If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust.

8.7 Governing Law. The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the Liens and security interests herein granted shall be governed by and construed in accordance with the laws of the State of Nebraska, without regard to choice of law provisions. All other provisions of this Deed of Trust shall be governed by the laws of the State of Iowa, without regard to choice of law provisions. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GRANTOR HEREBY IRREVOCABLY AND KNOWINGLY, INTENTIONALLY AND VOLUNTARILY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS DEED OF TRUST SHALL BE TRIED AND DETERMINED ONLY IN THE STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF POLK, STATE OF IOWA. TO THE MAXIMUM EXTENT PERMITTED BY LAW, GRANTOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION AND HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, SUBMITS TO PERSONAL JURISDICTION AND VENUE OF SUCH IOWA COURTS AND AGREES NOT TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER

FORUM. NOTHING HEREIN SHALL AFFECT BENEFICIARY'S RIGHT TO (I) COMMENCE LEGAL PROCEEDINGS OR OTHERWISE SUE GRANTOR IN ANY OTHER COURT HAVING JURISDICTION OVER GRANTOR; OR (II) SERVE PROCESS ON GRANTOR IN ANY MANNER AUTHORIZED BY THE LAWS OF SUCH JURISDICTION, UNLESS GRANTOR AND BENEFICIARY HAVE AGREED OTHERWISE IN ANY OTHER LOAN DOCUMENT.

8.8 JURY WAIVER. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, THE LOAN OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANOTHER LOAN DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). GRANTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY TO A LOAN DOCUMENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT WAS INDUCED TO ENTER INTO THIS DEED OF TRUST BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

8.9 Time of the Essence. It is specifically agreed that time is of the essence in this Deed of Trust.

8.10 Covenants Run with Land. All of the covenants of this Deed of Trust and the Secured Obligations and Liens and security interests securing the same shall run with the land constituting the Subject Property.

8.11 Non-Waiver; No Course of Dealing. Unless expressly provided in this Deed of Trust to the contrary, no consent or waiver, whether express or implied, by Beneficiary to or of any breach or Default by Grantor hereof, shall be deemed a consent to or waiver of Grantor of any obligations contained herein, or shall be deemed a consent to or waiver of the performance by Grantor of any other obligations hereunder, or the performance by Grantor of the same, or of any other obligations hereunder. The single or partial exercise of any right, remedy, or power hereunder shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, or power. No act or inaction of Beneficiary under this Deed of Trust shall be deemed to constitute or establish a "course of performance or dealing" that would require Beneficiary to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances.

8.12 No Joint Venture. Under no circumstances shall Beneficiary be deemed to be a partner or joint venturer with Grantor or any beneficiary of Grantor, including by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Deed of Trust or pursuant to any of the other Loan Documents, or otherwise.

8.13 Survival of Obligations. Each and all of the Secured Obligations shall survive the execution and delivery of the Deed of Trust, and the consummation of the Loan called for therein, and shall continue in full force and effect until the Secured Obligations have been paid in full, without regard to any subsequent bankruptcy or similar proceeding, exercise or non-exercise of a right or remedy or any amendment hereto.

8.14 Further Assurances. Grantor, upon the written request of Beneficiary, will promptly execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper, in Beneficiary's discretion, to carry out more effectively the purposes of this Deed of Trust, to subject the Subject Property and UCC Collateral to the Liens and security interests hereof, and create, perfect and protect Beneficiary's interests and rights hereunder, including specifically any

renewals, additions, substitutions, replacements, or appurtenances to the then Subject Property. Additionally, Grantor hereby irrevocably authorizes and appoints Beneficiary as the agent and attorney-in-fact of Grantor to execute all such documents and instruments on behalf of Grantor, which appointment shall be irrevocable and coupled with an interest.

8.15 Recording. Grantor will cause the Deed of Trust, and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

8.16 Entire Agreement. The Note, Loan Agreement, and all other Loan Documents, including this Deed of Trust (including the recitals hereby incorporated by this reference) contain the entire agreements among Grantor, Beneficiary and Guarantor relating to the Loan and all prior agreements relative thereto which are not contained herein or therein are terminated. This Deed of Trust may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against whom enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective.

8.17 No Set-Off. All Secured Obligations shall be paid without counterclaim, other compulsory counterclaims, set-off, or deduction and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage or any condemnation of the Subject Property; (b) any title defect or encumbrance or any eviction from the Subject Property by title paramount or otherwise; or (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary or Grantor, or any action taken with respect to this Deed of Trust by any agent or receiver of Beneficiary. Grantor waives, to the extent permitted by applicable law, all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any of the Secured Obligations.

