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(SPACE ABOVE THIS LINE FOR RECORDING DATA)  
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RETURN TO: Ryan J. Dougherty, Houghton Bradford Whitted PC, LLO, 6457 Frances Street, Suite 100, Omaha, NE 68106

**Deed of Trust and Assignment of Rents**

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS (this "Deed of Trust") is made this 27<sup>th</sup> day of February, 2018, by and among **West Farm RE LLC**, a Nebraska limited liability company ("**Trustor**"), whose mailing address is 4645 South 84<sup>th</sup> Street, Omaha, NE 68127, **Ryan J. Dougherty** ("**Trustee**"), attorney at law, whose mailing address is 6457 Frances Street, Suite 100, Omaha, NE 68106, and **TMark Real Estate, LLC**, a Nebraska limited liability company ("**Beneficiary**"), whose mailing address is 617 North 90<sup>th</sup> Street Omaha, Nebraska 68114.

FOR VALUABLE CONSIDERATION, Trustor irrevocably 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 of this Deed of Trust, the real property located in the County of Douglas, State of Nebraska, and described as follows (the "Property"):

See attached Exhibit A and Exhibit A1.

The real estate is commonly known as **716 North 102<sup>nd</sup> Street, Omaha, NE 68144.**

TOGETHER WITH all interest which Trustor now has or may hereafter acquire in or to said Property and in or to all rents, easements, appurtenances, hereditaments, interests in adjoining roads, streets and alleys, improvements and buildings of any kind situated thereon and all personal property that may be or hereafter become an integral part of such buildings and improvements (subject, however, to the right, power and author and apply such rents, issues, profits and income as they become due and payable, so long as no event of default hereunder has occurred and is continuing) and all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or

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liquidated claims, including without limitation, proceeds of insurance and condemnation awards.

The Property and the entire estate and interest conveyed to Trustee are referred to collectively as the "Trust Estate."

Trustor covenants that Trustor is lawfully seized of the Trust Estate hereby conveyed and has the right to grant, convey, transfer and assign the Trust Estate to the Trustee and that Trustor will warrant and defend generally the title to the Trust Estate against all claims and demands and that the Trust Estate is free of all liens, except covenants, easements and restrictions of record.

THIS CONVEYANCE IS GIVEN FOR THE PURPOSE OF SECURING:

a. Payment of the principal sum of Eleven Million and Two Hundred Thousand Dollars and No Cents (\$11,200,000.00) with interest thereon evidenced by that certain Promissory Note (the "Note") executed by Trustor, which has been delivered and is payable to the order of Beneficiary, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof, together with any future advances made by Beneficiary; and

b. Payment of all sums advanced by Beneficiary for any reason to protect the Trust Estate, with interest thereon at the rate of five percent (5%) per annum.

This Deed of Trust, the Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby are referred to collectively herein as the "Loan Documents."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY MAKES THE FOLLOWING REPRESENTATIONS AND WARRANTIES TO BENEFICIARY AND COVENANTS AND AGREES AS FOLLOWS:

1. PAYMENT OF INDEBTEDNESS. Trustor shall pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in the Loan Documents.

2. WARRANTY OF TITLE. Trustor is lawfully seized and possessed of good and marketable title and estate to the Trust Estate and has the right and authority to grant and convey the Trust Estate as herein provided by virtue of the special warranty deed conveying title to Trustor from Beneficiary. The Trust Estate is and, until the Trust Estate is reconveyed pursuant to the terms hereof, shall remain, free and clear of all security interests, pledges, mortgages, liens and encumbrances except those for (i) current and non-delinquent taxes or taxes being contested in good faith and by appropriate legal proceedings in a manner which, in the reasonable judgment of

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Beneficiary, will not jeopardize Beneficiary's interest in the Trust Estate, (ii) liens arising in the ordinary course of business for sums not past due or sums being protested in good faith and by appropriate legal proceedings in a manner which, in Beneficiary's reasonable judgment, will not materially jeopardize Beneficiary's interest in the Trust Estate, and (iii) easements, exceptions, reservations, covenants, and rights of way of record as of the date hereof. During the term of this Deed of Trust, Trustor shall not sell, convey, transfer or dispose of all or any portion of the Trust Estate without the prior written consent of Beneficiary and will warrant and defend title to and possession of the Trust Estate against all claims and demands.

