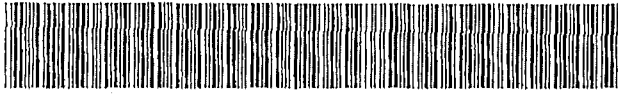


DEED 2005158559



DEC 16 2005 14:12 P 2

12-16-05
L.S.
\$ 312.50
By *[Signature]*

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/16/2005 14:12:15.26



2005158559

CORPORATION WARRANTY DEED

KNOWN ALL MEN BY THESE PRESENTS, that S & S Properties, LLC, a Nebraska Limited Liability Company, herein called the GRANTOR, whether one or more, in consideration of One Dollar and other valuable consideration received from GRANTEEES, does grant, bargain, sell, convey and confirm unto 1308 Jackson Dev, LLC, a Nebraska Limited Liability Company, herein called the GRANTEE, whether one or more, the following described real property in Douglas County, Nebraska:

**Parcel 1:
Lot 5, Block 167, Original City of Omaha, Douglas County, Nebraska.**

**Parcel 2:
Lots 6 and 7, Block 167, Original City of Omaha, Douglas County, Nebraska.**

To have and to hold the above described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the GRANTEE and to GRANTEE's successors and assigns forever. And GRANTOR does hereby covenant with the GRANTEE and with GRANTEE's successors and assigns that GRANTOR is lawfully seized of said premises; that they are free from encumbrance, except those easements, restrictions and covenants of record.

That GRANTOR has good right and lawful authority to convey the same; and that GRANTOR warrants and will defend the title to said premises against the lawful claims of all persons whomsoever.

DATED: December ¹⁵~~14~~, 2005

S & S Properties, LLC, a Nebraska Limited Liability Company

By *[Signature]*
A. Scott Hoyt, Member

By *[Signature]*
Steve Wheeldon, Member

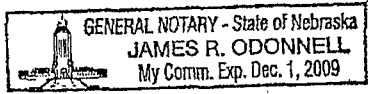
F Deed 11.50
2 03-80000
3

35

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On December ¹⁵~~14~~, 2005, before me, the undersigned, a Notary Public, duly commissioned and qualified in said County, personally came A. Scott Hoyt and Steve Wheeldon, Members of S & S Properties, LLC, a Nebraska Limited Liability Company known to be the identical person(s) whose name(s) are affixed to the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed on behalf of said Limited Liability Company.

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



James R. O'Donnell

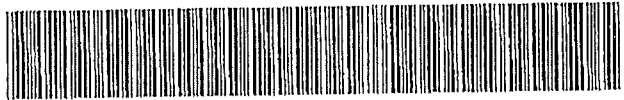
NOTARY PUBLIC

My commission expires: 12-1-09





MTG 2005158853



DEC 19 2005 10:11 P 23

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/19/2005 10:11:19.06



2005158853

**RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:**

**Morrison Enterprises
3303 W 12th
Hastings, NE 68901 - 3446
Attention: Anna Stehlik**

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

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust") dated this 18th day of November, 2005, by **1308 Jackson^{Del} L.L.C.** a Nebraska Limited Liability Company ("Trustor"), whose address is 4524 Farnam Street, Omaha, NE 68132 to **Morrison Enterprises**, a general partnership, whose address is 3303 W 12th Hastings, NE 68901 - 3446 ("Beneficiary") and to Anna Stehlik, Attorney # 15621, 3303 W 12th P.O. Box 609, Hastings, NE 68901-3446 ("Trustee").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably warrants, grants, bargains, sells, transfers, conveys and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property, rights and interest of Trustor now owned or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Mortgaged Property":

A. The "Property," being the real property located in the City of Omaha, County of Douglas County, State of Nebraska, described on Exhibit "A" attached hereto and by this reference made a part hereof, (the "Land"), together with any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to

Deed of Trust,
Page 1

mtg FEE 116.50 FB 03-80120
23/3 BKP _____ C/O _____ COMP g
DEL _____ SCAN _____ FV _____

be situated on the Land (collectively, the "Improvements"); and all right, title and interest of Trustor, now owned or hereafter acquired, in and to (i) all streets, roads and public places, alleys, easements, rights-of-way, public or private, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, now or hereafter used in connection with or pertaining to the Land or the Improvements; (ii) any strips or gores between the Land and abutting or adjacent properties; (iii) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; (iv) all water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) wells and well rights, well permits, springs and spring rights and reservoirs and reservoir rights appurtenant to or historically used in connection with the Property and all of Trustor's rights and interests under applicable state or Federal law to all water, and to use or consent to use all water, contained in or available from any part of the water-bearing formations underlying the Land, together with all associated easements and rights-of-way, any and all rights to obtain water, sewer and other services from service districts, and water stock, timber, crops and mineral interests on or pertaining to the Land; and (v) all development rights and credits and air rights (the Land, Improvements and other rights, titles and interests referred to in this clause (c) being herein sometimes collectively called the "Premises");

B. All fixtures, equipment (including but not limited to, fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, all kitchen equipment, and all other equipment of every kind other than such property owned by tenants of Trustor), systems, machinery, furniture, furnishings, appliances, machinery, tools, inventory, goods, building and construction materials, supplies, and other articles of personal property, of every kind and character, tangible and intangible, now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (d) being herein sometimes collectively called the "Accessories");

C. All (i) plans and specifications for the Improvements, including but not limited to, maps, surveys, studies, reports, permits, licenses, architectural, engineering, construction, management, maintenance, service and other contracts, books of account, insurance policies and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, purchase or operation of the Mortgaged Property, (ii) Trustor's rights, but not liability for any breach by Trustor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness as such term is defined below), insurance policies, interest rate protection agreements, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including payment intangibles and any trademarks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof, (iii) deposits and deposit accounts arising from or relating to any transactions related to the Premises or the

Accessories (including Trustor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents (as such term is defined below) for taxes, insurance or otherwise), (iv) rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories, (v) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (vi) all of Trustor's interest in all leases now or hereafter existing with respect to all or any portion of the Premises, all of the rents, issues and profits of the Mortgaged Property (as defined below) or arising from the use or enjoyment of all or any portion thereof, all security deposits arising from the use or enjoyment of all or any portion of the Mortgaged Property, and other benefits of the Premises and the Accessories, (vii) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof, and (viii) engineering, accounting, title, legal, and other technical or business data concerning the Mortgaged Property, including software, which are in the possession of Trustor or in which Trustor can otherwise grant a security interest.