8.18 Acknowledgment. Grantor acknowledges receipt of a copy of this Deed of Trust signed by Grantor.

8.19 Priority. This Deed of Trust shall be valid and have priority over all subsequent Liens and encumbrances, other than Permitted Encumbrances, to the extent of the maximum amount secured hereby.

8.20 Purpose of Loans. Grantor hereby represents and agrees that the Secured Obligations are being obtained for business or commercial purposes, and the proceeds thereof will not be used for personal, family, residential, household or agricultural purposes.

8.21 After-Acquired Property. This Deed of Trust shall encumber, encompass, cover, and apply to and include any and all "after-acquired property" of Grantor located at, adjacent, or adjoining to or in any way associated with the use or operation of Subject Property, and such after-acquired property shall be a part of the Subject Property. In furtherance of the foregoing, Grantor has given, granted, bargained, sold, and conveyed, and by these presents does give, grant, bargain, sell, and convey unto Beneficiary all of Grantor's right, title, and interest in and to said after-acquired property. The after-acquired property identified by Beneficiary from time to time may also be identified in a notice of extension filed in the real property records in which this Deed of Trust is recorded or in any other county in which the after-acquired property is located. Grantor agrees that Beneficiary has the absolute, irrevocable right and power, which right and power is coupled with an interest, to file one or more notices of extension, and that all

after-acquired property of Grantor identified by Beneficiary, whether through a notice of extension or otherwise, shall secure the due and punctual payment and performance of all of the Secured Indebtedness as and when the same becomes due and payable, with interest (including post-petition interest) thereon, and all renewals, extensions, renewals, rearrangements, modifications, replacements, amendments, amendments and restatements, or supplements thereof. This Section is intended to be and is an "after-acquired property clause" and shall be construed in accordance with the provisions of applicable law of the state in which the Land and Improvements are located that authorizes or governs after-acquired property clauses in mortgage.

8.22 Future Advances. This Deed of Trust is given to secure the Secured Obligations and shall secure not only obligations with respect to presently existing indebtedness under the Loan Documents but also any and all other indebtedness or which may hereafter be owing by Grantor to Beneficiary under the Loan Documents, however incurred, whether interest, discount or otherwise, and whether the same shall be deferred, accrued or capitalized, including future advances and re-advances, pursuant to the Loan Agreement or the other Loan Documents, whether such advances are obligatory or to be made at the option of Beneficiary, or otherwise, to the same extent as if such future advances were made on the date hereof. The Lien of this Deed of Trust shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Subject Property is located. This Deed of Trust, to the fullest extent permitted by applicable law, shall be valid and have priority over all subsequent Liens and encumbrances, including statutory Liens, excepting Permitted Encumbrances. All future advances and other future obligations are secured as if made on the date of this Deed of Trust. If more than one person signs this Deed of Trust, each Grantor agrees that this Deed of Trust will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. All future advances and other future obligations are secured by this Deed of Trust even though all or part may not yet be advanced. Nothing in this Deed of Trust shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

8.23 Counterparts. This Deed of Trust and any amendments, waivers, consents or supplements hereto may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute a single contract.

#### ARTICLE IX. STATE-SPECIFIC PROVISIONS

9.1 State-Specific Provisions Control. In the event of any direct conflict between the terms and provisions set forth in this Article IX and the other terms and provisions of this Deed of Trust, this Article IX shall control.

9.2 State-Specific Provisions. With respect to the Subject Property which is located in the State of Nebraska, notwithstanding anything contained herein to the contrary:

(a) Grantor acknowledges that the Subject Property is not subject to any fine or penalty assessed by the State of Nebraska or costs incurred for clean-up or remediation under the Nebraska Environmental Hazard Act in Nebraska Statute Section 71-6301 *et seq.*, the Nebraska Integrated Solid Waste Management Act in Nebraska Statute Section 71-6301 *et seq.* and the Nebraska Environmental Protections Act in Nebraska Statute Section 81-1501 *et seq.*

(b) Grantor acknowledges that the Subject Property is not used in farming operations as defined in Nebraska Statute Section 76-1006(b).



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

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first set forth above.

[Remainder of this Page Intentionally Left Blank]

MTC Real Estate TIC, LLC, an Iowa limited liability company ("Grantor")

By: Kinseth MTC, LLC, Manager

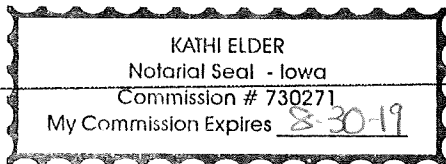
By: Bruce Kinseth

Name: Bruce Kinseth

Title: Manager


STATE OF IA  
COUNTY OF Johnson

This record was acknowledged on August 17, 2018, by Bruce Kinseth, as Manager of Kinseth MTC, LLC, an Iowa limited liability company, Manager of MTC Real Estate TIC, LLC, an Iowa limited liability company.



