

2013-10847

**RECORDER JOHN SCIORTINO
POTTAWATTAMIE COUNTY, IA
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DEED OR TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

Preparer Information: Paul Heimann, Erickson & Sederstrom, 10330 Regency Parkway
Drive, Suite 100, Omaha, Nebraska, 68114 402/397-2200

Return document to: TitleCore, LLC, 1905 Harney Street, Suite 210, Omaha, Nebraska
68102

Name of Taxpayer: EEO, LLC, 1010 34th Avenue, Council Bluffs, Iowa 51501

Grantor: EEO, LLC

Grantee: T & K O'Neill Family Limited Partnership, LLP

Legal Description: See Attached Document page 15

12-114497

DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (Deed of Trust) made this 10th day of December 2012, among EEO, LLC, an Iowa limited liability company, whose mailing address is 1010 34th Avenue, Council Bluffs, IA 51501 as Trustor; Samuel E. Clark, whose mailing address is 10330 Regency Parkway Drive, Suite 100, Omaha, Nebraska, as Trustee; and T & K O'Neill Family Limited Partnership, LLP, an Iowa limited liability partnership as Beneficiary:

WITNESSETH:

That Trustor irrevocably grants, transfers, and assigns to TRUSTEE a security interest in the following described real estate located in the City of Council Bluffs, Pottawatomie County, Iowa (the "Real Estate"): 1012 34th Avenue, Council Bluffs, IA 51501, legally described as:

(SEE EXHIBIT "A" ATTACHED)

together with all interest which Trustor now has or may hereafter acquire in or to said Real Estate and in and to: (a) all easements and rights of way appurtenant thereto and all of the estate, right, title, interest, claim and demand whatsoever of Trustor in the Real Estate, either at law or in equity, now or hereafter acquired; (b) all structures, buildings, and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "Improvements"); (c) all machinery, appliances, apparatus, equipment, and fixtures now or hereafter located in, upon, or under the Real Estate or the Improvements, or any part thereof, and used or usable in connection with any present or future operation thereof, and all additions thereto and replacements therefore; (d) all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof, including, without limitation, all furniture and furnishings, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Real Estate or the Improvements, or any portion thereof, and owned by the Trustor or in which Trustor now has or hereafter acquires an interest; (e) all of the rents, royalties, issues, and profits of the Real Estate and the Improvements, or arising from the use or enjoyment of all or any portion thereof or from any lease, license, concession, occupancy agreement, or other agreement pertaining thereto (the "Rents and profits"), and all right, title, and interest of Trustor in

and to all leases, licenses and occupancy agreements of the real Estate or of the Improvements now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by tenants, lessees, or licensees, as applicable, of their obligations thereunder; (f) all building materials and supplies now or hereafter placed on the Real Estate or in the Improvements; (g) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and (h) all other or greater rights and interests of every nature in the Real Estate and the Improvements and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor. The property so conveyed hereunder is hereinafter referred to as "such property."

FOR THE PURPOSE OF SECURING:

A. Payment of the principal sum \$1,875,000 and interest accrued thereon evidenced by that certain \$1,875,000 Promissory Note dated effective June 1, 2012, issued by Trustor to Beneficiary (hereinafter referred to as the "Promissory Note") and obligations of EEO, LLC under section 5.2 of its Operating Agreement payable to Class B Members (as defined in the Operating Agreement of EEO, LLC).

B. Payment of late charges, prepayment charges, and charges calculated on the same basis as prepayment charges upon acceleration of the indebtedness secured hereby.

C. Performance, discharge of and compliance with every obligation, covenant, and agreement of Trustor incorporated by reference or contained herein, or contained in a separate Assignment of Rents and Leases or Security Agreement and any other instrument now or hereafter evidencing or securing the indebtedness evidenced by the \$633,333.00 Promissory Note (all of which are collectively hereinafter called the "Security Documents").

