

91-20483

DEED OF TRUST AND SECURITY AGREEMENT
(Security for Construction Loan Agreement)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made on this 13 day of December, 1991. The Trustor is Brentwood Crossing Associates, a Missouri general partnership, whose mailing address is c/o The Kroenke Group, 2001 Cherry Street, Columbia, Missouri 65201 and c/o Midwest Diversified Properties, 23123 South State Road 7, Suite 255, Boca Raton, Florida 33428 ("Trustor"). The Trustee is First American Title Insurance Company, whose mailing address is 1905 Harney Street, Suite 700, Exchange Building ("Trustee"). The beneficiary is Mercantile Bank of St. Louis National Association, whose mailing address is 721 Locust Street, St. Louis, Missouri 63101 ("Beneficiary").

WITNESSETH:

WHEREAS, Trustor and Beneficiary have entered into a Construction Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Beneficiary has agreed to lend and Trustor has agreed to borrow up to the maximum amount of Eight Million Two Hundred Sixty-Eight Thousand Nine Hundred Thirty-Six Dollars (\$8,268,936) for the purpose of financing the acquisition of certain real estate and improvements thereon, and the construction of certain additional improvements thereon; and

WHEREAS, pursuant to the Loan Agreement, Trustor has executed and delivered to Beneficiary (i) that certain promissory note of Trustor dated of even date herewith (the "Improvements Note"), which Note is payable to the order of Beneficiary in the principal amount of Six Million Three Hundred Sixty-Eight Thousand Nine Hundred Thirty-Six Dollars (\$6,368,936), provides for interest as therein set forth, and has a stated final maturity date of December 19, 1993, and (ii) that certain promissory note of Trustor dated of even date herewith (the "Land Note"), which Note is payable to the order of Beneficiary in the principal amount of One Million Nine Hundred Thousand Dollars (\$1,900,000), provides for interest as therein set forth, and has a stated final maturity date of December 19, 1993 (the Improvements Note and the Land Note are collectively referred to herein as the "Note"); and

WHEREAS, Trustor is now or hereafter may become otherwise obligated or indebted to Beneficiary, and Beneficiary may make future advances to Trustor pursuant to the terms of the Loan Agreement, and Trustor may incur future obligations to Beneficiary, whether pursuant to the Note or the Loan Agreement as specified above, or pursuant to other notes, contracts, guaranties or other evidences of indebtedness or obligations now or hereafter executed by Trustor in favor of Beneficiary (which Note and Loan Agreement and other evidences of indebtedness or obligations are collectively referred to herein as the "Debt Instruments"); and

WHEREAS, the parties intend that this Deed of Trust shall secure the payment of any and all other present and future indebtedness (principal, interest, fees and other amounts), liabilities and obligations of Trustor to Beneficiary arising under the Note, Loan Agreement and any other Debt Instruments, including any and all amendments, modifications, extensions or renewals thereof, whether now existing or made or incurred after the date of execution of this Deed of Trust, in the maximum principal amount (exclusive of sums spent for the reasonable protection of the security of this Deed of Trust and for completion of the Project as described in the Loan Agreement, if any), of Eight Million Two Hundred Sixty-Eight Thousand Nine Hundred Thirty-Six Dollars (\$8,268,936) (collectively, the "Indebtedness");

NOW, THEREFORE, as security for the Indebtedness, and in consideration thereof, and the sum of Ten Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor by these presents does hereby IRREVOCABLY GRANT, TRANSFER AND CONVEY unto Trustee, his successors and assigns, IN TRUST, forever, WITH POWER OF SALE, the following described real estate, chattels real, personal property and other properties, interests and rights, whether now owned or hereafter acquired by Trustor (collectively, the "Trust Property") situated in the County of Sarpy, State of Nebraska, to-wit:

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Lots 1 through 8, Inclusive, Brentwood Crossing, a subdivision, in Sarpy County, Nebraska, as shown in Plat recorded December 26, 1990 as Instrument No. 90-18556;

AND TOGETHER with (1) all buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon; (2) all rights, privileges, easements, rights of way, franchises, tenements, hereditaments, appendages and appurtenances thereunto belonging or in anywise appertaining; (3) all right, title, interest and estate of Trustor in and to streets, roads, ways, sidewalks, curbs, alleys and areas adjoining said real estate and portions thereof, private or public, and whether vacated by law or ordinance (conditionally or otherwise); (4) all rents, revenues, royalties, income, issues and profits, which are hereby specifically assigned, transferred and pledged primarily and on a parity with said real estate; (5) all fixtures and personal property now or at any time hereafter annexed, affixed or attached to said real estate and/or the buildings, improvements or structures thereon and all replacements, additions and substitutions thereof or thereto, including (but not limited to) all apparatus, appliances, machinery, equipment and articles used to supply or provide, or in connection with, heat, gas, air conditioning, plumbing, water, lighting, power, elevator, sewerage, cleaning, refrigeration, cooling, ventilation and sprinkler systems, all water heaters, ranges, stoves, dishwashers and disposals, all window shades, drapes and drapery equipment and apparatus, all carpeting, tile and floor coverings, all fire prevention and extinguishing apparatus, all security and access control apparatus, and all trees, plants and landscaping; (6) all other personal property, whether now owned or hereafter acquired by Trustor, and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof and thereto, including (but not limited to) all furniture, furnishings and equipment, all appliances, all shelving and storage apparatus, all construction goods and materials whether or not the same have been incorporated into the buildings or improvements thereon, and all tools, supplies and equipment used in connection with construction, repair, maintenance, janitorial or groundskeeping services thereon or therefor; (7) all existing and hereafter created or acquired accounts, contract rights and general intangibles arising from or relating in any manner to the foregoing or the development or operation thereof; (8) all books, records, reports, tests, surveys, plans, specifications, permits, licenses and documents of any kind or nature relating to the foregoing or the development or operation thereof; and (9) all products and proceeds of any of the foregoing, including, without limitation, insurance proceeds.

