

NUM PGS 35
DOC TAX _____ CK# _____
FEES 178.50 PD 178.50 CA# 16678+
CHG _____ ACCT# _____
RET FEES: _____ CASH _____ R.O.D. CK# _____
PROD Dawn Adams Land
RETURN Adams Land Title
Hastings NE 68901



ADAMS COUNTY, NE
FILED
INST. NO. 20101697
Date 5-5-10 Time 9:57 AM
Janice S. Johnson
REGISTER OF DEEDS

NUM Hastings Industrial Park West
RD. COMP x Q2 4-14
COMPARE ✓ RO
CADAS - AO ✓

THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION WHICH TRUSTOR INCURRED FOR THE PURPOSE OF MAKING IMPROVEMENTS TO THE LAND IN WHICH THE SECURITY INTEREST IS HEREBY GIVEN AND IS INTENDED TO CREATE A CONSTRUCTION SECURITY INTEREST.

After recording return to:
Schiff Hardin LLP
1201 West Peachtree Street, Suite 2300
Atlanta, GA 30309
Attention: Tracy S. Plott

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE
FINANCING STATEMENT**

Between

BUBBA FOODS, LLC,
a Delaware limited liability company, as Trustor

to

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association, as Trustee

for the benefit of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association, the trustee under the Indenture, as Beneficiary

Dated as of April 1, 2010

Maturity Date April 1, 2025

THIS DEED OF TRUST CONSTITUTES A CONSTRUCTION SECURITY AGREEMENT THAT SECURES AN OBLIGATION WHICH TRUSTOR INCURRED FOR THE PURPOSE OF MAKING IMPROVEMENTS TO THE LAND IN WHICH THE SECURITY INTEREST IS HEREBY GIVEN AND IS INTENDED TO CREATE A CONSTRUCTION SECURITY INTEREST.

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LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This **LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT** (hereafter referred to as the "Deed of Trust") is made as of April 1, 2010, by **BUBBA FOODS, LLC** a Delaware limited liability company, whose address is 4339 Roosevelt Blvd., Suite 400, Jacksonville, Florida 32210, Attn: William H. Morris, President/CEO ("Trustor"), to **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is 225 Water Street Suite 410, Jacksonville, Florida 32202 (MAC Code: Z3055-044); Attn: Corporate Trust Services / Michael C. Jenkins, ("Trustee"), for the benefit of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as trustee under the Indenture (as hereinafter defined), whose address is 225 Water Street Suite 410, Jacksonville, Florida 32202 (MAC Code: Z3055-044); Attn: Corporate Trust Services / Michael C. Jenkins ("Beneficiary").

W I T N E S S E T H :

WHEREAS, the City of Hastings, Nebraska (the "Issuer") proposes to undertake the financing of the acquisition, construction and equipping of a beef processing facility located at 2001 Summit Avenue, Hastings, Nebraska (the "Project"), and to obtain the funds therefore by the issuance of its Bonds (as hereinafter defined) under an Indenture of Trust dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "Indenture") between the Issuer and Beneficiary, as bond trustee, securing such Bonds;

WHEREAS, it has been determined that the financing of the acquisition, construction and equipping of the Project will require the issuance, sale and delivery by the Issuer of its City of Hastings, Nebraska Industrial Development Revenue Bonds (Bubba Foods, LLC Project), Series 2010 in the aggregate principal amount of up to Ten Million and No/100 Dollars (\$10,000,000) (the "Bonds");

WHEREAS, the Land (as hereinafter defined), which is held in fee simple by the Issuer, has been leased to Trustor pursuant to that certain Lease Agreement dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "Lease Agreement") between the Issuer and Trustor relating to the Land;

WHEREAS, pursuant to the Lease Agreement, the Issuer has agreed to make the proceeds from the sale of the Bonds available to Trustor to finance its cost to construct and equip the Project upon the terms and conditions more particularly set forth therein;

WHEREAS, pursuant to the Indenture, Issuer has assigned to Beneficiary all of the rights of the Issuer under the Lease Agreement;

WHEREAS, as a condition to the purchase of the Bonds by Wells Fargo Bank, National Association ("Bank"), under the Bond Purchase Agreement, dated as of the date hereof (the "Purchase Agreement"), among the Issuer, Trustor and Bank, Trustor and Bank have entered into that certain Continuing Covenant Agreement dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "Continuing Covenant Agreement"); and

WHEREAS, to secure payment and performance of Trustor's obligations under the Bonds, the Continuing Covenant Agreement, this Deed of Trust, the Lease Agreement, the Swap (as defined in the Indenture) and the other Bond Documents (all of the foregoing, as the same may be amended, restated and/or supplemented from time to time, and any renewals, extensions, novations, or modifications of same, are collectively referred to herein as the "Related Documents"), Trustor has been required to execute and deliver this Deed of Trust for the benefit of Beneficiary.