D. Payment of all fees and charges of Beneficiary set forth herein.

E. Payment of future advances deemed necessary or desirable by Beneficiary to protect such property, as provided in this Deed of Trust and any of the other Security Documents.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS:

1. **Title:** That it is lawfully seized and possessed of a good and indefeasible title and estate to such property in fee simple, subject only to the "Permitted Exceptions" shown on Schedule A attached hereto and that certain Title Commitment dated December 10, 2012 and by this reference incorporated herein, and will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon such property.

2. **Maintenance and Leases:**

(a) To keep such property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof; to comply with the provisions of restrictions affecting such property; not to remove, demolish or materially alter any building, or the character or use thereof at any time thereon; not to drill or extract nor to permit the drilling for or extraction of oil, gas, or other hydrocarbon substances or any mineral of any kind unless the written consent of Beneficiary is first had and obtained; not to commit or permit any waste thereof or any act upon such property in violation of law; to do all other acts in a timely and proper manner which from the character or use of such property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general.

(b) To faithfully perform all of the covenants of the lessor or landlord under any and all present and future leases affecting such property, and neither do nor neglect to do, nor permit to be done, anything which may diminish or impair the value of all such leases and property, or the rents provided for in such leases, or the interest of the lessor or of the Beneficiary therein or thereunder.

3. **Fire and Casualty Insurance:**

(a) To keep such property insured against loss or damage by fire with extended coverage, vandalism and malicious mischief endorsement and loss as a result of loss of rental income (including, but not limited to, minimum rent, percentage rent, real estate tax participation, and any other items of additional rent) in an amount equal to rent for six (6) months after the date of damage or destruction of the Improvements, and against such other risks or hazards which, in the opinion of Beneficiary, should be insured against, to the amount of the full insurable value thereof on a replacement cost basis with a company or companies and in such form and with such endorsements as may be approved or required by Beneficiary. Loss under all such insurance shall be payable to Trustor and Beneficiary, as their interests may appear, and all such insurance policies shall be endorsed with a standard, noncontributory mortgagee's clause in favor of Beneficiary and with a lender's loss payee endorsement as to loss of rental income. Trustor shall also carry public liability insurance in such form, amount and with such companies as Beneficiary may, from time to time, require, insuring Beneficiary, if it so requests. Said policies shall be delivered to, and remain in possession of, Beneficiary as further security for the faithful performance of these obligations, which delivery shall constitute an assignment of Trustor to Beneficiary to all rights thereunder, including all return premiums; to deliver to Beneficiary a policy or policies renewing or extending any expiring insurance with a receipt showing premiums paid at least thirty (30) days before expiration. If Trustor fails to so deliver any renewal policies, Beneficiary may procure such insurance as it may elect and may make payment of premiums thereon, which payment is repayable on demand. Neither Trustor nor Beneficiary shall be responsible for obtaining or maintaining such insurance. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. In no event and whether or not an Event of Default hereunder has occurred shall Beneficiary, by the

fact of approving, accepting, or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Trustor hereby expressly assumes full responsibility therefor and liability, if any, thereunder. In the event of loss, Trustor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor. Said policies shall require sixty (60) days' prior written notice cancellation or modification be given to Beneficiary.

(b) In case of any loss, the amount collected under any policy of insurance on such property may, at the option of the Beneficiary, be applied by Beneficiary upon any indebtedness and/or obligations secured hereby and in such order and amount as Beneficiary may determine; or said amount, or any portion thereof may, at the option of Beneficiary, either be used in replacing or restoring the Improvements partially or totally destroyed to a condition satisfactory to said Beneficiary, or said amount or any portion thereof, may be released to the Trustor. In any such event neither the Trustee nor the Beneficiary shall be obligated to see to the proper application thereof; nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. Such application, use, and/or release shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice. Any unexpired insurance and all returnable insurance premiums shall inure to the benefit of, and pass to, the purchaser of the property covered thereby at any Trustee's sale or judicial foreclosure sale held hereunder. If said property is sold pursuant to the power of sale contained herein or pursuant to any decree of foreclosure, all right, title and interest of Trustor in and to the proceeds of fire and other insurance policies for damage prior to the sale, which proceeds are not received prior to the date of said sale, shall belong to Beneficiary.