TO HAVE AND TO HOLD the Trust Property and every part thereof unto Trustee, his successors and assigns, forever, IN TRUST, WITH POWER OF SALE, nevertheless, to secure the payment of the Indebtedness, and the performance and observance by Trustor of every covenant and condition contained in the Loan Agreement and herein contained and any amounts expended by Beneficiary to complete the Project described in the Loan Agreement.

Representations and Warranties. Trustor hereby represents and warrants to Trustee and Beneficiary (i) that it is lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the Trust Property, and Trustor will forever warrant and defend the title to the Trust Property and every part thereof unto Trustee and Beneficiary against the claims and demands of all persons whomsoever; (ii) that the Trust Property and every part thereof is and will remain free and clear of any and all liens, encumbrances and charges of every kind and character, including liens of general and special taxes and assessments, excepting taxes for the current year which are not yet due, excepting the lien of this Deed of Trust, and excepting any easements, rights of way or restrictions of record shown as special exceptions in any title insurance policy insuring this Deed of Trust; (iii) Trustor, at its expense, will preserve such title and will maintain this Deed of Trust as a first and paramount lien upon the Trust Property and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever; (iv) Trustor, at its expense, will cause this Deed of Trust, and each amendment or supplement hereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place and will take such action as in the opinion of Trustee may be required by any present or future law in order to

perfect, maintain and protect the lien of this Deed of Trust, as the same may be amended or supplemented from time to time; (v) Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be required by Beneficiary; (vi) Trustor hereby relinquishes all right of dower and homestead, if any, in and to the Trust Property; (vii) Trustor has inspected the Trust Property and has researched and investigated the prior uses of the Trust Property and all adjoining properties and no Regulated Substances exist on, in, under or about the Trust Property or, to the best of Trustor's knowledge, on any adjoining property; (viii) the Trust Property has never been used as a waste disposal site for any Regulated Substances, as a storage site for petroleum products or chemicals, or as a manufacturing site; (ix) no improvements or structures on the Trust Property contain asbestos or asbestos containing materials (whether or not the same is friable); (x) there are not now nor have there ever been any underground storage tanks on the Trust Property; (xi) Trustor will not allow any person now or hereafter occupying the Trust Property to bring Regulated Substances onto the Trust Property or to process or store or dispose of such substances on the Trust Property, except in the ordinary course of Trustor's current business and in complete compliance with all applicable laws and regulations; and (xii) Trustor has checked with the applicable federal, state and local environmental protection offices, and with the local fire department, and there are no complaints on file or records or investigations or matters pending in said offices or departments alleging, concerning or indicating the presence or suspected presence, now or at any time in the past, of Regulated Substances on, in, under or about the Trust Property, and neither the Trust Property nor the properties adjacent thereto are identified or contained on any listing of actual, suspected or potential hazardous waste sites. The term "Regulated Substance" as used in this Deed of Trust shall mean those materials and substances defined as hazardous substance in 42 U.S.C. § 9601(14) and all other wastes and substances, now or hereafter defined as hazardous, toxic, dangerous, or otherwise regulated under any international, federal state or local laws, rules or regulations pertaining to environmental pollution, contamination, protection, or waste management, treatment, storage, handling or disposal, and any other materials or substances, the exposure to which is prohibited, limited or regulated by any governmental authority or which does or could pose a hazard to the health or safety of the occupants of the Trust Property or the owners and/or occupants of any property adjacent thereto, including (but not limited to) explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB's), petroleum products and radon gas.

Covenants. Trustor hereby expressly covenants and agrees with Trustee and Beneficiary that:

- (1) **Payment of Obligations.** Trustor will duly pay the Indebtedness secured hereby and all interest thereon, as and when the same shall become due and payable, according to the terms thereof.
- (2) **Due on Sale or Encumbrance.** Trustor will not, without the prior written consent of Beneficiary, transfer, convey or otherwise part with title to any of the Trust Property, or any portion thereof or ownership interest therein, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other lien or encumbrance on any of the Trust Property, other than this Deed of Trust, and Trustor will not suffer or permit any mechanic's or materialmen's lien or any other lien of any nature whatsoever to attach to any of the Trust Property or to remain outstanding against the same or any part thereof.
- (3) **Insurance.** Trustor shall at all times at the cost and expense of Trustor keep all of the Trust Property of an insurable nature constantly insured in accordance with the terms of the Loan Agreement. Such insurance shall be maintained with companies satisfactory to Beneficiary, and all policies of insurance shall make any loss occurring thereunder payable by standard mortgage clause to Trustee and Beneficiary as their interests may appear, irrespective of, and which may not be invalidated by, any act or default of Trustor, and all such policies, or a certificate or