GRANTING CLAUSES:

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged and in order to secure the Obligations (as hereinafter defined), Trustor does hereby irrevocably TRANSFER, CONVEY AND ASSIGN, to Trustee for the benefit and security of Beneficiary, its successors and assigns, IN TRUST, FOREVER, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest now owned or hereafter acquired in and to all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances and does hereby grant to Beneficiary, as security for the Obligations, a security interest in that portion of the following consisting of personal property and fixtures (collectively, the "Property");

(a) all those certain tracts, pieces or parcels of land in the Adams County, Nebraska more particularly described in Exhibit A attached hereto and made part hereof (the "Land");

(b) the Lease Agreement and all of Trustor's rights and interests under the Lease Agreement, including the rights under any options (including options to purchase the Land) granted by the Issuer to Trustor therein;

(c) all buildings, structures and improvements of every nature whatsoever now or hereafter owned by Trustor and situated on the Land (collectively, the "Improvements"), and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, water heaters, air conditioning apparatus, refrigerating plants, refrigerators, freezers, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements and all other furnishings, furniture, machinery, appliances, vehicles (excluding Trustor's personal automobiles, if any), building supplies and materials, warranties and other rights under construction service and other contracts, books and records, inventory, equipment, fixtures and accessions, chattels, chattel paper (whether tangible or electronic), instruments (including without limitation promissory notes), documents, accounts, deposit accounts, farm products, goods (including without limitation inventory, equipment, fixtures and accessions), consumer goods, and general intangibles (including without limitation payment intangibles and software), investment property, letter of credit rights, letters of credit, money, supporting obligations, as

extracted collateral, timber to be cut and all personal property of every kind and nature whatsoever now or hereafter owned or leased by Trustor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Property, including all extensions, additions, improvements, betterments, after acquired property, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, and all the right, title and interest of Trustor in any such furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Trustor or on behalf of Trustor, all tradenames, trademarks, servicemarks, logos and goodwill related thereto which in any way now or hereafter belong to Trustor and relate or appertain to the Property or any part thereof or are now or hereafter acquired by Trustor; and all inventory, equipment, fixtures and accessions, chattels, chattel paper (whether tangible or electronic), instruments (including without limitation promissory notes), documents, accounts, deposit accounts, farm products, goods (including without limitation inventory, equipment, fixtures and accessions), consumer goods and general intangibles (including without limitation payment intangibles and software), investment property, letter of credit rights, letters of credit, money, supporting obligations, as extracted collateral, timber to be cut and all personal property of every kind and nature whatsoever constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Deed of Trust. The location of the above described collateral is also the location of the Land;

(d) all easements, rights of way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or leased or hereafter acquired by Trustor;

(e) all right, title and interest of Trustor in and to cash, if any from time to time on deposit in any project or sinking fund, created by the Bond Documents, and investments, if any, from time to time held for credit of any project or sinking fund and investment income earned on such investments, subject to the rights of Trustor and the Issuer under the Lease Agreement and the other Bond Documents to have amounts in the project funds applied as provided in the Lease Agreement and in the Bond Documents; and

(f) all income, rents, issues, profits and revenues of the Property from time to time accruing (including without limitation all payments under leases or tenancies,

proceeds of insurance, condemnation payments, tenant security deposits whether held by Trustor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Trustor of, in and to the same; reserving only the right of Trustor to collect the same so long as no Event of Default has occurred and is continuing hereunder.

In the event that Trustor is the owner of a leasehold estate with respect to any portion of the Property and Trustor obtains a fee estate in such portions of the Property, then such fee estate shall automatically, and without further action of any kind on the part of Trustor, be and become subject to the security interest and lien of this Deed of Trust.

