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COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/17/2016 07:51:20.00



2016036720

**THIS IS A CONSTRUCTION SECURITY AGREEMENT WITHIN THE MEANING OF NEB. REV. ST. §52-127 AND IT SECURES AN OBLIGATION WHICH THE TRUSTOR (DEBTOR) INCURRED FOR THE PURPOSE OF MAKING AN IMPROVEMENT OF THE REAL ESTATE IN WHICH THE SECURITY INTEREST IS GRANTED.**

**CONSTRUCTION SECURITY AGREEMENT, DEED OF TRUST,  
ASSIGNMENT OF LEASES AND RENTS AND  
FIXTURE FINANCING STATEMENT**

THIS CONSTRUCTION SECURITY AGREEMENT, DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FINANCING STATEMENT (this "Deed of Trust") is made and entered into as of the 11<sup>th</sup> day of May, 2016, by 204 FSTREET, LLC, a Nebraska limited liability company (hereinafter "Trustor"); TO AND IN FAVOR OF ARBOR BANK, a Nebraska banking corporation, as Trustee (hereinafter "Trustee"), FOR THE BENEFIT OF ARBOR BANK, a Nebraska banking corporation (hereinafter "Beneficiary"). Capitalized terms used but not defined herein shall have the meaning given to such terms in the Loan Agreement (as defined below).

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including, without limitation, certain financial benefits that Trustor will derive directly or indirectly from the funds advanced pursuant to the Notes (as defined below), Trustor irrevocably transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, and hereby grants to Beneficiary a security interest in, all of the real property located in Douglas County, Nebraska and described in Exhibit A attached hereto (the "Land");

TOGETHER WITH: All right, title, interest and estate of Trustor now owned or hereafter acquired in and to the following property, rights, interests, and estates:

- (a) the Land and all infrastructure improvements for the future development of the Land, including grading and the installation of utilities (collectively, the "Infrastructure Improvements") and all buildings, structures, additions, and improvements now or hereafter located on the Land or belonging thereto (collectively, along with the Infrastructure Improvements, the "Improvements");

**After recording, return to:**

Meagan J. Deichert  
Koley Jessen P.C., L.L.O.  
1125 South 103<sup>rd</sup> Street, Suite 800  
Omaha, NE 68124

(b) all additional real property acquired for use in connection with the Land (collectively, the "Additional Lands");

(c) all goods of Trustor, including those which are or are to become fixtures attached to the Land or Improvements (collectively, the "Goods and Fixtures"; and together with the Land, the Improvements and the Additional Lands, the "Real Property");

(d) all easements, rights, rights-of-way, strips and gores of land, alleys, sewer rights, water and water rights relating to the Land, including reversions and remainders, if any, of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street or highway adjoining the Land;

(e) all other estates, rights, titles, claims, interests, privileges, hereditaments and appurtenances of any nature whatsoever, in any way relating to the Land or Improvements;

(f) all leases, subleases, licenses and other agreements affecting the use, enjoyment or occupancy of the Land, now or hereafter entered into, together with any extensions thereof and guaranties relating thereto (collectively, the "Leases"), and all rents, issues, revenues, profits, fees, charges, accounts, income, and other sums payable under the Leases (it being the intention of Trustor that Beneficiary shall have a continuing security interest and/or lien upon the Real Property's rents pursuant to 11 U.S.C. § 552(b)), all tenant security and other deposits, oil and gas or other mineral royalties, bonuses, entry fees, service charges and rents, revenues, issues and profits relating to the Land and Improvements (collectively, the "Rents");

(g) all accounts of Trustor, including those arising out of or in connection with the use or operation of the Land and Improvements, and the right to receive the same including, without limitation, revenues, fees, charges, accounts or other payments for the use or occupancy of the Land or Improvements or any part thereof; all accounts receivable, deposits, payments, deposit accounts, house banks, bank accounts, reserve accounts for capital improvements, furniture, fixture and equipment replacements, working capital accounts and time deposit accounts relating to any of the same, security deposit accounts, replacement reserve accounts, operating accounts and all other accounts established by or through Trustor pursuant to this Deed of Trust or any other Loan Document (as defined below) and all of Trustor's interest therein, and any and all amounts in any escrow fund for the purposes of payment of taxes, insurance premiums or other impositions in connection with the Land, Improvements, Inventory, Equipment and Inventory (as defined below), and all other rents, revenues, issues and profits now or hereafter accruing to the benefit of Trustor, including, without limitation, (i) all charges and other compensation received or owing, rights of payment for the use of the Land, and (ii) all records and books of account (whether in printed or electronic form) now or hereafter maintained by or on behalf of Trustor in connection with the operation of the Land and Improvements, ownership by Trustor of the Equipment and Inventory, or otherwise (collectively, the "Accounts");