certificates of the insurers (together with a certified copy of the policies), showing that such policies, with such mortgage clauses, are in force, shall be deposited with Beneficiary as additional security hereunder. Trustor shall at all times also maintain at the cost and expense of Trustor comprehensive general liability insurance with minimum limits of \$1,000,000, and the policy of insurance therefor shall name Trustee and Beneficiary as additional insureds thereof; and Trustor shall also maintain such other insurance coverages as Beneficiary may reasonably request insuring Trustor and Trustee and Beneficiary against liabilities, claims, damages and losses to persons and property arising by reason of the use or occupation of the Trust Property. All insurance moneys received on account of any loss or damage to the Trust Property, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement of said moneys, shall first be applied in whole or in part for the purpose of paying the cost of repair, restoration or replacement of the Trust Property damaged or destroyed, if in the reasonable opinion of the Beneficiary it is proper to do so, but if not, the same shall be applied to the prepayment, or partial prepayment, of the Indebtedness secured hereby in such order and manner as Beneficiary may elect, subject to restrictions in leases which have been approved by the Beneficiary at the time of the event giving rise to said proceeds. Any disbursement of said proceeds for restoration or repair shall be subject to Beneficiary's normal construction disbursing procedures. In the event of loss or damage to the Trust Property, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary. Trustor hereby grants to Trustee and Beneficiary acting jointly or severally, full power and authority to make proof of loss under any and all insurance policies, either in the name of Trustor, or in the name or names of Trustee or Beneficiary, and to adjust, settle, collect and receipt for all insurance, and to endorse for and in behalf and in the name of Trustor any check, draft or other instrument received therefor, and to collect the proceeds thereof, and also, if an event of default shall occur hereunder, to collect and receipt for any unearned premiums and to apply same on the Indebtedness secured hereby in such order and manner as Beneficiary may elect. In the event of foreclosure sale, any and all insurance policies may be assigned without consent of Trustor, and Trustor authorizes Trustee or Beneficiary to assign said policies to the purchaser or purchasers at such foreclosure sale, or if Beneficiary so elects, Trustee or Beneficiary may collect any unearned premiums and apply the same on the Indebtedness secured hereby in such order and manner as Beneficiary may elect.

- (4) **Indemnity.** Trustor will protect, indemnify, defend and hold harmless Trustee and Beneficiary from and against any and all claims, causes of action, suits, liabilities, damages, losses, costs and expenses (including attorneys' fees), of whatever nature, which may arise or result, directly or indirectly by reason of the use or occupation of the Trust Property or any part thereof or any failure by Trustor to comply with the covenants contained herein.
- (5) **Repairs.** Trustor will at all times keep and maintain the Trust Property and every part thereof in good order, repair and condition, without any liability of Trustee or Beneficiary to any person for damage for failure to repair or for any other cause, and Trustor will promptly make all needed and proper repairs, restorations, renewals and replacements thereof, so that at all times the value of the Trust Property and every part thereof shall be fully preserved and maintained, and Trustor will not cause or permit any waste on or of the Trust Property or otherwise allow the Trust Property, or any part thereof, to depreciate in value by any act or neglect.

- (6) **Compliance.** Trustor will not use or suffer or permit to be used the Trust Property or any part thereof in any manner inconsistent with the rights of Trustee or Beneficiary hereunder, or in violation of the provisions of any insurance policy or any rules or regulations of insurance underwriters, and will comply with, and maintain, use and cause the Trust Property to at all times be in compliance with all laws, ordinances, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body, officer or department applicable to the Trust Property or to the uses or purposes thereof.
- (7) **Condemnation.** In the event the Trust Property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the Trust Property, or any part thereof, are hereby assigned to and shall be paid to Trustee, and when received by Trustee, after deducting all reasonable charges and expenses paid or incurred in connection with the collection thereof, the same shall first be applied in whole or in part to the replacement of that part of the Trust Property so taken, or to the repair or restoration of that part of the Trust Property not so taken, if in the reasonable opinion of the Beneficiary it is proper to do so, but if not, the same shall be applied to the prepayment, or partial prepayment, of the Indebtedness secured hereby in such order and manner as Beneficiary may elect, subject to restrictions in the leases of the Trust Property which have been approved by Beneficiary at the time of the event giving rise to said proceeds. Any disbursement of said proceeds for replacement, restoration or repair shall be subject to Beneficiary's normal construction disbursing procedures.
- (8) **Damage by Third Parties.** In the event any part of the Trust Property shall be destroyed or damaged by any party or from any cause whereby Trustor becomes entitled to indemnity or recovery therefor from any third person or persons, Trustor, for the considerations named, does hereby sell, assign and transfer to Trustee all of such sum or sums so due from any such third person or persons, and Trustee is hereby authorized to receive, collect and sue for the same and Trustor hereby authorizes and directs that such sum or sums be paid to Trustee upon presentation of a duly certified copy hereof. Any and all sums received by Trustee hereunder, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement of said moneys, shall first be used and applied in whole or in part for the purpose of paying the cost of repair, restoration or replacement of the Trust Property damaged or destroyed, if in the reasonable opinion of the Beneficiary it is proper to do so, but if not, the same shall be applied to the prepayment, or partial prepayment, of the Indebtedness secured hereby in such order and manner as Beneficiary may elect, subject to restrictions in the leases of the Trust Property which have been approved by Beneficiary at the time of the event giving rise to said proceeds. Any disbursement of said proceeds for replacement, restoration or repair shall be subject to Beneficiary's normal construction disbursing procedures.
- (9) **Taxes.** Trustor hereby covenants and agrees to pay any and all taxes, assessments, liens and other charges that may be levied or assessed against the Trust Property, or any part thereof, prior to the time the same shall become delinquent, and Trustor shall promptly provide Beneficiary with proof of payment thereof. Trustor likewise covenants and agrees to pay any and all taxes, assessments, liens and other charges that may be levied, assessed, placed or made against, or measured by, this Deed of Trust or the recordation hereof. Trustor specifically agrees to pay all taxes now or hereafter due or imposed on Beneficiary by reason of its ownership

of the Note or on Beneficiary or Trustee by virtue of their respective interest in this Deed of Trust.

