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JUN 29 2016 15:41 P 32

Fee amount: 196.00  
FB: 61-11239  
COMP: AH

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/29/2016 15:41:47.00



2016051156

Prepared by and when recorded return to:  
Steven J. Christophersen  
Ameritas Life Insurance Corp.  
5900 O Street  
Lincoln, Nebraska 68510

Loan No. 3161376

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

Property Address: 11010 Q Street  
Omaha, Nebraska 68137

Assessor's Parcel Number: 1023591013

Date: June 28, 2016

Trustor: VFD 110 Q, LLC  
a Nebraska limited liability company

Trustor's Mailing Address: Attention: Alfred J. Vacanti, Jr.  
5123 So 111<sup>th</sup> Street  
Omaha, Nebraska 68137

Trustee: TitleCore National

Trustee's Mailing Address: 9140 West Dodge Road, Suite 380  
Omaha, Nebraska 68114

Beneficiary: Ameritas Life Insurance Corp.

Beneficiary's Mailing Address: 5900 O Street  
Lincoln, Nebraska 68510

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND  
FIXTURE FILING STATEMENT ("Deed of Trust") is made as of June \_\_\_\_, 2016, by VFD 110  
Q, LLC, a Nebraska limited liability company ("Trustor" or "Mortgagor") in favor of TitleCore  
National ("Trustee") for the benefit of Ameritas Life Insurance Corp., a Nebraska corporation

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("Mortgagee" or "Beneficiary"). The mailing address of Trustor, Trustee and Beneficiary are set forth above.

**IT IS HEREBY AGREED:**

That Trustor irrevocably grants, bargains, sells, transfers, conveys and assigns to Trustee in trust, with power of sale, the real estate located in the County of Douglas, State of Nebraska (the "Real Estate") described on Exhibit A attached hereto and by this reference made a part hereof, together with all interest which Trustor now has or may hereafter acquire in and to said Real Estate and in and to:

- (a) All oil, gas and mineral rights, all appurtenances, reversions, remainders, water, water stock and water rights and water right applications, pumps and pumping plants, pipes, flumes and ditches thereunto appertaining, all rights to the use of water as well as all rights in ditches for the irrigation of said Real Estate, and all shares of stock evidencing such rights, together with any and all appurtenances to the Real Estate, including without limitation, all development rights and credits and/or air rights;
- (b) 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;
- (c) 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");
- (d) 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 therefor (the "Fixtures");

Trustor agrees that Fixtures shall include all articles of personal property, furniture and furnishings which are so related to the Real Estate such that an interest arises in them under the real estate laws of the State of Nebraska, including, without limiting the generality of the foregoing: all electric wiring, plumbing and heating fixtures, appliances and equipment for heating, lighting, refrigeration, air-conditioning and fire fighting, screen doors, screens, venetian blinds, alarm systems, safety and life support systems, stoves, ovens, dishwashers, carpeting and other floor coverings, and all other equipment now or hereafter installed in or upon said premises by Trustor and used or for use therein or thereon, it being mutually agreed that all of the aforesaid property owned by Trustor and placed on the Real Estate shall be deemed to be Fixtures, a part of the Real Estate covered by this Deed of Trust to the extent permitted by law; and as to the balance of said property, this Deed of Trust shall be deemed to be a Security Agreement between Trustor and Beneficiary for the purpose of creating a security interest in said property in favor of Beneficiary pursuant to the terms of Paragraph 17 below, all of which property, whether real or personal, shall secure the performance of Trustor's obligations hereunder and under the Promissory Note as hereinafter defined; provided, however, that if Trustor enters into a separate Security Agreement with Beneficiary relating to any of said property, the terms thereof shall govern the rights and remedies of Beneficiary with regard to the property covered thereby; provided, however, that trade fixtures or other personal property of any tenant now or hereafter installed shall

not be included in this provision and shall not be affected hereby. This Deed of Trust shall be self-operative with respect to such personal property, but Trustor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any of such property;

- (e) 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 (the "Personal Property");
- (f) All of the rents, deposits, royalties, issues and profits (the "Rents 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 "Leases"), and all right, title and interest of Trustor in and to all Leases 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 obligation thereunder;
- (g) All building materials and supplies now or hereafter placed on the Real Estate or in the Improvements;
- (h) 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
- (i) All other or greater rights and interests of every nature in the Real Estate, the Improvements, the Fixtures and the Personal Property 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 collectively referred to as the "Property".

**FOR THE PURPOSE OF SECURING:**

- (a) Payment of the Principal sum of One Million Nine Hundred Thousand and No/100 Dollars, evidenced by that certain \$1,900,000.00 Promissory Note dated of even date herewith, issued by Trustor to Beneficiary, together with all interest, accrued or otherwise, and expenses (including reasonable attorneys' fees) due thereunder and any extensions, modifications, renewals or replacements thereof (hereinafter referred to as the "Promissory Note"). The interest rate, payment terms and balance due with respect to the loan described herein may be indexed, adjusted, renewed or renegotiated in accordance with the terms of the Promissory Note and/or on account of any extensions or renewals of the Promissory Note;

- (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 the Promissory Note, 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 Promissory Note (all of which are collectively hereinafter called the "Security Documents");
- (d) Payment of all fees and charges of Beneficiary set forth herein; and
- (e) Payment of all obligations incurred and all monies expended or advanced by Beneficiary pursuant to the terms hereof or the Security Documents to protect the Property.

Notwithstanding any terms in this Deed of Trust to the contrary, this Deed of Trust shall not be deemed to secure that certain Environmental Indemnity Agreement of even date herewith executed by Trustor, which does not and shall not constitute additional security for the indebtedness secured hereby.

**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 the Real Estate in fee simple, subject only to the "Permitted Exceptions" shown on Exhibit B attached hereto and by this reference incorporated herein; that it will forever warrant and defend the title thereto against the claims and demands of all persons whosoever; and that it will, at its expense, maintain and preserve the lien of this Deed of Trust as a first and paramount lien upon the Property.

2. Maintenance and Leases:

- (a) To maintain the tangible Property in its present condition and repair ordinary wear and tear excepted; to complete or restore promptly and in good workmanlike manner any building or other Improvements 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 materially comply with the provisions of all covenants, conditions and restrictions, if any, affecting the Real Estate; not to remove, demolish or materially alter any building or other Improvements, or the character or use thereof at any time; 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 the tangible Property in violation of law; to do all other acts in a timely and proper manner which from the character or use of the tangible Property may be reasonably necessary to protect and preserve said security, the specific enumerations herein not excluding the general, and to keep within the Improvements all Fixtures and all Personal Property originally installed or thereafter placed in the Improvements except for the purpose of replacing

such Fixtures or Personal Property with equal or better Fixtures or Personal Property.