(h) all equipment and inventory of Trustor, including, without limitation, all appliances, apparatus, machinery, devices, fixtures, appurtenances, equipment, furniture and furnishings and articles of personal property of every kind and nature whatsoever now or hereafter located in or at, or used, useful or necessary in connection

with any present or future occupation, operation or maintenance of, all or any part of the Land and the Improvements, and now owned or hereafter acquired by Trustor or arising out of Trustor's, right, title and interest in the Land and the Improvements, or otherwise (all of the foregoing is hereinafter referred to as the "Equipment and Inventory");

(i) all awards or payments, including interest thereon, which may be made with respect to the Land, Improvements, Equipment and Inventory, from the exercise of the right of eminent domain, or for any other injury thereto or decrease in the value thereof (collectively, the "Awards");

(j) all policies of insurance relating to the Land, Improvements, Equipment and Inventory, all proceeds thereof, and any unearned premiums on any such insurance policies, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof;

(k) all deposits made to procure or maintain utility services to the Land or the Improvements and any money, cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents, including interest or income earned thereon held by Beneficiary or Trustee under or in accordance with this Deed of Trust or any Loan Document;

(l) all refunds, rebates or credits in connection with reduction in taxes and assessments charged against the Real Property as a result of tax certiorari or any applications or proceedings for reduction (collectively, the "Tax Certiorari");

(m) the right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Real Property and to commence any action or proceeding to protect the interest of Beneficiary in the Real Property (collectively, the "Proceedings");

(n) all of Trustor's contract rights, and other rights to services or to the payment of money, including, without limitation, insurance proceeds and tort claims (including commercial tort claims), chattel paper, documents, instruments, general intangibles, and securities, together with all income therefrom, increases thereunder and proceeds thereof, patents, trademarks, tradenames, service marks and associated goodwill and registrations and registration applications, rights to telephone numbers, copyrights and copyright registrations and registration applications, architectural and engineering drawings, service marks, customer lists, books and records; all contracts, agreements, licenses, permits, approvals, warranties and representations, and all agreements, licenses or franchises relative to the use, operation, management, affiliation, license or franchises relating to the Real Property and all amendments thereto or substitutions therefor; and all repair, maintenance, and other service contracts relating to Trustor's interest in the Land and Improvements, and all of Trustor's right, title and interest in all equipment leases, contracts or agreements entered into for the lease, rental, hire or use by Trustor of any equipment or service in connection with the operation, maintenance or occupation of the Land and Improvements (all of the foregoing are hereinafter collectively referred to as the "Contracts and Permits"); and

(o) all products and proceeds of all of the foregoing, and all additions and accessions to, replacements and substitutions of, condemnation proceeds of, and documents covering all of the foregoing property described above, all property received

wholly or partly in trade or exchange for all of the foregoing, and all income, rents, revenues, dividends, distributions, issues, profits, cash or non-cash proceeds and accessions arising from the sale, lease, license, encumbrance, collection or any other temporary or permanent disposition of any of the foregoing or any interest therein.

The Land, Improvements, Additional Lands, Fixtures, Leases, Rents, Accounts, Equipment and Inventory, Awards, Tax Certiorari, Proceedings, Contracts and Permits and all other real and personal property described in this paragraph are hereinafter collectively referred to as the "Property."

1. Secured Obligations. This is a construction security agreement within the meaning of Neb. Rev. Stat. § 52-127 and it creates a construction security interest to secure an obligation which Trustor (Debtor) incurred for the purpose of making an improvement of the Property in which the security interest is granted. Further, this Deed of Trust is given to secure the prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the following (collectively, the "Secured Obligations"):

(a) all indebtedness, obligations and liabilities of Trustor under: (i) that certain Construction Loan Agreement, of even date herewith, by and between Trustor and Beneficiary (as the same may be amended, restated or otherwise modified from time to time, the "Loan Agreement"), (ii) the promissory notes executed from time to time by Trustor in favor of Beneficiary in accordance with the Loan Agreement (the "Notes"), together with interest and prepayment premiums, if any, according to the terms thereof, and any other note given in substitution therefor or in modification, renewal, or extension thereof, in whole or in part;

(b) all indebtedness, liabilities, and obligations of Trustor now or hereafter incurred or arising pursuant to the provisions of this Deed of Trust or under any other agreement, assignment or instrument now or hereafter evidencing, securing and/or guaranteeing the obligations of Trustor under the Loan Agreement, the Notes or any part thereof (the Loan Agreement, the Notes, this Deed of Trust and such other instruments and agreements, as the same may be amended, restated or otherwise modified from time to time, are hereinafter collectively referred to as the "Loan Documents"); and

(c) any and all other indebtedness, obligations, and liabilities of Trustor or any Guarantor to Beneficiary of any nature whatsoever, whether arising out of contract, tort, or otherwise, including, without limitation, obligations arising under any and all present and future loans, advances, and/or other extensions of credit obtained and/or to be obtained by Trustor from Beneficiary, and any and all present and future guaranties made by Trustor in favor of Beneficiary, and any and all instruments and agreements evidencing such present and/or future loans, advances, other extensions of credit, and/or guaranties, together with interest, costs, expenses, attorneys' fees and other fees and charges.