- (10) **Environmental Compliance.** Trustor shall at its expense comply and maintain the Trust Property in compliance with any and all international, national, state, local, judicial or other laws, rules, regulations and orders with respect to the investigation, remediation, monitoring, release, handling, storage, transportation, discharge and/or removal of Regulated Substances (collectively, "Environmental Laws"), pay immediately when due the cost of removal of any such Regulated Substance which may be located on, in, under or about the Trust Property, and keep the Trust Property free of any lien imposed pursuant to any such Environmental Law. In the event Trustor fails to do so, after notice to Trustor and the expiration of one-half of any cure period permitted under applicable law, rule, regulation or executive order, Beneficiary may declare an event of default to have occurred under this Deed of Trust and cause the Trust Property to be freed from and decontaminated of the Regulated Substance or take or cause to be taken any other action with respect to any such Regulated Substance or the Trust Property to protect its interest therein. Trustor shall give Beneficiary immediate written notice of any environmental enforcement action or any investigation with respect to the existence or potential existence of any Regulated Substance instituted or threatened with respect to the Trust Property. Trustor shall also give Beneficiary immediate written notice of any condition or occurrence on the Trust Property which constitutes a violation of any Environmental Law or would justify a demand for removal or remediation under any Environmental Law. Trustor hereby grants to Beneficiary, its agents and employees access to the Trust Property and the right to (but in no case shall Beneficiary be in any way obligated or required to) remove any Regulated Substance from the Trust Property and to perform such investigation and/or remediation thereon, all at Trustor's expense and as Beneficiary shall see fit. Trustor agrees to protect, indemnify, defend and hold harmless Trustee and Beneficiary to the fullest extent allowed by law, from and against all claims, demands, causes of action, suits, losses, damages (including, without limitation, punitive damages), violations of any Environmental Law, environmental response and clean-up costs, fines, penalties and expenses (including, without limitation, reasonable counsel fees, cost and expenses incurred in investigating and defending against the assertion of such liabilities), of any nature whatsoever, which may be sustained, suffered or incurred by Trustee and/or Beneficiary based upon, or in connection with, or relating to, (i) the ownership or operation of the Trust Property and all activities relating thereto, (ii) any knowing or material misrepresentation or material breach of warranty by Trustor, (iii) any compliance with or investigation, action or proceeding under or violations of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended) or any other Environmental Law, (iv) the presence, remediation, clean-up or removal of any Regulated Substance or evaluation or investigation of any release or threat of release of any Regulated Substance, (v) any loss of or damage to natural resources, including damages to air, surface or ground water, soil and biota, and (vi) any private or governmental suits or court or administrative orders or injunctions relating in any way to any Regulated Substances on, in, under or about the Trust Property, or emanating therefrom. The specific indemnity and covenants contained in this paragraph are in addition to and shall not be construed to narrow or in any way restrict the application of the other indemnities and covenants contained in this Deed of Trust, notwithstanding any overlap in coverage.

- (11) **Change in Taxation Laws.** In the event of the enactment after the date hereof of any law of the State of Nebraska or the United States of America imposing a specific tax on notes, bonds, or other

evidences of indebtedness or obligations secured by a mortgage or deed of trust on real estate, or in the event the laws now in force relating to taxes on notes, mortgages, bonds, or other evidences of indebtedness or obligations secured by mortgage or deed of trust shall be in any manner changed, or in case such a tax shall be assessed under any existing law, as the result of which Trustee or Beneficiary may become chargeable with the payment of any such taxes, then and in any such event, Trustor covenants and agrees to pay to Trustee or Beneficiary, within thirty (30) days after written notice thereof, the amount of any such tax; provided that if Trustee or Beneficiary shall be required by law to pay any such tax, all moneys so expended shall be due on demand, bear interest at the highest rate set forth in the Debt Instruments (or if no rate is specified, at the maximum lawful rate) and shall be secured hereby. In the event Trustor shall fail to pay or cause to be paid or to reimburse Trustee or Beneficiary for advances as aforesaid to pay any such tax or taxes, or if by such law it should be illegal for Trustor to pay any such tax or taxes, then all of the Indebtedness secured hereby shall, at the option of Beneficiary, become immediately due and payable without further notice, anything herein or in the evidence of any indebtedness or other obligations secured by this Deed of Trust to the contrary notwithstanding; provided, however, that Trustor shall not be required to pay any such tax in excess of an amount which when added to the interest paid by Trustor on the Indebtedness would exceed the maximum lawful rate.