D. All of Trustor's interest in and to all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses (as said terms are defined in the Nebraska Uniform Commercial Code, as the same may be amended from time to time) and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Property (as defined below), whether now existing or entered into or obtained after the date hereof; all existing and future names under or by which the Mortgaged Property, or any portion thereof, may at any time be operated or known; all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the Mortgaged Property, or any portion thereof;

E. All interests, estates or other claims or demands, in law and in equity, which the Trustor now has or may hereafter acquire in the Mortgaged Property and all right, title and interest hereafter acquired by Trustor in any greater estate in any of the foregoing; and

F. All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property referred to above

The foregoing items are hereinafter called the "Mortgaged Property."

PROVIDED, HOWEVER, that these presents are upon the condition that, if the obligations secured hereby shall be paid when due, and if the Trustor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Deed of Trust expressed to be kept, performed by and observed by or on the part of the Trustor, then the Trustee, its successors and assigns, shall reconvey and release the Mortgaged Property.

THIS DEED OF TRUST SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

- 1. Payment of a maximum indebtedness in the amount of \$3,000,000 evidenced by that certain Promissory Note dated November 18, 2005, executed by Trustor in favor of Beneficiary in the principal amount of \$3,000,000, being payable as provided therein, according to its terms, and all extensions, renewals and modifications thereof, and the performance and discharge of each and every obligation of Trustor set forth in the Promissory Note;
- 2. Payment of all other indebtedness and the due, prompt and complete performance of all obligations and covenants of Trustor herein and under each of the "Loan Documents" (as defined below);
- 3. Payment of all of sums advanced by Beneficiary to protect the Mortgaged Property, and
- 4. Such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary, its successors or assigns, by Trustor, its successors or assigns, when evidenced by another promissory note or notes, which are by the terms thereof secured by this Deed of Trust.

The indebtedness and the obligations secured by this Deed of Trust which are described in (1) through (4) above may be referred to herein as the "Secured Obligations."

The indebtedness secured hereby is further evidenced and secured by two UCC Financing Statements (one state and one county), which, with this Deed of Trust, the Promissory Note and any amendments or supplements thereto or modifications thereof are hereinafter referred to collectively as the "Loan Documents:"

ARTICLE I

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor hereby represents, warrants, covenants and agrees:

Section 1.01. Payment of Secured Obligations. Trustor hereby grants this Deed of Trust to secure the payment and performance when due of the Secured Obligations. The consideration received by Trustor to execute and deliver this Deed of Trust and the liens and security interests created herein is sufficient and will provide a direct economic benefit to Trustor.

Section 1.02. Title of Trustor. Trustor has, subject to Permitted Exceptions set forth in Exhibit "B" hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Deed of Trust and has full right to make this conveyance. With respect to any personal property acquired after the date hereof, Trustor shall be the sole owner of the personal property, free of

any adverse lien, security interest, encumbrance or adverse claim of any kind. Trustor agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Deed of Trust in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Deed of Trust thereon, or any of the rights of either Trustee or Beneficiary hereunder; and Trustor agrees to pay all costs and expenses incurred by either Trustee or Beneficiary in or in connection with any such action or proceeding, including but not limited to Beneficiary's costs, whether any such action or proceeding progresses to judgment and whether brought by or against Trustee or Beneficiary. Beneficiary or Trustee, as the case may be, shall be reimbursed for any such costs and expenses. Trustee or Beneficiary may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as either may, in its sole and absolute discretion, deem advisable, and may settle or compromise the same and, on that behalf and for any of such purposes, may expend and advance such sums of money as either may deem necessary, and Beneficiary or Trustee, as the case may be, shall be reimbursed therefor. Upon receipt of a written request from Beneficiary, Trustor agrees to supply Beneficiary from time to time, but not more frequently than once each calendar year, with an inventory of all Mortgaged Property in a form acceptable to Beneficiary.

Section 1.03. Intentionally Omitted

Section 1.04. **Maintenance, Repair, Alterations**. Trustor shall: (i) keep the Property and Accessories in good condition and repair, subject to reasonable and ordinary wear and tear; (ii) not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; (iii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor; (iv) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property, or any part thereof, or requiring any alterations or improvements; (v) not to commit or permit any waste or deterioration of the Mortgaged Property; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; (vii) comply with the provisions of any lease, if this Deed of Trust is on a leasehold; and (viii) not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation. In the event that Trustor fails to maintain the Mortgaged Property in the manner specified herein, Beneficiary may, at its option, undertake such repairs or maintenance, for the account of Trustor, as Beneficiary deems necessary. The cost of any such repairs or maintenance undertaken by Beneficiary, together with interest thereon at the rate so provided in the Note, from the date such cost was incurred by Beneficiary, shall become immediately due and payable to Beneficiary, and Beneficiary shall be reimbursed therefor. The right of Beneficiary to undertake such repairs or maintenance shall be optional, and shall in no way limit Beneficiary's right to declare a default under the Note, this Deed of Trust or the other Loan Documents for failure to maintain the Mortgaged Property in accordance with the covenants herein.