3. MAINTENANCE AND COMPLIANCE WITH LAWS. Until the Trust Estate is reconveyed pursuant to the terms hereof, Trustor shall keep the Trust Estate in good repair and condition and will make, from time to time, all repairs, renewals, replacements, additions and improvements which are necessary to such end, and shall not commit waste or permit impairment or deterioration of the Trust Estate, reasonable and normal wear and tear excepted. No improvement on the Trust Estate which materially affects the value of the Trust Estate shall be removed or demolished without the prior written consent of Beneficiary, except to the extent required by governing law or where Trustor replaces the removed or demolished improvement with an improvement of equal or greater value. Trustor shall comply with, and shall not commit, suffer or permit any act to be done in or upon the Trust Estate in violation of, any law, ordinance, regulation, covenant, condition and restriction affecting the Trust Estate, including environmental law. Trustor shall cause to be restored within a reasonable period of time and in a good and workmanlike manner any Improvement which may be damaged or destroyed and cause to be paid, when due, all claims for labor performed and materials furnished therefor and for any alterations thereof. No building or improvement now or hereafter erected upon the Property shall be materially altered, moved or demolished without the prior written consent of Beneficiary, which shall not be unreasonably withheld, delayed or conditioned.

4. PAYMENT OF TAXES AND INSURANCE. Unless otherwise agreed to in writing by Beneficiary, Borrower shall pay the yearly property taxes, assessments and other charges, whether general or special, on the Property, including, without limitation, all fines, penalties and impositions, and all lawful claims for labor, materials, and supplies, if any, which are assessed or imposed upon all or any part of the Trust Estate, or become due and payable and create, may create, or appear to create a lien or other encumbrance upon all or any part of the Trust Estate. Borrower shall also pay the yearly hazard or property insurance premiums. The insurance policy shall be from an insurance company acceptable to Beneficiary, shall be in an amount acceptable to Beneficiary and shall not be cancelable, terminable, or modifiable without ten (10) days prior written notice to Beneficiary. Trustor shall pay the property taxes and insurance directly to the person owed payment prior to such obligations being due. In the event Trustor fails to pay the property taxes or insurance, Beneficiary, at Beneficiary's option, may pay for such items and such amounts shall be immediately due to Beneficiary from Trustor, together with interest thereon, at the rate of five percent (5%) per annum. All insurance policies maintained pursuant to this Deed of Trust shall name Trustor as the

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insured and Beneficiary as an additional insured, and such insurance shall contain a standard mortgage clause in favor of Beneficiary. After the occurrence of any casualty to the Trust Estate, Trustor shall give prompt written notice thereof to the insurer and to Beneficiary. Trustor shall immediately file a proof of claim of loss under the insurance. Trustor shall collect and compromise all claims under the policies, and shall apply the insurance proceeds, if any, to the following items in the following order, provided no event of default has occurred and is continuing at the time Trustor receives the insurance proceeds: (i) to the restoration of the Trust Estate; (ii) to Beneficiary's obligations under the Loan Documents, in such order as Beneficiary may determine; and (iii) to Trustor. If an event of default has occurred and is continuing at the time Trustor receives the insurance proceeds, Beneficiary may, at its option, require the Trustor to apply the insurance proceeds to the foregoing items in whatever order Beneficiary shall see fit. All such insurance proceeds shall constitute additional security hereunder. Any application of insurance proceeds to Beneficiary's obligations under the Loan Documents shall not extend or postpone the due date of any payment pursuant to the terms and conditions of the Note, or cure any event of default hereunder unless agreed in writing by Beneficiary. If all or any part of the Trust Estate is acquired by Beneficiary under the provisions of this Deed of Trust, Trustor's right to insurance proceeds resulting from damage to the Trust Estate prior to its acquisition by Beneficiary shall pass to Beneficiary to the extent of Beneficiary's obligations under the Loan Documents immediately prior to such acquisition. Beneficiary shall not be deemed to have incurred any liability or assumed any responsibility for or with respect to the amount of insurance carried by Trustor, the form or legal sufficiency of the policies, the solvency of any insurance companies, or the payment or defense of any lawsuits, as a result of having approved, disapproved of, accepted, prevented, obtained or failed to obtain any insurance, and Trustor acknowledges that all such liability and responsibility shall remain with Trustor.