2. Warranty of Title. Trustor warrants to Trustee and Beneficiary that: (a) Trustor is lawfully seised and possessed of good, marketable, and indefeasible fee simple title to the Property, free and clear of all liens and encumbrances except Permitted Liens and the **[Lot Sale Agreements]**, (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Trustee and Beneficiary, and (c) Trustor will forever defend the title to the Property against the claims of all persons.

3. Maintenance and Compliance with Laws. Trustor shall keep the Property in good condition and repair (ordinary wear and tear excepted), and shall promptly perform or ensure that its tenants shall promptly perform all repairs, replacements, and maintenance necessary to preserve its value. Trustor shall promptly complete or restore promptly and in good and workmanlike manner any portion of the Property which may be damaged or destroyed, and shall pay, when due, all claims for labor performed and materials furnished on or to the Land or Improvements, and any and all other claims which could result in a lien on the Property or any part thereof. Trustor shall not commit waste or permit impairment or deterioration of the Property (ordinary wear and tear excepted). Trustor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Property, any part thereof or the use thereof and shall comply with all covenants, conditions and restrictions filed of record against the Land or the Improvements.

4. Insurance. Trustor shall maintain insurance as required pursuant to the Loan Agreement. In the event of any loss or damage to the Property, all insurance proceeds paid to Trustor payable as a result thereof shall be payable to Beneficiary and applied to the outstanding Secured Obligations. If flood insurance coverage was not required as of the date hereof, then, within 45 days after written notice from Beneficiary to Trustor that the Property is located in a Special Flood Hazard Area designated by the Federal Emergency Management Administration, Trustor, at Trustor's expense, shall provide and maintain flood insurance coverage sufficient to rebuild or replace the building, equipment and improvements in an amount equal to the maximum amount of coverage available under the National Flood Insurance Program with a deductible not to exceed \$50,000. WARNING: Unless Trustor provides Beneficiary with evidence of insurance coverage as required by the Loan Documents, Beneficiary may purchase insurance, at Trustor's expense, to protect Beneficiary's interest. This insurance may, but need not, also protect Trustor's interest. If there is a loss or liability, the coverage Beneficiary purchases may not pay any claim Trustor makes or any claim made against Trustor. Trustor may later cancel this coverage by providing evidence satisfactory to Beneficiary that Trustor has obtained the required insurance elsewhere. Trustor is responsible for the cost of any insurance purchased by Beneficiary and will reimburse Beneficiary upon demand for all such costs. The effective date of coverage may be the date Trustor's prior coverage lapsed or the date Trustor failed to provide proof of coverage. The coverage Beneficiary purchases may be considerably more expensive than insurance.

5. Impositions. Trustor shall pay when due (and in all events prior to delinquency) all taxes, assessments, fines and other impositions levied against or on account of the Property (collectively, the "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 principal unpaid balance of such Imposition, in installments as the same become due before any such fine, penalty, interest or cost may be added thereto for the nonpayment of such installment and interest to the extent provided for in the Budget. Trustor shall provide Lender with evidence acceptable to Lender that the premiums on any applicable insurance policy have been paid at least thirty (30) days prior to the expiration of such policy. After the occurrence and continuance of an Event of Default, Trustor shall pay to Beneficiary on each monthly payment date under any Notes, until the Secured Obligations are paid in full, a sum (herein "Funds") equal to one-twelfth of the Impositions, plus one-twelfth of yearly premium installments for the insurance required to be maintained pursuant hereto, all as reasonably estimated initially and from time to time by Beneficiary on the basis of assessments and bills or other reasonable estimates thereof. The Funds shall be held by Beneficiary and commingled with Beneficiary's other funds and, further, Beneficiary shall not be liable to Trustor for interest on such Funds. Beneficiary shall apply the Funds to pay said taxes, assessments,

insurance premiums and ground rents. The Funds are pledged as additional security for the Secured Obligations. If at any point during the term hereof, the amount of the Funds held by Beneficiary shall exceed the amount required to pay the taxes, assessments, insurance premiums and ground rents as they fall due during the next consecutive twelve-month period, such excess shall be credited to Trustor on future monthly payments of Funds. If the amount of the Funds held by Beneficiary shall not be sufficient to pay taxes, assessments, insurance premiums, and ground rents as they fall due during the next consecutive twelve-month period, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof. Upon payment in full of all sums secured by this Deed of Trust, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary. If under Section 14 herein the Property is sold or the Property is otherwise acquired by Beneficiary, Beneficiary shall apply, no later than immediately prior to the sale of the Property or its acquisition by Beneficiary, any Funds held by Beneficiary at the time of application as a credit against the sums secured by this Deed of Trust.

6. Liens. Trustor shall not create, incur or suffer to exist any Lien on the Property or any part thereof which might or could be held to be superior or inferior to the lien of this Deed of Trust, other than current non-delinquent real estate taxes and assessments, Permitted Liens and any such lien, encumbrance or charge consented to in writing by Beneficiary. Trustor shall pay, when due, the claims of: (i) all persons supplying labor or materials to or in connection with the Property, and (ii) registered or certified surveyors or engineers, or licensed architects, or their professional consultants supplying professional services in connection with the Property.