(c) Notwithstanding the foregoing subparagraph (b), in the event of damage to, or destruction of, such property and provided that the cost of repair or replacement is not estimated by Beneficiary, in Beneficiary's reasonable judgment, to exceed \$2,500,000; and provided, further, that Trustor is not in default in the observance or performance of any of the terms, conditions, or provisions contained in any of the Security Documents, then, and not otherwise, insurance proceeds which may be received by, or which may be available to, Beneficiary, on account of such damage or destruction, after deducting therefrom reasonable charges of Beneficiary and Trustee in connection with the collection and disbursement of such monies, shall be disbursed, from time to time, as work progresses, under Beneficiary's customary construction disbursement procedures, for the repair and replacement of any such damage or destruction. The plans and specifications for any such work shall be subject to review and approval by Beneficiary prior to the commencement of any such work. The occurrence of any Event of Default under any of the Security Documents shall negate the provisions of this subparagraph.

(d) In the event of the occurrence of an Event of Default under any of the Security Documents, then, at the request of Beneficiary, together with, and in addition to the annual payment of principal and/or interest, and on the same date on which the principal and/or interest is payable under the terms of the Promissory Note secured hereby, Trustor shall deposit with Beneficiary, in a noninterest bearing account, a sum equal to the yearly taxes and assessments which may be levied against such property and which may attain priority over this

Deed of Trust, and ground rents, if any, plus the yearly premiums for insurance that will become due and payable regarding fire or such other hazards as may reasonably be required by Beneficiary. If the amount of funds held shall exceed, at any time, the amount deemed necessary by Beneficiary to provide for the payment of taxes, assessments, ground rents, and insurance premiums as they fall due, such excess shall be repaid to Trustor or credited to Trustor, as Beneficiary may determine. If the amount of funds held shall not be sufficient at any time to pay taxes, assessments, ground rents, and insurance premiums as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency promptly upon notice from Beneficiary to Trustor requesting payment thereof. Upon payment in full of all sums secured by this Deed of Trust, Beneficiary shall promptly refund to the Trustor any funds held.

4. **Taxes and Other Sums Due:** To pay, satisfy and discharge, at least ten (10) days before delinquency, all general and special taxes and assessments affecting such property, and in no event later than the date such amounts become due: (1) all encumbrances, charges and liens, with interest, on such property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto, (2) all costs, fees and expenses of this trust, whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Beneficiary, not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at the request of Trustor or any successor in interest to Trustor, (5) if such property includes a leasehold estate, all payments and obligations required of the Trustor, or his successor in interest, under the terms of the instrument or instruments creating such leasehold, Trustor hereby agreeing not to amend, change, or modify his leasehold interest or the terms on which he has such leasehold interest, or to agree to do so, without the written consent of Beneficiary being first obtained, (6) all payments and monetary obligations required of the owner of such property under any declaration of covenants, conditions, and restrictions pertaining to such property or any modification thereof. Should Trustor fail to make any such payment, Beneficiary, without contesting the validity or amount, may elect to make or advance such payment, together with any costs, expenses, fees or charges relating thereto, including employment counsel and paying his reasonable fees. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of such property and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment.

In the event of the passage of any law deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust for state or local purposes, or the manner of the collection of any such taxes, so as to affect this Deed of Trust, the holder of this Deed of Trust and of the obligations which it secures shall have the right to declare all sums secured hereby due as of a date to be specified by not less than thirty (30) days' written notice to be given to Trustor by Beneficiary; provided, however, that such election shall be ineffective if Trustor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if, prior to such specified date, does pay such tax and agrees to pay any such tax when hereafter levied or assessed against such property.