Once commenced, all work thereunder shall be prosecuted with due diligence, and all construction thereof will be fully in accordance with the plans and specifications so approved, and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire

Underwriters. Should Trustor at any time fail to comply with any governmental notice or demand alleging a failure to comply with any such plan, specification, law, ordinance or regulation, such failure shall, at Beneficiary's option and in its sole and absolute discretion, constitute a default hereunder.

Section 1.05. **Required Insurance.** Trustor shall at its sole expense obtain, provide, maintain and at all times keep in force for the benefit of Beneficiary during that term of this Deed of Trust, the policies of insurance required by Gateway Bank (the "Primary Lender"):

Section 1.06. **Delivery of Insurance Policies, Payment of Premiums.** All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents or as otherwise satisfactory to Beneficiary. All policies of insurance shall name Beneficiary as an additional insured. Trustor shall furnish Beneficiary with an original or certified copy of all policies of required insurance.

Fifteen (15) days prior to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary of the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including, without limitation, amended to reduce the scope or limits of coverage, without thirty (30) days' prior written notice to Beneficiary and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to Beneficiary. In all cases, Trustor shall immediately give notice to Beneficiary of any notice received by Trustor of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Trustor fails to provide, maintain, keep in force, or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or to make the deposits required hereunder, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums, together with interest thereon at the Default Rate provided by the Promissory Note, shall be secured by this Deed of Trust.

Section 1.07. **Insurance Proceeds.** After the occurrence of any casualty to the Mortgaged Property, or any part thereof, Trustor shall give prompt written notice thereof to Beneficiary and each insurer and promptly submit a claim to insurer for payment of insurance proceeds. Except as provided below, nothing contained in this Deed of Trust shall be deemed to excuse Trustor from repairing or maintaining the Mortgaged Property as provided in Section 1.04. The application or release of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice. If the Insurance Proceeds are not applied to the restoration, rebuilding or repair of the Mortgaged Property pursuant to Section 1.07(a), Trustor shall not be required to restore, rebuild or repair the portion of the Mortgaged Property damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Deed of Trust.

Section 1.10. **Taxes and Impositions.**

(a) Trustor agrees to pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and

assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) Upon request of Beneficiary, Trustor covenants to furnish Beneficiary, official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Subject to the applicable state law provisions, Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay such Imposition at the time and in the manner provided in this Section 1.10, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary; and (iii) Trustor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) Trustor covenants and agrees not to suffer, permit or initiate the joint assessment of the Real Property and Personal Property, or any other procedure whereby the lien of the Real Property taxes and the lien of the Personal Property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

Section 1.11. **Utilities.** Trustor shall pay when due all utility charges incurred for the benefit of the Premises or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.12. Intentionally Omitted

Section 1.13. **Actions by Beneficiary and/or Trustee to Preserve Mortgaged Property.** Should Trustor fail to make any payment or do any act as and in the manner provided in this Deed of Trust, Beneficiary, in its sole discretion, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any Secured Obligation, may make or do the same in such manner and to such extent as Beneficiary deems necessary to protect the security hereof without prejudice to its right to declare a default

hereunder, provided, however, Beneficiary shall have given all required notices to the Primary Lender and any applicable cure period has expired.

Section 1.14. **Survival of Warranties**. Trustor shall fully and faithfully satisfy and perform the Secured Obligations. All representations, warranties and covenants of Trustor contained herein shall remain continuing obligations, warranties and representations of Trustor during any time when any portion of the Secured Obligations remain outstanding.

Section 1.15. **Eminent Domain**. Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Trustor receive any notice or other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. To the extent permitted by the primary lender, Beneficiary may participate in any such Condemnation proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by Beneficiary to permit such participation.

Section 1.16. **Additional Security**. In the event Beneficiary at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. **Additional Indebtedness**. This Security Instrument is subject to the priority first mortgage lien of the Primary Lender. To the extent any provision conflicts with that of the first lien, the first lien prevails.

Section 1.18. **Successors and Assigns**. 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. The covenants and agreements of Trustor contained herein shall apply to and be binding upon any successor owner of the Mortgaged Property or any part thereof.

Section 1.19. Intentionally Omitted

Section 1.20. **Liens**. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge.

Section 1.21. **Restrictions Affecting Title**. Trustor shall perform when due all Secured Obligations required to be performed by Trustor by the provisions of any agreement affecting title to the Mortgaged Property.

Section 1.22. **Further Assurances**. Trustor shall take all action and do all things which it is authorized by law to take and do, and cooperate with Beneficiary as Beneficiary deems necessary or desirable, to insure the release of all encumbrances against the Mortgaged Property, except Permitted Exceptions, existing prior to the date hereof. So long as any Secured Obligation remain unpaid, Trustor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Beneficiary all such instruments and

documents as in the opinion of Beneficiary are necessary or desirable to preserve the first priority lien created by this Deed of Trust.

Section 1.23. **Performance of Covenants.** At all times Trustor shall faithfully perform all covenants, undertakings, stipulations and provisions contained in the Loan Documents and all of its proceedings pertaining to this Deed of Trust.

Section 1.24. **No Event of Default Under Loan Documents.** Trustor agrees to notify Beneficiary immediately in writing of any default by Trustor in the performance or observance of any covenant, agreement, representation, warranty or obligation of Trustor set forth in this Deed of Trust. Trustor shall also notify Beneficiary in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.25. Intentionally Omitted

Section 1.26. **Organization; Due Authorization.** Trustor is a Limited Liability Company, duly organized, validly existing and in good standing under the laws of the State of Nebraska, is duly authorized to transact business in the State of Nebraska, and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by this Deed of Trust, the Loan Documents and all other documents pertaining to the Loan to which it is a party. The execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Trustor and will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance (other than those contained herein or in any instrument concurrently delivered to Beneficiary) upon any of the Mortgaged Property or other assets of Trustor under any other indenture or instrument to which Trustor is bound.