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

3. Insurance:

- (a) The buildings and improvements shall be continually insured by Special Causes of Loss coverage for 100% of the insurable replacement cost of the improvements. If such policy contains co-insurance, then Beneficiary, in its sole discretion, may require an Agreed Amount/Value Endorsement. The policy shall also include ordinance and law coverage, plate glass, boiler and machinery or equipment breakdown coverage, windstorm, hail coverage and earthquake (if the Security is located in Seismic Zones 3 or 4); and such other insurance protections mutually agreed to by Trustor and Beneficiary. Flood insurance will be required if the Property or any part thereof is in a flood zone area. The policy shall list Beneficiary as mortgagee and include a lender's loss payable endorsement. Trustor shall continually provide rental insurance in an amount sufficient to cover any period of time during which one or more tenants at the Property may be entitled to abatement of rent but for no less than twelve months of actual loss sustained (ALS), or in an amount determined by Beneficiary and mutually agreed to by Trustor. A lender's loss payable endorsement shall be included as part of the foregoing coverage. In the event Trustor or any affiliate or subsidiary of Trustor should occupy the Property then Trustor shall, in lieu of the foregoing rental insurance, provide Business Income Extra Expense coverage in an amount sufficient to cover monthly installment payments on the loan secured hereby together with annual taxes and insurance premiums for a period of at least twelve (12) months, or in an amount otherwise mutually agreed to by Trustor and Beneficiary. A lender's loss payable endorsement shall be included as part of the foregoing coverage.
- (b) Trustor shall continually provide comprehensive general liability insurance for an amount as reasonably required from time to time by Beneficiary, but not less than an aggregate amount of \$2,000,000 with an occurrence limit of not less than \$1,000,000. In the event such insurance coverage is provided through a blanket policy, the foregoing limits shall be on a 'per location' or 'per project' basis and not on a 'per policy' basis. Beneficiary shall be listed as an additional insured.
- (c) That said insurance policies shall be endorsed with a standard noncontributory mortgagee's clause in favor of Beneficiary; shall name as insured both Trustor and Beneficiary; shall be issued by companies having a rating of A- VIII or better from A.M. Best and Company and shall be in such forms satisfactory to Beneficiary; shall provide that such policies will not be cancelled or materially amended without at least thirty (30) days' prior written notice to Beneficiary; and 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 by Trustor to Beneficiary to all rights thereunder, including all return premiums. Trustor shall deliver to Beneficiary original copies of all policies of

insurance required hereby and original certificates 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 Trustee 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 prompt written notice to Beneficiary; and Beneficiary may, but is not obligated to, make proof of loss if not made promptly by Trustor.

- (d) In the event of loss, any insurance proceeds payable by reason of such loss shall be paid jointly to Beneficiary and Trustor; and if such loss is a Major Damage (as defined below), proceeds shall be applied at Beneficiary's option to reduce the indebtedness hereby secured (and to apply such proceeds to the payment of interest, late charges or other amounts due from Trustor under the Promissory Note, this Deed of Trust or any other Security Document), whether then matured or to mature in the future, in such order and manner as Beneficiary may elect; or Beneficiary may permit Trustor to use said proceeds to repair or replace all Improvements damaged or destroyed and covered by said policy, in which case Trustor agrees to repair and rebuild said Improvements without undue delay, holding Beneficiary harmless for, from and against any and all liabilities, claims and liens relating to such repairs or replacements. Should Beneficiary elect to apply the proceeds to the indebtedness, such application shall not be deemed a voluntary prepayment for purposes of the prepayment fee and prepayment premium set forth in the Promissory Note. Trustor agrees that a Major Damage, which is any loss (i) in excess of thirty-three percent (33%) of the insurable replacement cost of the Improvements or (ii) which results in the termination of any Lease or Rents and Profits constituting thirty-three percent (33%) or more of the rental income of the Property (after appropriate credit for the proceeds of loss of rental income insurance required hereby) shall constitute a material impairment of Beneficiary's security for the loan secured hereby.

Notwithstanding the foregoing, in case of partial destruction, which is not a Major Damage insurance proceeds will be made available for repair and restoration of the Property, provided:

- (i) Such damage or destruction occurs at least one (1) year prior to the Maturity Date of the Promissory Note;
- (ii) The Trustor provides a certificate (with appropriate supporting documentation from a contractor acceptable to Beneficiary) that such repair and restoration can be completed within one (1) year;
- (iii) There is no existing and continuing Event of Default;

- (iv) After repair, the loan-to-value ratio is less than Seventy-five percent (75%) as reasonably determined by Beneficiary;
  - (v) The Property has at least substantially the same income producing potential as before the destruction; and
  - (vi) The amount of proceeds together with additional funds deposited by Trustor into an escrow account established by the parties is sufficient to repair the Property.
- (e) If Beneficiary applies all or any portion of insurance proceeds to repair or rebuild Improvements, the insurance proceeds required for such rebuilding or repairing shall be received by Beneficiary and held by it in and deposited in an escrow account without payment or allowance of interest. Prior to the commencement of such rebuilding or repair, Trustor shall, at its expense, prepare all plans and specifications necessary for such work and enter into a fixed price construction contract with a contractor acceptable to Beneficiary. Trustor shall promptly deposit in the escrow account an amount equal to the difference between the insurance proceeds deposited with Beneficiary and the total contract price for such rebuilding or repair; and disbursement shall be made (not more frequently than once a month) from said account for such rebuilding or repair in accordance with a disbursement schedule, and subject to other terms and conditions acceptable to Beneficiary, provided that such disbursements shall be charged first against funds deposited in said account by Trustor, and second, after such funds are exhausted, against the insurance proceeds deposited therein. Final payment shall be made upon Beneficiary's receipt of a certificate of occupancy or other certificate issued by an architect, contractor satisfactory to Beneficiary, or an appropriate governmental official, that such repair or replacement has been completed in accordance with plans, specifications and applicable laws and that the Improvements may legally be used or occupied. Beneficiary shall be permitted to withhold any installment in escrow should Beneficiary determine that the funds remaining in escrow are insufficient to pay for the completion of the repair or restoration. All administrative costs incurred in connection with replacement and repair of the Property shall be paid by Trustor.

4. Taxes and Other Sums Due:

- (a) To pay, satisfy and discharge before delinquency, all general and special taxes and assessments affecting the Property, including, but not limited to, any tax assessed on the value of the Property or related to an Improvement or benefit provided to the Property or arising from the production of income attributed to the Property, whether it be in accordance with the law as it presently exists or to yet be enacted. As used herein, the term "taxes and assessments affecting the Property" shall include any form of assessment, possessory interest tax, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition imposed by an authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, as against any legal or equitable interest of Trustor in the Property, including, but not limited to, the following:
  - (i) Any assessment, tax, fee, levy or charge in substitution, partially or

totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax. It is the intention of Trustor and Beneficiary that all such new and increased assessments, taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of taxes and assessments affecting the Property for the purposes of this Deed of Trust, but shall not include taxes on Beneficiary's income or the disposition of Beneficiary's assets;

- (ii) Any assessment, tax, fee, levy or charge allocable to the operation of or measured by the area of the Property, including, without limitation, any gross income tax or excise tax levied in lieu of real property taxes by the state, city or federal government, or any political subdivision thereof, with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use of or occupancy of the Property, or any portion thereof; and
  - (iii) Any assessment, tax, fee, levy or charge upon this transaction or any document creating or transferring any interest or an estate in the Property.
- (b) To pay, satisfy and discharge the following amounts, in no event later than the date such amounts become due:
- (i) All encumbrances, charges and liens, with interest, on the Property, or any part thereof, which are, or appear to Beneficiary to be prior to or superior hereto;
  - (ii) 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;
  - (iii) If the 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 Trustor's leasehold interest or the terms of which Trustor has such leasehold interest, or to agree to do so, without the written consent of Beneficiary being first obtained; and
  - (iv) All payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof.
- (c) 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 employing counsel and paying reasonable fees of counsel. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the tangible Property and agrees that at its option, Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment and may appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security of Beneficiary hereunder; and Trustor will pay all costs, expenses (including costs



of searching title) and attorneys' fees incurred in such action or proceeding at Trustor's sole cost and expense if Beneficiary prevails in such contest. All amounts, paid, suffered or incurred by Beneficiary in exercising the authority herein granted, shall be secured hereby, shall be a lien on the Property, shall be due and payable by Trustor to Beneficiary without demand and shall bear interest at the Default Rate set forth in the Promissory Note from the date incurred, suffered or advanced, until paid.