7. Actions Affecting Property. Trustor shall appear in and contest any action or proceeding purporting to affect the Property or the rights or powers of Beneficiary or Trustee hereunder, and shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in their own discretion, without obligation to do so and after written notice to or demand upon Trustor and without releasing Trustor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect their respective interest in and to the Property. Trustor shall, immediately upon demand therefor by Beneficiary or Trustee, pay all costs and expenses incurred by Beneficiary or Trustee in connection with the exercise by Beneficiary or Trustee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

8. Condemnation. Should the 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 including a deed in lieu of condemnation, or should Trustor receive any notice or other information regarding any such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled, at its sole option, to commence, appear in and prosecute in its own name any such action or proceedings. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (the "Condemnation Proceeds") are hereby assigned to Beneficiary to the extent of the Secured Obligations and Trustor shall execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. Condemnation Proceeds shall be payable to Beneficiary and applied to the outstanding Secured Obligations.

9. Assignment of Leases and Rents.

(a) Trustor hereby irrevocably and absolutely grants, transfers and assigns and grants to Beneficiary a security interest in all of its right title and interest in all Leases, together with any and all extensions and renewals thereof for purposes of securing and discharging the performance by Trustor of the Secured Obligations. Trustor has not assigned or executed any assignment of, and will not assign or execute any assignment of, any other Lease or their respective Rents to anyone other than Beneficiary.

(b) Without Beneficiary's prior written consent, Trustor will not enter into any Lease, nor modify, amend, terminate or consent to the cancellation, surrender or assignment of any Lease consented to by Beneficiary. Any Lease or any amendment, termination, assignment or other transfer of any Lease entered into without the express written consent of Beneficiary shall be null and void.

(c) Subject to Section 9(d), Trustor has assigned and transferred to Beneficiary all of Trustor's right, title and interest in and to the Rents now or hereafter arising from each Lease heretofore or hereafter made or agreed to by Trustor, it being intended that this assignment establishes an absolute transfer and assignment of all Rents and all Leases to Beneficiary and is not merely a grant of a security interest therein. Subject to Section 9(d), Beneficiary may in Trustor's name and stead (with or without first taking possession of any of the Property personally or by receiver as provided herein) operate the Property and rent, lease or let all or any portion of any of the Property to any party or parties at such rental and upon such terms as Beneficiary shall, in its sole reasonable discretion, determine, and may collect and have the benefit of all of said Rents arising from or accruing at any time thereafter or that may thereafter become due under any Lease.

(d) So long as an Event of Default shall not have occurred and be continuing, Beneficiary will not exercise any of its rights under Section 9(c), and Trustor shall have a revocable license to receive and collect the Rents accruing under any Lease *provided* Trustor will perform all of its obligations as lessor or otherwise under all of the Leases now or hereafter assigned to Beneficiary; but after the happening and during the continuance of any Event of Default, Beneficiary may, at its option, receive and collect all Rents and enter upon the Property through its officers, agents, employees or attorneys for such purpose and for the operation and maintenance thereof. Trustor authorizes Beneficiary to give notice at any time of the assignment under this Section 9 (as well as notice of Beneficiary's other rights under this Deed of Trust or any of the other Loan Documents which may have an impact upon, or otherwise be relevant to, a Lease) to any tenant or other party under any Lease, and to any successor of such a tenant or other party. Trustor hereby irrevocably authorizes and directs each tenant or other party, if any, and each successor, if any, to the interest of any tenant or other party under any Lease, respectively, to rely upon any notice of a claimed Event of Default sent by Beneficiary to any such tenant or other party or any successors in interest, and thereafter pay Rents to Beneficiary without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from Trustor, who shall have no right or claim against any such tenant or other party or successor in interest for any such Rents so paid to Beneficiary. Each tenant or other party or any successors in interest from whom Beneficiary or any officer, agent, attorney or employee of Beneficiary shall have collected any Rents, shall be authorized

to pay Rents to Trustor only after such tenant or other party or any of their successors in interest shall have received written notice from Beneficiary that the Event of Default is no longer continuing, unless and until a further notice of an Event of Default is given by Beneficiary to such tenant or other party or any of its successors in interest.

(e) Beneficiary will not become a mortgagee in possession so long as it does not enter or take actual possession of the Property. In addition, Beneficiary, except to the extent Beneficiary or any of its agents or representatives agrees in writing to assume responsibility therefor, shall not be responsible or liable for performing any of the obligations of the landlord or otherwise under any Lease, for any waste by any tenant, or others, for any dangerous or defective conditions of any of the Property, for negligence in the management, upkeep, repair or control of any of the Property or any other act or omission by any other person and provided, further, that Beneficiary shall have no obligation to any tenant under any Lease with respect to any Rents unless and until Beneficiary comes into actual possession and accepts control of Rents and provides notice of the same to such tenant.