Section 1.27. **Liabilities; Compliance with Other Instruments.** Trustor has no liabilities except hereunder and those incurred in the ordinary course of business and which are not delinquent or which are otherwise contemplated or permitted by this Deed of Trust and the other Loan Documents. Trustor is not in default (i) in the payment of any taxes levied or assessed against it or its assets, (ii) under any applicable statute, rule, order or regulation of any governmental authority, (iii) under this Deed of Trust or any of the other Loan Documents or (iv) under any other agreement to which it is a party or by which it or any of its properties are bound.

Neither the execution and delivery of this Deed of Trust or any of the other Loan Documents, nor the consummation of the transaction contemplated, nor compliance with the terms and provisions hereof or thereof, conflicts with or results or will result in a breach of any of the terms, conditions or provisions of the Articles of Organization or the Operating Agreement of Trustor, any law, order, rule, regulation, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Trustor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder, or results or will result in the creation or imposition of any lien of any nature whatsoever upon any of its property or assets pursuant to the terms of any such agreement or instrument except the liens created or permitted by the Loan Documents.

Section 1.28. **Enforceability.** This Deed of Trust and each of the other Loan Documents have been duly executed and delivered by Trustor and constitute valid and binding

obligations of Trustor, enforceable in accordance with their respective terms, except as the enforceability (but not the validity thereof) may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

Section 1.29. **Pending Litigation.** There are no proceedings pending or, to the knowledge of Trustor threatened, against or affecting Trustor in any court or before any governmental authority, arbitration board or tribunal which if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor or the right or ability of Trustor to enter into the Loan Documents, and if any such proceedings are subsequently initiated or threatened Trustor will promptly provide written notice to Beneficiary. Trustor is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

Section 1.30. **Compliance With Law.** Trustor is in compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules or regulations relating to environmental protection the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Trustor. No portion of the proceeds of the Loan shall be used by Trustor for the purpose of purchasing, acquiring or owning registered equity securities as defined in Regulation G of the United States Federal Reserve Board or for the purpose of refinancing, releasing or retiring any secured indebtedness originally incurred for such purpose.

Section 1.31. **Appointment of Successor Trustee.** If Trustee shall die, be dissolved or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of Trustee named herein, Beneficiary shall have full power, subject to applicable law, to appoint by written instrument a substitute Trustee and, if necessary, several substitute Trustees in succession, who shall succeed to all the estate, rights, powers and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary, and, if Beneficiary is a corporation or limited partnership, and such appointment is executed in its behalf by any officer of such corporation or general partner of such limited partnership, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or further partnership action.

Section 1.32. **Transfer of Interests in Mortgaged Property.** Trustor shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber or assign ownership or control of all or any part of the Mortgaged Property or any interest therein, without the consent of Beneficiary. In the event that without first obtaining the written consent of the Beneficiary there shall be any (i) transfer, sale, mortgage or conveyance (except leases of space in the Mortgaged Property as specifically permitted under the Loan Agreement) of all or any part of the interest of the Trustor in the Mortgaged Property or any part thereof, whether voluntarily or by operation of law, or (ii) transfer, sale, conveyance, or pledge of 50% or more of the ownership interests in Trustor, or (iii) mortgage, pledge, encumbrance, lien or security interest to be outstanding against the Trustor's interest in any portion of the Mortgaged Property, except as created by this Deed of Trust and the other documents which secure the

Promissory Note, and except Permitted Encumbrances, the entire amount secured hereby shall, without notice at the option of the Beneficiary, become immediately due and payable. Failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent transfer, sale or conveyance. It is understood that a consent by the Beneficiary to any such transfer, conveyance or mortgage shall not be deemed a waiver of the right to require such consent to any subsequent transfer, mortgage or conveyance and that the provisions of this paragraph shall be binding upon any and all successive holders of the interest of the Trustor in the Mortgaged Property or any part thereof.

ARTICLE II

BENEFICIARY'S POWERS

At any time, or from time to time, without liability and without affecting the personal liability of any person for payment of the Secured Obligations and without effecting the enforceability of this Deed of Trust upon the remainder of said Mortgaged Property, Beneficiary may without notice (i) release any part of said Mortgaged Property, (ii) join in any extension agreement or any agreement subordinating the lien or charge hereof, (iii) grant other indulgences, (iv) take or release any other or additional security for any obligation herein mentioned, or (v) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Trustor hereunder, and all amounts so advanced, with interest thereon at the rate provided by the Promissory Note, shall be secured hereby.

ARTICLE III

SECURITY AGREEMENT

Section 3.01. Creation of Security Interest. With respect to any portion of the Mortgaged Property which constitutes Personal Property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Trustor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of its security interest, or any modification thereof. Trustor shall pay all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC.

Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or business form or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property.

Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated in Section 5.05 of this Deed of Trust. The mailing address of Trustor, as debtor, is as stated in Section 5.05 of this Deed of Trust.

The security interest in the personal property created hereby shall be subject to the right of Trustor to replace any such personal property from time to time so long as the replacement has a fair market value, equal or greater to the fair market value of the property replaced. The personal property may be moved about and relocated from time to time within the Premises without the prior consent of Beneficiary.

