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 Register of Deeds, Douglas County, NE
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Upon Filing Return to:
 David N. Steier
 Steier Law, LLC
 3717 Harney Street
 Omaha, Nebraska 68131

DEED OF TRUST

THIS DEED OF TRUST, made by and between **North Birch 168, LLC**, a Nebraska limited liability company, hereinafter called "**Trustor**" whose mailing address is 1015 N. 98th Street, Suite 100, Omaha, NE 68114, **David N. Steier**, hereinafter called "**Trustee**", whose mailing address is 3717 Harney Street, Omaha, NE 68131, and **Birch Rental, LLC**, hereinafter called "**Beneficiary**", whose mailing address is 1015 N. 98th Street, Suite 100, Omaha, NE 68114,

WITNESSETH:

Trustor, in consideration of the sums advanced contemporaneously herewith and other valuable consideration receipt whereof is hereby acknowledged, grants, conveys, sells and warrants to Trustee, in trust, with power of sale, the following described property, situated in Douglas County, Nebraska:

Lot 2, Maple Valley Subdivision, Douglas County, Nebraska

The intention being to convey hereby an absolute title in fee simple, including all the rights of homestead and dower, together with all buildings, fixtures, improvements and appurtenances thereunto belonging; and all of the foregoing, together with said property are herein referred to as the "Property".

FOR THE PURPOSE OF SECURING performance of each agreement and covenant of Trustor herein contained and the payment of the principal sum of **One Hundred Twenty-Six Thousand, Eighty-Four and 88/100 Dollars (\$126,084.88)**, as evidenced by a secured promissory note bearing even date herewith at the rate of interest thereon which may hereafter be paid or advanced under the terms of this Deed of Trust; both principal sum and interest thereon being payable according to the terms set forth in said promissory note, reference to which is hereby made, at the office of the Beneficiary in

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Omaha, Nebraska, or at such other place as the holder may designate in writing, the final payment of principal and interest, if not sooner paid, shall be due and payable on the 5th day of October, 2016.

Trustor and Beneficiary covenant and agree as follows:

1. **Warranty of Title.** Trustor is lawfully seized of the Property; has good right and lawful authority to sell and convey the Property; the Property is free and clear of all liens and encumbrances except liens now of record; and Trustor will warrant and defend the title to the Property unto the Trustee and its successors and assigns forever, against the claims of all persons. Trustor, at its expense, will maintain and preserve the lien of this Deed of Trust as a lien upon the Trust Property subject only to encumbrances existing as of the date hereof, will cause this Deed of Trust, and each amendment or supplement thereto, to be filed and recorded as a mortgage of the Trust Property in such manner and in such place, and will take such other 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 from time to time amended or supplemented.

2. **Payment of Judgment Amount.** Trustor shall pay the principal of, and interest on, said Indebtedness, including any advances thereto as provided herein, on or before October 4, 2011, and in the manner provided therein and will punctually perform all agreements, conditions and provisions of any other security instrument given in connection with the transaction.

3. **Preservation and Maintenance of Property.** Trustor will not commit any waste upon the Property and will, at all times, maintain the same in good order and condition and will make, from time to time, all repairs, renewals, replacements, additions and improvements which are reasonably required to prevent waste, impairment, or deterioration of said property. No building or improvement now or hereafter erected upon the Property shall be altered, removed or demolished without the prior written consent of Beneficiary.

4. **Damage to Property.** In case of any damage to, or destruction of, the buildings, improvements or personal property constituting part of the Trust Property, whether such loss is covered by insurance or otherwise, Trustor, at its sole cost and expense, will promptly restore, repair, replace and rebuild the same as nearly as practicable to its condition immediately prior to such damage or destruction or with such changes and alterations as Trustor may deem appropriate, provided such changes and alterations do not materially lessen the value and utility of such buildings, improvements and personal property from that existing immediately prior to such damage or destruction. Trustor shall be entitled to reimbursement from the Trustee to the extent of the net insurance proceeds received by Trustee, but only to the extent of the actual sum expended under this provision.

5. **Limited Liability Company Trustor.** If Trustor is a limited liability company, it will do all things necessary to preserve its existence, rights and privileges under the laws of the State of its formation.

