

THE STATE OF NEBRASKA  
MADISON COUNTY } ss.

0299

2:30

Security Land Title - Easement  
On aha

Pd 155.50 Ck 157969

This instrument filed for record  
the 3 day of July 20 06

at 2:30 P.M. and recorded in

2006-07 Page 0299-0329

Linda Sue Stiles

~~Register of Deeds~~ Deputy Register of Deeds

**SPIRIT SPE PORTFOLIO 2006-1, LLC (formerly known as SHOPKO SPE REAL  
ESTATE, LLC), a Delaware limited liability company, as grantor  
(Borrower)**

to

**FIRST AMERICAN TITLE INSURANCE COMPANY, as trustee  
(Trustee)**

and

**BARCLAYS CAPITAL REAL ESTATE INC., as beneficiary, and  
CITIGROUP GLOBAL MARKETS REALTY CORP., as beneficiary  
(Lender)**

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

Dated: As of May 31, 2006

Location: See Attached Schedule of Properties

County: See Attached Schedule of Properties

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Thacher, Proffitt & Wood LLP  
Two World Financial Center  
New York, New York 10281  
Attention: David S. Hall, Esq.

File No.: 20528-00030

**SCHEDULE OF PROPERTIES**

| Store # | Property Address                     | City         | County  | State    |
|---------|--------------------------------------|--------------|---------|----------|
| 48      | 2005 Krenzien Drive                  | Norfolk      | Madison | Nebraska |
| 53      | 510 East Philip Avenue               | North Platte | Lincoln | Nebraska |
| 46      | 5646 North 90 <sup>th</sup> Street   | Omaha        | Douglas | Nebraska |
| 56      | 14445 W. Center Road                 | Omaha        | Douglas | Nebraska |
| DC 998  | 10808 South 132 <sup>nd</sup> Street | Omaha        | Sarpy   | Nebraska |

**THIS AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (this "**Security Instrument**") is made as of this 31 day of May, 2006, by **SPIRIT SPE PORTFOLIO 2006-1, LLC** (formerly known as **SHOPKO SPE REAL ESTATE, LLC**), a Delaware limited liability company, having an address c/o Spirit Finance Corporation, at 14631 N. Scottsdale Rd. Suite 200, Scottsdale, Arizona 85254, as grantor ("**Borrower**") to **FIRST AMERICAN TITLE INSURANCE COMPANY**, having an address at 1055 N. 115<sup>th</sup> Street, Omaha, Nebraska 68154, as trustee ("**Trustee**") for the benefit of **BARCLAYS CAPITAL REAL ESTATE INC.**, a Delaware corporation, having its principal place of business at 200 Park Avenue, New York, New York 10166, its successors and/or assigns ("**Barclays**"), and **CITIGROUP GLOBAL MARKETS REALTY CORP.**, a New York corporation, having its place of business at 388 Greenwich Street, 11th Floor, New York, NY 10013, its successors and/or assigns ("**Citigroup**"), as beneficiary (Barclays and Citigroup, individually and collectively, as the context may require, "**Lender**"). References to this "**Security Instrument**" shall mean this instrument and any and all renewals, modifications, amendments, supplements, extensions, consolidations, substitutions, spreaders and replacements of this instrument. All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement (defined below).

#### RECITALS:

WHEREAS, this Security Instrument is given to Lender, to secure a loan (the "**Loan**") in the principal sum of FIVE HUNDRED FORTY-FIVE MILLION SIX HUNDRED FIFTY-FIVE THOUSAND TEN AND 00/100 DOLLARS (\$545,655,010.00) made pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower, certain Affiliates of Borrower and the Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**");

WHEREAS, pursuant to the Loan Agreement, the Lender has agreed to make the Loan to the Borrower and certain Affiliates of Borrower upon the terms and subject to the conditions set forth therein, including, without limitation the granting of a first priority Lien on the Property (as hereinafter defined);

WHEREAS, Lender is the owner and holder of (i) that certain Amended and Restated Promissory Note (Note A), dated January 27, 2006, in the original principal amount of \$425,000,000.00 given by Borrower to Barclays (the "**Original Note A**"), (ii) that certain Amended and Restated Promissory Note (Note B), dated January 27, 2006 in the original principal amount of \$25,000,000.00 given by Borrower to Barclays (the "**Original Note B**"), (iii) that certain Amended and Restated Promissory Note (Note C), dated January 27, 2006, in the original principal amount of \$175,000,000.00 given by Borrower to Barclays (the "**Original Note C**"), (iv) that certain Promissory Note (Note D), dated January 27, 2006, in the original principal amount of \$25,000,000.00 given by Borrower to Barclays (the "**Original Note D**"), and (v) that certain Promissory Note (Note E), dated January 27, 2006, in the original principal amount of \$50,000,000.00 given by Borrower to Barclays (the "**Original Note E**"; Original Note A, Original Note B, Original Note C, Original Note D and Original Note E hereinafter collectively referred to as the "**Original Notes**").