5. Sums Advanced to Bear Interest:

Trustor agrees 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, shall bear interest from the date advanced or paid at the Default Rate as provided for in 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 by Trustor, pertaining to the Property.

7. Default Provisions:

Time is of the essence hereof. Upon the occurrence of any one of the following which is not cured within any applicable grace period (hereinafter an "Event of Default" or "Default"), the payment of all principal, interest and any other sums due in accordance with the terms of the Promissory Note or the Security Documents 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 non-judicially through power of sale any and all liens securing the payment thereof; and Beneficiary may pursue any or all of the rights and remedies provided for in the Promissory Note, this Deed of Trust, or any one or more of the Security Documents, or otherwise available at law or in equity under the laws of the State of Nebraska:

- (a) The Trustor fails to pay (i) any regular monthly installment of principal or interest due under the Promissory Note by the tenth day of the month following the date said amount is due or by the next succeeding business day if the 10th is on a non-business day, (ii) the final installment due under the Promissory Note by the Maturity Date, or (iii) any other sum due or otherwise advanced pursuant to any other Security Document by the date such amount is due and beyond any applicable grace and/or notice and cure period; or
- (b) The Trustor fails to perform any of the terms, covenants or conditions in the Promissory Note, this Deed of Trust or any of the other Security Documents provided that Beneficiary shall provide notice of any such default and Trustor shall have Thirty (30) days in which to cure said non-monetary default before Beneficiary further exercises its rights and remedies hereunder; or

- (c) Any warranties, representations or certifications made by Trustor to Beneficiary in this Deed of Trust, the Note or the other Security Documents are found to be materially false or misleading; or
- (d) The Trustor or any Guarantor of the indebtedness represented by the Promissory Note ("Guarantor") 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, seeking to adjudicate it a bankrupt or insolvent, seeking a dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it, or its debts, under any Bankruptcy Law, or failing to file an answer or other pleading denying the material allegations of any such proceeding filed against it (or if any creditor of Trustor shall do any of the foregoing) and such proceeding continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;
  - (vi) Take any action to authorize or effect any of the foregoing actions set forth in this Paragraph (d); or
  - (vii) Fail to contest, in good faith, any appointment or proceeding described in Paragraph (e) below; or
- (e) 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 Guarantor, or any substantial part of the property of either, or proceeding described in Paragraph (d)(v) shall be instituted against the Trustor, or any Guarantor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) consecutive days; or
- (f) If a final order, judgment or decree shall be entered against the Trustor, or any Guarantor, by a court of competent jurisdiction which, together with other outstanding orders, judgments and decrees against the Trustor, or any Guarantor, exceeds an aggregate of \$100,000.00 (exclusive of amounts insured against by adequate liability insurance policy), and shall continue in effect for any period of thirty (30) consecutive days without a stay of execution; or
- (g) Should it be discovered after the execution and delivery of this instrument that there is a defect in the title to, or a lien or encumbrance of any nature, on the Property or the Personal Property described in the Security Documents prior to

the lien of the Beneficiary under this Deed of Trust or the Security Documents, and not disclosed in the policy of title insurance issued to the Beneficiary insuring the priority of the Deed of Trust covering the Property, unless such defect is cured within thirty (30) days after written notice of such defect from the Beneficiary to the Trustor; or

- (h) If any prior lien, encumbrance or homestead claim is determined to exist against the Property adverse to the priority of the lien given to the Beneficiary hereof in this Deed of Trust and not disclosed in the policy of title insurance issued to the Beneficiary insuring the priority of this Deed of Trust, unless the Trustor shall, within thirty (30) days after demand by the Beneficiary, satisfy or otherwise secure the release of such prior lien, encumbrance or homestead claim; or
- (i) Should the Trustor, or any successor in interest of the Trustor, voluntarily or involuntarily, sell, exchange, convey, transfer, contract to sell, lease with option to purchase, change the character or use of, or further encumber the Property or any other collateral covered by the Security Documents, or any part thereof, or any interest therein, except as therein permitted, without the prior written consent of the Beneficiary of this Deed of Trust in each such instance first had and obtained; or
- (j) Should the Trustor be divested of title to the Property 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
- (k) If legal action or other proceedings are instituted to enforce or foreclose any subordinate mortgage, deed of trust, or security interest or other lien or encumbrance of any kind upon the Property or any portion thereof.

8. Restriction On Transfer and Additional Financing:

- (a) The financial stability, managerial and operational ability, creditworthiness and business reputation of Trustor and of those persons having a direct or beneficial interest in and management responsibilities for Trustor, as well as the equity of Trustor in the Property and the projected cash flow from the Property to pay operating costs and debt service are a substantial and material consideration to Beneficiary in its agreement to make the loan to Trustor which is evidenced by the Promissory Note and secured by this Deed of Trust. Therefore, in order to induce Beneficiary to make the loan, Trustor agrees that without the prior written consent of Beneficiary, which consent may be withheld for any reason or no reason, Trustor shall not:
  - (i) Voluntarily or involuntarily sell, exchange, convey, transfer or lease with option to purchase (collectively a "Transfer") all or any part of or interest in the Property or any other collateral covered by the Security Documents; or
  - (ii) Voluntarily or involuntarily further encumber the Property by any mortgage, deed of trust, assignment of rents or security interest, or otherwise subject all or any part of the Property to any lien or charge, contractual, statutory, by operation of law or otherwise (collectively an "Encumbrance"); or

- (iii) If Trustor or any successor or assign of Trustor is a corporation, Transfer fifty percent (50%) or more of the issued and outstanding shares of any class of shares of Trustor or issue new shares equal to fifty percent (50%) or more of the issued and outstanding shares of any class of shares of Trustor; or
- (iv) If Trustor or any successor or assign of Trustor is a general or limited partnership or a joint venture, make any Transfer of any general partnership interest or joint venture interest of Trustor; or
- (v) If Trustor or any successor or assign of Trustor is a limited liability company, make any Transfer of a majority of the membership interests to a non-member; or
- (vi) Transfer or change the management of the Property to any person or entity other than the current manager or Trustor; or
- (vii) Permit a Transfer of any or all of Guarantor's ownership interest, if any, in Trustor to a non member; or
- (viii) Permit the Transfer of the controlling interest of Trustor.

Should Trustor receive knowledge, either actual or constructive, of any Transfer of or Encumbrance on the title to the Property, or any part thereof, or of any contract providing for any such Transfer or Encumbrance, Trustor shall immediately, upon obtaining such knowledge, notify Beneficiary.