- (12) **Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Property for the purpose of inspecting the same and/or for the purpose of performing any of the acts it is authorized to perform hereunder. Beneficiary shall have no duty to make such inspection and shall not be liable to Trustor or to any person in possession if it fails to make any such inspection.
- (13) **Title Disputes.** Should the Trustee or Beneficiary be made defendant in any suit involving the title to any of the Trust Property, or involving the validity or priority of the lien of this Deed of Trust, then it is agreed that in every such case an attorneys' fee in a reasonable amount shall be fixed by the court in which said suit may be pending, and may be adjudged in favor of the attorney or attorneys of record representing said parties, which fee shall be adjudged against the Trustor, on motion made therein therefor as a part of the costs of such proceedings, and that such reasonable costs and expenses of said parties, shall also be fixed and adjudged as costs therein by the court, and it is agreed that all such fees, costs and expenses of every such proceeding shall be adjudged against said Trustor, and when so adjudged shall be secured by this Deed of Trust.
- (14) **Cure Payments.** If Trustor shall fail to pay any tax, assessment, lien or other charge levied or assessed against the Trust Property, or any part thereof, or shall fail to keep and perform any of the covenants and conditions herein contained, Trustee or Beneficiary, shall be privileged, but shall not be obligated, to pay any such tax, assessment, lien, rent or other charge, to redeem such property from any sale or foreclosure for taxes or assessments or liens, to effect and pay for insurance required hereunder, to perform or pay for any other obligations, and to make such other disbursements as are necessary or advisable in the opinion of Trustee or Beneficiary to cure any default of Trustor hereunder or protect the lien or the rights of Trustee and Beneficiary hereunder; any and all such sums of money advanced for such purposes by Trustee or Beneficiary shall be deemed additional Indebtedness secured by this Deed of Trust and shall be payable on demand with interest accruing from the time so advanced at the highest rate per annum set forth under the Debt Instruments (or if no rate is specified, at the maximum lawful

rate), and failure on the part of Trustor to repay the amounts so advanced on demand shall constitute an event of default hereunder; provided, however, nothing herein contained shall be construed as requiring Trustee or Beneficiary to effect such insurance or to advance or expend money or take any action for any of the purposes aforesaid.

- (15) **Financial Information.** Promptly following Beneficiary's request, Trustor will deliver or cause to be delivered to Beneficiary financial statements and such additional financial and other information concerning Trustor, the Trust Property and any guarantor of any part of the Indebtedness as are required by the Loan Agreement.
- (16) **Rent Assignment.** This instrument is intended to create an absolute and present assignment to Beneficiary of the items of Trust Property constituting rents, revenues, royalties, income, issues and profits, and not merely the passing of a security interest; provided, that so long as no event of default exists hereunder, Trustor shall have the right and license to collect said rents, revenues, royalties, income, issues and profits as the same shall accrue.
- (17) **Security Agreement.** This instrument is intended to be a security agreement and fixture filing pursuant to the Missouri Uniform Commercial Code for any of the items specified as part of the Trust Property which, under applicable law, may be subject to a security interest pursuant to the Missouri Uniform Commercial Code, and Trustor hereby grants Beneficiary a security interest in said items, whether now owned or hereafter acquired, and including all products and proceeds of said items. Trustor agrees that Beneficiary may file this instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified as part of the Trust Property. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Trustor agrees to execute and deliver to Beneficiary, upon Beneficiary's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument, in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created any other security interest in said items, including replacements and additions thereto. Upon the occurrence of an event of default as hereinafter provided, Beneficiary shall have the remedies of a secured party under the Missouri Uniform Commercial Code and, at Beneficiary's option, may also invoke the remedies as otherwise provided in this instrument. In exercising any of said remedies, Beneficiary may proceed against the items of real property and any items of personal property specified as part of the Trust Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the Missouri Uniform Commercial Code or of the remedies otherwise provided in this instrument.

Events of Default; Remedies. If an event of default as specifically set forth herein shall occur, or in the event any one or more of the following events shall occur (each an "event of default"): (a) if default shall be made in the payment of any of the Indebtedness secured hereby, or any interest thereon, as and when the same shall become due and payable, whether by reason of demand, acceleration or otherwise; (b) if default shall be made by Trustor in the due performance or observance of any covenant, agreement or condition herein contained or required to be performed or observed by Trustor and such default shall continue for a

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period of fifteen (15) days after the date of the mailing of a written notice addressed to Trustor at the address hereinabove set forth, or to such other address as may be designated by Trustor in written notice delivered to Beneficiary; (c) if any representation or warranty of Trustor contained herein shall prove to be in any material respect incorrect or if there shall be any breach of any such representation or warranty; (d) if Trustor should become insolvent either in the equity or bankruptcy definition of the term, or if a voluntary or involuntary petition in bankruptcy or reorganization of Trustor is filed, or if Trustor makes an assignment for the benefit of creditors or an arrangement with its creditors, or if a receiver or trustee is appointed for Trustor's business or property, or if Trustor's interest in the Trust Property shall pass by operation of law as the result of any creditor's action, suit or proceeding or if any of the foregoing shall occur with respect to any guarantor of the Indebtedness secured hereby which is not covered within the applicable cure period, if any, provided in said documents; (e) if the Trust Property or any portion thereof or ownership interest therein is sold, transferred, assigned or in any manner conveyed without the prior written consent of Beneficiary; (f) if a default or event of default shall occur under or within the meaning of any other deed of trust or mortgage covering any of the Trust Property; (g) if a default or event of default shall occur under or within the meaning of the Loan Agreement or under any agreement, document or instrument (including any guaranty) evidencing or securing any of the Indebtedness secured hereby which is not cured within the applicable cure period, if any, provided in said documents; (h) if a default or event of default shall occur under any other present or future obligation to Beneficiary, including, without limitation, any other loan, line of credit, revolving credit, guaranty or reimbursement obligation relating to any letter of credit issued by Beneficiary for the account of Trustor, or any other agreement purporting to convey to Beneficiary a lien or encumbrance upon, or a security interest in, any of the property or assets of Trustor; (i) if pursuant to Neb. Rev. Stat. § 76-238.01 (1943), as amended, Trustor shall notify Beneficiary of Trustor's election to terminate the operation of this Deed of Trust as security for future advances or future obligations; or (j) if there is any change in the identity of Trustor's partners or if there is any change in Trustor's management which, as to either of the foregoing, is not approved by Beneficiary;