5. **Sums Advanced to Bear Interest:** To pay immediately upon demand any sums advanced or paid by Beneficiary or Trustee under any clause or provision of this Deed of Trust. Any such sums, until so repaid, shall be secured hereby and bear interest from the date advanced or paid at the same rate as the Promissory Note and shall be secured by this Deed of Trust.

6. **Assignment of Deposits:** That as further additional security, Trustor hereby transfers and assigns to Beneficiary during continuance of these Trusts, all right, title, and interest to any and all monies deposited by Trustor or deposited on behalf of Trustor with any city, county, public body or agency, sanitary district gas and/or electric company, telephone company and any other body or agency, for the installation or to secure the installation of any utility for Trustor, pertaining to such property.

7. **Default Provisions:** Time is of the essence hereof. Upon the occurrence of any one of the following (hereinafter an "Event of Default" or "default"), which is not cured within any applicable grace period specified herein, the payment of all principal, interest, and any other sums due in accordance with the terms of the Promissory Note secured hereby shall, at the option of the Beneficiary, be accelerated and such principal, interest, and other sums shall immediately be due and payable without notice or demand, and the Beneficiary shall have the option to foreclose judicially or extrajudicially through power of sale of any and all liens securing the payment thereof:

(a) The Trustor fails to pay when due any amounts due under the Promissory Note; or

(b) The Trustor shall:

(i) have an order for relief entered with respect to it under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors ("Bankruptcy Law");

(ii) Not pay, or admit in writing its inability to pay its debts generally as they become due;

(iii) make an assignment for the benefit of its creditors;

(iv) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for it, or any substantial part of its property;

(v) institute any proceedings seeking an order for relief under any Bankruptcy Law, or a proceeding seeking to adjudicate it a bankrupt or insolvent or seeking a dissolution, winding up, liquidation, reorganization, arrangement, adjustment, or composition of it, or its debts, under any Bankruptcy Law; or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it;

(vi) take any action to authorize or effect any of the foregoing actions set forth in this Paragraph (b); or

(vii) fail to contest, in good faith, any appointment or proceeding described in Paragraph (c) below; or

(c) Without the application, approval, or consent of the Trustor, a receiver, custodian, trustee, examiner, liquidator or similar official shall be appointed for the Trustor, or any substantial part of its property, or proceeding described in Paragraph (b)(v) shall be instituted against the Trustor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) consecutive days; or

(d) If a final order, judgment or decree shall be entered against the Trustor by a court of competent jurisdiction which, together with other outstanding orders, judgments, and decrees against the Trustor exceeds an aggregate of \$10,000.00 (exclusive of amounts insured against by adequate liability insurance policies), and shall continue in effect for any period of thirty (30) consecutive days without a stay of execution; or

(e) Should:

(i) the Trustor be divested of title to the Real Estate described in this Deed of Trust, or any part thereof, or any interest therein, either voluntarily or involuntarily, as a result of any condemnation proceedings, except where the proceeds of such proceedings are paid to the Beneficiary; or

(ii) If title to the Real Estate be subjected to any lien or charge, voluntary or involuntary, contractual or statutory, except as permitted by the Security Documents, without the prior written consent of the Beneficiary in each such instance first had and obtained; or

(f) The Trustor fails to observe or perform any other covenant, agreement or obligation contained in any of the Security Documents, provided that such default is not either an intentional default or monetary default (such as, by way of example, a failure to pay insurance premiums or taxes) and unless such failure is cured within thirty (30) days after written notice of such failure from the Beneficiary to the Trustor, provided that the thirty (30) day cure period shall be extended by Beneficiary for an additional thirty (30) days for any nonmonetary and nonintentional default which is not susceptible of cure within thirty (30) days and Trustor has undertaken, and is vigorously proceeding to effect, such cure.

8. **Compliance With Laws, Etc.:** Trustor shall comply promptly and fully with all present and future laws, ordinances, rules and regulations of any governmental authority having jurisdiction affecting such property or any part thereof or any use of such property, including, without limitation, laws, ordinances, rules or regulations relating to hazardous wastes, hazardous materials or oil.