5. APPLICATION OF PAYMENTS. Unless otherwise provided in the Loan Documents, all payments received by Beneficiary under the Loan Documents shall be applied: first to interest due, second to principal due, and last to any late charges or other amounts due or chargeable under the Loan Documents.

6. ACTIONS AFFECTING TRUST ESTATE. Trustor, at its own expense, shall appear in and contest any action or proceeding purporting to affect the Property or the rights or powers of Beneficiary or Trustee, and shall pay all costs and expenses, including cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear. Should Trustor fail to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and without 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 the Property. Trustor shall, immediately upon demand therefor by Beneficiary, pay all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys, and attorney's fees.

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Any such costs and expenses not paid within ten (10) days of written demand shall draw interest at the default rate provided in the Note. Other than voluntary liens or encumbrances incurred by Trustor in the regular course of business, Trustor shall pay and promptly discharge, at Trustor's cost and expense, all nonconsensual and involuntary liens, encumbrances and charges imposed upon the Trust Estate, or any part thereof or interest therein, within thirty (30) days of its filing; provided, that if Trustor shall in good faith desire to contest the validity of any such lien, it may do so by an appropriate proceeding after first posting a bond sufficient to cover such lien and thereby remove same. In the event Trustor fails to discharge or pay promptly such liens, encumbrances or charges, or post a bond as described above, such failure shall be considered an event of default and Beneficiary shall be entitled to all the remedies provided under this Deed of Trustor available at law or equity. If Trustor shall fail to discharge any such lien, encumbrance or charge within thirty (30) days of its filing or post a bond as described above, then, in addition to any other right of remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any such payment shall accrue interest at the rate set forth herein and shall be payable, together with accrued interest, immediately upon written demand. The Trustor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Trust Estate or any part thereof. This shall apply to any construction upon the Trust Estate as well as the operation of any business upon the Trust Estate.

7. SELF HELP. If any action or proceeding is commenced which materially affects Beneficiary's or Trustee's interest in or the value of the Trust Estate, including, but not limited to, eminent domain proceedings, proceedings involving a decedent, notice of sale by Trustee, a notice of default by Trustee, a mortgage foreclosure action, or if Trustor fails to pay their respective, legally enforceable debts generally as they become due, then Beneficiary may, at Beneficiary's sole option, and without notice to or demand upon Trustor and without releasing Trustor from any obligation under the Loan Documents, make such appearances, disburse such sums and take such action as is reasonable necessary in Beneficiary's opinion in order to protect Beneficiary's interest in the Trust Estate, including, but not limited to (a) appearance in and prosecution or defense of any legal action or proceeding which affects or may affect the Trust Estate; (b) disbursement of attorneys' fees; (c) payment, purchase, contest or compromise of any encumbrance, charge or lien upon the Trust Estate; (d) entry upon the Trust Estate to make repairs or to otherwise restore or protect the Trust Estate or any part thereof; or (e) declaration of an event of default under this Deed of Trust, and sale or foreclosure hereunder. Any amounts disbursed by Beneficiary pursuant to this Section 7 shall become an additional obligations of Trustor secured by this Deed of Trust. Such amounts shall be payable immediately upon notice from Beneficiary to Trustor requesting payment thereof. Nothing contained in this Section 7 shall obligate the Beneficiary to incur any expense or take any action hereunder.

*Handwritten signature and date: 8-1-2018*

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8. EMINENT DOMAIN. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding ("Condemnation"), or should Trustor receive any notice or other information regarding any such Condemnation, Trustor shall give immediate notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, to the full extent of Beneficiary's obligations under the Loan Documents. Trustor and Beneficiary shall be mutually required to appear in and jointly prosecute any Condemnation action or proceedings. Neither Beneficiary nor Trustor shall make any compromise or settlement without the full consent of the other. All such compensation, awards, damages, rights of action and proceeds awarded (the "Proceeds") are hereby sold, conveyed, transferred, and assigned to Beneficiary to the extent of Beneficiary's outstanding obligations under the Loan Documents, and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may reasonably require. In the event of a Condemnation, Beneficiary shall have the option, in its sole and absolute discretion, to apply all the Proceeds, after deducting therefrom all actual costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees incurred by them in connection with such Condemnation, to any of Beneficiary's obligations under the Loan Documents and in such order as Beneficiary may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Trust Estate upon such conditions as Beneficiary may determine. If the Proceeds are applied to Beneficiary's obligations under the Loan Documents and exceed the amount of the obligations and any expenses of Beneficiary described above, the excess shall be paid to Trustor.

9. REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy provided hereunder by this Deed of Trust to Trustee or Beneficiary or to which any 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 any of them may pursue inconsistent remedies. 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 Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and 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. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by governing law.

10. ASSIGNMENT OF RENTS. Trustor hereby assigns and transfers to Beneficiary all the rents, issues and profits of the Trust Estate and hereby gives to and confers upon Beneficiary the right, power and authority to collect such rents, issues and

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profits. Trustor irrevocably appoints Beneficiary its true and lawful attorney in fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all such rents, issues and profits and apply the same to the indebtedness secured hereby: provided, however, that Trustor shall have the right to collect such rents, issues and profits (but not more than one (1) month in advance) prior to or at any time there is not an event of default that has occurred and is continuing. This assignment of the rents, issues and profits of the Trust Estate is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of security interest. The rents, issues and profits are hereby assigned absolutely by Trustor to Beneficiary contingent only upon the occurrence of an event of default under the Loan Documents. Upon any event of default under the Loan Documents, so long as it is continuing, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Trust Estate, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less reasonable costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The collection of such rents, issues and profits, or entering upon and taking possession of the Trust Estate, or the application thereof as described above, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

11. APPOINTMENT OF SUCCESSOR TRUSTEE. Beneficiary may, from time to time, substitute, in the manner prescribed by law, a successor or successors to the Trustee named herein or acting hereunder. The successor Trustee shall succeed to all the predecessor's title, rights, powers and duties without conveyance from the predecessor trustee.

12. SUCCESSORS AND ASSIGNS. Beneficiary may assign its rights hereunder by notice to Trustee and Trustor. Trustor may not assign its rights and obligations hereunder by contract, operation of law, or otherwise without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

13. EVENTS OF DEFAULT. Any of the following events shall be deemed an event of default hereunder:

- (a) Trustor shall have failed to make payment of any installment of principal and interest or any other sum secured hereby when due; or

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(b) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in this Deed of Trust or in any of the Loan Documents.

14. ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES. Should an event of default occur under the Loan Documents, Beneficiary may declare all indebtedness secured hereby to be due and payable. Thereafter Beneficiary may:

(a) Commence an action to foreclose this Deed of Trust as a mortgage, to seek deficiency on the indebtedness after foreclosure without any limitation other applicable under governing law, appoint a receiver, or to specifically enforce any of the covenants hereof;

(b) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Trust Estate to be sold, by exercise of the power of sale herein contained, which notice Trustee shall cause to be duly filed for record in the appropriate official records of the County in which the Trust Estate is located;

(c) Pay such sums as it deems reasonably necessary to protect the Trust Estate and cure any default of Trustor; or

(d) Exercise any and all other rights provided for in the Loan Documents or by governing law upon the occurrence of an event of default.

15. FORECLOSURE BY POWER OF SALE. Should Beneficiary elect to foreclose by exercise of the Power of Sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Notice of Sale as then required by governing law and by this Deed of Trust. Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash or cash equivalent payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed conveying the property so sold, but without



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any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) As may be permitted by law, after deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including costs of evidence of title and reasonable attorney fees, Trustee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then prepaid, with accrued interest; (ii) all other sums secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against Trustor.

(c) Trustee may in the manner provided by governing law, postpone sale of all or any portion of the Trust Estate.

16. REMEDIES NOT EXCLUSIVE. In the event of default of Beneficiary's obligations under the Loan Documents, the remedies provided in this Deed of Trust are not exclusive of any other remedies available to the Beneficiary and Trustee as allowed by governing law.

17. ADDITIONAL TRUSTEE POWERS AND LIMITS OF LIABILITY. At any time, and without notice, upon written request of Beneficiary and presentation of this Trust Deed and the Note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, and without affecting the security for the full amount secured on all property remaining subject to this Deed of Trust, and without the necessity that any sum representing the value of any portion thereof of the property affected by Trustee's action be credited on the indebtedness, Trustee may:

- (a) release and reconvey all or any part of the property;
- (b) join in granting any easement thereon;
- (c) join in or consent to any extension agreement or any agreement subordinating the lien or encumbrance of this Deed of Trust.