6. **Insurance.** Trustor, at its expense, will maintain with insurers approved by Beneficiary, insurance with respect to the improvements and personal property, constituting the Property against loss by fire, lightning, tornado, and other perils covered by standard extended coverage endorsement, in an amount equal to at least one hundred percent of the full replacement value thereof; and insurance against such other hazards in such amount as is customarily carried by owners and operators of similar properties and as Beneficiary may require for its protection. Trustor will comply with such other requirements as Beneficiary may from time to time request for the protection by insurance of the interest of the respective parties. All insurance policies maintained pursuant to this Deed of Trust shall name Trustor and Beneficiary as insureds, as their respective interests may appear, and provide that there shall be no cancellation or modification without fifteen

days prior written notification to Trustee and Beneficiary. In the event any policy hereunder is not renewed on or before fifteen days prior to its expiration date, Trustee or Beneficiary may procure such insurance and the cost thereof shall be added to the loan secured by this Deed of Trust and shall bear interest at the greater of the interest rate specified therein or the highest interest rate authorized by the laws of the State of Nebraska. Trustor shall deliver to Beneficiary the original policies of insurance and renewals thereof or memo copies of such policies and renewals thereof. Failure to furnish such insurance by Trustor, or renewals as required hereunder shall, at the option of Beneficiary, constitute a default. All unearned premiums are hereby assigned to Trustee as additional security and a sale and conveyance of the Property by the Trustee shall operate to convey to the purchaser the Trustor's interest in and to all policies of insurance upon the Trust Property.

7. **Taxes and Assessments.** Trustor shall pay all taxes and special assessments levied or assessed against or due upon the Property before delinquency, and will deliver to Beneficiary copies of receipts showing payment of such taxes and special assessments. If Beneficiary shall so request, Trustor agrees that she shall be required to make payments in an amount estimated by Trustee to be sufficient to enable Trustor to pay, at least thirty (30) days before delinquency, all taxes, assessments or other public charges against the Trust Property, the Indebtedness secured by this Deed of Trust, or upon account of the debt or the lien of this Deed of Trust, together with premiums for insurance required to be provided under this Deed of Trust and no interest shall be payable to Trustor in respect thereof. Upon demand by Trustee, Trustor shall deliver to Trustee such additional sums of money as are necessary to make up any deficiency in the amounts necessary to enable Trustee to pay any of the foregoing items.

8. **Additional Liens.** Trustor shall make all payments of interest and principal and payments of any other charges, fees, and expenses contracted to be paid to any existing lienholders or prior beneficiaries under any prior Deed of Trust, Mortgage or other security agreement, before the date they are delinquent, and to pay any other claim which jeopardizes the security granted herein.

9. **Protection of Beneficiary's Security.** Should Trustor fail to make any payment, fail to do any act as herein provided, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, eminent domain, insolvency, arrangements or proceedings involving an order for relief or decedent, then Beneficiary or Trustee but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereunder, may make or do the same, and may pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either appears to affect said Property; in exercising any such powers the Beneficiary or Trustee may incur any liability and expend whatever amounts, including disbursements of reasonable attorney's fees, which in their absolute discretion, may be necessary. In the event that Trustor shall fail to procure insurance or to pay taxes, and special assessments, or to make any payments to existing or prior lienholders or beneficiaries, the Beneficiary may procure such insurance and make such payments. All sums incurred or expended by Beneficiary or Trustee in accordance with the provisions of this Deed of Trust are secured hereby and, without demand, shall be immediately due and payable by Trustor and shall bear interest at the maximum allowable legal rate; provided, however, that at the option of Beneficiary or Trustee such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the same interest as such indebtedness and shall be payable ratably over the remaining term thereof.

10. **Assignment of Rents.** Beneficiary shall have the right, power and authority during the continuance of this Deed of Trust to collect the rents, issues and profits of the Property and of any personal property located thereon with or without taking possession of the property affected hereby, and Trustor hereby absolutely and unconditionally assigns all such rents, issues and profits to Beneficiary. Beneficiary, however, hereby consents to the Trustor's collection and retention of such rents, issues and profits as they accrue and become payable so long as Trustor is not, at such times, in default with respect to payment of any indebtedness secured hereby or in the performance of any

agreement hereunder. Upon any such default, Beneficiary may at any time, either in person, by agent, or by a receiver to be appointed by a court, without notice and without regard to the adequacy of any security for the indebtedness hereby secured, (a) enter upon and take possession of the Property or any part thereof and, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; (b) perform such acts of repair or protection as may be necessary or proper to conserve the value of the Property; (c) lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate. Unless Trustor and Beneficiary agree otherwise in writing, any application of rents, issues or profits to any indebtedness secured hereby shall not extend or postpone the amounts due hereunder. The entering upon and taking possession of the Property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice. Trustor also assigns to Beneficiary, as further security for the performance of the obligations secured hereby, all prepaid rents and all monies which may have been or may hereafter be deposited with said Trustor by any lessee of the Property, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Beneficiary. Delivery of written notice of Beneficiary's exercise of the rights granted herein, to any tenant occupying said premises shall be sufficient to require said tenant to pay said rent to the Beneficiary until further notice.