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, in trust, unto Trustee for the benefit of Beneficiary and its substitutes or successors forever; and Trustor covenants that Trustor is lawfully seized and possessed of the Property as aforesaid, and has good right to convey the same pursuant to the Lease Agreement, that the same are unencumbered except for those matters expressly set forth in Exhibit B attached hereto and by this reference made a part hereof (hereinafter referred to as the "Permitted Liens"), and that Trustor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Liens.

Items (a) through (e) below are hereinafter collectively referred to as the "Obligations." Should the Obligations be paid according to the tenor and effect thereof when the same shall become due and payable, and be performed in a timely manner, then this Deed of Trust shall be cancelled and surrendered in accordance with the terms hereof.

(a) Trustor's performance of, observance of and compliance with all terms, covenants, conditions, stipulations and agreements contained in this Deed of Trust, the other Related Documents, the Swap (as defined in the Indenture) and in any and all renewals, modifications, consolidations and extensions thereof;

(b) All costs, expenses, charges, liabilities, commissions, and fees now or hereafter chargeable to, incurred by, or disbursed by Beneficiary pursuant to any provision of this Deed of Trust and the other Related Documents or any applicable law, rule or regulation, together with interest thereon as provided in this Deed of Trust or the other Related Documents or any applicable law, rule or regulation;

(c) Any and all other sums of money and indebtednesses which are due or hereafter become due Beneficiary under the Bonds, this Deed of Trust or the other Related Documents;

(d) Any and all additional advances made by Beneficiary to protect or preserve the Property or the security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Trustor's obligations hereunder or for any other purpose provided herein (whether or not the original Trustor remains the owner of the Property at the time of such advances); and

(e) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary with respect to the Property and not secured by collateral

other than the Property, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations and extensions thereof.

To protect the security of this Deed of Trust, Trustor further represents and agrees with Beneficiary as follows:

1. **Payment of Obligations.** That the Obligations shall be timely paid and performed.

2. **Future Advances.** This Deed of Trust is given to secure not only the existing Obligations, but also such future advances made pursuant to this Deed of Trust (including, without limitation, advances for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Property or the lien of this Deed of Trust), the Related Documents, any notes representing any portion of the Obligations, any loan agreement or other instrument evidencing or securing the Obligations or as requested by Trustor or any other obligor hereunder, whether such advances are obligatory or are to be made at the option of Beneficiary, or otherwise, either to Trustor or to any other obligor hereunder, to the same extent as if such future advances were made on the date of the execution of this Deed of Trust and to the extent permitted by applicable law. At no time during the term of this Deed of Trust or any extension thereof shall the unpaid and outstanding secured principal future advances, not including sums advanced to protect the security of this Deed of Trust, exceed the following amount: \$15,000,000. This provision shall not constitute an obligation upon or commitment of Beneficiary or any other party to make additional advances or loans to Trustor. **This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Property subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed to Beneficiary by Trustor, including advances and re-advances made under any Related Document subsequent to the recording of this Deed of Trust, shall be secured with the priority afforded this Deed of Trust as recorded.**

3. **Security Agreement.**

(a) With respect to the Property, including but not limited to the machinery, apparatus, fittings, building supplies and materials, articles of personal property, inventory, equipment, fixtures and accessions, chattels, chattel paper (whether tangible or electronic), instruments (including without limitation promissory notes), documents, accounts, deposit accounts, farm products, goods (including without limitation inventory, equipment, fixtures and accessions), consumer goods and general intangibles (including without limitation payment intangibles and software), investment property, letter of credit rights, letters of credit, money, supporting obligations, as extracted collateral, timber to be cut and all proceeds and products of the foregoing, in each case as such terms are defined under the Uniform Commercial Code of the State of Nebraska (the "UCC"), referred to or described in this Deed of Trust, or in any way connected with the use and enjoyment of the Property, this Deed of Trust is hereby made and declared to be a security agreement encumbering (and Trustor grants to Beneficiary a security interest in) each and every item of such property included herein as a part of the Property, in