Trustor agrees that, all property of every nature and description, whether real or personal, tangible or intangible, covered by this Deed of Trust or by the security interest granted hereby, or in the Loan Documents or as contained in other instruments executed or to be executed by Trustor, are encumbered as one unit, and upon default by Trustor under the Promissory Note, or this Deed of Trust, or any other security agreement given, this Deed of Trust and such security interest may, at Beneficiary's option, be foreclosed or sold in the same proceeding. All of the Mortgaged Property may, at Beneficiary's option, be sold as such in one unit as a going business, subject to the provisions and requirements of all applicable Nebraska law. The filing of any financing statement relating to any personal property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

This Deed of Trust also constitutes a fixture filing pursuant to the provisions of the Nebraska Uniform Commercial Code with respect to those portions of the Mortgaged Property consisting of goods or property which are now or are to become fixtures relating to the Land. Trustor covenants and agrees that the filing of this Deed of Trust in the official records of the county in which the Mortgaged Property is located shall also operate from the date of such filing as a fixture filing in accordance with the Nebraska Uniform Commercial Code. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the Nebraska Uniform Commercial Code any other security interest in such items, including replacements and additions thereto. Upon the occurrence of an Event of Default, Beneficiary shall have the remedies of a secured party under the Nebraska Uniform Commercial Code and may also invoke the other remedies provided in this Deed of Trust. For purposes of this fixture filing, the name of the debtor is 1308 Jackson DEV L.L.C., a Nebraska Limited Liability Company and the name of the secured party is Morrison Enterprises, a general partnership, its successors and/or assigns. The respective addresses of the debtor and secured party are set forth on the first page of this Deed of Trust.

Section 3.02. **Warranties, Representations and Covenants of Trustor in Regard to Personal Property**. Trustor hereby warrants, represents and covenants, with respect to the Personal Property, as follows:

(a) the personal property is not used or bought for personal, family or household purposes;

(b) the personal property will be kept on or at the Premises and Trustor will not remove the personal property from the Premises without the prior written consent of Beneficiary, except such portions or items of personal property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with new items of equal or greater quality; and

(c) all covenants and obligations of Trustor contained herein relating to the Mortgaged Property shall be deemed to apply to the personal property, whether or not expressly referred to herein.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 4.01. **Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

(a) Failure by the Trustor to pay, as and when due and payable, any installments of principal or preferred return due under the Promissory Note, or any deposits for taxes and assessments or insurance premiums due hereunder, or any other sums to be paid by the Trustor hereunder or under any other instrument securing the Promissory Note, and such failure shall continue for ten (10) days beyond the date such payment is due;

(b) Failure by the Trustor to duly keep, perform and observe any other covenant, condition or agreement in this Deed of Trust, any other instrument securing the Promissory Note or any other instrument collateral to the Promissory Note or executed in connection with the sums secured hereby, and such failure shall be continuing and uncured for thirty (30) days after notice in writing delivered to the Trustor, unless such default cannot be cured within such thirty (30) day period with diligent efforts and the Trustor has been diligently pursuing a cure thereof;

(c) The occurrence of a default, or an Event of Default, under any Loan Document (other than this Deed of Trust) or under any other obligation of Trustor to Beneficiary, whether or not existing on the date hereof or hereafter created or arising, and such default is not cured within the applicable cure period, if any;

(d) Trustor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Trustor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Trustor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof; or Trustor shall make any general assignment

for the benefit of creditors, or shall admit in writing Trustor's inability to pay its debts generally as they become due;

(e) A trustee or receiver is appointed for the Trustor's interest in the Mortgaged Property or any portion thereof, for Trustor or any Guarantor, or for any portion of any of Trustor's or any Guarantor's assets, or an involuntary petition in bankruptcy or insolvency is filed against Trustor or any Guarantor, and is not discharged within sixty (60) days after such appointment or filing;

(f) An order, judgment, or decree shall be entered, without the application, approval or consent of the Trustor, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization of the Trustor or any Guarantor or appointing a receiver, trustee, liquidator, intervener or the like of the Trustor or any Guarantor, or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days;

(g) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Trustor which shall become a lien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(h) Any suit or proceeding shall be filed against Trustor or any endorser or Guarantor on any of the Loan Documents which, if adversely determined, could substantially impair the ability of Trustor or any endorser or Guarantor to perform any of their obligations contained in the Loan Documents, as determined by Beneficiary in its sole and absolute discretion, provided that such suit or proceeding is not dismissed within thirty (30) days after service of summons upon such party;

(i) If, during the term of the Promissory Note, Trustor shall, without the prior written approval of Beneficiary, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Trustor;

(j) Any assignment by Trustor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the prior written consent of Beneficiary;

(k) At any time any representation, warranty or statement made by Trustor in any Loan Document, certificate or financial statement delivered by Trustor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Beneficiary by Trustor;

(l) There shall be any unrepaired damage to or destruction of the Premises, or any part of the Premises shall have been taken by condemnation or eminent domain or be subject to pending proceedings thereof and such taking may materially affect the

value of the Premises, unless provision for repair or restoration of the same shall have been made to the Beneficiary's satisfaction; or

(m) If any of the events in (d), (e) or (f) shall occur with respect to any Guarantor.

Section 4.02. **Remedies, Judicial Foreclosure or Trustee's Sale on Default.** Upon the occurrence of one or more Events of Default, or default by Trustor in the performance of any other agreement hereunder or under any instrument or agreement secured hereby, and the expiration of any applicable cure period and notice to the Primary Lender and expiration of any additional cure period:

(a) This Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property; or the Mortgaged Property, or any part thereof, may be sold in the manner provided by state law under the power of sale conferred upon the Trustee hereunder.