WHEREAS, Borrower and Lender have agreed to amend, modify and restate the Original Notes pursuant to those certain Consolidated Amended and Restated Promissory Notes dated as

of the date hereof in the aggregate principal sum of \$545,655,010.00 (such promissory notes, together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter collectively referred to as the "Note").

WHEREAS, Borrower delivered to Barclays a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of January 27, 2006 (the "**Original Security Instrument**"), and Borrower and Lender wish to amend and restate the Original Security Instrument in its entirety.

WHEREAS, Borrower desires to secure the payment of the Debt (as defined in Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants and agreements hereinafter set forth, and in and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree that all of the terms, provisions and obligations contained in the Original Security Instrument are hereby amended, restated and superseded in their entirety to read as follows:

#### **Article 1 - GRANTS OF SECURITY**

**Section 1.1** PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey and grant a security interest to Trustee, its successors and assigns, for the benefit of Lender and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land which may, from time to time, by supplemental deed of trust or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, pads, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand

whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures but expressly excluding any trade fixtures) and additions thereto and replacements thereof used in connection with or to operate any of the foregoing owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter, affixed to, attached to or placed upon the Land and the Improvements, or appurtenant thereto, and used in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "**Fixtures**"), and the right, title and interest of Borrower in and to any of the Fixtures which may be subject to any "security interests", as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), and all proceeds and products of the above;

(f) Leases and Rents. All leases, subleases, subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of, the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, lettings, licenses, concessions or other agreements entered into in connection with such leases, subleases, subsubleases, lettings, licenses, concessions or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Leases**") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered in connection with such leases, subleases, subsubleases, lettings, licenses, concessions or other agreements, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources now existing or hereafter arising or created out of the sale, lease, sublease, letting, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower in connection therewith and proceeds, if any, from business interruption or other loss of rental income insurance whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations;

(g) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies in respect of the Property under any Policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property as provided herein or in the Loan Agreement;



(h) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property by reason of Condemnation, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction, credit or refund;

(j) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the ownership, financing, leasing, sale, marketing, use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(l) Intangibles. All books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) Permits. All consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Land and the Improvement or any part thereof; and all drawings, plans, specifications and similar or related items relating to the Land and the Improvements;

(n) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing items set forth in subsections (a) through (m) including, without limitation, Insurance Proceeds and Awards, into cash or liquidation claims; and

(o) Other Rights. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (n) above.

**Section 1.2** ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender and Trustee all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 8.1(g) of this Security Instrument, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents and Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Obligations, for use in the payment of such sums.

**Section 1.3** SECURITY AGREEMENT. This Security Instrument is both a real property deed of trust and a "security agreement" within the meaning of the Uniform Commercial Code.

The Property includes both real property and Fixtures and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender and Trustee, as security for the Secured Obligations (hereinafter defined), a security interest in the Fixtures to the full extent that the Fixtures may be subject to the Uniform Commercial Code.

**Section 1.4** FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5** CONDITIONS TO GRANT. TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Lender and to the use and benefit of Lender and Trustee and their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Lender of the Obligations at the time and in the manner provided for its payment in the Note and in this Security Instrument.

UPON CONDITION that, so long as no Event of Default has occurred and is continuing, Borrower shall be permitted to possess and use the Property and to use the rents, issue, profits, revenues and other income of the Property as provided or permitted by the terms of this Security Instrument, the Loan Agreement and the other Loan Documents;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Obligations at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

## **Article 2 – SECURED OBLIGATIONS**

**Section 2.1** OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing all debts and obligations to be secured by this Security Instrument, including the Debt and any other obligations under the Note, the Loan Agreement or any other Loan Document and the performance of all Other Obligations (as hereinafter defined) (the "**Obligations**").