compliance with the provisions of the UCC. Trustor hereby authorizes Beneficiary, its counsel or its representative, at any time and from time to time, to file financing statements, amendments and continuations without Trustor's signature that describe the collateral encumbered by this Deed of Trust as "all assets of Trustor relating to the Property," "all personal property of Trustor located in or at the Property" or words of similar effect, in such jurisdictions as Beneficiary, its counsel or its representative may deem necessary or desirable in order to perfect the security interest granted by Trustor under this Deed of Trust. Trustor hereby agrees that it shall not file any termination statements with regard to any financing statement filed pursuant to this Deed of Trust unless authorized in writing by Beneficiary. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said UCC, all at Beneficiary's sole election. Trustor and Beneficiary agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Trustor and Beneficiary that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Deed of Trust, is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (A) any such item is physically attached to the Improvements, (B) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Deed of Trust, or (C) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (1) the proceeds of any insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Beneficiary as determined by this Deed of Trust or affect the priority of Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Beneficiary in the event any court shall at any time hold, with respect thereto, that notice of Beneficiary's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the UCC records.

(b) Trustor warrants that (i) Trustor's (that is, "Debtor's") name, identity or corporate structure, location of organization and residence or principal place of business are as set forth in subsection (c) below; (ii) Trustor (that is, "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in subsection (c) below; and (iii) the location of the collateral is upon the Land. Trustor covenants and agrees that Trustor will furnish Beneficiary with notice of any change in the matters addressed by clauses (i) or (iii) of this subsection within thirty (30) days of the effective date of any such change and Trustor will promptly execute any financing statements or other instruments deemed necessary by Beneficiary to prevent any filed financing statement from becoming misleading or losing its perfected status.

(c) The information contained in this subsection is provided to Beneficiary so that Beneficiary may include such information in, and properly file, financing statements in compliance with the requirements of the UCC. The names of the "Debtor" and the "Secured Party," the identity or corporate structure, location of organization and residence or principal place of business of "Debtor," the organizational identification number of the "Debtor" and the time period for which "Debtor" has been using or operating under said name and identity or corporate structure without change, are as set forth in Schedule 1 of Exhibit C attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor," are as set forth in Schedule 2 of said Exhibit C attached hereto; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

(d) Trustor further authorizes Beneficiary, its counsel or its representative, at any time and from time to time, to file for record in the real estate records of the county where any part of the Property (including said fixtures) is situated, financing statements as fixture filings, including amendments and continuations thereof, without Trustor's signature, with respect to all fixtures included within the Property.

4. **Leases, Subleases and Easements.** Trustor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property, including the Lease Agreement. Trustor shall not, without the consent of Beneficiary, enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease (including the Lease Agreement) of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Beneficiary shall be void as against Beneficiary.

5. **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon written request by Beneficiary, Trustor will make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall reasonably be deemed desirable by Beneficiary, any and all such other and further mortgages, deeds to secure debt, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Trustor under this Deed of Trust and/or any of the other Related Documents and (b) the security interest created by this Deed of Trust upon and security interest in and to all of the Property, whether now owned or hereafter acquired by Trustor. Upon any failure by Trustor so to do within thirty (30) days following Beneficiary's request therefore, Beneficiary may make, execute, record, file, re-record and/or refile any and all such mortgages, deeds of trust, deeds to secure debt, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Trustor, and Trustor hereby irrevocably appoints Beneficiary the agent and attorney-in-fact of Trustor so to do. The security interest of this Deed of Trust and

the security interest created hereby will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Property or any part thereof.

6. **Expenses.** Trustor will pay or reimburse Beneficiary, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Beneficiary in any suit, action, legal proceeding or dispute of any kind in which Beneficiary is made a party or appears as party plaintiff or defendant, affecting the Obligations, this Deed of Trust or the interest created hereby, or the Property, including but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Property, any federal bankruptcy proceeding or state insolvency proceeding or other proceeding involving the priorities or rights of creditors, or any action to protect the security hereof, and any such amounts paid by Beneficiary shall be added to the Obligations and shall be secured by this Deed of Trust.

7. **Subrogation.** To the full extent of the Obligations, Beneficiary is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Obligations, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Beneficiary as additional collateral and further security for the Obligations, to the same extent they would have been preserved and would have been passed to and held by Beneficiary had they been duly and legally assigned, transferred, set over and delivered unto Beneficiary by assignment, notwithstanding the fact that any Deed of Trust providing public notice of the same may be satisfied and cancelled of record.