(b) Beneficiary may proceed as if all of the Mortgaged Property were real property, or Beneficiary may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Premises without causing structural damage thereto as if the same were personal property, and dispose of the same separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property. In the event that the Mortgaged Property is sold pursuant to the power of sale conferred upon the Trustee hereunder, the Trustee shall cause to be filed of record a written notice of default and election to sell the Mortgaged Property. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Mortgaged Property, either as a whole or in separate parcels, and in such order as it or Beneficiary may determine at public auction to the highest bidder. Trustee may postpone the sale of all or any portion of the Mortgaged Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to each purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact or otherwise shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's fees actually incurred, second, to the payment of the obligation secured by this Deed of Trust, third, to the payment of junior trust deeds, mortgages or other liens, and the balance, if any, to the person or persons legally entitled thereto. Upon foreclosure of the lien of this Deed of Trust (whether by judicial action or by exercise of the power of sale), or delivery of a deed in lieu of foreclosure, all right, title and interest of Trustor in, to and under the Leases shall thereupon vest and become the absolute property of the purchaser of the Premises in such foreclosure proceeding, or the grantee in such deed, without any further act or assignment by Trustor. Nevertheless, Trustor shall execute, acknowledge and deliver from time to time such further instruments and assurances as Beneficiary may require in connection therewith and hereby irrevocably appoints Beneficiary as its

true and lawful attorney-in-fact, coupled with an interest, with full power of substitution, in its name and stead to execute all appropriate instruments of transfer or assignment, or any instrument of further assurance, as Beneficiary may deem necessary, and Beneficiary may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof.

(d) Beneficiary may elect to cause any of the Mortgaged Property to be disposed of as personal property, it may dispose of any part thereof in any manner now or hereafter permitted by the Uniform Commercial Code of the State of Nebraska or in accordance with any other remedy provided by law. Trustor, Beneficiary and Trustee shall each be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the Uniform Commercial Code. 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 such property or of the time at or after which any private sale or any other intended disposition is made, and if such notice is sent as provided in Section 6.05 hereof, it shall constitute reasonable notice to Trustor.

(e) 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 Premises, or any part thereof, subsequent to foreclosure 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 sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the Real Estate, 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 are hereby expressly waived.

(f) To the extent permitted by law, Trustor shall be and remain liable for any deficiency remaining after sale, either pursuant to the power of sale or judicial proceedings. After default or breach, Trustor shall pay Beneficiary's attorneys' fees, Beneficiary's costs, Trustee's attorneys' fees, Trustee's fees and its cost and expenses incurred as a result of said default or breach, and if suit is brought, all costs of suit, all of which sums shall be secured by this Deed of Trust. As used herein, "costs of suit" shall include but not be limited to costs of tests and analyses, architectural, engineering and other professional fees and costs, expert witness fees and costs, travel and accommodation expenses, deposition and trial transcript expenses and costs of court. Trustor's statutory rights of reinstatement, if any, are expressly conditioned upon Trustor's payment of all sums required under the applicable statute and performance of all required acts.

(g) Upon any sale of the Mortgaged Property, or any part thereof, whether made under a power of sale herein granted or pursuant to judicial proceedings, if the holder of the Promissory Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Secured Obligations then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property

purchased. To the extent permitted by law, Trustor hereby waives any right of redemption.

Section 4.03. **Appointment of Receiver.** If an Event of Default shall have occurred, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Mortgaged Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases.

Section 4.04. **Remedies Not Exclusive.** Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Documents, or the provisions of Douglas County law, as now enacted or subsequently amended, any other laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Beneficiary is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Beneficiary, or to which Beneficiary may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Beneficiary. Beneficiary may pursue inconsistent remedies.

The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and failure of Trustor to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of amount on account. Beneficiary or Trustee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Beneficiary to any action or inaction of Trustor which is subject to consent or approval of Beneficiary hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

ARTICLE V

MISCELLANEOUS

Section 5.01. **Governing Law.** This Deed of Trust shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts 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. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 5.03. **Limitation of Interest.** All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Beneficiary for the use, forbearance, or detention of the money to be loaned pursuant to the Promissory Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Beneficiary or holder of the Promissory Note shall ever receive as interest under the Promissory Note or this Deed of Trust or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note or on account of other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and such other Secured Obligations, such excess shall be refunded to Trustor, or to the maker of the Promissory Note, if other than Trustor. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, pro-rated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Trustor, or the maker of the Promissory Note, if other than Trustor, and Beneficiary.

Section 5.04. **Statements by Trustor.** Trustor, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Beneficiary a written statement stating the unpaid principal of the Promissory Note and any other amounts secured by this Deed of Trust and stating that no offset or defense exists against such amounts.

Section 6.05. **Notices.** Any notice required or permitted to be given by any party hereto to the other under the terms of this Deed of Trust, or documents related hereto, shall be deemed to have been given (i) three (3) days after the date the same is deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, (ii) on the date the same is forwarded by telefacsimile with proof of transmission, or (iii) one (1) day following deposit with a reputable overnight courier providing a receipt for overnight delivery, addressed as follows:

If to Trustor: 1308 Jackson DEV L.L.C.
4524 Farnam Street
Omaha, NE 68132
Attn: Mike Brannan, Manager Member

With a copy to: Jerry Slusky
Slusky Law, LLC
17445 Arbor Street, Suite 300
Omaha, NE 68130
(402) 991-5777
(402) 991-5117 (fax)

If to Trustee or
Beneficiary: Morrison Enterprises
3303 W 12th
P.O. Box 609

Hastings, NE 68901-3346
Attn: Kenneth Morrison, general partner
With a copy to: Anna Stehlik
Morrison Enterprises
3303 W 12th
Hastings, NE 68901-3346

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change at least ten (10) in advance of change of address.

Section 5.06. **Captions.** The captions or headings at the beginning of each Section hereof are for the convenience of the parties only and are not a part of this Deed of Trust.

Section 5.07. **Invalidity of Certain Provisions; Conflicting Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust. To the extent any conflict exists between the terms of the Primary Lender, the terms of the security interest will govern.