(f) Trustor shall furnish to Beneficiary, within 30 days after a request by Beneficiary to do so, a written statement containing the names of all tenants, subtenants and concessionaires of the Premises or Improvements, the terms of any Lease, the space occupied and the rentals, license fees or other amounts payable thereunder.

(g) All Leases entered into after the date of this Deed of Trust shall contain (i) provisions pursuant to which tenant agrees that such Lease is subordinate to the lien of this Deed of Trust and that the tenant will attorn to the purchaser of the Property following a foreclosure of the same, and (ii) a provision authorizing the tenant thereunder to pay the Rents to Beneficiary upon notice of an Event of Default.

10. Authorized Entry; Inspections. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

11. Transfer of Property. Trustor shall not sell or transfer all or any part of the Property or any interest therein, including, but not limited to, by an option to sell, a sale or transfer by deed or by land contract or by contract for deed, without Beneficiary's prior written consent. In the event of a violation of the provisions of this Section 11, Beneficiary may, at Beneficiary's option, declare all Secured Obligations secured by this Deed of Trust to be immediately due and payable. Beneficiary may, without further notice or demand on Trustor, invoke any remedies granted or permitted herein or provided by law.

12. Default. Any default of any of the provisions of this Deed of Trust by Trustor or any default under and as defined in any other Loan Document shall constitute an event of default (an "Event of Default") under this Deed of Trust.

13. Certain Remedies. Without limiting the rights of Beneficiary under the Loan Documents and in addition to any other rights or remedies available to Beneficiary at law or in equity, upon the occurrence of an Event of Default, Beneficiary may exercise any one or more of the following rights:



(a) Beneficiary may enter upon, take immediate possession of, manage, and operate the Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems reasonably proper and necessary or advisable to protect the security hereof, including but not limited to those granted Beneficiary pursuant to the other Loan Documents; and either with or without taking possession, in its own name, sue for or otherwise collect and receive Rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees and Beneficiary's costs, upon the Secured Obligations in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Real Property any of the Property which has been removed therefrom. The entering upon and taking possession of the Property, the collection of any Rents, issues or profits and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice of default hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of Rents, issues or profits, Beneficiary shall be entitled, as a matter of right, to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary is so entitled without regard to the adequacy of any security for the Secured Obligations, but only upon the occurrence of an Event of Default.

(b) Beneficiary shall, without regard to the adequacy of any security for the Secured Obligations, be entitled to the immediate ex parte appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Property and operate the same and collect the Rents, issues and profits therefrom.

(c) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust or to enforce any of the covenants hereof.

(d) Trustee may, and upon the request of Beneficiary shall, elect to cause the Property or any part thereof to be sold as follows:

(i) Trustee may proceed as if all of the Property were real property in accordance with Section (iv) below, or Trustee may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Real Property without causing structural damage thereto as if the same were personal property and dispose of the same in accordance with Section (iii) below, separate and apart from the sale of any real property, the remainder of the Property being treated as real property.

(ii) Trustee may cause any such sale or other disposition to be conducted immediately upon the expiration of any redemption period required by law, or Trustee may delay any such sale or other disposition for such period of time as Trustee deems to be in its best interest. Should Trustee desire that more than one such sale or other disposition be conducted, Trustee may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Trustee may deem to be in Beneficiary's best interest.

(iii) Should Trustee elect to cause any of the Property to be disposed of as personal property as permitted in subparagraph (i) above, Trustee or Beneficiary may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the UCC or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall 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 Trustee or Beneficiary may so elect, subject to the provisions of the Uniform Commercial Code. Trustee or 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 and if such notice is sent to Trustor at the address above set forth, it shall constitute reasonable notice to Trustor (provided, however, that this sentence shall not be construed to prohibit a shorter notice period, if commercially reasonable under the circumstances or otherwise permitted by the UCC).

(iv) Should Trustee elect to sell the Property which is real property or which it has elected to treat as real property, upon such election, Trustee shall give such notice of default and notice of sale as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Property, or any portion thereof specified by Trustee, at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Property consists of several lots or parcels, Trustee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person, including Trustor, Trustee, or Beneficiary may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers, a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be given immediate possession.

(v) This instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Property in any manner permitted by the laws of the State of Nebraska or of any other state in which any part of the Property is situated, and any foreclosure suit may be brought by Trustee or by Beneficiary. In the event a foreclosure hereunder shall be commenced by Trustee, or its substitute or successor, Beneficiary may at any time before the sale of the Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of the Notes and the other Secured Obligations, and for the foreclosure of this Deed of Trust. It is agreed that if Beneficiary should institute a suit for the collection of the Notes or any other Secured Obligations and for the foreclosure of this Deed of Trust Beneficiary may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee or his substitute or successor to sell the Property in accordance with the provisions of this Deed of Trust.

(vi) In the event of a sale or other disposition of the Property, or any part thereof, and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts, such as default, the giving of notice of default, and notice of sale, terms of sale, purchaser, payment of purchase money, and any

other fact affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts; and any such deed or conveyance shall be conclusive proof against all persons as to such facts recited herein.