**Section 2.2** OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "**Other Obligations**"): (a) all other obligations of Borrower contained herein; (b) each obligation of Borrower contained in the Loan Agreement, the Note and any other Loan Document; and (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.3** SECURED OBLIGATIONS. Borrower's obligations for the payment of the Obligations and the performance of the Other Obligations shall be referred to collectively herein as the "Secured Obligations."

**Section 2.4** PAYMENT OF OBLIGATIONS. Borrower will pay the Secured Obligations at the time and in the manner provided in the Loan Agreement, the Note and this Security Instrument.

**Section 2.5** INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

### **Article 3 - PROPERTY COVENANTS**

Borrower covenants and agrees that:

**Section 3.1** INSURANCE. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

**Section 3.2** TAXES. Borrower shall pay all Taxes assessed or imposed against the Property or any part thereof in accordance with the Loan Agreement.

**Section 3.3** LEASES. Borrower shall not enter into any Leases for all or any portion of the Property unless in accordance with the provisions of the Loan Agreement.

**Section 3.4** WARRANTY OF TITLE. Borrower has good, indefeasible, marketable and insurable fee simple title to the real property constituting part of the Property and good indefeasible and marketable title to the balance of the Property, free and clear of all Liens whatsoever except for the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all Persons whomsoever.

**Section 3.5** PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any Lien or security interest, even though inferior to the Liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the



Liens or security interests hereof except for the Permitted Encumbrances. Borrower represents that there are no claims for payment for work, labor or materials affecting the Property which are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents.

**Section 3.6** MAINTENANCE OF THE PROPERTY. Borrower shall maintain the Property in accordance with the requirements of the Loan Agreement.

#### **Article 4 - FURTHER ASSURANCES**

**Section 4.1** COMPLIANCE WITH LOAN AGREEMENT. Borrower shall comply with the covenants set forth in Section 5.1 and Section 5.2 of the Loan Agreement in order to protect and perfect the Lien or security interest hereof upon, and in the interest of Lender in, the Property.

**Section 4.2** AUTHORIZATION TO FILE FINANCING STATEMENTS; POWER OF ATTORNEY. Borrower hereby authorizes Lender at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, as applicable to all or part of the Fixtures. For purposes of such filings, Borrower agrees to furnish any information requested by Lender promptly upon request by Lender. Borrower also ratifies its authorization for Lender to have filed any like initial financing statements, amendments thereto or continuation statements, if any, if filed prior to the date of this Security Instrument. Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent of Lender, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Borrower or in Borrower's own name to execute in Borrower's name any such documents and otherwise to carry out the purposes of this Section 4.2, to the extent that Borrower's authorization above is not sufficient. To the extent permitted by law, Borrower hereby ratifies all acts said attorneys-in-fact have lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of this Section 4.2. This power of attorney is a power coupled with an interest and shall be irrevocable.

#### **Article 5 - DUE ON SALE/ENCUMBRANCE**

**Section 5.1** NO SALE/ENCUMBRANCE. Borrower shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property or any part thereof, Borrower or any Restricted Party, other than in strict accordance with the express provisions of the Loan Agreement, without the prior written consent of Lender.

#### **Article 6 - PREPAYMENT; RELEASE OF PROPERTY**

**Section 6.1** PREPAYMENT. The Obligations may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

**Section 6.2** RELEASE OF PROPERTY. Borrower shall not be entitled to a release of any portion of the Property from the lien of this Security Instrument except in strict accordance with express terms and conditions of the Loan Agreement.

## Article 7 - DEFAULT

**Section 7.1** EVENT OF DEFAULT. The term "Event of Default" as used in this Security Instrument shall have the meaning assigned to such term in the Loan Agreement.