- (b) In the event that Trustor or any successor in interest of Trustor shall breach the covenants contained in Paragraph 8(a), all indebtedness secured by this Deed of Trust, irrespective of the maturity date thereof, shall, at the sole option of the Beneficiary, become immediately due and payable without demand or notice.
- (c) Notwithstanding the foregoing, Trustor may transfer the Property provided there is an assumption by the transferee of the indebtedness as well as the other duties and obligations set forth in the Security Documents and such proposed transfer otherwise satisfies the following conditions:
  - (i) Trustor shall provide Beneficiary at least thirty (30) days prior written notice of the sale or transfer;
  - (ii) Trustor shall provide all information requested by Beneficiary concerning the terms of the sale and the buyer. The proposed buyer must be acceptable to Beneficiary in its sole discretion;
  - (iii) The proposed buyer must assume all of Trustor's obligations and liabilities under the Security Documents first arising on or after the date of the proposed transfer;
  - (iv) If required by Beneficiary, the proposed buyer must provide a replacement guarantor that is suitable to Beneficiary, in its sole discretion;

- (v) After the sale, there shall be no encumbrance on the Property other than the lien of Beneficiary;
- (vi) The unpaid principal of the loan at time of sale shall not exceed seventy-five percent (75%) of the sale price;
- (vii) Trustor shall pay to Beneficiary or its designee an assumption fee equal to one percent (1%) of the unpaid principal at the time Beneficiary's approval is requested. Said fee shall be refunded to Trustor if approval is denied; and
- (viii) All costs shall be paid by Trustor.

No such consent shall be considered by the Beneficiary unless the appropriate fee is paid in advance; and no such consent shall be given unless the Trustor agrees, inter alia, immediately upon closing of the subject sale or transfer, to provide Beneficiary with a copy of the deed or other instrument conveying title to the Property and with an assumption agreement from the transferee in form satisfactory to the Beneficiary and its legal counsel.

- (d) If Beneficiary consents to any Transfer or Encumbrance referred to in Paragraph 8(a), Trustor shall pay to Beneficiary all costs, attorneys' fees and other expenses incurred by Beneficiary in reviewing, negotiating, preparing and recording documents in connection with any such Transfer or Encumbrance. Consent to any one such Transfer or Encumbrance shall not be deemed to be a waiver of the right to require consent to future or successive Transfers or Encumbrances. If consent is given, any such Transfer or Encumbrance shall be subject to this Deed of Trust; and any transferee shall assume all obligations under the Promissory Note, this Deed of Trust and other Security Documents and agree to be bound by all provisions contained herein and therein. Such assumption shall not, however, release Trustor or any Guarantor, for liability under the Promissory Note, this Deed of Trust or any other of the Security Documents unless otherwise agreed to by Beneficiary. This covenant shall run with the Property and shall remain in full force and effect until the indebtedness secured by this Deed of Trust is satisfied in full; and Beneficiary may, without notice to Trustor, deal with such transferees with reference to the indebtedness or other obligations secured hereby in the same manner as with Trustor, without in any way altering or discharging Trustor's liability hereunder or the indebtedness secured hereby or the liability of any Guarantor with respect thereto.
- (e) Notwithstanding the foregoing and provided that no Event of Default has occurred and is then continuing, the sale or transfer of the Property by Trustor or of any equity interest of any Guarantor in the Trustor to immediate family members (including, but not limited to, a current spouse) or to a trust for the benefit of the transferor's family members (including, but not limited to, a current spouse) shall not be considered a Transfer for purposes of this paragraph, provided Trustor notifies Beneficiary in advance and in writing of such transfer and provides all documentation reasonably required by Beneficiary to properly document said transfer. For each such transfer, Trustor shall pay a processing

fee in the amount of \$1,500.00.

9. Mechanics' and Materialmen's Liens:

It is understood and agreed that the lien of this Deed of Trust shall have priority at all times over any and all construction, furnishers', mechanics' and materialmen's liens. It is stipulated and agreed that no contract for labor or materials will be let by Trustor except with the express stipulation that the mechanics' and materialmen's liens therefor shall at all times be subordinate to the lien of this Deed of Trust.

10. Compliance With Laws, Etc.:

Trustor, their lessees or assigns, shall occupy and use the Property in material compliance with all federal, state or local laws, statutes, ordinances, regulations or the like, including, but not limited to, the Americans with Disabilities Act of 1990, zoning and use laws, toxic waste laws and landlord-tenant statutes.

11. Litigation:

Trustor shall defend this Deed of Trust in any action or proceeding purporting to affect the Property, whether or not it affects the Property, 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 the 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 to 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 attorneys' 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 the Property is directly questioned by such action, including but not limited to partition, condemnation, reorganization, bankruptcy (whether Chapters 7, 11 or 13, or any other similar or successor statutes), probate and administrative proceedings, as well as any other proceeding where proof of claim is required to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust.

12. Condemnation:

In the event the Property or any part thereof is taken or damaged under the power of eminent domain, by condemnation or by sale in lieu thereof, the damages awarded, the proceeds for the taking of, the rights of action and the consideration for such acquisition, to the extent of the full amount of the remaining unpaid indebtedness secured hereunder, will be assigned to Beneficiary and after deducting any expenses of Beneficiary, including attorneys' fees, will be applied on account of the last maturing installments of such indebtedness. Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement, in connection with such condemnation, taking under the power of eminent

domain or sale in lieu thereof. Trustor agrees to execute such further assignments of any compensation, award, damages, right of action and proceeds, as Beneficiary may require.

Notwithstanding the preceding, in the case of a partial condemnation, proceeds from such condemnation will be made available for repair and restoration of the Property provided:

- (a) Such condemnation occurs at least one (1) year prior to the Maturity Date of the Promissory Note;
- (b) The Trustor provides a certificate (with appropriate supporting documentation from a contractor acceptable to Beneficiary) that such repair and restoration can be completed within one (1) year;
- (c) There is no existing Event of Default;
- (d) After repair, the loan-to-value ratio is less than seventy-five percent (75%) as reasonably determined by Beneficiary;
- (e) The Property has at least substantially the same income producing potential as before the condemnation; and
- (f) The amount of proceeds together with additional funds deposited by Trustor into an escrow account established by the parties is sufficient to repair the Property.

If Beneficiary agrees or is required hereunder to apply all or any portion of condemnation proceeds to repair or restore Improvements, disbursement of such proceeds shall be made in the manner described in sub-paragraph 3(e) hereof. In the event Beneficiary should apply all or any portion of the condemnation proceeds to the indebtedness secured by this Deed of Trust, such application shall not be deemed a voluntary prepayment for purposes of the prepayment fee and prepayment premium set forth in the Promissory Note.

13. Full Reconveyance:

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 presumptive proof of the truthfulness thereof. The Beneficiary 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 and Profits hereinbefore assigned to Beneficiary and a release of any separate Assignment of Rents and Leases.

14. Right to Collect and Receive Rents and Profits:

Trustor absolutely and irrevocably assigns to Beneficiary the Rents and Profits of the Property, together with the immediate and continuing right to collect and receive the same, for the purposes and upon the terms set forth in this Deed of Trust, provided that the foregoing assignment shall not impose upon Beneficiary any duty to produce rents from the Property and said assignment shall not cause Beneficiary to be a "mortgagee in possession" for any purpose. The assignment of Rents and Profits and Leases from Trustor to Beneficiary provided for above is absolute and irrevocable; however,

notwithstanding any other provisions hereof, Beneficiary hereby grants permission to Trustor to collect and retain the Rents and Profits of the Property as they become due and payable until the occurrence and during the continuation of an Event of Default beyond any applicable grace and/or notice and cure period. Following the third (3<sup>rd</sup>) occurrence of an Event of Default beyond any applicable grace and/or notice and cure period, Beneficiary reserves the right to rescind Trustor's right and license to collect and receive Rents and Profits of the Property, notwithstanding any subsequent cure of said Event of Default. In the event of such a rescission, Assignor shall direct all current and any future tenants to make all payments of Rents and Profits due pursuant to their lease directly to Beneficiary or Beneficiary shall direct. On a monthly basis, any balance remaining from the amounts collected by Beneficiary following payment of all amounts presently due Assignee under the Note, this Deed of Trust or any Security Documents shall be promptly returned to Trustor.