(vii) The proceeds of any sale or disposition hereunder, together with any other sums which then may be held by Trustee or Beneficiary under this Deed of Trust, whether under the provisions of this paragraph, or otherwise, shall be applied as follows: FIRST, to the expenses of such sale or disposition together with Trustee's fees and reasonable attorneys' fees and expenses, Beneficiary's costs and the actual cost of publishing, recording, mailing, posting notice, the cost of any search or other evidence of title procured in connection therewith, if applicable, and recordation and transfer taxes and other charges, if any, on any release or deed of reconveyance; SECOND, to the payment of the Secured Obligations; THIRD, to all other sums secured by the Property; and FOURTH the remainder, if any, to the person or persons legally entitled thereto in the order of their priority.

Beneficiary shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and Beneficiary shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, all or part of the Secured Obligations owing to Beneficiary, or if Beneficiary holds less than all of such indebtedness the pro rata part thereof owing to Beneficiary, accounting to all other beneficiaries or noteholders not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding beneficiary or noteholder.

14. Remedies Not Exclusive. Trustee and Beneficiary shall each be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Deed of Trust, under the Notes, under any of the other Loan Documents, or under any other agreement with Trustor or any 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, by court action or pursuant to the power of sale or other powers contained in this Deed of Trust, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy conferred upon or reserved to Trustee or Beneficiary, is intended to be exclusive of any other remedy in this Deed of Trust or provided or permitted by law or in equity, but each shall be cumulative and shall be in addition to every other remedy given in this Deed of Trust or now or hereafter existing at law or in equity. Every power or remedy given to Trustee or Beneficiary by the Notes, this Deed of Trust or any of the other Loan Documents, or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies. Nothing in this Deed of Trust shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against Trustor to the extent such action is permitted by law.

15. Security Agreement; Financing Statements.

(a) Security Agreement. This Deed of Trust is both a real property deed of trust and a "security agreement" within the meaning of the UCC. The Property includes both real and personal property and all other rights and interest, whether tangible or

intangible in nature, of Trustor in the Property. TRUSTOR HEREBY GRANTS TO BENEFICIARY, AS SECURITY FOR THE SECURED OBLIGATIONS, A SECURITY INTEREST IN THE PROPERTY TO THE FULL EXTENT THAT THE PROPERTY MAY BE SUBJECT TO THE UCC OR THE UNIFORM COMMERCIAL CODE OF ANY OTHER STATE OR STATES WHERE TRUSTOR IS LOCATED (said portion of the Property so subject to the UCC being called in this paragraph the "Collateral"). If an Event of Default shall occur, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a Beneficiary upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem reasonably necessary or advisable for the care, protection and preservation of the Collateral. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and expenses, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral.

(b) Financing Statements. Trustor authorizes Beneficiary to prepare and file such financing statements and take such other action to perfect and continue Beneficiary's security interest in the Collateral, and agrees to execute any and all documentation and take such other actions as may be requested by Beneficiary for such purposes. In addition to recording this Deed of Trust in the real property records, Beneficiary may, at any time and without further authorization from Trustor, file counterparts, copies or reproductions of this Deed of Trust as financing statements. Trustor shall pay to Beneficiary on demand any and all expenses, including reasonable attorneys' fees and expenses, incurred or paid by Beneficiary in perfecting, continuing, and protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral. Trustor agrees that the requirement of reasonable notice under the UCC shall be met if such notice is given at least ten (10) days before the time of the sale or disposition (provided, however, that this sentence shall not be construed to prohibit a shorter notice period, if commercially reasonable under the circumstances or otherwise permitted by the UCC).

16. Fixture Filing. From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all Property which now is or hereafter becomes fixtures related to the Land. For this purpose, the following information is set forth:

(a) Name and address of Debtor:

204 FStreet, LLC  
21008 Cumberland Drive, Suite 110  
Elkhorn, Nebraska 68022

(b) Name and Address of Secured Party:

Arbor Bank  
16949 Lakeside Hills Plaza  
Omaha, NE 68130  
Attn: Douglas P. Sutko, Vice President  
Fax No. (402) 964-0856

- (c) This document covers goods which are or are to become fixtures.
- (d) Description of Land: See Exhibit A.
- (e) Owner of Record of Land: Debtor.
- (f) This Financing Statement covers Proceeds.
- (g) Products of the Collateral are also covered.

17. Requests for Notice. Trustor hereby requests a copy of any notice of default and any notice of sale hereunder be mailed to Trustor at Trustor's address set forth in Section 18 of this Deed of Trust. While hereby expressly reserving the priority of this Deed of Trust as established by law, Trustee and Beneficiary hereunder request that a copy of any notice of default and any notice of sale under any deed of trust recorded against the Property either prior to, or subsequent to the date this Deed of Trust is recorded be mailed to each at the addresses set forth in Section 18 of this Deed of Trust.

