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 Register of Deeds, Douglas County, NE
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 2008095810

SECOND DEED OF TRUST

THIS DEED OF TRUST, is made May 30, 2008, by and among WEST BAY, INC., a Nebraska corporation, (hereinafter referred to as "Trustor"), whose mailing address is 4951 South 155th Street Omaha, NE 68137, MARK L. LAUGHLIN, Attorney at Law, ("Trustee"), whose mailing address is 11718 Nicholas Street, Suite 101, Omaha, Nebraska 68154, and CHARLES G. SMITH, ("Beneficiary") whose mailing address is 13443 Eagle Run Drive, Omaha, NE 68164.

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 following described premises situated in Douglas County and State of Nebraska, to wit:

Lot Five (5) Walnut Grove Plaza Replat Three, in the County of Douglas, State of Nebraska (the "Property").

TOGETHER WITH, 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, and all water rights. The Property and the entire estate and interest conveyed to the Trustee are referred to collectively as the "Trust Estate".

FOR THE PURPOSE OF SECURING:

a. The payment of a certain indebtedness in the original principal amount of Five Hundred Eighty Thousand Dollars (\$580,000.00), plus interest thereon according to the tenor of a certain Promissory Note of even date herewith made by Trustor for the benefit of the Beneficiary in the aforesaid principal amount (hereinafter referred to as the "Note"), with a maturity date of May 30, 2013, and further to secure Trustor's prompt and faithful performance of all of the terms and provisions of the Note and this Deed of Trust. This Deed of Trust shall also secure all amounts which the Beneficiary in its discretion, may pay for taxes, assessments, or governmental charges levied or assessed against the premises or for the

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establishment, re-establishment, preservation or protection of the Beneficiary's interest therein. This Deed of Trust shall also secure any extensions and renewals of the sums secured by this Deed of Trust.

b. Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate of eighteen percent (18%) per annum.

c. The respective performance, discharge of and compliance with every term, covenant, obligation and agreement of the Trustor contained in the Note, or this Deed of Trust, or any other security instrument, document or agreement at any time given to secure Trustor's payment and performance under the Note or any indebtedness described herein.

d. The payment of all sums or future advances, with interest thereon, which may heretofore have been or hereafter be advanced by the Beneficiary to Trustor or Trustor's successor in interest or title.

All of which is hereafter collectively referred to as the "Indebtedness". The Note, this Deed of Trust, and any other security instruments or agreements or loan documents which relate to the Indebtedness and the Trust Estate, are hereinafter collectively referred to as the "Loan Documents". Trustor covenants that it is lawfully seized of the Trust Estate and has the right to grant and convey the Trust Estate as a Second Deed of Trust, and that Trustor shall warrant and defend the title to the Trust Estate against all claims and demands of any nature whatsoever.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST:

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, and all obligations under the First Deed of Trust which has priority to this conveyance. Trustor shall also promptly pay all bills for labor performed and merchandise supplied to improve, alter or repair the Trust Estate subject to this Deed of Trust to the end that no construction liens are filed against the Trust Estate. In the event that any such liens are filed Trustor shall immediately obtain release of the same by paying the lien or obtaining a payment bond to obtain the release of the Trust Estate from the construction lien.

2. **TAXES.** Upon written demand by the Beneficiary, the Trustor shall pay each installment of all taxes, now or hereafter levied against the Trust Estate or any part thereof, and shall provide Beneficiary with evidence of the payment of same. Trustor shall pay all taxes and assessments which may be levied upon Beneficiary's interest herein or upon this Deed of Trust or the debt secured hereby, without regard to any law that may be enacted imposing payment of the whole or any part thereof upon the Beneficiary.

3. **INSURANCE COVERAGE.** Trustor shall maintain fire and extended coverage insurance insuring the improvements and buildings constituting part of the Trust Estate for an amount no less than the amount of the unpaid principal balance of the Note (co-insurance not exceeding 80% permitted). Such insurance policy shall contain a standard mortgage clause in favor of

Beneficiary and shall not be cancelable, terminable or modifiable without ten (10) days prior written notice to Beneficiary. Trustor shall promptly repair, maintain and replace the Trust Estate or any part thereof so that, except for ordinary wear and tear, the Trust Estate shall not deteriorate. In no event shall the Trustor commit waste on or to the Trust Estate.

4. **ACTIONS AFFECTING TRUST ESTATE.** Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee, and shall pay at 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 to do so 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 security hereof. 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. 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.