Trustee shall not be held liable for any loss resulting from any act(s) or failure(s) to act if such act(s) or failure(s) are so performed in good faith.

18. ACCELERATION UPON SALE. If Trustor sells, conveys, transfers or disposes of the Trust Estate, or any part thereof, without the written consent of Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable.

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19. REQUEST FOR NOTICE. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

20. SUBORDINATION. Any lease of all or any part of the Trust Estate by Trustor that was or is made and entered into for any business purpose, shall contain a provision obligating such lessee to enter into a subordination, attornment and nondisturbance agreement with Beneficiary, in form and substance reasonably satisfactory to Beneficiary and such lessee.

21. INSPECTIONS. Trustor shall permit Beneficiary to enter upon any part of the Trust Estate, upon reasonable notice, for the purpose of inspecting the same.

22. ADDITIONAL REPRESENTATIONS. Trustor covenants and warrants with Beneficiary, its successors and assigns, that this Deed of Trust is and will remain a valid and enforceable first lien on the Trust Estate, that Trustor will preserve such title and will forever warrant and defend the same to the Beneficiary and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. The foregoing warranties shall survive the exercise of the power of sale as herein conferred, as well as the foreclosure of the Deed of Trust, and shall run with the land. Trustor will make such further assurance or assurances to perfect its title to the Trust Estate as may be reasonably required by Beneficiary.

23. FURTHER ASSURANCES. So long as any of Beneficiary's obligations under the Loan Documents remain unsatisfied, Trustor will execute and deliver to Trustee, promptly upon demand, such security instruments as may be reasonably required by Trustee, in form and substance reasonably satisfactory to Trustee, covering any of the Trust Estate covered by this Deed of Trust, which are necessary to preserve the first priority lien created by this Deed of Trust. Such instruments shall be recorded or filed, and rerecorded and refiled, at Trustor's expense.

24. FORBEARANCE BY BENEFICIARY OR TRUSTEE NOT A WAIVER. Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by governing law, shall not be a waiver of or preclude the exercise of any such right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any event of default under this Deed of Trust shall not be deemed to be a waiver of any other or similar events of default.

25. NON-WAIVER. The acceptance by Beneficiary of any sum after the same is due shall not constitute a waiver of the right either to request 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 Trustor's failure

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to pay the entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter (following notice and cure periods as set forth herein) 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, upon the occurrence of a default, and the right to proceed with a sale under any notice of default and election to sell in accordance with Section 14 shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Beneficiary to any transaction or action 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 transactions or actions.

26. DUTIES AND OBLIGATIONS OF TRUSTEE. The duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and governing law. Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein and in the Act, and no implied covenants or obligations shall be imposed upon Trustee. No provision of this Deed of Trust shall require Trustee to expend or risk his or her own funds, or otherwise incur any financial obligation in the performance of any of his or her duties hereunder, or in the exercise of any of his or her right or powers, if he or she shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured. Trustee shall not be liable for any action taken in good faith and reasonably believed to be authorized or within the discretion, rights and powers conferred by this Deed of Trust and governing law.

27. NOTICES. Except for any notices, demands, requests or other communications required under governing law to be given in another manner, whenever Beneficiary, Trustor or Trustee gives or serves any notice (including, without limitation, notices of default and notices of sale), demands, requests or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and personally delivered or deposited with a reputable overnight carrier or mailed by certified mail, postage prepaid, return receipt requested, and addressed to the address set forth at the beginning of this Deed of Trust. Such notice shall be effective immediately upon personal delivery, or twenty four (24) hours after deposit with an overnight carrier, or forty eight (48) hours after deposit in the U. S. mail, in the manner set forth above, or the date of the return receipt (whichever is later).

28. SEVERABILITY. In the event any one or more of the provisions contained in this Deed of Trust shall be for any reason held to be invalid, illegal or unenforceable under governing law by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. If the lien of this Deed of Trust is invalid or unenforceable as to any part of Beneficiary's obligations

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under the Loan Documents or the Trust Estate, all payments made on the obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied first to the full payment of that portion of Beneficiary's obligations under the Loan Documents which is not secured or not fully secured by the lien of this Deed of Trust.