Upon any such Event of Default, in accordance with and to the extent allowed by applicable law 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 the Property, or any part thereof, make, cancel, enforce or modify Leases; obtain and evict tenants, set or modify rents; in its own name sue or otherwise collect the Rents and Profits thereof, including those past due and unpaid; apply the same, less costs and expenses of operation and collection, including reasonable attorneys' 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 non-collection of any Rents and Profits, for the failure to assert or enforce any of the foregoing rights, nor shall Beneficiary be charged with any of the duties and obligations of a mortgagee in possession. The entering upon and taking possession of the Property, the collection of such Rents and 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. The assignment of Rents and Profits described in this Paragraph 14 shall be deemed perfected, absolute and choate, upon the recording of this Deed of Trust. In the event of any conflict between the terms of this Paragraph 14 and the terms of any separate Assignment of Rents and Leases, the terms providing Beneficiary with the most extensive or expansive rights and remedies shall control.

15. Judicial Foreclosure or Trustee's Sale on Default:

- (a) Upon the occurrence of one or more Events of Default as defined in this Deed of Trust or under any other Security Document beyond any applicable grace and/or notice and cure period, 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 the Property may be sold in the manner provided under the power of sale conferred upon the Trustee hereunder and in accordance with applicable law.



- (b) If an Event of Default occurs and Beneficiary so requests, in accordance with applicable law, Trustee shall sell the Property at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Unless otherwise required by applicable law (in which case the proceeds shall be applied as required by applicable law), Trustee shall apply the proceeds of the sale as follows:
- (i) To the expenses of sale, including Trustee's fee and attorneys' fee;
  - (ii) To all the indebtedness evidenced by the Promissory Note and all other indebtedness secured by this Deed of Trust or any other Security Document;
  - (iii) The surplus, if any, shall be distributed in accordance with the statutes of the State of Nebraska.

Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Trustor had or had the power to convey at the time of its execution of this Deed of Trust and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust and by the statutes of the State of Nebraska is not an exclusive remedy, and when not exercised Beneficiary may foreclose this Deed of Trust as a mortgage.

Beneficiary may proceed as to the Personal Property in accordance with Beneficiary's rights and remedies and in respect to Property hereunder, or sell the Personal Property separately and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Nebraska Uniform Commercial Code as well as other rights and remedies available at law or in equity.

- (c) Trustor agrees, for itself and any and all persons or concerns claiming by, through or under Trustor, that if it, or any one or more of them, shall hold possession of the Property, or any part thereof, subsequent to a foreclosure or trustee's sale hereunder, it, or the parties so holding possession, shall become, and be considered as, tenants at will of the purchaser or purchasers at such foreclosure or trustee's sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.
- (d) To the extent permitted by law, in addition to the foregoing, in the event of a Default under this Deed of Trust, the Promissory Note or any of the Security Documents, Beneficiary shall have all other rights and remedies provided herein, in the Promissory Note, the Security Documents and available at law or in equity.
- (e) Upon the occurrence of any Event of Default under this Deed of Trust, under the Promissory Note or under any of the Security Documents and following any

acceleration of maturity of the indebtedness secured hereby, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to a foreclosure sale, whether under the power of sale contained herein or pursuant to judicial foreclosure proceedings, shall constitute an evasion of the payment terms of the indebtedness secured hereby and shall be deemed a voluntary prepayment of the indebtedness; and any such payment, to the extent permitted by law, must, therefore, include the prepayment fee, premium and any other charge required under the prepayment privilege contained in the Promissory Note secured hereby; or, if at that time there shall be no privilege of prepayment, then such payment, to the extent permitted by law, will include a charge equal in amount to the prepayment fee, premium and other charge calculated under the prepayment provisions, as set forth in the Promissory Note secured hereby.

16. Personal Property:

This Deed of Trust is also intended to encumber and create, and Trustor does hereby grant to Beneficiary, a security interest in:

- (a) All Personal Property and Fixtures now or hereafter placed in or affixed to the above Property and Improvements and used on or in connection therewith, whether or not the same shall have or would have become a part of said Property by attachment thereto, including without limitation all elevators, and ventilating apparatus, awnings, carpeting and other floor covering materials, draperies, gas and oil tanks and such other goods, equipment and personal property, including but not limited to furniture, furnishings, and all maintenance and other such equipment as is usually furnished by landlords in renting retail business and commercial office space or warehouse space, including the Rents and Profits and all additions thereto and replacements thereof.
- (b) All the Rents and Profits and all rights, causes of action, demands and claims which the Trustor is or may be entitled to assert in Bankruptcy Court, or otherwise, by reason of the termination, rejection or breach of any Lease of any portion of said Property.
- (c) All items described on Exhibit C attached hereto and incorporated herein by this reference.

17. Security Agreement:

This Deed of Trust constitutes a security agreement between Trustor and Beneficiary with respect to all Fixtures and Personal Property in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute and deliver and, if appropriate, to file with the appropriate filing officer or officers such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Upon the occurrence of a Default hereunder not cured within any applicable grace period, Beneficiary shall have the right to cause any of the Property which is subject to the security interest of Beneficiary hereunder to be sold in one or more public or private sales as permitted by applicable

law, including at a sale held in conjunction with the sale of the Property by Trustee, as provided for in this Deed of Trust; and Beneficiary shall further have all rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include Beneficiary's and Trustee's fees and legal expenses. Beneficiary shall have the right to enter upon the Property, the Improvements, any other real property or any Personal Property which is the subject of the security interest granted herein to take possession of, assemble and collect such Fixtures and Equipment and Personal Property, or Trustor, upon demand of Beneficiary, shall assemble such Fixtures and Equipment and Personal Property and make it available to Beneficiary at a place deemed reasonably convenient to Beneficiary. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of any property which is subject to the security interest of Beneficiary or of the time of or after which any private sale or other intended disposition is to be made; and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a reasonably commercial manner if held contemporaneously with the sale under the power of sale granted in this Deed of Trust upon giving the same notice with respect to the sale of the Fixtures and Equipment and Personal Property hereunder as is required with respect to the sale under the power of sale given the Trustee under this Deed of Trust. In the event of any conflict between the terms of this Paragraph 17 and a separate security agreement, the terms providing Beneficiary with the most extensive or expansive rights and remedies shall control.

18. Fixture Financing Statement:

This Deed of Trust is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to those items of the Property as constitute fixtures on the Property. 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 in the real property records of Douglas County, Nebraska where the Property is located. Trustor is the record owner of the Property.

19. Substitution of Trustee:

Beneficiary may, from time to time, by instrument in writing and conforming to applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the real property records of the county where the 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, powers and duties.

20. 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.