IT IS MUTUALLY AGREED THAT:

9. **Litigation:** Trustor shall defend this Trust in any action or proceeding purporting to affect such property, whether or not it affects the security hereof, or purporting to affect the rights or powers of Beneficiary or Trustee, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of such property, and either Trustee or Beneficiary is hereby authorized, without obligation so to do, to commence, appear in, or defend any such action, whether brought by or against Trustor, Beneficiary or Trustee, or with or without suit, to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding; and Trustor or Beneficiary may appear or intervene in any action or proceeding, and retain counsel therein; and take such action therein, as either may be advised and may settle, compromise or pay the same or any other claims and, in the behalf and for any of said purposes, may expend and advance such sums of money as either may deem necessary. Whether or not Trustor so appears or defends, Trustor on demand shall pay all costs and expenses of Beneficiary and Trustee, including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Beneficiary or Trustee in such property is directly questioned by such action, including but not limited to any action for the condemnation or partition of such property.

10. **Condemnation:** All sums due, paid or payable to Trustor, or any successor in interest of Trustor, whether by way of judgment, settlement or otherwise, (a) for injury or damage to such property, or (b) in connection with any condemnation for public use or injury to such property or any part thereof, or (c) in connection with the transaction financed by the loan secured hereby, or (d) arising out of all causes of action, whether accruing before or after the date of this Deed of Trust, sounding in tort or contract, including causes of action for fraud or concealment of a material fact, together with the settlements, proceeds, awards and damages, direct and consequential, in connection therewith, are hereby absolutely and irrevocably assigned and shall be paid to Beneficiary. Beneficiary shall be entitled, at its option, to commence, intervene in, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with any such taking or damage. Trustor agrees to execute such further assignments of any compensation, award, damages, rights of action, and proceeds as Beneficiary may require.

All amounts received by Beneficiary pursuant to this Deed of Trust, in connection with any condemnation for public use of, or injury to, such property, are to be applied, at the option of Beneficiary, upon any indebtedness secured hereby. No such application, use or release shall cure or waive any default, or notice of default, hereunder or invalidate any act done pursuant to such notice.

11. **Consent, Partial Reconveyance, Etc.:** That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of such property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or the Trustee with respect to the remainder of such property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any

easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

12. **Full Reconveyance:** That, upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be designated as "the person or persons legally entitled thereto." Such request and reconveyance shall operate as a reassignment of the rents, income, issues and profits hereinbefore assigned to Beneficiary.

13. **Right to Collect and Receive Rents and Profits:** Notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the rents, income, issues and profits of such property as they become due and payable, but reserves the right to revoke such permission at any time by notice in writing to Trustor, mailed to Trustor at his last known address in the event of the occurrence of an Event of Default, as defined in this Deed of Trust, if not cured within any applicable grace period. On any such Event of Default, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of such property, or any part thereof, make, cancel, enforce, or modify leases; obtain and eject tenants, set or modify rents; in its own name sue or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine; and except for such application, Beneficiary shall not be liable to any person for the collection or noncollection of any rents, income, issues, or profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligation of a mortgagee in possession. The entering upon and taking possession of such property, the collection of such rents, income, issues, or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. **Judicial Foreclosure or Trustee's Sale on Default:**

Upon the occurrence of one or more Events of Default as defined in this Deed of Trust, or default by Trustor in the performance of any other agreement hereunder, or under any instrument or agreement secured hereby, Beneficiary may declare all sums secured hereby immediately due and payable and, at the option of the Beneficiary, this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or may be sold in the manner provided in the Iowa Trust Deeds Act under the power of sale if applicable.

15. **Fixture Financing Statement:** This Deed of Trust is intended to be a financing statement within the purview of the Iowa Uniform Commercial Code with respect to those items of such property as constitute fixtures on the Real Estate. The address of Trustor (Debtor) and Beneficiary (Secured Party) are set forth on the first page of this Deed of Trust. This Deed of

Trust is to be filed for record with the Register of Deeds of Pottawattamie County, Iowa where the Real Estate is located. Trustor is the record owner of the Real Estate.