## Article 8 - RIGHTS AND REMEDIES UPON DEFAULT

**Section 8.1** REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may or acting by or through Trustee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender or Trustee may determine, in their sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender or Trustee:

(a) declare all or any portion of the entire unpaid Secured Obligations to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Secured Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Secured Obligations not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Secured Obligations and without regard for the solvency of Borrower or any other Person liable for the payment of the Secured Obligations;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without

liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Secured Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures or any part thereof, and to take such other measures as Lender or Trustee may deem necessary for the care, protection and preservation of the Fixtures, and (ii) request Borrower at its expense to assemble the Fixtures and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender or Trustee with respect to the Fixtures sent to Borrower in accordance with the provisions hereof at least five (5) business days prior to such action shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion: (i) Taxes ; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including, without limitation, advances made by Lender pursuant to the terms of this Security Instrument;

(k) apply the undisbursed balance of any deposits or funds (including, without limitation, any Net Proceeds Deficiency) held by Lender, together with interest thereon, to the payment of the Obligations in such order, priority and proportions as may be required under the Loan Agreement or as Lender shall deem to be appropriate in its discretion; or

(l) pursue such other remedies as Lender may have under applicable law.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Section 8.1 of the Loan Agreement shall occur, the entire unpaid Secured Obligations shall immediately become due and payable, without any further notice, demand or other action by Lender.

**Section 8.2** APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper.

**Section 8.3** RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default, Lender may remedy such Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 8.3, shall constitute a portion of the Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender or Trustee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate for the period after notice from Lender that such cost or expense was incurred to the date of payment by Borrower to Lender shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

**Section 8.4** ACTIONS AND PROCEEDINGS. Lender or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

**Section 8.5** RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Secured Obligations as the same become due and payable, without regard to whether or not the balance of the Secured Obligations shall be due and payable, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

**Section 8.6** OTHER RIGHTS, ETC.



(a) The failure of Lender or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender or Trustee to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender or Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender or Trustee thereafter to foreclose this Security Instrument. The rights of Lender or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Lender nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 8.7** RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

**Section 8.8** RIGHT OF ENTRY. Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 8.9** BANKRUPTCY.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints,

motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## Article 9 - ENVIRONMENTAL HAZARDS

**Section 9.1 ENVIRONMENTAL COVENANTS.** Borrower has provided representations and warranties regarding environmental matters set forth in Section 4.1 of the Loan Agreement and shall comply with the covenants regarding environmental matters set forth in Section 5.1 of the Loan Agreement and as set forth in the Environmental Indemnity.

**Section 9.2 LENDER'S RIGHTS.** Lender and any other Person or entity designated by Lender, including but not limited to any representative of a Governmental Authority, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing as, and to the extent, provided in the Loan Agreement and the Environmental Indemnity. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

## Article 10 - WAIVERS

**Section 10.1 MARSHALLING AND OTHER MATTERS.** Borrower hereby waives, to the extent permitted by law, the benefit of all Legal Requirements now or hereafter in force regarding appraisement, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by Legal Requirements.

**Section 10.2 WAIVER OF NOTICE.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Trustee except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by

Lender or Trustee to Borrower and except with respect to matters for which Borrower is not permitted by Legal Requirements to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or the Loan Agreement does not specifically and expressly provide for the giving of notice by Lender or Trustee to Borrower.

**Section 10.3** WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Secured Obligations or performance of its Other Obligations.

**Section 10.4** SOLE DISCRETION OF LENDER. Except as otherwise expressly provided in the Loan Agreement, whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

**Section 10.5** WAIVER OF TRIAL BY JURY. **BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF LENDER AND BORROWER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER AND LENDER.**

**Section 10.6** SUBMISSION TO JURISDICTION. Borrowers hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Security Instrument and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower, at its address set forth in the Loan Agreement and Section 11.2 hereof or at such other address of which the Lender shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

**Section 10.7** WAIVER OF FORECLOSURE DEFENSE. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

**Section 10.8** FAILURE TO ACT. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the failure of Lender to take any action hereunder or under any other Loan Document shall not (i) be deemed to be a waiver of any term or condition of this Security Instrument or any of the other Loan Documents, (ii) adversely effect any rights of Lender hereunder or under any other Loan Document and (iii) relieve Borrower of any of Borrower's obligations hereunder or under any other Loan Document.

## Article 11 - NOTICES

**Section 11.1** NOTICES. All notices or other written communications hereunder shall be delivered in accordance with the applicable terms and conditions of the Loan Agreement. Borrower, for itself and for each party hereto, hereby requests a copy of any notice of default and a copy of any notice of sale hereunder be mailed to them at the applicable addresses provided below.