11. **Leased Premises.** Within ten (10) days after demand, Trustor shall furnish to Trustee a schedule certified to be true, setting forth all leases of space in the Trust Property then in effect, including, in each case, the name of the tenants and occupants, a description of the space occupied by such tenant and occupant, the rental payable for such space and such other information and documents with respect to such leases and tenancies as the Trustee may request.

Without the prior written consent of Trustee, Trustor shall not, directly or indirectly, with respect to any lease of space in the described premises, whether such lease is now or hereafter in existence: (a) accept or permit any prepayment, discount or advance rent payable thereunder; (b) cancel or terminate the same, or accept any cancellation, termination or surrender thereof, or permit any event to occur which would entitle the lessee thereunder to terminate or cancel the same; (c) amend or modify the same so as to reduce the term thereof, the rental payable thereunder, or to change any renewal provisions therein contained; (d) waive any default thereunder or breach thereof; (e) give any consent, waiver or approval thereunder or take any other action in connection therewith, or with a lessee thereunder, which would have the effect of impairing the value of lessor's interest thereunder, on the Property subject thereto, or of impairing the position or interest of the Trustee or Beneficiary; or (f) sell, assign, pledge, mortgage or otherwise dispose of, or encumber, its interest in any such lease or any rents, issues or profits issuing or arising thereunder.

12. **Condemnation.** If title to any part of the Property shall be taken in condemnation proceedings, by right of eminent domain or similar action, or shall be sold under threat of condemnation, all awards, damages and proceeds are hereby assigned and shall be paid to Beneficiary who shall apply such awards, damages and proceeds to the sums secured by the Deed of Trust, with the excess, if any, paid to the Trustor. Trustor will promptly, and with due diligence, repair, alter and restore the remaining part of the Trust Property to its former condition substantially to the extent that the same may be feasible and so as to constitute a complete and usable unit.

13. **Future Advances.** Upon request of Trustor, Beneficiary, at Beneficiary's option, prior to reconveyance of the Property to the Trustor, may make future advances to the Trustor. Such future advances, with interest thereon, shall be secured by this Deed of Trust stating that said indebtedness is secured hereby; provided that at no time shall the secured principal, future advances, not including

sums advanced to protect the security, exceed one hundred and twenty percent (120%) of the original principal amounts secured hereby.

14. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. **Acceleration; Remedies; Sale.** Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default. The Trustee shall have the power of sale of the Property and if Beneficiary desires the Property to be sold, it shall deposit with Trustee this Deed of Trust and all documents evidencing expenditures secured hereby, and shall deliver to Trustee a written notice of default and election to cause the Property to be sold, and the Trustee in turn shall prepare a similar Notice in the form required by law, which shall be duly filed for record by Trustee.

- (a) After the lapse of such time as may be required by law following the recording of said notice of default, and notice of default and notice of sale having been given as required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in said notice of sale, at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one (1) day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser his Deed conveying the Property sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof to the truthfulness thereof. Any person, including Beneficiary, may purchase at the sale.
- (b) When Trustee sells pursuant to the powers herein, the Trustee shall apply the proceeds of the sale to payment of the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's Fees actually incurred, and then to the items in subparagraph (c) in the order there stated.
- (c) After paying the items specified in subparagraph (b) if the sale is by Trustee, or the proper court and other costs of foreclosure and sale if the sale is pursuant to judicial foreclosure, the proceeds of sale shall be applied in the order stated to the payment of:
 - (i) Cost of any evidence of title procured in connection with such sale and of any revenue stamps;
 - (ii) All sums then secured hereby;
 - (iii) All sums secured by junior deeds of trust mortgages or other lienholders;
 - (iv) The remainder, if any, to the person legally entitled thereto.

16. **Duties and Obligations of Trustee.**

- (a) The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee;
- (b) No provision of this Deed of Trust shall require Trustee to expend or risk his own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its right or powers, if it shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;
- (c) Trustee may consult with counsel of his own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and reliance thereon;
- (d) Trustee shall not be liable for any action taken by him in good faith and reasonably believed by him to be authorized or within the discretion or rights of powers conferred upon it by this Deed of Trust.

17. **Additional Security Instruments.** Trustor, at its expense, will execute and deliver to the Trustee, promptly upon demand, such security instruments as may be required by Trustee, in form and substance satisfactory to Trustee, covering any of the Property conveyed by this Deed of Trust, which security instruments shall be additional security for Trustor's faithful performance of all of the terms, covenants and conditions of this Deed of Trust, the Judgment secured hereby, and any other security instruments executed in connection with this transaction. Such instruments shall be recorded or filed, and re-recorded and refiled, at Trustor's expense.

18. **Due on Sale.** If the Trustor shall sell, convey, transfer, or dispose of or further encumber the real property described in this Deed of Trust securing the debt evidenced by the indebtedness, or any part of such property, or any interest therein, or agree to do so without the written consent of the Beneficiary being first obtained, the Beneficiary shall have the right, at its option, to declare the entire balance of the unpaid principal and accrued interest to be immediately due and payable and require prompt payment by Trustor. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of a subsequent default.