16. **Substitution of Trustee:** That Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Register of Deeds of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, power and duties.

17. **No Waiver by Beneficiary:** No waiver by Beneficiary of any right under this Deed of Trust shall be effective unless in writing. Waiver by Beneficiary of any right granted to Beneficiary under this Deed of Trust or of any provision of this Deed of Trust as to any transaction or occurrences shall not be deemed a waiver as to any future transaction or occurrences. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder, but failed to make or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

18. **Time of the Essence:** Time is of the essence in all Trustor's obligations hereunder.

19. **Remedies:** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness secured hereby, and the Beneficiary is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness of the Trustor to the Beneficiary any and all sums of money of Trustor which Beneficiary may have in its possession or under its control, including without limiting the generality of the foregoing, any savings account, deposit, investment certificate, escrow or trust funds.

20. **Acknowledgment:** Trustor agrees and acknowledges that (a) this Deed of Trust is not a mortgage, but a deed of trust and (b) that the power of sale provided for herein provides substantially different rights and obligations for Trustor than a mortgage in the Event of a Default or breach of any obligation hereunder.

21. **Illegality:** In the event that any provision or clause of this Deed of Trust conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which

can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

22. **General Provisions:** (a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. (b) The term "Beneficiary" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Beneficiary herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement, and shall not be used in construing it. (e) The term "Trustor" shall mean the original Trustor hereunder and any subsequent owner of the trust property who acquires same subject to this Deed of Trust with the consent of the Beneficiary. If more than one person is now or hereafter named herein as Trustor, each obligation of Trustor shall be the joint and several obligation of each such person. (f) The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative. (g) This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile, each of which may be executed by less than all of the parties, each of which will be enforceable against all parties executing such counterparts, and all of which will constitute one instrument.

23. **Trustee's Acceptance:** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

24. **Address for Mailing Notices:** Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale hereunder shall be mailed to each person itemized below at the address indicated:

If to Trustor: David H. Edwards, Manager
1011 34th Avenue
Council Bluffs, IA 51501

If to Trustee: Samuel E. Clark
10330 Regency Pkwy. Dr., #100
Omaha, Nebraska 68114

If to Beneficiary: T & K O'Neill Family Limited Partnership
c/o Timothy O'Neill Managing Partner
1011 34th Avenue,
Council Bluffs, IA 51501

25. **Iowa Law:** This Deed of Trust, the rights of the Beneficiary hereunder and the Promissory Note secured hereby and the other Security Documents shall be construed and enforced according to the laws of the State of Iowa.

26. **Hazardous Material:** Trustor hereby covenants and agrees not to generate, manufacture, store or dispose of on, under or about the Real Estate or transport to or from the Real Estate any flammable, explosives or radioactive materials, hazardous wastes, hazardous materials, toxic substances or related materials (hereinafter called "Hazardous Materials") in a manner that violates any applicable federal, state or local law. Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and those substances defined as "hazardous" or "toxic" in the State's or municipality's codes or ordinances where the Real Estate is located; and in the regulations adopted and publications promulgated pursuant to said laws. Trustor hereby agrees to indemnify and hold harmless Beneficiary, its directors, officers, employees, and agents, and any successors to Beneficiary's interest in the Real Estate from and against any and all liability relating in any manner to Hazardous Materials including but not limited to: (1) all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by Trustor, its agents, or employees; (ii) all costs, including attorney's and consultant's fees relating to any claims, suit or action, including the costs of enforcing the terms of this agreement, relating to the Real Estate; and (iii) the cost of any required or necessary repair, cleanup, remediation or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following termination of this Deed of Trust, for any reason, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on the Real Estate during ownership and/or possession of the Real Estate by Trustor.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust on the date first above written.