29. GOVERNING LAW. This Deed of Trust shall be governed by the laws of the State of Nebraska. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents that can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents 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.

30. 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 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 Trust Estate then held hereunder. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

31. ACCEPTANCE BY TRUSTEE. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

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

**West Farm RE LLC, Trustor**

  
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**Steven M. Hinchcliff, President and Sole Manager**



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EXHIBIT A

LEGAL DESCRIPTION

Parcel A

That part of the SW 1/4 of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the NE corner of said SW 1/4; thence South (assumed bearing) 1433.93 feet on the East line of said SW 1/4; thence West, 83.20 feet to the point of beginning, said point also being the SE corner of a tract of land deeded to Metro Lincoln-Mercury as described in Deed Book 1454 at Page 33 of the Douglas County Records; thence continuing West 779.80 feet on the South line of said Metro Lincoln-Mercury tract to the Easterly line of Interstate 680; thence Southerly on the Easterly line of Interstate 680; on the following described courses; thence Southeasterly on a 1025.92 foot radius curve to the left, chord bearing S29°56'49"E, chord distance of 185.39 feet, an arc distance of 185.65 feet; thence S35°13'00"E, 294.07 feet; thence S48°12'00"E, 725.50 feet to the West line of 102nd Street; thence North 245.70 feet on a line 60.00 West of and parallel to the East line of said SW 1/4 and on the West line of 102nd Street; thence N11°06'00"E, 52.05 feet on the West line of 102nd Street; thence West 33.20 feet on the West line of 102nd Street; thence North 587.69 feet on the West line of 102nd Street to the point of beginning. Together with that part of vacated 102nd Street right of way lying within the SE 1/4 of the SW 1/4 of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows: commencing at the NE corner of the SW 1/4 of said Section 16; thence South (assumed bearing) 2088.40 feet on the East line of SW 1/4; thence West 45.00 feet to the point of beginning; thence continuing West 15.00 feet to the West line of 102nd Street; thence South 230.00 feet on the West line of 102nd Street to the SE corner of a tract of land described on a deed recorded in Book 1793 at Page 489 of the Douglas County records; thence East 15.00 feet; thence North 230.00 feet on a line 45.00 feet West of and parallel with the East line of said SW 1/4 to the point of beginning.

EXCEPT:

That part of the SW 1/4 of Section 16, Township 15 North, Range 12 East of the 6th P.M., in the City of Omaha, in Douglas County, Nebraska, more particularly described as follows: Commencing at the NE corner of said SW 1/4; thence South (assumed bearing) 1433.93 feet on the East line of said SW 1/4; thence West 83.20 feet to the point of beginning, said point also being the SE corner of a tract of land deeded to Metro Lincoln-Mercury as described in Book 1454 at Page 33 of the Deed Records of Douglas County, Nebraska; thence continuing West 535.00 feet on the South line of said Metro Lincoln-Mercury tract; thence South 180.00 feet on a line 535.00 feet West of and parallel to the West line of 102nd Street; thence East 535.00 feet on a line 180.00 feet South of and parallel to the South line of said Metro Lincoln-Mercury tract, to the West line of 102nd Street; thence North 180.00 feet on the West line of 102nd Street to the point of beginning.

Parcel B

A tract of land located in the SE 1/4 of the SW 1/4 of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska and being more particularly described as follows: Commencing at the NE corner of the SW 1/4 of said Section 16 and running thence S02°37'14"E on an assumed bearing along the East margin of said SW 1/4 for 2,088.40 feet; thence S87°22'46"W for 45.00 feet to the point of beginning; thence S02°37'14"E, parallel to and 45.00 feet distant from the East margin of said SW 1/4 for 246.00 feet; thence S77°01'00"W for 15.43 feet; thence N80°16'00"W for 23.62 feet; thence N42°00"W for 177.20 feet to a point on the State of Nebraska Right of Way Line as described in Douglas County Deed Records in Book 1309 at Page 303; thence S50°49'19"E along said right of way for 184.00 feet; thence N02°34'40"W along said right of way for 229.78 feet; thence N87°22'46"E for 15.00 feet to the point of beginning.