21. Time of the Essence:

Time is of the essence in all of Trustor's obligations hereunder.

22. Inspection and Business Records:

Trustor agrees to provide Beneficiary with an annual Property operating statement and current rent roll, each certified to Beneficiary, within one hundred twenty (120) days of the end of each calendar year, setting forth all income, expenses and occupancy information relating to the Property. If during the continuance of any Event of Default, Beneficiary shall have the further right to immediately require a then current operating statement and/or rent roll in a form satisfactory to Beneficiary. All statements provided under this Paragraph 22 will be provided at Trustor's cost. In addition, Trustor shall provide Beneficiary with such other and further records, reports or information as Beneficiary shall reasonably request. Beneficiary or its representatives may, upon reasonable notice to Trustor, make or cause to be made reasonable entries upon and inspections of the Property as Beneficiary in its sole discretion may deem appropriate, and Trustor or its representatives shall be fully cooperative in allowing such inspections.

23. Remedies:

No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. To the extent allowed by law, 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.

24. Savings Clause:

If under any circumstances whatsoever, the interest payable to Beneficiary by Trustor is at a rate in excess of that permitted under applicable law to be paid by Trustor, then, the interest payable to Beneficiary shall be reduced to the maximum amount permitted under applicable law; and if under any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note without prepayment penalty or premium and the obligations owing under this Deed of Trust and not to the payment of interest; or if such excessive interest exceeds the unpaid balance of principal

of the Promissory Note and the obligations owing under this Deed of Trust, such excess shall be refunded to Trustor.

25. Waiver of Jury Trial:

TRUSTOR, BY EXECUTION OF THIS DEED OF TRUST, AND BENEFICIARY BY ACCEPTANCE OF THIS DEED OF TRUST, EACH HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS DEED OF TRUST, THE PROMISSORY NOTE AND OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED THEREBY, ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY OF THE PARTIES. TRUSTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO BENEFICIARY MAKING THE LOAN WHICH IS THE SUBJECT MATTER OF THIS TRANSACTION. TRUSTOR FURTHER ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY AND VOLUNTARILY MADE AFTER FULL OPPORTUNITY TO DISCUSS SAME WITH COUNSEL OF TRUSTOR'S CHOICE.

26. 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. If the lien of this Deed of Trust is or becomes invalid or unenforceable, the amount secured hereby shall become immediately due and payable. Should this instrument be construed or adjudicated to be ineffective or unenforceable as a Deed of Trust, then this instrument shall be construed and enforced as a real estate mortgage, with Trustor as mortgagor and Beneficiary as mortgagee.

27. 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; however, nothing herein is intended to be a waiver by Beneficiary of the provisions of Paragraph 8 hereof.
- (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 Deed of Trust and shall not be used in construing it.
- (e) The term "Trustor" shall mean the original Trustor hereunder and any subsequent owner of the Property who acquires the 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 in equity or by law, shall not be exclusive, but shall be concurrent and cumulative.

28. Representations:

The representations made by Trustor to Beneficiary, through either itself or any other agent, shall survive the closing of the loan evidenced by the Promissory Note and secured by this Deed of Trust and by the recording of this Deed of Trust. Said representations were important to Beneficiary in determining the ability of the Property to support the debt service of the loan secured hereby.

29. 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.

30. Address for Mailing Notices:

Pursuant to Section 76-1008(3) of the Nebraska Trust Deeds Act, a copy of any notice of default and a copy of any notice of sale given under this Deed of Trust shall be mailed to each party to this Deed of Trust at the address set forth for such party in this Deed of Trust at the time and in the manner provided for in Section 76-1008(3). All notices, demands, requests or other communications with respect to this Deed of Trust shall be in writing and shall be effective if personally delivered or mailed by certified mail following three (3) days deposit in the United States mail, postage prepaid, to Trustor, Trustee or Beneficiary, respectively, at the addresses set forth above. Any party may at any time change its address for notices by delivering or mailing to the other parties a notice of said change.

31. Law:

This Deed of Trust, the rights of the Beneficiary hereunder and the Promissory Note secured hereby shall be construed and enforced according to the laws of the State of Nebraska. The parties agree that any action or claim arising out of, or any dispute in connection with, this Deed of Trust, any rights, remedies, obligations, or duties hereunder, or the performance or enforcement (other than the exercise of the power of sale granted in this Deed of Trust) hereof or thereof, may only be brought in the state or federal courts of the State of Nebraska sitting in Douglas County, Nebraska, and each party consents to the non-exclusive jurisdiction of such courts. Each party hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

32. Entire Contract:

This contract together with all other Security Documents embodies the final, entire agreement among the parties hereto and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. The provisions of the Deed of Trust may be amended or waived only by an instrument in writing signed by the parties hereto.

33. No Agricultural Use:

The Property is not used principally or primarily for agricultural or farming purposes.

34. Additional Representation:

Trustor hereby represents and warrants to Beneficiary that:

(a) Trustor:

- (i) Is a limited liability company, validly existing and in good standing under the laws of the State of Nebraska;
- (ii) Has the power and authority to own its properties and to carry on its business as now being conducted;
- (iii) Is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and
- (iv) Is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The execution, delivery and performance by Trustor of this Deed of Trust, the Promissory Note and all other Security Documents, and the borrowing evidenced by the Promissory Note:

- (i) Are within the powers of Trustor;
- (ii) Have been duly authorized by all requisite action;
- (iii) Have received all necessary governmental approval; and
- (iv) Will not violate any provision of law, any order of any court or other agency or government, or the Certificate of Organization and Operating Agreement of Trustor.

(c) This Deed of Trust, the Promissory Note and all other Security Documents constitute the legal, valid and binding obligations of Trustor and other obligors named therein, if any, in accordance with their respective terms.

(d) Neither the execution and delivery of this Deed of Trust, the Promissory Note or other Security Documents, the consummation of the transactions contemplated hereby, or thereby, nor the fulfillment of or compliance with the terms and conditions of this Deed of Trust, the Promissory Note, or other Security Documents, conflicts with or results in a breach of any of the terms, conditions or provisions of any restrictions or any agreement or instrument to which Trustor is now a party or by which it is bound.

35. Hazardous Materials:

- a. **Definitions.** For the purpose of this Deed of Trust, Trustor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the

following capitalized terms in this Paragraph 35 shall have the meaning herein specified:

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time.

"Environmental Laws" means all present and future laws, statutes, ordinances, rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and requirements, as they may be amended from time to time, relating to the environment or to any Toxic Materials or Indemnified Activity, including, without limitation, CERCLA, and all rules, regulations, orders and decrees now or hereafter promulgated thereunder, together with all statutes and rules and municipal ordinances dealing with similar environmental matters.

"Indemnified Activity" means (A) any actual, proposed or threatened location, use, manufacture, storage, holding, existence, presence, release, emission, discharge, generation, processing, abatement, removal, disposal, handling or transportation of any Toxic Materials from, beneath, into or onto the Property or otherwise relating to the Property or the Use of the Property, or any other activity or occurrence that would cause any such event to exist, or (B) the improper installation, maintenance or removal of any underground storage tank (an "UST") on, in, under, or from the Property by or at the direction of Trustor. For purpose of this definition, "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Toxic Materials into or through soil, surface water or groundwater; such term does not include actions directly relating to incorporation in a lawful manner of building materials into a permanent improvement to the Property. For purposes of this definition, "Property" shall be deemed to include the air, soil, groundwater and surface water thereof.