THEN, AND IN EACH AND EVERY SUCH EVENT: (1) All of the Indebtedness then outstanding and unpaid and all accrued and unpaid interest thereon shall, at the option of Beneficiary, become and be due and payable immediately. Anything in the Note or any other Debt Instrument evidencing any of the Indebtedness or in this Deed of Trust to the contrary notwithstanding; (2) Upon demand of Trustee or Beneficiary, Trustor shall forthwith surrender to Beneficiary the actual possession of all of the Trust Property and it shall be lawful (whether or not Trustor has so surrendered possession) for Beneficiary, either personally or by agents or attorneys, forthwith to enter into or upon the Trust Property and to exclude Trustor, the agents and servants of Trustor, and all parties claiming by, through or under Trustor, wholly therefrom, and Beneficiary shall thereupon be solely and exclusively entitled to possession of said Trust Property and every part thereof, and to use, operate, manage and control the same, either personally or by managers, agents, servants or attorneys to the fullest extent authorized by law; and upon every such entry, the Beneficiary may, from time to time, at the expense of Trustor, make all necessary and proper repairs and replacements to the Trust Property as the Beneficiary in its discretion sees fit, and any amounts so expended shall be due on demand, bear interest at the highest post-maturity rate set forth in the Debt Instruments and shall be secured hereby; (3) Beneficiary may make demand for and collect and receive all rents and income from the Trust Property, including rents and income accrued but unpaid prior to the date of such default, and the receipt of Beneficiary therefor shall be binding on Trustor with respect to the amount so paid. All sums of money received by Beneficiary from rents and income, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof, shall be applied to the payment of the Indebtedness secured hereby in such order and manner as Beneficiary may elect, or applied to remedy any default hereunder as Beneficiary may direct. Any lessee of the Trust Property, or any part thereof, shall be fully protected in relying and acting upon the written statement of Beneficiary to the effect that this Deed of Trust is in default and

that Beneficiary is entitled to receive the rents and income hereunder, notwithstanding any notice to or knowledge of said lessee to the contrary. Such lessee shall have no duty to determine that any sum paid to Beneficiary hereunder is properly applied by Beneficiary; (4) Trustee, at the request of Beneficiary, shall proceed to sell, either by himself or by agent or attorney, the Trust Property or any part(s) thereof at the time and place required by the statutes of the State of Nebraska at public auction to the highest bidder for cash after first giving notice of default and notice of sale as required by the statutes of the State of Nebraska and upon such sale Trustee shall receive the proceeds of such sale and shall execute and deliver deed or deeds or other instruments of conveyance, assignment and transfer to the property sold, the purchaser or purchasers thereof; and (5) Trustee and/or Beneficiary may proceed by suit or suits at law or in equity to enforce the Indebtedness secured hereby and/or to foreclose this Deed of Trust and in such event Trustee shall be entitled to a reasonable fee for his services and Trustee and Beneficiary shall be entitled to a reasonable fee for the services of their attorneys and agents, and for all expenses, costs and outlays. Upon or at any time after the filing of any suit to foreclose the lien hereof, Beneficiary shall be entitled as a matter of right to the appointment of a receiver of the Trust Property, either before or after sale, without notice and without regard to the solvency or insolvency of Trustor at the time of the application for such receiver, and without regard to the then value of the Trust Property, and Trustee, or Beneficiary, may be appointed as such receiver. Such receiver shall have full power to collect the rents, issues and profits from the Trust Property and all other powers necessary or incidental for the protection, possession, control, management and operation of the Trust Property.

In any sale or sales made by Trustee under the power herein granted, or upon any sale or sales under or by virtue of any judicial proceedings: (i) the whole of the Trust Property, real, personal and mixed, may be sold in one parcel as an entirety, or the Trust Property may be sold in separate parcels as may be determined by Trustee in his discretion; (ii) all recitals contained in any deed or other instrument of conveyance, assignment or transfer made and delivered by Trustee in pursuance of the powers granted and conferred herein, shall be prima facie evidence of the facts therein set forth; (iii) such sale or sales shall operate to divest Trustor of all right, title, interest, claim and demand, either at law or in equity, under statute or otherwise, in and to the Trust Property and every part thereof so sold and shall be a perpetual bar, both in law or equity, against Trustor and any and all persons claiming or to claim from, through or under Trustor; and (iv) Beneficiary may bid for and purchase the Trust Property or any part thereof and may make payment therefor by presenting to Trustee the Note secured hereby or the other evidences of the Indebtedness secured hereby so that there may be endorsed as paid thereon the amount of such bid which is to be applied to the payment of the Indebtedness secured hereby as herein provided. Each time it shall become necessary to insert an advertisement of foreclosure, and sale is not had, Trustee shall be entitled to receive the sum of One Hundred Dollars (\$100.00) for services and the amount of all advertising charges from Trustor, all of which shall be further secured hereby. Upon the foreclosure and/or sale of the Trust Property, or any part thereof, the proceeds of such sale or sales shall be applied as follows: First, to the cost and expense of exercising the power of sale and of the sale, including but not limited to Trustee's fees of not more than \$500 plus one-half of one percent (.005%) of the gross sales price, and reasonable attorneys' fees, next to the payment of the balance of the Indebtedness secured hereby, with interest thereon as therein provided; and any surplus thereafter shall be paid to Trustor or any other party legally entitled thereto; provided that in the event the net proceeds of such sale or sales shall not be sufficient to pay in full the Indebtedness secured hereby, Trustor hereby promises and agrees to pay any deficiency thereon on demand with interest. All costs incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation attorneys' fees and expenses, outlays for documentary stamps, cost of procuring title insurance commitments, continuing abstracts, title searches or examinations reasonably necessary or proper, any and all advances made by Trustee or Beneficiary, with interest thereon as hereinabove provided, shall be and constitute Indebtedness secured hereby.

Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale made or executed pursuant to the provisions hereof be mailed to Trustor as required by Neb. Rev. Stat. § 76-1008 (1943) at its mailing address set forth hereinabove.

Trustor shall not apply for or avail itself of any appraisement, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, and hereby waives the benefit of such laws. Trustor, for itself, its successors and assigns, hereby wholly waives the period of redemption and any right of redemption provided under any existing or future law in the event of a foreclosure of this Deed of Trust. Trustor, for itself and all who may claim through or under it, hereby waives any and all right to have the property and estates comprising the Trust Property marshalled upon any foreclosure of the lien hereof and hereby agrees that any court having jurisdiction to foreclose such lien may order the Trust Property sold as an entirety. Trustor hereby waives any order or decree of foreclosure, pursuant to the rights herein granted, on behalf of the Trustor, and each and every person acquiring any interest in or title to the Trust Property, subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law.

The Trustee may resign at any time by written instrument to that effect delivered to Beneficiary. Beneficiary, at its option, shall be entitled to remove, at any time and from time to time, the Trustee. In case of the death, removal, resignation, refusal to act or otherwise being unable to act of the Trustee, Beneficiary shall be entitled to select and appoint a successor Trustee hereunder by an instrument duly executed, acknowledged and recorded in the county in which this Deed of Trust is recorded and, without conveyance of the Trust Property, any such successor Trustee shall thereupon succeed to Trustee as Trustee hereunder and to all of the rights, powers, duties, obligations and estate of said Trustee as if specifically named herein, provided no defect or irregularity in the resignation or removal of said Trustee or in the appointment of a successor Trustee or in the execution and recording of such instrument shall affect the validity of said resignation, removal or appointment or any act or thing done by such successor Trustee pursuant thereto. Trustee shall not be disqualified from acting as Trustee hereunder or from performing any of the duties of Trustee, or from exercising the rights, powers and remedies herein granted, by reason of the fact that Trustee is an officer employee or stockholder of Beneficiary, or is interested, directly or indirectly, as the holder of the Note or other Indebtedness secured hereby, Trustor hereby expressly consenting to Trustee acting as Trustee irrespective of the fact that Trustee might be otherwise disqualified for any of the foregoing reasons, and that any interest which Trustee or any successor shall have or may acquire in the Indebtedness secured hereby, or the Trust Property, shall neither interfere with nor prevent his acting as Trustee or from purchasing said property at said sale or sales, and all parties waive any objection to Trustee having or acquiring any such interest in the Indebtedness or Trust Property and continuing to act as Trustee. Trustee covenants faithfully to perform and fulfill the trust herein created, but shall be liable, however, only for gross negligence or willful misconduct as determined by a court of competent jurisdiction.

No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this Deed of Trust to Trustee or to Beneficiary may be exercised from time to time and as often as may be deemed expedient. No delay or omission by Trustee or by Beneficiary to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein. In case Trustee shall have proceeded to enforce any right under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely, then, and in such and every such case, Trustor and Trustee shall severally and respectively be restored to their former

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positions and rights hereunder in respect of the Trust Property, and all rights, remedies and powers of Trustee shall continue as though no such proceedings had been taken. If any additional sum or sums shall become due and owing, by Trustor to Beneficiary, pursuant to the provisions hereof, the affidavit of Beneficiary shall be sufficient evidence of the fact that such additional sums are secured hereby in the amount set forth in such affidavit.

Reconveyance. Upon payment of all Indebtedness secured by this Deed of Trust and termination of Beneficiary's obligation to advance any funds to Trustor, Beneficiary shall request Trustee to reconvey the Trust Property and shall surrender this Deed of Trust and all notes evidencing Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Trust Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation.

Miscellaneous Rights of Beneficiary. Beneficiary may at any time and from time to time, without notice, consent to the making of any plat of the Trust Property or the creation of any easement thereon or any covenants restricting use or occupancy thereof or agree to alter or amend the terms of this Deed of Trust. Any personal property remaining upon the Trust Property after the Trust Property has been possessed or occupied by Beneficiary, its agent or any purchaser following Trustee's sale, foreclosure, or under any deed in lieu of Trustee's sale or foreclosure, shall be conclusively presumed to have been abandoned by Trustor.

Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail, return receipt requested addressed to Trustor at its mailing address set forth above or at such other address as Trustor may designate by prior written notice to Beneficiary, and (b) any notice to Beneficiary or Trustee shall be given by certified mail, return receipt request, to Beneficiary's and Trustee's mailing address stated herein or to such other address as Beneficiary or Trustee may designate by prior written notice to Trustor. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor, Beneficiary or Trustee when given in the manner designated herein.

Governing Law. This Deed of Trust shall be governed by the laws of the State of Nebraska except as otherwise provided in paragraph (17) above and in the Loan Agreement and Note.