18. Notices. All notices and other communications provided for herein shall, unless otherwise stated herein, be in writing and shall be personally delivered or sent by certified mail, postage prepaid, by prepaid overnight nationally recognized courier, or by facsimile, to the intended party at the address or facsimile number of such party set forth as follows:

If to Trustee or Beneficiary:

Arbor Bank  
16949 Lakeside Hills Plaza  
Omaha, NE 68130  
Attn: Douglas P. Sutko, Vice President  
Fax No. (402) 964-0856

With a copy to:

Koley Jessen P.C.  
One Pacific Place, Suite 800  
1125 S. 103 Street  
Omaha, Nebraska 68124-1079  
Attention: Matthew J. Speiker  
Fax No. (402) 390-9005

If to Trustor:

204 FStreet, LLC  
21008 Cumberland Drive, Suite 110  
Elkhorn, Nebraska 68022  
Attention: William J. Douglas  
Fax No.: (402) 932-7033

With a copy to:

Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114  
Attention: James D. Buser  
Fax No. (402) 397-4853

or at such other address or facsimile number as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective (a) if personally delivered, when delivered, (b) if sent by certified mail, three days after having been deposited in the mail, postage prepaid, (c) if sent by overnight courier, one business day after having been given to such courier, or (d) if transmitted by facsimile, when sent.

19. Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee shall also release Lots sold by Trustor at Trustor's request, provided Trustor fully complies with the terms the conditions for such release set forth in the Loan Agreement.

20. Further Assurances; Attorney-In-Fact. At any time, upon request of Beneficiary, Trustor will make, execute and deliver to Beneficiary or to Beneficiary's designee, and when requested by Beneficiary, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Beneficiary may deem appropriate, any and all such mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, affidavits, certificates, and other documents as may, in the sole opinion of Beneficiary, be necessary or desirable in order to effectuate, complete, perfect, continue, preserve or enforce: (a) the obligations of Trustor under the Notes, this Deed of Trust, and the Loan Documents, and (b) the liens and security interests created by this Deed of Trust and the Loan Documents as first and prior liens on the Property. Trustor shall reimburse Beneficiary for all reasonable costs and expenses incurred in connection with the matters referred to in this paragraph. For purposes of taking such action or executing such documents, Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact.

21. Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the County in which the Real Property is located and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to Trustee named herein or acting hereunder.

22. Waiver and Amendment. The failure of Trustee or Beneficiary to insist upon strict performance of any of the terms or conditions of this Deed of Trust shall not be deemed a waiver of any of Trustee's or Beneficiary's rights or remedies hereunder and shall not be deemed a waiver by Trustee or Beneficiary of any subsequent breach or default by Trustor of any of such terms or conditions. This Deed of Trust cannot be amended, modified or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any amendment, modification or termination is sought.

23. Rights and Remedies Cumulative. The rights and remedies of Trustee and Beneficiary under this Deed of Trust are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Trustee or Beneficiary shall have under this Deed of Trust, the other Loan Documents, or at law or in equity. No course of dealing between Trustor, on the one hand, and Trustee or Beneficiary, on the other hand, or any failure or delay on the part of Trustee or Beneficiary in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of Trustee or Beneficiary and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder by Trustee or Beneficiary. In the event of any inconsistency among the provisions of this Deed of Trust and any other Loan Document, the provisions selected by Beneficiary, in its sole and absolute discretion, shall control.

24. Subrogation. To the extent that proceeds of any Loans are used to pay any outstanding Lien against the Property, such proceeds shall be deemed to have been advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, irrespective of whether said Liens are released.

25. Miscellaneous. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, respective personal or legal representatives, successors and assigns. All references to the term "beneficiary" herein shall mean the owner and holder of the Notes, whether or not named as beneficiary herein. This Deed of Trust shall be governed by Nebraska law. If any provision or any clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust. 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. If more than one person comprises Trustor, all obligations of Trustor hereunder shall be joint and several.