**Section 11.2** ADDRESSES. Notices to Borrower and Lender hereunder shall be addressed and delivered in accordance with the Loan Agreement) and shall to be sent as follows:

If to Borrower:

Spirit SPE Portfolio 2006-1, LLC  
c/o Spirit Finance Corporation  
14631 N. Scottsdale Rd. Suite 200  
Scottsdale, Arizona 85254  
Attention: Catherine Long  
Telecopy No.: 480-606-0826

with copies to:

Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver CO 80202  
Attention: Paul E. Belitz, Esq.  
Facsimile No.: (303) 292-7799

If to Lender:



Barclays Capital Real Estate Inc.  
 200 Park Avenue  
 New York, New York 10166  
 Attn.: Lori Rung/CMBS Servicing  
 Telecopy No.: (212) 412-1621

and

Citigroup Global Markets Realty Corp.  
 388 Greenwich Street  
 New York, New York 10013  
 Attn: Phil Holmes  
 Facsimile No.: 212-816-2880

with a copy to:

Thacher Proffitt & Wood LLP  
 Two World Financial Center  
 New York, New York 10281  
 Attention: David S. Hall, Esq.  
 Telecopy No.: (212) 912-7751

#### Article 12 - APPLICABLE LAW

**Section 12.1 GOVERNING LAW.** THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

**Section 12.2 PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

#### Article 13 - DEFINITIONS

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent permitted owner or owners of the Property or any part thereof or any interest therein," the word "**Lender**" shall mean "Lender, and its successors and assigns," the word "**Trustee**" shall mean

"Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

#### **Article 14 - MISCELLANEOUS PROVISIONS**

**Section 14.1** NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 14.2** SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of (a) Lender and its successors and assigns forever, and (b) Borrower and its permitted successors and assigns forever.

**Section 14.3** INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

**Section 14.4** HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.5** NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 14.6** ENTIRE AGREEMENT. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of this Security Instrument and the other Loan Documents.

**Section 14.7** LIMITATION ON LENDER'S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

**Section 14.8 CROSS-COLLATERALIZATION.** Borrower acknowledges that the Secured Obligations are secured by this Security Instrument together with those additional Security Instruments given by Borrower to Lender, together with the other Loan Documents securing or evidencing the Obligations, and encumbering the other Individual Properties, all as more specifically set forth in the Loan Agreement. Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Secured Obligations or the portion of the Obligations allocated to the Property in the Loan Agreement, and the lien and the security interest created by the other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Obligations then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the other Individual Properties are located in one or more States and counties, and therefore Lender shall be permitted to enforce payment of the Obligations and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or the other Security Instruments and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or the other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the States or counties in which the Property or any other Individual Property is located. Neither the acceptance of this Security Instrument, the other Loan Documents or the other Security Instruments nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, this Security Instrument, the other Loan Documents, or any other Security Instruments through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Lender under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Obligations in such order and priority as Lender shall determine, in its sole discretion, without regard to the Release Price for the Property or any other Individual Property or the appraised value of the Property or any Individual Property.

## **Article 15 - STATUS OF BORROWER**

**Section 15.1 STATUS OF BORROWER.** Borrower's exact legal name is correctly set forth in the first paragraph of this Security Instrument and the signature block at the end of this Security Instrument. Borrower is an organization of the type specified in the first paragraph of this Security Instrument. Borrower is incorporated in or organized under the laws of the state specified in the first paragraph of this Security Instrument. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) the address of Borrower set forth on the first page of this Security Instrument. Borrower will not change or permit to be changed (a) Borrower's name, (b) Borrower's identity (including its trade name or names), (c) Borrower's principal place of business set forth on the first page of this Security Instrument, (d) the corporate, partnership or other organizational structure of Borrower, (e) Borrower's state of organization, or (f) Borrower's organizational number, without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a

change in Borrower's structure, without first obtaining the prior written consent of Lender, unless such consent is not required pursuant to the other Loan Documents. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

## **Article 16 - DEED OF TRUST PROVISIONS**

**Section 16.1** CONCERNING THE TRUSTEE. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving thirty (30) days' notice to Borrower and to Lender. Lender may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Lender may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Lender. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

**Section 16.2** TRUSTEE'S FEES. Borrower shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

**Section 16.3** CERTAIN RIGHTS. With the approval of Lender, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Lender) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Note, this Security Instrument or the other Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Lender may instruct Trustee to take to protect or enforce Lender's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property



for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

**Section 16.4** RETENTION OF MONEY. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 16.5** PERFECTION OF APPOINTMENT. Should any deed, conveyance, or instrument of any nature be required from Borrower by any Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Borrower.