General Provisions. This Deed of Trust and all provisions hereof shall extend to and be binding upon Trustor and all parties claiming by, through or under Trustor. All covenants and agreements of Trustor herein shall be joint and several. Trustor acknowledges and agrees that all expenses and amounts expended by Trustee and/or Beneficiary or owed to Trustee or Beneficiary under any indemnity in this Deed of Trust, shall be due as and when incurred, bear interest at the highest rate set forth in the Debt Instruments (or if no rate is specified, at the maximum lawful rate) and shall constitute Indebtedness secured hereby, and all indemnities contained in this Deed of Trust shall apply notwithstanding any negligent conduct or omission of Beneficiary or Trustee (except to the extent of gross negligence or willful misconduct on the part of Beneficiary or Trustee), are in addition to any legal liability or responsibility Trustor otherwise has, and shall survive the foreclosure of this Deed of Trust and the payment of the obligations secured hereunder. The unenforceability or invalidity of any provision or provisions of this Deed of Trust shall not render any other provision or provisions herein contained unenforceable or invalid. The term "Beneficiary" shall be deemed to mean and include the endorsee(s), transferee(s) or the holder(s) at the time being of the Debt Instruments and/or any of the other Indebtedness secured hereby, and the successor or successors and assigns of Beneficiary, and the term "Trustee" shall be deemed to mean and include any successor or successors of the Trustee in the trust hereby created; and the covenants and agreements shall bind and inure to the benefit of the heirs, executors, personal representatives, successors and assigns of Trustor and the successor in trust of the Trustee and the endorsee(s), transferee(s), successors and assigns of Beneficiary. All of the grants, covenants, terms,

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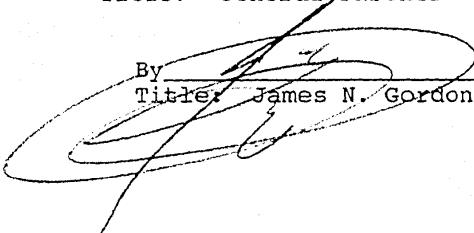
agreements, provisions and conditions herein contained shall run with the land. Time is of the essence of all Trustor's obligations hereunder. The captions or headings used herein are for the convenience of the parties and are not a part of this Deed of Trust. To the extent that proceeds of the Indebtedness secured hereby or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Trust Property, Beneficiary is hereby subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released. Trustee hereby leases the Trust Property to Trustor and assigns until this Deed of Trust be released and satisfied, or until default be made under the covenants and agreements hereof, upon the following terms to-wit: Trustor and all persons claiming or possessing said Trust Property or any part thereof, shall pay rent therefor during said term at one cent per month, payable on demand, and shall and will surrender peaceful possession of said premises, and every part thereof, to Trustee immediately upon such default, and without notice or demand therefor, and thereupon Beneficiary shall be entitled to the rents, revenues, income and profits therefrom as hereinabove provided; provided that nothing in this Deed of Trust shall be construed to prevent the Beneficiary from having and taking every legal means to enforce payment of the Indebtedness secured hereby, without having first enforced this Deed of Trust. To the extent that Beneficiary receives any payment on account of the Indebtedness and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment(s) received, the Indebtedness or part thereof intended to be satisfied any and all liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Trustor and theretofore created and/or existing in favor of Beneficiary as security for the payment of such Indebtedness shall be revived and continue in full force and effect, as if such payment(s) had not been received by Beneficiary and applied on account of the Indebtedness.

IN THE EVENT ANY OF THE INDEBTEDNESS SECURED HEREBY IS PAYABLE UPON DEMAND, NEITHER THIS DEED OF TRUST NOR ANYTHING CONTAINED HEREIN SHALL BE DEEMED TO ALTER, LIMIT, OR OTHERWISE IMPINGE UPON THE DEMAND CHARACTER OF SUCH INDEBTEDNESS.

TRUSTOR:

BRENTWOOD CROSSING ASSOCIATES

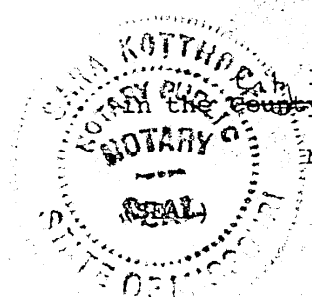
By Gordon Property Company IX, L.P.
Title: General Partner

By 
Title: James N. Gordon, General Partner

STATE OF Missouri)
CITY) ss.
COUNTY OF St. Louis)

On this 13th day of December, 1991, before me appeared James N. Gordon, to me personally known, who, being by me duly sworn, did state that he is the general partner of Gordon Property Company IX, L.P., a Missouri limited partnership and a general partner of Brentwood Crossing Associates, a Missouri general partnership, and that the foregoing instrument was signed on behalf of said limited partnership as a general partner of said general partnership for the purposes stated therein; and that said James N. Gordon acknowledged said instrument to be his free act and deed and the free act and deed of said limited partnership and said general partnership.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal in the County and State aforesaid, the day and year first above written.

SARA KOTTHOFF
My term expires NOTARY PUBLIC - STATE OF MISSOURI
MY COMMISSION EXPIRES AUG. 8, 1994
ST. LOUIS COUNTY

Sara Kotthoff
Notary Public

STATE OF NEBRASKA, COUNTY OF SARPY
Filed for record and entered in Numerical Index on _____
at _____ o'clock _____ M. and recorded in Mortgage Book _____, Page _____.

Register or Deputy Register of Deeds
County Clerk or Deputy County Clerk

FILED SARPY CO. RE.
INSTRUMENT NUMBER
91-20483

91 DEC 23 PM 12:42

Carol A. Davin
REGISTER OF DEEDS

Proof	<u>by</u>
D.E.	<u>MR</u>
Verify	<u>L</u>
Filmed	<u>MR</u>
Checked	_____
Fee \$	<u>74.00</u>