"Indemnitee" means Beneficiary and its respective subsidiaries, affiliates, directors, officers, shareholders, agents, attorneys, employees, participants, successors and assigns.

"Knowledge" means the actual knowledge of the Trustor, without any investigation or inquiry other than as provided for in the Disclosures.

"Loan Documents" means the Deed of Trust, the Promissory Note, any separate Assignment of Rents and Leases and any other documents executed by Trustor and delivered in connection with the loan secured hereby.

"Termination Date" means the earlier to occur of (i) date after which Trustor ceases to be either an owner or an operator of the Property, as "owner" and "operator" are defined in Section 101(20)(A) of CERCLA or (ii) the loan secured hereby has been repaid in full.

"Toxic Materials" means, at any time, (i) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) (ii) any additional substances or materials which at such time are classified or considered to be hazardous or toxic under any Environmental Laws; (iii) asbestos and asbestos-containing materials; and (iv) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.



"Use" means use, ownership, development, construction, maintenance, management, operation or occupancy.

- b. **Covenants, Representations and Warranties of Trustor.** Trustor covenants, represents and warrants as follows:

(a) that, except as previously disclosed by Trustor to Beneficiary in writing and except as disclosed in that certain Phase I Environmental Site Assessment of the Property dated June 2016, prepared by The Assessment Group Inc. (the foregoing collectively referred to as the "Disclosures"), (i) no Toxic Materials are or at any time hereafter shall be present, generated, manufactured, treated, refined, reproduced, processed, released or disposed of, in, on or beneath the Property or transported to or from the Property except in accordance with applicable Environmental Laws; (ii) no activity is now or at any time during Trustor's ownership shall be undertaken with respect to the Use of the Property which would cause a violation of or support a claim under any Environmental law; (iii) no UST or underground deposits are, or at any time during Trustor's ownership will be located on the Property and to the best of Trustor's Knowledge no UST or underground deposits were at any time on the Property and were subsequently removed or filled; (iv) to the best of Trustor's Knowledge there are no surface or subsurface soil, water, mineral, chemical or environmental conditions which presently, or with the passage of time will (A) require reporting to any governmental authority, (B) constitute a risk to human health or safety or a violation of any Environmental Laws, or (C) otherwise materially adversely affect or threaten to materially adversely affect the use and operation of the Property; (v) no investigation, administrative order, litigation or settlement with respect to any Toxic Material is threatened or in existence with respect to the Property; (vi) no notice has been served on Trustor from any entity, governmental body or individual, and Trustor has no Knowledge or reason to know that any governmental authority or employee or agent thereof is or will be claiming any violation of any Environmental Law, or requiring compliance with any Environmental Law, or demanding payment or contribution for environmental damage or injury to any third party or natural resources; and (vii) Trustor has given no release or waiver of liability that would waive or impair any claim based on Toxic Materials to a previous owner of the Property or to any party who may be potentially responsible for the presence of Toxic Materials on the Property, nor has Trustor given any promises of indemnification regarding Toxic Materials to any party other than Beneficiary; and

(b) that the Property is and will only be utilized for commercial purposes.

- c. **Liens.** Trustor shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Property, including any so-called state, federal or local "Superfund" lien relating to such matters.
- d. **Site Assessments.** Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to, in the event Beneficiary has reasonable belief that environmental contamination has occurred, or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition which could result in any liability, cost or expense to the owner, occupier or operator of such Property

arising under any Governmental Requirements relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Trustor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below-ground testing for environmental damage or the presence of Hazardous Materials or Hazardous Materials Contamination on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Trustor will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Trustor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Trustor upon demand of Beneficiary and any such obligations shall be indebtedness secured by this Deed of Trust.

- e. **Indemnity.** Trustor shall exonerate, indemnify, defend (with counsel reasonably approved by the Indemnitee(s)), save and hold harmless each Indemnitee from and against any and all claims, losses, fines, penalties, judgments, damages, costs or expenses (including attorneys' fees, consultant fees and expert fees) and all other liabilities to any third party arising out of or resulting from the following:

(a) Any Indemnified Activity on the Property that Trustor or its agents have caused, permitted or contributed to, or the failure of anyone to materially comply with all applicable Environmental Laws relating to the Property or the Use of the Property, which Indemnified Activity or failure to materially comply occurs or exists on or prior to the Termination Date and during the ownership of the Property by Trustor or any affiliate. The term 'affiliate' shall mean any person or entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Trustor.

(b) Any investigation, inquiry, order, hearing, action or other proceeding by or before any government agency in connection with any Indemnified Activity by Trustor or by anyone under Trustor's control, which Indemnified Activity occurs or allegedly occurs on or prior to the Termination Date, or in connection with any Indemnified Activity which resulted directly or indirectly from any Indemnified Activity occurring or allegedly occurring prior to the Termination Date and during the ownership of the Property by Trustor or an affiliate;

(c) Any costs relating to any cleanup, remediation or other response action concerning a release or threatened release of Toxic Materials on, beneath or from the Property, whether or not such cleanup, remediation or other response action is pursuant to an order of any federal, state or local governmental agency;

(d) Any inaccuracy of the representations and warranties made in Section 3 above; and

(e) Any claim, demand, liability or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any

Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (a) through (d) of this Section 4 or any allegation of any such matters.

f. **Payment of Indemnitees' Expenses.**

(a) Trustor shall pay to each Indemnitee all costs and expenses (including the reasonable fees and disbursements of the Indemnitee's legal counsel and the reasonable charges of the Indemnitee's internal legal counsel) incurred by any Indemnitee in connection with this Indemnity or the enforcement of the terms of this Indemnity.

(b) Trustor shall pay when due any judgments or claims for damages, penalties or otherwise against any Indemnitee, and shall assume the burden and expense of defending all suits, administrative proceedings and resolutions of any description with all persons, political subdivisions or government agencies arising out of the occurrences described in this Indemnity. If any action is brought against any Indemnitee, Trustor at the Indemnitee's sole option and at Trustor's expense, shall defend against such action with counsel reasonably satisfactory to the Indemnitee and, with the Indemnitee's sole consent and approval, settle and compromise any such action. However, any Indemnitee may elect to be represented by separate counsel at such Indemnitee's sole expense, and if the Indemnitee so elects such separate counsel, any settlement or compromise by Trustor shall likewise be effected only with the consent of the Indemnitee. Indemnitee, at its expense, may elect to join and participate in any settlements, remedial actions, legal proceedings or other actions included in connection with any claims under this Indemnity.

(c) In the event that payment under clauses (a) and (b) of this Section 5 is not made, Indemnitee, at its sole discretion, may proceed to file suit against Trustor to compel such payment.

(d) If amounts due to Indemnitee under clauses (a) and (b) of this Section 5 are not paid within ten (10) days after Indemnitee makes demand therefor after final judgment and exhaustion of all appeals, then such amounts shall bear interest from the date of demand until the date such amounts are paid in full at the Default Rate (as defined in the Note). The Default Rate is intended to compensate Indemnitee for damages Indemnitee will suffer as a result of Trustor's late payment. Trustor agrees that such damages are extremely difficult and impractical to ascertain, but that such amounts plus interest thereon calculated at the Default Rate shall be presumed to be reasonable and to represent the actual amount of damages sustained by Indemnitee for any late payment. Any interest calculated at the Default Rate which may accrue shall be immediately due and payable.