**Section 16.6** SUCCESSION INSTRUMENTS. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his/her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Lender or of the substitute trustee, Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in Trustee's place.

## **Article 17 - NEBRASKA PROVISIONS**

**Section 17.1** INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of the other articles and provisions of this Security Instrument and this Article 17, the terms and conditions of Article 17 shall control and be binding.

**Section 17.2** ASSIGNMENT OF LEASES AND RENTS. The beginning portion of Section 1.2 stating "Borrower hereby absolutely and unconditionally assigns to Lender" is hereby deleted and replaced with "Borrower hereby absolutely and unconditionally assigns to Lender and Trustee, and grants to Lender and Trustee a security interest (pursuant to Section 52-1701 et. seq. of the Revised Statutes of the State of Nebraska) in,"

**Section 17.3** RECONVEYANCE. The following text shall be inserted at the end of Article 1:

"When the obligations secured by this Security Instrument have been satisfied, the Lender shall, upon receipt of a written request by the Borrower or the Borrower's successor in interest or designated representative or by the holder of a junior trust deed or

junior mortgage, deliver to the Borrower or Borrower's successor in interest or designated representative a reconveyance in recordable form duly executed by the Trustee. The reconveyance may designate the grantee therein as the person or persons entitled thereto. The Lender shall, upon receipt of a written request, deliver to Borrower or its successor in interest, as directed in the written request, the trust deed and the note or other evidence of the obligation so satisfied."

**Section 17.4 POWER OF SALE OR FORECLOSURE.** At any time following the occurrence and during the continuance of any Event of Default, Trustee may, and upon written request of Lender shall, by such agents as it may appoint, with or without entry, sell all the Property as an entirety or in parcels as Lender shall request in writing, or, in the absence of such request, as Trustee may determine, at public auction at the Property or at the courthouse in the County in which the Property is located, at such time, in such manner and upon such terms as Trustee may fix and briefly specify in the notice of sale and as may be required by law, which notice of sale shall state the time when, and the place where, the sale is to be held, shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once a week for five successive weeks prior to such sale, the last publication to be at least ten (10) days but not more than thirty (30) prior to the sale, in a newspaper having a general circulation in the County in which the Property is located.

Or, at the option of the Lender in the exercise of its remedies hereunder, this Security Instrument may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property.

**Section 17.5 BORROWER'S RIGHT TO REINSTATE.** Notwithstanding Lender's acceleration of the sums secured by this Security Instrument as provided in Section 8.1 hereof, if the power of sale described in Section 17.4 hereof is to be exercised, Borrower, or its successor in interest in the Property, or any part thereof, or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate deed of trust at any time within one month of the filing for record of notice of default under this Security Instrument, may pay to Lender, or its successor in interest, the entire amount then due under the terms of this Security Instrument and the obligations secured hereby, including costs and expenses actually incurred in enforcing the terms of such obligation or Security Instrument and the Trustee's fees actually incurred not exceeding in the aggregate Fifty Dollars (\$50.00) or one half (1/2) of one (1) percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligations and this Security Instrument shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred.

**Section 17.6 APPLICATION OF PROCEEDS.** Section 8.2 is hereby deleted in its entirety and replaced with the following text:

"**SECTION 8.2 APPLICATION OF PROCEEDS.** To the extent permitted by applicable law, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this

Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. If required by the laws of the State of Nebraska, the trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's fees actually incurred not to exceed the amount which may be provided for in this Security Instrument, second, to payment of the obligations secured by this Security Instrument, third, to the payment of junior trust deeds, mortgagees, or other lienholders, and the balance, if any, to the person or persons legally entitled thereto."

**Section 17.7 REQUEST FOR NOTICE.** Borrower requests that a copy of any notice of default and notice of sale be mailed to it at its mailing addresses set forth in Section 11.2 hereof in the manner provided for in the Loan Agreement or as otherwise prescribed by applicable law. Lender requests that a copy of any notice of default and notice of sale be mailed to it at: Barclays Capital Real Estate Inc., 200 Park Avenue, New York, New York 10166, Attn.: Lori Rung /CMBS Servicing, and Citigroup Global Markets Realty Corp., 388 Greenwich Street, 11th Floor, New York, NY 10013 which shall be deemed to be the mailing addresses of Lender.