TRUSTOR:



EEO, LLC

By: David H. Edwards, Manager

TRUSTEE:


~~Andrew Collins~~ SAMUEL E. CLARK

BENEFICIARY:

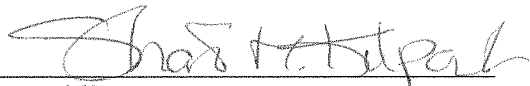

T & K O'Neill Family Partnership, LLP,
an Iowa Limited Liability partnership

By:


Timothy L. O'Neill, Managing Partner

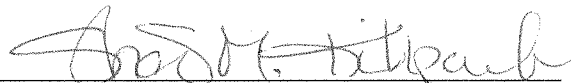
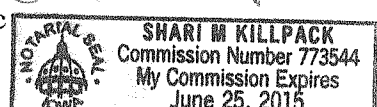
STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

The foregoing instrument was acknowledged before me this 10th day of December 2012 by David H. Edwards, Manager of EEO, LLC, an Iowa limited liability company by, for and on behalf of said limited liability company.


Notary Public 

STATE OF IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

The foregoing instrument was acknowledged before me this 10th day of December 2012 by Timothy L. O'Neill, as the manager of T & K O'Neill Family Partnership, LLP an Iowa limited liability partnership by, for, and on behalf of the partnership.


Notary Public 

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14 ^{March 2013} ~~December 2012~~ by ~~Andrew Collins.~~ SAMUELE CLARK.


Notary Public



EXHIBIT "A"

LEGAL DESCRIPTION

A part of the Northwest Quarter of Section 12, Township 74 North, Range 44 West of the 5th P.M., Pottawattamie County, Iowa, in the City of Council Bluffs, which is more particularly described as follows: Commencing at the West Quarter corner of said Section 12, thence N90°00'00"E, 33.00 feet; thence along the East right of way of South 11th Street, N00°12'00"E, 70.00 feet; thence N90°00'00"E 1020.02 feet to a point of beginning; thence N00°00'00"E, 449.10 feet; thence N90°00'00"E, 630.00 feet; thence S00°00'00"W, 449.10 feet; thence along the North right of way of 34th Avenue S90°00'00"W 630.00 feet to the point of beginning.

AND

A part of the Northwest Quarter of Section 12, Township 74 North, Range 44 West of the 5th P.M., Pottawattamie County, Iowa, in the City of Council Bluffs, which is more particularly described as follows: Commencing at the West Quarter corner of said Section 12, thence N90°00'00"E, 33.00 feet; thence along the East right of way of South 11th Street N00°12'00"E, 70.00 feet to a point of beginning; thence N00°12'00"E, 449.10 feet; thence N90°00'00"E, 1018.42 feet; thence S00°00'00"W, 449.10 feet; thence along the North right of way of 34th Avenue S90°00'00"W, 1020.02 feet to the point of beginning.

EXCEPT FOR

A parcel of land conveyed to the City of Council Bluffs at Instrument No. 2011-004805 filed April 14, 2011 in the Records Office of Pottawattamie County, Iowa and more particularly described as follows: A parcel of land being a portion of the Southwest Quarter of the Northwest Quarter of Section 12, Township 74 North, Range 44 West of the 5th P.M., City of Council Bluffs, Pottawattamie County, Iowa, being more fully described as follows: Commencing at the West Quarter corner of Section 12; thence along the South line of the Northwest Quarter of said Section 12, S88°07'08"E, 33.00 feet to a point on the East right of way line of South 11th Street; thence along said East right of way line, N02°04'52"E, 70.00 feet to the North right of way line of 34th Avenue; thence along said North right of way line, S88°07'08"E, 888.57 feet to the true point of beginning; thence N02°04'52"E, 25.00 feet; thence S88°07'08"E, 27.00 feet; thence S02°04'52"W, 25.00 feet, to a point on said North right of way; thence along said North right of way line, N88°07'08"W, 27.00 feet to the true point of beginning.