- g. **Right of Entry.** Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on or under the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property, or any part thereof which, if true, could result in an order, notice, suit, imposition of a lien on the Property, or other action, and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's



**EXHIBIT A**

**Legal Description of Property**

**To Deed of Trust, Security Agreement,  
Assignment of Rents and Fixture Filing Statement**

Lots 66 and 67, in EMPIRE PARK REPLAT II, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska EXCEPT a triangular parcel more particularly described as follows: Commencing at the Southwest corner of said Lot 67, thence North along the West boundary line of said Lot for a distance of 15.00 feet; thence Southeasterly along a straight line for a distance of 16.55 feet to a point on the South boundary line of Lot 67, said point being 7.00 feet East of the Southwest corner of said Lot; thence West along the South boundary line a distance of 7.00 feet to the point of beginning.

Together with a beneficial easement for storm sewer filed December 28, 1990 in Book 948 at Page 721 of the Miscellaneous Records of Douglas County, Nebraska.

## EXHIBIT B

### Permitted Exceptions

#### To Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing Statement

1. The lien of the second installment of the general taxes for 2015, payable in 2016, and all subsequent taxes and special assessments, including but not limited to those now pending, assessed or levied, not yet certified to the Office of the County Treasurer for collection at the date hereof.
2. Covenants, conditions and restrictions contained in Declaration of Protective Covenants dated February 22, 1984, filed February 24, 1984, in Book 705 at Page 629 of the Miscellaneous Records of Douglas County, Nebraska, which contains no forfeiture provision.
  - a. Provisions for Architectural Control and Approval of Construction Plans set forth therein.
  - b. Assignment dated September 28, 1984, filed September 28, 1984, in Book 719 at Page 422 of the Miscellaneous Records of Douglas County, Nebraska, wherein Developer rights under the above Covenants were assigned to Midway Development Company, A Texas General Partnership.
  - c. Developer rights were subsequently assigned to Bank of Oklahoma, N.A., by instrument dated April 30, 1987, filed May 6, 1987 in Book 1802 at Page 616 of the Deed Records of Douglas County, Nebraska.
  - d. Developer rights subsequently assigned to Metro North State Bank by instrument filed July 27, 1990 in Book 932 at Page 474 of the Miscellaneous Records of Douglas County, Nebraska.
3. Easement granted to Omaha Public Power District by instrument dated October 28, 1974, filed November 25, 1974, in Book 545 at Page 141 of the Miscellaneous Records of Douglas County, Nebraska, to construct and maintain electric transmission lines over, above, along, under, in and across Pt. SE1/4 SW1/4Sec. 5-14-12 lying East of Interstate Highway right-of-way and Lots 30 thru 34 Empire Park. (Affects Lot 67.)
  - a. Amended by Agreement dated February 27, 1976, filed March 19, 1976 in Book 562 at Page 531 of the Miscellaneous Records of Douglas County, Nebraska, which amends the above instrument.
4. Easements granted for utilities by Plat and Dedication of Empire Park Replat II, filed September 7, 1983, in Book 1713 at Page 20 of the Deed Records of Douglas County, Nebraska, on, over, through, under and across a five foot wide strip of land abutting the front and side boundary lot lines; an eight foot wide strip of land abutting the rear boundary lines of all interior lots; and, a sixteen foot wide strip of land abutting the rear boundary lines of all exterior lots, with provision for said sixteen foot wide easements to be reduced to eight feet.
  - a. Disclaimer and Release filed December 28, 1990 in Book 948 at Page 720 of the Miscellaneous Records of Douglas County, Nebraska, by Omaha Public Power District which releases and disclaims rights attained by virtue of the above Plat and Dedication over, upon, along and above a ten foot wide strip of land being five feet on either side of and abutting the common lot line of Lots 66 and 67.

- b. Release of Easement filed January 8, 1991 in Book 949 at Page 653 of the Miscellaneous Records of Douglas County, Nebraska, by US West Communications, Inc., which releases and disclaims rights attained by virtue of the above Plat and Dedication in, under, upon, over and through those side lot easements abutting the common line of Lot 66 and 67.
  - c. Plat Survey reveals a 28 foot existing Omaha Public Power District Powerline Easement affecting the Southerly 28 feet of Lot 67.
5. Covenants, conditions and restrictions contained in Declaration of Protective Covenants dated January 9, 1981, filed January 9, 1981, in Book 644 at Page 682 of the Miscellaneous Records of Douglas County, Nebraska, which contains no forfeiture provision.
  6. Terms, conditions, agreements and limitations contained in Subdivision Agreement dated August, 1981, filed October 2, 1981, in Book 660 at Page 402 of the Miscellaneous Records of Douglas County, Nebraska.
  7. Subject to and together with terms and conditions of beneficial easement for storm sewer filed December 28, 1990 in Book 948 at Page 721 of the Miscellaneous Records of Douglas County, Nebraska, in, through, and under adjacent property for the benefit of subject property.
  8. Right-of-Way Easement granted to Omaha Public Power District by instrument dated March 1, 1991, filed April 5, 1991 in Book 958 at Page 658 of the Miscellaneous Records of Douglas County, Nebraska, to construct and maintain underground electric facilities upon, over, along and under a ten foot wide strip of land affecting subject property.
  9. Return of Appraisers filed March 11, 1993 in Book 1061 at Page 141, records of Douglas County, Nebraska, for taking of part of Lot 67 by the City of Omaha, a Municipal corporation, and subject to a temporary construction easement as stated therein.
  10. ALTA/ACSM Land Title Survey prepared by Clarence Roger Carrell, Nebraska Registered Land Surveyor of Carrell & Associates, Inc., L.S. No. LS-306, dated April 20, 2015, designated as AC 15612, reveals a 3.7' X 13.5' encroachment of concrete over the North property line.
  11. Rights and claims of lessees/tenants, as lessees/tenants only, under unrecorded leases, contracts and/or verbal agreements.

## EXHIBIT C

### Personal Property Description

#### To Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing Statement

- A. All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the operation of, the real property located in Douglas County, Nebraska, and more particularly described as Exhibit A (the "Property") (whether such items are leased, owned absolutely or subject to any title retaining or security instrument, or otherwise used or possessed, but excluding those items owned by tenants in accordance with their leases), including, without limitation, all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric, and communication fixtures, equipment, and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators, and other appliances, all escalators and elevators, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding and draperies, all furnishings of public spaces, halls and lobbies and all shrubbery and plants.
- B. All present and future contracts and policies of insurance which insure the Property or any building, structures, or improvements thereon, or any such fixtures or personal property, against casualties and theft, and all proceeds and rights thereto which may be or become payable by virtue of any such insurance contracts or policies.
- C. All the rents, revenues, issues, profits and income of the Property, and all right, title, and interest of Trustor in and to all present and future leases and other agreements for the occupancy or use of all or any part of the Property, and all right, title and, interest of Trustor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, together with all guaranties of tenants' or occupants' performance thereunder.
- D. All general intangibles relating to the development or use of the Property, including, without limitation, all permits, licenses, and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos, and good will in any way relating to the Property.
- E. All water stock relating to the Property, all shares of stock or other evidence of ownership of any part of the Property that is owned by Trustor in common with others, and all documents or membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property.
- F. All products and proceeds of all of the foregoing.