5. **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, or in any other manner including deed in lieu of Condemnation ("Condemnation"), or should Trustor receive any notice or in any other information regarding such proceeding, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings, and shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Trustor (the "Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

6. **APPOINTMENT OF SUCCESSOR TRUSTEE.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and Recorded in the County in which the Trust Estate is located and by otherwise complying with the provisions of the applicable law of the State of Nebraska substitute a successor or successors to the Trustee named herein or acting hereunder.

7. **SUCCESSORS AND ASSIGNS.** This Deed of Trust applies to the benefit of and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successor and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein.

8. **INSPECTIONS.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

9. **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 interest, principal, or principal and interest or any other sum secured hereby when due or shall fail to make any installment of interest, principal, or principal and interest or any other sum due on the First Deed of Trust which has priority to this Second Deed of Trust, and any such default continues after the notice period set forth in the Note or the note for which the First Deed of Trust is given as security, as the case may be; or

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

(c) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Documents for the loan represented by the Note and First Deed of Trust on the Property.

10. **ACCELERATION UPON DEFAULT, ADDITIONAL REMEDIES.** Should an event of default occur Beneficiary may declare all Indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand protest or notice of any kind (except as otherwise set forth in the Loan Documents). Thereafter Beneficiary may:

(I) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues and profits and the application thereof as aforesaid, 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 and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of rents, issues or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the loan Documents or by law upon occurrence of any event of default, including the right to exercise the power of sale.

(ii) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(iii) 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, 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.

11. 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 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 in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without 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 and 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 Trustee Funds in the amount of Five Hundred Dollars (\$500), Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, trustee fees of not more than 1/2 of 1% of the gross sales price, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; (c) to the payment of junior Trust Deeds, mortgages or other lien holders; and (d) the balance, if any, to the person or persons legally entitled thereto.

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

12. REMEDIES NOT EXCLUSIVE. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the such indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the

power of sale or other powers herein contained, shall prejudice or in any manner affect 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. 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 given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. Nothing herein shall be construed as prohibiting Beneficiary from seeking a deficiency judgment against the Trustor to the extent such action is permitted by law.

13. 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.

14. 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 which 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.

15. 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 recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto.

16. NOTICES. Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any part may at this time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

17. 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 date first above written.

TRUSTOR:

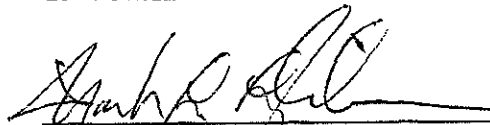
WEST BAY, INC., a Nebraska corporation,

In presence of:

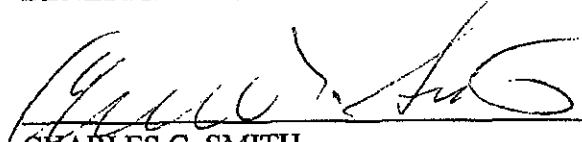
Barbara J. Russo

By: 
THOMAS E. SMITH, President

TRUSTEE:

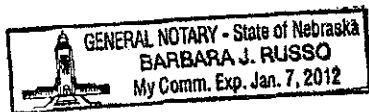

Mark L. Laughlin

BENEFICIARY:


CHARLES G. SMITH

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

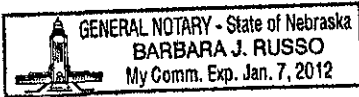
On this 30 day of May, 2008, before me, the undersigned a Notary Public, duly commissioned and qualified for in said county, personally came THOMAS E. SMITH, the President of WEST BAY, INC., a Nebraska corporation, the Mortgagor, who acknowledges the execution thereof to be his voluntary act and deed and that of said corporation.



Barbara J. Russo
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

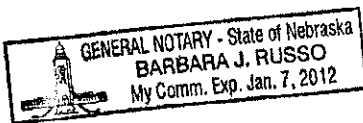
On this 30 day of May, 2008, before me, the undersigned a Notary Public, duly commissioned and qualified for in said county, personally came Mark L. Laughlin, the Trustee, who acknowledged the execution of the above and foregoing instrument to be his free and voluntary act and deed.



Barbara J. Russo
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 30 day of May, 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared Charles G. Smith, who being by me duly sworn did acknowledge his execution of the above and foregoing instrument to be his free and voluntary act and deed.



Barbara J. Russo
Notary Public

WHEN RECORDED TO BE RETURNED TO:
Mark L. Laughlin
Laughlin, Peterson & Lang
11718 Nicholas Street, Suite 101
Omaha, NE 68154
(402) 330-1900