**[The Remainder of This Page Intentionally Left Blank and Signature Page Follows]**

## EXHIBIT A

### LEGAL DESCRIPTION OF LAND

#### Parcel A:

A TRACT OF LAND LOCATED IN PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 15 NORTH, RANGE 10 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 36; THENCE ON THE NORTH LINE OF SAID SOUTHEAST QUARTER ON AN ASSUMED BEARING OF S87°31'20"W, 127.87 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 204TH STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE SOUTHERLY ON SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET FOR THE FOLLOWING FIVE (5) DESCRIBED COURSES: (1) S01°44'53"W, 112.05 FEET; (2) S15°14'40"W, 243.87 FEET; (3) S26°59'20"E, 108.62 FEET; (4) S03°52'52"E, 1140.11 FEET; (5) S01°25'06"E, 974.61 FEET TO A POINT INTERSECTING SAID WEST RIGHT-OF-WAY LINE OF 204TH STREET AND THE NORTH RIGHT-OF-WAY LINE OF "F" STREET; THENCE WESTERLY ON SAID NORTH RIGHT-OF-WAY LINE OF "F" STREET FOR THE FOLLOWING SIX (6) DESCRIBED COURSES: (1) N85°40'05"W, 382.86 FEET; (2) S78°14'40"W, 408.84 FEET; (3) S02°30'44"E, 29.48 FEET; (4) S87°25'57"W, 1093.26 FEET; (5) N02°35'52"W, 17.00 FEET; (6) S87°25'57"W, 171.47 FEET; THENCE N19°50'21"E, 342.09 FEET; THENCE S70°09'39"E, 5.78 FEET; THENCE N19°50'21"E, 81.26 FEET; THENCE N06°36'38"W, 66.72 FEET; THENCE N12°09'09"W, 42.69 FEET; THENCE N07°14'20"W, 83.49 FEET; THENCE N02°11'27"W, 84.63 FEET; THENCE N02°51'26"E, 84.63 FEET; THENCE N07°54'18"E, 74.39 FEET; THENCE N11°52'08"E, 50.54 FEET; THENCE N08°56'10"E, 70.60 FEET; THENCE N03°04'16"E, 70.60 FEET; THENCE N03°10'32"W, 79.78 FEET; THENCE N09°35'42"W, 135.71 FEET; THENCE N00°55'41"W, 45.02 FEET; THENCE N87°28'22"E, 702.30 FEET; THENCE N02°37'17"W, 454.69 FEET; THENCE S70°47'46"E, 45.92 FEET; THENCE S59°46'58"E, 49.17 FEET; THENCE N87°22'13"E, 208.26 FEET; THENCE S02°37'47"E, 374.88 FEET; THENCE S47°18'01"E, 12.70 FEET TO A POINT OF CURVATURE; THENCE ON A 86.50 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 83.76 FEET (LONG CHORD BEARS S75°02'26"E, 80.53 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE ON A 36.50 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 19.38 FEET (LONG CHORD BEARS N62°00'29"E, 19.15 FEET) TO A POINT OF REVERSE CURVATURE; THENCE ON A 1232.50 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 146.33 FEET (LONG CHORD BEARS N50°11'54"E, 146.25 FEET); THENCE N36°24'02"W, 53.41 FEET; THENCE N14°06'10"W, 131.08 FEET; THENCE N06°21'36"W, 89.33 FEET; THENCE N01°22'58"E, 89.33 FEET; THENCE N09°07'31"E, 89.33 FEET; THENCE N16°52'05"E, 89.55 FEET; THENCE N24°07'48"E, 37.14 FEET; THENCE N14°59'54"E, 66.78 FEET; THENCE N03°26'32"E, 70.14 FEET; THENCE N02°28'40"W, 300.00 FEET; THENCE S87°31'20"W, 142.71 FEET; THENCE N24°33'54"W, 248.22 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE N87°31'20"E, ON SAID NORTH LINE, 877.19 FEET TO THE POINT OF BEGINNING.

#### Parcel B:

A TRACT OF LAND LOCATED IN PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 15 NORTH, RANGE 10 EAST OF THE 6<sup>TH</sup> P.M., DOUGLAS COUNTY, NEBRASKA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Deed of Trust  
Exhibit A  
4852-5107-5120.3


NESE  
SWSE  
SESE



COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 36; THENCE ON THE NORTH LINE OF SAID SOUTHEAST QUARTER ON AN ASSUMED BEARING OF S87°31'20"W, 1319.15 FEET, TO THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE S02°37'17"E ON THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, 865.56 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING, S02°37'17"E ON SAID EAST LINE, 454.69 FEET TO THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE S87°28'22"W ON THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, 702.30 FEET; THENCE N05°55'41"W, 45.54 FEET; THENCE N10°05'07"E, 98.33 FEET; THENCE N21°05'54"E, 98.33 FEET; THENCE N32°06'42"E, 98.33 FEET; THENCE N43°07'29"E, 98.33 FEET; THENCE N54°08'17"E, 98.33 FEET; THENCE N65°09'04"E, 98.33 FEET; THENCE N76°09'52"E, 98.33 FEET; THENCE N87°10'39"E, 98.33 FEET; THENCE S81°48'33"E, 98.33 FEET; THENCE S70°47'46"E, 52.42 FEET TO THE POINT OF BEGINNING.

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

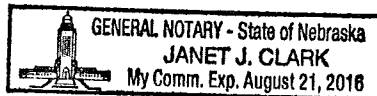
204 FSTREET, LLC,  
a Nebraska limited liability company

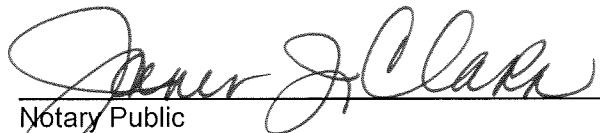
By:   
Name: William J. Douglas  
Title: MANAGER

ACKNOWLEDGEMENT

STATE OF NEBRASKA                    )  
                                                  ) ss  
COUNTY OF DOUGLAS                )

The foregoing Deed of Trust was acknowledged before me on this 11 day of MAY, 2016 by WILLIAM J. DOUGLAS, MANAGER of 204 FStreet, LLC, a Nebraska limited liability company, on behalf of said company.



  
Notary Public