19. **Miscellaneous.**

- (a) In the event any one or more of the provisions contained in this Deed of Trust, or any other security instrument given in connection with this transaction shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.
- (b) This Deed of Trust shall be construed according to the laws of the State of Nebraska.
- (c) This Deed of Trust shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto.
- (d) Trustor shall pay all taxes levied upon this Deed of Trust or the debt secured hereby, together with any other taxes or assessments which may be levied against the Trustee

or Beneficiary or the legal holder of said indebtedness on account of the indebtedness evidenced thereby.

- (e) Whenever used herein, the singular number shall include the plural, the plural, the singular, the use of any gender shall be applicable to all genders, and the term "Beneficiary" shall include any payee of the indebtedness hereby secured or any transfer thereof, whether by operation of law or otherwise.

20. **Successor Trustee.** Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment and without conveyance to the successor Trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument by Beneficiary, containing reference to this Deed of Trust and its place of record, which when recorded in the office of the Register of Deeds of the county or counties in which said property is situated shall be conclusive proof of proper appointment of the successor Trustee. The foregoing power of substitution and the procedure therefore shall not be exclusive of the power and procedure provided for by law for the substitution of a Trustee or Trustees in the place of the Trustee.

21. **Forbearance by Beneficiary or Trustee Not a Waiver.** Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any default of Trustor under this Deed of Trust shall not be deemed to be a waiver of any other or similar defaults subsequently occurring.

22. **Trustor Not Released.** Extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successor in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor and Trustor's successors in interest.

23. **Default.** This Deed of Trust shall be in default if the total amount owed on the Indebtedness is not paid with interest on or before October 4, 2011. If there shall be a default under this Deed of Trust or under any prior mortgage, the Beneficiary may cure such default, and the amounts advanced by, and other costs and expenses of the Beneficiary in curing such default, with interest at eighteen percent (18%) secured hereby from the time of the advances or payments shall be added to the indebtedness secured by this Deed of Trust and may be collected hereunder at any time after the time of such advances or payments and shall be deemed to be secured hereby.

24. **Trustor's Rights, Absent Default.** Until any default in the payment of indebtedness hereby secured or until the breach of any covenant herein contained, the Trustor, its successors and assigns, shall possess and enjoy the property, and receive the rents and profits therefrom. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the property and shall surrender this Deed of Trust and any and all other documents evidencing this indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the property without warranty and without charge to the persons legally entitled thereto. The Grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay all costs of recording, if any.

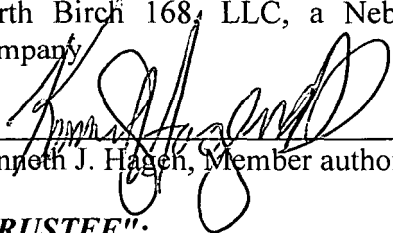
25. **Request for Notice.** The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address hereinbefore set forth.

26. **Not Mortgage.** Trustor agrees and acknowledges (i) the Deed of Trust executed herein is not a mortgage but a deed of trust and (ii) that the power of sale provided for in this Deed of Trust provides substantially different rights and obligations to the Trustor than a mortgage in the event of a default or breach of obligation.

IN WITNESS WHEREOF, the parties hereto have executed this Deed of Trust the 29th day of September, 2011.

"TRUSTOR":

North Birch 168, LLC, a Nebraska limited liability Company



Kenneth J. Hagen, Member authorized by the Company


"TRUSTEE":



David N. Steier

"BENEFICIARY":

Birch Rental, LLC, a Nebraska limited liability Company



M. David Steier, Member authorized by the Company

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 29th day of September, 2011, before me, a Notary Public in and for said County and State, personally appeared Kenneth J. Hagen, Jr., to me known to be the identical person who executed the within and foregoing instrument on behalf of North Birch 168, LLC, Trustor, and acknowledged to me that he executed the same as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year last above written.



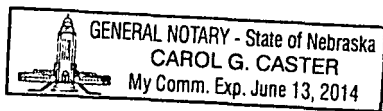
Carol G Caster

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 29th day of September, 2011, before me, a Notary Public in and for said County and State, personally appeared M. David Steier, to me known to be the identical person who executed the within and foregoing instrument on behalf of Birch Rental, LLC, Beneficiary, and acknowledged to me that he executed the same as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year last above written.



Carol G Caster

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 29 day of September, 2011, before me, a Notary Public in and for said County and State, personally appeared David N. Steier, known to me to be the identical person who executed the within and foregoing instrument as Trustee and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year last above written.



Carol G Caster

Notary Public