**Section 17.8** The text "IN TRUST WITH THE POWER OF SALE" shall be added after the words "Lender and its successors and assigns" in Section 1.1, entitled PROPERTY MORTGAGED of this Security Instrument.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the day and year first above written.

**SPIRIT SPE PORTFOLIO 2006-1, LLC,**  
a Delaware limited liability company

By: MTB

Name:

Title:

*Michael J. Bergman*  
**Senior Vice President**



STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me on May 24, 2006, by Tracee R. Smith, as Senior Vice President of SPIRIT SPE PORTFOLIO 2006-1, LLC, a Delaware limited liability company and executed the foregoing instrument for the purposes therein contained on behalf of such limited liability company.

IN WITNESS THEREOF, I hereunto set my hand and official seal.

Tracee R. Smith

Notary Public  
[Affix Seal]



**EXHIBIT A**

(Legal Description[s])

**EXHIBIT A**

Lot 1 of Replat 2 of Lot 1-R, Block 1, of Replat of Shopko Acres in the City of Norfolk, Madison County, Nebraska.

Together with non-exclusive easement rights created by Cross-Easement and Use Restriction Agreement by and between Shopko Stores, Inc., a Minnesota corporation and Super Valu Stores, Inc., a Delaware corporation, filed May 8, 1986 in M86-5 at Pages 235-258, Amendment filed September 21, 1988 in M88-9 at Pages 704-710A, Assumption filed September 21, 1988 in M88-9 at Pages 719-720, Second Amendment filed August 25, 1989 in M89-8 at Pages 682-687, Third Amendment filed March 17, 2004 in M2004-3 at Pages 1226-1237 inclusive, Madison County Register of Deed's Office.

TAX I.D.: 5902800.23

TPW # NE-4  
STORE # 48  
2005 Krenzien Drive, Norfolk, NE

Lot 1, Block 2, in South Platte Business Park, a Subdivision of Lot 7 of Fritz's Subdivision of part of the SE 1/4 of Section 4, Township 13 North, Range 30 West of the 6th P.M., in North Platte, Lincoln County, Nebraska.

Together with non-exclusive easement rights created by Declaration of Cross-Easements and Covenants and Restrictions Affecting Land, dated January 27, 2006, and recorded immediately prior hereto.

Tax ID No. 40050.00

TPW # NB-5  
STORE # 53  
510 East Philip Avenue, North  
Platte, NE



EXHIBIT A

Lot 1 of Replat 1 of subdivision known as Fort Division Replat of Lots 1, 2 and 3, being the Replat of Lot 1, Fort Division, an Addition to the City of Omaha, Douglas County, Nebraska; excepting therefrom Lots 2 and 3 as described on Instrument No. 2005-155-172.

Together with non-exclusive easement rights created by Cross-Easement Agreement by and between Shopko Stores, Inc., a Minnesota corporation, and Lerner Fort Partnership, a Nebraska general partnership, filed September 16, 1988 in Book 862 at Page 266, Miscellaneous Records and First Amendment to Cross-Easement Agreement filed September February 24, 1998 in Book 1239 at Page 203, Miscellaneous Records, Douglas County, Nebraska.

Tax I.D.: 3470-5000-11

Omaha, NE (Store 46)

Lot 2, Crescent Oaks Plaza Replat, an Addition to the City of Omaha, Douglas County, Nebraska.

Together with non-exclusive easement rights created by Corporation Quitclaim Deed, filed May 16, 1984 in Book 1730 at Page 43, Deed Records, Douglas County, Nebraska.

Together with non-exclusive easement rights created by Cross-Easement Agreement by and between Shopko Stores, Inc., a Minnesota corporation, and K.V. Company, a Nebraska Partnership, filed June 13, 1986 in Book 777 at Page 469, Miscellaneous Records, and First Amendment to Cross-Easement Agreement, filed September 24, 1997 in Book 1223 at Page 298, Miscellaneous Records, Douglas County, Nebraska.

TAX I.D.: 1070-1502-09

TPW # NE-7  
STORE # 56  
14445 W. Center Road, Omaha, NE

The North Half of the Southeast Quarter of Section 25, Township 14 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, Except that part conveyed to Sarpy County, Nebraska at Instrument No. 99-35025, Records, Sarpy County, Nebraska.

Tax I.D.: 10466843

TPW # NE-8  
STORE # DC 998  
10808 South 132Nd Street, Omaha,  
NE