*Mt 02-02-18*

West Farm RE LLC Deed of Trust

Parcel C

A part of the 102nd Right of Way in the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  and in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , all in Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, as described as follows: Commencing at the NE corner of the SW  $\frac{1}{4}$  of said Section 16; thence South (assumed bearing), a distance of 2,021.62 feet on the East Line of the SW  $\frac{1}{4}$  of said Section 16; thence West a distance of 50.20 feet to the West Line of 102nd Street and the point of beginning; thence S 11° 06' 00" West, a distance of 52.05 feet on the West Line of 102nd Street; thence South, a distance of 15.70 feet on the West Line of 102nd Street; thence East, a distance of 15.00 feet; thence South, a distance of 245.00 feet; thence N78°41'24"E, a distance of 113.17 feet; thence Northwesterly on a 445.00 foot radius curve to the right on a chord bearing N22°59'16"W, a chord distance of 242.03 feet, an arc distance of 245.11 feet; thence N17°47'29"W, a distance of 70.13 feet to the point of beginning.

Parcel D

A tract of land located in the SW  $\frac{1}{4}$  of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Referring to the NE corner of said Quarter Section; thence Southerly a distance of 2304.25 feet along the East line of said Quarter Section to the Southerly line of vacated 102nd Street by Ordinance No. 36121, to the point of beginning; thence Southerly deflecting 000°00'00", a distance of 48.17 feet along said line; thence Northwesterly 116°16'06" right, a distance of 92.69 feet along a line 2.0 feet Northerly and parallel from the State right of way fence; thence Easterly deflecting 165°35'44" right, a distance of 23.62 feet; thence Northeasterly deflecting 023° 10'26" left, a distance of 61.19 feet along the Southerly line of vacated 102nd Street by Ordinance No. 36121, to the point of beginning.

And also, a tract of land located in the SE  $\frac{1}{4}$  of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows: Referring to the NW corner of said Quarter Section; thence Southerly a distance of 2304.25 feet along the West Line of said Quarter Section to the Southerly line of vacated 102nd Street by Ordinance No. 36121, to the point of beginning; thence Southerly deflecting 000°00'00", a distance of 48.17 feet along said line; thence Southeasterly 063° 43'54" left, a distance of 50.10 feet along a line 2.0 feet Northerly and parallel from the State right of way fence; thence Southeasterly deflecting 11°56'53" left, a distance of 73.21 feet along a line 2.0 feet Northerly and parallel from the State right of way fence; thence Northeasterly deflecting 069°15'07" left, a distance of 38.32 feet; thence Northwesterly on a 445.00 foot radius curve to the right, deflecting to the initial tangent beginning 087°10'30" left, a distance of 100.72 feet, subtending to a central angle of 012° 58'06"; thence Southwesterly deflecting 062°10'18" left, a distance of 67.35 feet along the Southerly line of vacated 102nd Street by Ordinance No. 36121, to the point of beginning.

West Farm RE LLC Deed of Trust

**EXHIBIT A1**

**LEGAL DESCRIPTION OF THE VACATED PORTION**

**SEGMENT 3:**

THAT PART OF THE 102ND STREET RIGHT-OF-WAY LYING WITHIN THE EAST 1/2 OF THE SW 1/4 OF SECTION 16, T15N, R12E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS, COMMENCING AT THE SE CORNER OF LOT 5, WESTPLEX, A SUBDIVISION IN SAID DOUGLAS COUNTY;

THENCE EAST 58.28 FEET TO A POINT 46.54 FEET WEST OF THE EAST LINE OF SAID EAST 1/2;

THENCE S02°44'15"W 237.36 FEET TO A POINT 35.20 FEET WEST OF THE EAST LINE OF SAID EAST 1/2;

THENCE SOUTH 506.89 FEET ON A LINE 35.20 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID EAST 1/2 AND THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 453.83 FEET ON A LINE 35.20 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID EAST 1/2 TO A POINT ON THE WEST LINE OF 102ND STREET;

THENCE N17°47'29"W 48.44 FEET ON THE WEST LINE OF 102ND STREET;

THENCE WEST 33.20 FEET ON THE WEST LINE OF 102ND STREET;

THENCE NORTH 407.71 FEET ON THE WEST LINE OF 102ND STREET;

THENCE EAST 48.00 FEET TO THE POINT OF BEGINNING.

*mt* 02-02-18