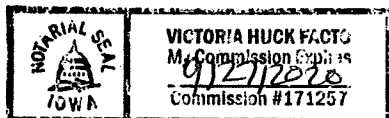
Kathi Elder  
Notary Public in and for said State  
My commission expires: 8-30-19

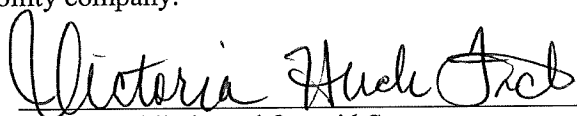
Portage Daniels, L.L.C., a Delaware limited liability company (“Grantor”)

By:   
Ronald L. Daniels, President


STATE OF IOWA  
COUNTY OF POLK, ss:

This record was acknowledged on August 17, 2018, by Ronald L. Daniels, as President of Portage Daniels, L.L.C., a Delaware limited liability company.



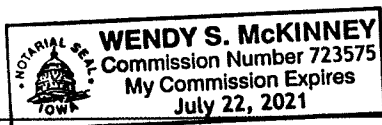
  
Notary Public in and for said State  
My commission expires: 9/21/2020

Portage Kahan, L.L.C., a Delaware limited liability company ("Grantor")

By:   
Marc A. Kahan, President

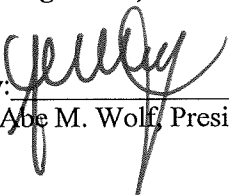
STATE OF Iowa  
COUNTY OF Polk, ss:

This record was acknowledged on August 16<sup>th</sup>, 2018, by Marc A. Kahan, as President of Portage Kahan, L.L.C., a Delaware limited liability company.



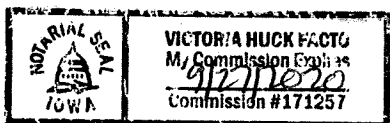
Wendy S. McKinney  
Notary Public in and for said State  
My commission expires: July 22, 2021


Portage Wolf, L.L.C., a Delaware limited liability company (“Grantor”)

By:   
Abe M. Wolf, President

STATE OF IOWA  
COUNTY OF POLK, ss:

This record was acknowledged on August 17, 2018, by Abe M. Wolf, as President of Portage Wolf, L.L.C., a Delaware limited liability company.



  
Notary Public in and for said State  
My commission expires: 9/21/2020

Portage Baer, L.L.C., a Delaware limited liability company ("Grantor")

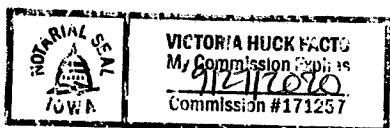
By:   
Steven K. Baer, President

STATE OF IOWA  
COUNTY OF POLK, ss:

This record was acknowledged on August 17, 2018, by Steven K. Baer, as President of Portage Baer, L.L.C., a Delaware limited liability company

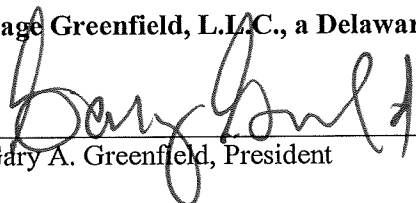


Notary Public in and for said State  
My commission expires: 9/27/2020



Portage Greenfield, L.L.C., a Delaware limited liability company ("Grantor")

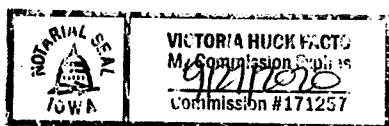
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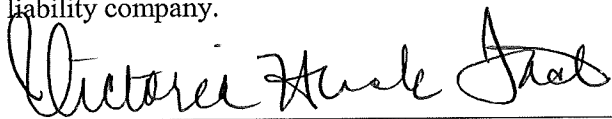
  
\_\_\_\_\_  
Gary A. Greenfield, President

STATE OF IOWA

COUNTY OF POLK, ss:

This record was acknowledged on August 17, 2018, by Gary A. Greenfield, as President of Portage Greenfield, L.L.C., a Delaware limited liability company.



  
\_\_\_\_\_  
Notary Public in and for said State  
My commission expires: 9/27/2020

**EXHIBIT A**  
**(Description of Property)**

Unit 2, Midtown Crossing Parcel 1 Condominium, a condominium organized and existing under the laws of the State of Nebraska pursuant to the Declaration thereof recorded October 11, 2017 as Instrument No. 2017081791 of the Records of Douglas County, Nebraska.