Section 5.08. **Severability.** Should any term, provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. Should this instrument be or become ineffective as a Deed of Trust, then these presents shall be construed and enforced as a realty mortgage, with Trustor being the mortgagor and Beneficiary being the mortgagee.

Section 5.09. **Change in Ownership.** If the ownership of the Mortgaged Property or any part thereof or interest therein becomes vested in a person other than Trustor owning the

same on the date hereof, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and the Secured Obligations in the same manner as with Trustor without in any way vitiating or discharging Trustor's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Secured Obligations given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability, if any, of Trustor or the liability of any Guarantors or sureties of Trustor, either in whole or in part.

Section 5.10. **Assignment of Beneficiary's Interest.** It is expressly agreed that any and all terms of this Deed of Trust, the other Loan Documents and all other agreements made or executed by Trustor or others in favor of Beneficiary, and all rights, powers, privileges, options and remedies conferred upon Beneficiary herein and therein, shall inure to and be for the benefit of Beneficiary and may be exercised by Beneficiary, its successors and assigns. The word "Beneficiary" shall also mean and include the successor or successors and the assign or assigns of Beneficiary and their successors and assigns. Trustor hereby specifically grants unto Beneficiary the right and privilege, at Beneficiary's option, to transfer and assign to any third person all or any part of Beneficiary's rights to receive funds or payments hereunder.

Section 5.11. **Time Is of the Essence.** In the performance of all obligations, time is of the essence under this Deed of Trust and the other Loan Documents.

Section 5.12. **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Mortgaged Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

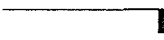
Section 5.13. Intentionally Omitted

Section 5.14 Intentionally Omitted

Section 5.15 **Non-Liability of Trustee.** At any time, or from time to time, without liability therefor and without notice, upon the written request of Beneficiary and presentation of the Promissory Note and this Deed of Trust for endorsement, without affecting the personal liability of any person for the payment of the Secured Indebtedness, and without affecting the lien of this Deed of Trust upon the Mortgaged Property for the full amount of all amounts secured hereby, Trustee may (a) reconvey all or any part of the Mortgaged Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

Section 5.16 Intentionally Omitted

Section 5.17 **Definitions.** The term "Beneficiary" means the original Beneficiary hereunder, or any future owner and holder, including pledgees, of the Promissory Note. This Deed of Trust in all its parts applies to and binds the successors and assigns of Trustor. The



provisions hereof shall apply according to the context thereof and without regard to the number or gender of words or expressions used.

Section 5.18 **Amendment**. No alternation or amendment of this Deed of Trust, the Promissory Note or the Loan Documents shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

Section 5.19 **Offsets**. No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying installments or performing any other obligation herein or secured hereby.

Section 5.20 **Further Assurances**. Trustor will, upon request of Beneficiary, promptly correct any errors which may be discovered in the contents of this Deed of Trust or any other Loan Document, or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

Section 5.21 Intentionally Omitted

Section 5.22 Intentionally Omitted

Section 5.23 Intentionally Omitted

Section 5.24 Intentionally Omitted

Section 5.25 Intentionally Omitted

Section 5.26 **Debtor-Creditor Relationship**. Nothing contained herein or in any Loan Document shall be deemed to create or construed to create a partnership, joint venture or any relationship other than that of debtor-creditor. Trustor and Beneficiary expressly disclaim any intent to create a partnership or joint venture pursuant to this Deed of Trust, any other Loan Document, or any other document related hereto or thereto.

Section 5.27 Intentionally Omitted

Section 5.28 **Nonforeign Entity**. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Mortgaged Property pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury that:

- (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue code and the regulations promulgated thereunder; and
- (b) Trustor's U.S. employer identification number is «Borrower EIN»; and

(c) Trustor's principal place of business is 1308 Jackson DEV L.L.C., «4524 Farnam Street, Omaha, NE, 68132.

(d) Trustor is duly qualified to do business in Nebraska. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the appropriate state tax authority and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

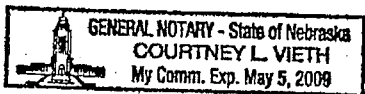
TRUSTOR:

1308 Jackson DEV L.L.C., a Nebraska Limited Liability Company

By: Mike D. Brannan
Mike Brannan, MEMBER MANAGER

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me, a Notary Public, this 17th day of November, 2005, by Mike Brannan, Member Manager of 1308 Jackson DEV. L.L.C., a Nebraska Limited Liability Company on behalf of said Limited Liability Company. Mike Brannan personally appeared before me, a General Notary Public for the State of Nebraska, and is either personally known to me or was identified by me through satisfactory evidence.



Courtney L. Vieth
Notary Public

EXHIBIT "A"**Legal Description**

CITY LOTS LOT 5 BLOCK 167 66 X 132; CITY LOTS LOT 7 BLOCK 167 ALL LTS 6 & 7
132 X 132 including all fixtures and equipment permanently attached to the Property.

Address: 1314 Jackson Street, 1308 Jackson Street, Omaha, Nebraska 68102



MISC 2006116099



OCT 10 2006 10:10 P 6

B
Misc 6/6
 FEE 3300 FB D3-80000
 BKP _____ C/O _____ COMP MB
 DEL _____ SCAN _____ FV _____

This instrument prepared by:
Robert W. Rieke, Esq., 409 South 17th Street, Suite 500, Omaha NE 68102

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE

10/10/2006 10:10:39.77



2006116099

AGREEMENT

This Agreement is entered into between The J. P. Cooke Company ("Cooke") and 1308 Jackson DEV, LLC ("Jackson").

WHEREAS, Cooke is the lessee of the real estate described in Exhibit A attached hereto ("Cooke Property"); and

WHEREAS, Jackson is the owner of the real estate described in Exhibit B attached hereto (the "Jackson Property"); and

WHEREAS, Jackson desires to construct a residential or mixed residential, office and/or retail project on the Jackson Property ("Project"); and

WHEREAS, Jackson had applied to the City of Omaha for tax increment financing in connection with the Project ("TIF"); and

WHEREAS, Cooke and Jackson acknowledge the Project as presently proposed will require certain modifications to be made to the loading docks and doors of Cooke (the "Modifications"); and

WHEREAS, Cooke and Jackson have entered into this Agreement in order to accomplish the Modifications.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Cooke and Jackson agree as follows:

1. Definitions. In addition to the definitions set forth in the foregoing recitals, the following terms are hereby defined:

- (a) "Commencement Date" shall mean the date Jackson commences the construction of the Project which shall include the date site grading is commenced for construction of the Project.
- (b) "Consideration" shall mean the sum of \$41,250.00, as adjusted pursuant to paragraph 2, if applicable.

1260142

- (c) "Covenant" shall mean a covenant to be recorded in the Recorder's Office against the Jackson Property in accordance with this Agreement if the Project is not developed as a condominium.
- (d) "CPI" shall mean the monthly index of the National Consumer Price Index for All Urban Consumers (CPI-U All Items: 1982-84=100) for the Midwest Region, issued by the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency that issues such indexes.
- (e) "Current CPI" shall mean the CPI for the month preceding the month in which the Commencement Date occurs.
- (f) "Declaration" shall mean the condominium declaration for the Project to be recorded in the Recorder's Office in accordance with applicable law if the Project is developed as a condominium.
- (g) "Recorder's Office" shall mean the office of the Register of Deeds in Douglas County, Nebraska.
- (h) "September CPI" shall mean the CPI for the month of September, 2006.

2. Consideration. On the Commencement Date, Jackson covenants and agrees to pay the Consideration to Cooke; provided, if the Commencement Date has not occurred by December 31, 2006, the Consideration shall be adjusted and shall be equal to product obtained when (a) \$41,250.00, is multiplied by (b) the quotient obtained when (i) the Current CPI, is divided by (ii) the September CPI, but in no event shall the Consideration be less than \$41,250.00.

3. Declaration/Covenant. If the Project is developed as a condominium, Jackson covenants and agrees to include within the Declaration the provision set forth below (modified to confirm to definitions set forth in the Declaration). If the Project is not developed as a condominium, Jackson covenants and agrees to record the Covenant within three (3) months after the Commencement Date containing the provision set forth below:

[Each owner/owner] acknowledges and agrees that one of the entrances/exits to the [Project] garage is adjacent to the alley north of the [Project] and that trucks and semi-trailers utilize such alley for loading and unloading purposes. [Each owner/owner] agrees that it may be required to access such entrance from, and exit the garage to, either 13th Street or 14th Street, depending on such loading and unloading activities. [Each owner/owner] covenants and agrees for itself and its successors, assigns, tenants and invitees that it shall not make or file a complaint or objection with the City of Omaha or anyone else regarding the use of the alley for such truck and semi-trailer loading and unloading activities as long as such activities do not prevent access to and from the garage and either 13th Street or 14th Street.

4. Construction. Jackson covenants and agrees that it shall consult and coordinate with Cooke before filing, applying for or otherwise obtaining a temporary certificate for the use (but not the temporary closure) of the alley between the Jackson Property and the Cooke Property. Jackson and Cooke agree to consult, coordinate and cooperate with each other during the course of construction of the Project and any repaving of the alley so as to minimize any disruption to business operations on the Cooke Property. In no event shall the alley be closed to truck deliveries without the prior written consent of Cooke.

5. Recording. This Agreement may be recorded in the Recorder's Office at the option of either party.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Cooke and Jackson and their respective successors and assigns.

Dated: October 4, 2006

THE J.P. COOKE COMPANY

By Warren Cooke Vice-President
Title:

1308 JACKSON DEV, LLC

By Michael D. Brannon
Title: managing member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 4th day of October, 2006, before me, a notary public in and for said county and state, personally came WARREN COOKE VICE PRESIDENT of J. P. Cooke Company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL] 

John Lee Cooke
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 4th day of October, 2006, before me, a notary public in and for said county and state, personally came Michael D. Brannon Managing Member of 1308 Jackson Dev, LLC, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL] 

Robert W. Rieke
Notary Public

JOINDER

WARREN H. COOKE and JOHN L. COOKE, as the fee owners of the Cooke Property, hereby join in the foregoing Agreement for the purposes of recording the Agreement in the Recorder's Office.

DATED effective October 4, 2006.

Warren H. Cooke
Warren H. Cooke

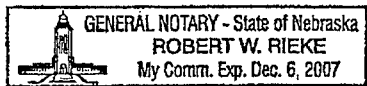
John L. Cooke
John L. Cooke

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 4th day of October, 2006, before me, a notary public in and for said county and state, personally came WARREN H. COOKE, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]



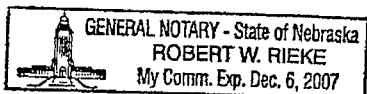
Robert W. Rieke
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 4th day of October, 2006, before me, a notary public in and for said county and state, personally came JOHN L. COOKE, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.

[SEAL]



Robert W. Rieke
Notary Public

Exhibit A
Cooke Property

Lots 2, 3 and 4, Block 167, Original City of Omaha, Douglas County, Nebraska

Exhibit B
Jackson Property

Parcel 1: Lot 5, Block 167, Original City of Omaha, Douglas County, Nebraska

Parcel 2: Lots 6 and 7, Block 167, Original City of Omaha, Douglas County, Nebraska