8. **Limit of Validity.** All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the Obligations or otherwise, shall the interest contracted for, charged or received by Beneficiary exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Obligations and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Obligations, such excess shall be refunded to Trustor. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal of the Obligations (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between Trustor and Beneficiary.

9. **Duty to Notify.** Trustor shall provide to Beneficiary the notices, documents and information required in Section 5.3 of the Continuing Covenant Agreement, in accordance with such Section 5.3.

10. **Required Insurance.**

(a) Trustor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Beneficiary as mortgagee and loss payee; (ii) at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount equal to the principal amount of the Bonds, but in no event less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Beneficiary as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Beneficiary as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Trustor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Beneficiary that the Property has been reclassified by Federal Emergency Management Agency (FEMA) as being located in a special flood hazard area, Trustor has not provided sufficient evidence of flood insurance, Beneficiary is mandated under federal law to purchase flood insurance on behalf of Trustor, and Beneficiary will add the associated costs to the principal balance of the Obligations; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Trustor shall be required to maintain such insurance; (v) use and occupancy insurance covering, as applicable, rental income or business interruption in an amount sufficient, for a twelve (12) month period, to pay debt service, taxes and insurance and the cost to continue operations at the Property; (vi) liability insurance providing coverage in such amount as Beneficiary may require but in no event less than \$2,000,000 per each occurrence, \$4,000,000 general aggregate with an excess/umbrella liability master policy limit of \$10,000,000 for each occurrence and aggregate, naming Beneficiary as an additional insured; and (vii) such other insurance required under the Lease Agreement or under the Continuing Covenant Agreement or as Beneficiary may otherwise require from time to time. Policies shall have a deductible no greater than \$100,000 unless otherwise agreed by Beneficiary.

(b) All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Beneficiary that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Beneficiary, and rights of set-off, counterclaim or deductions against Trustor.

(c) All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Beneficiary. At least thirty (30) days prior

to the expiration of each such policy, Trustor shall furnish Beneficiary with evidence satisfactory to Beneficiary that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in force, and furnish to Beneficiary the policies of insurance required by this paragraph, Beneficiary may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Beneficiary chooses, at Trustor's expense; provided however, Beneficiary shall have no responsibility to obtain any insurance, but if Beneficiary does obtain insurance, Beneficiary shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Trustor.

11. **Insurance Proceeds.**

(a) After occurrence of any loss to any of the Property, Trustor shall give prompt written notice thereof to Beneficiary.

(b) In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary and not to Beneficiary and Trustor jointly. Beneficiary is hereby authorized by Trustor to make proof of loss if not promptly made by Trustor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Trustor appoints Beneficiary as its attorney-in-fact to receive and endorse any insurance proceeds to Beneficiary, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Trustor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Trustor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Beneficiary as security for payment of the Obligations.

(c) In the event of any damage to or destruction of the Property, the insurance proceeds shall be applied in accordance with the provisions of the Lease Agreement. Nothing herein shall be deemed to excuse Trustor from restoring, repairing and maintaining the Property as required herein.

12. **Impositions; Escrow Deposit.** Trustor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Following an Event of Default and at the request of Beneficiary, Trustor shall add to each periodic payment required under the Related Documents the amount estimated by Beneficiary to be sufficient to enable Beneficiary to pay, as they come due, all Impositions and insurance premiums which Trustor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Beneficiary from time to time. Such funds may be commingled with the general funds of Beneficiary and shall not earn interest. Beneficiary may apply such funds to pay any of the Obligations.

13. **Use of Property.** Trustor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property, including the Lease Agreement. Trustor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Trustor shall not allow changes in the stated use of Property from that disclosed to Beneficiary at the time of execution hereof. Trustor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Beneficiary.

14. **Maintenance, Repairs and Alterations.** Trustor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the reasonable satisfaction of Beneficiary. Other than in connection with the construction of the Project and in accordance with the approved plans, specifications and construction documents, Trustor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Beneficiary. Trustor shall promptly notify Beneficiary in writing of any material loss, damage or adverse condition affecting the Property.

15. **Eminent Domain.** Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Trustor receive any notice or other information regarding such Condemnation, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Beneficiary shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Trustor related to any Condemnation (the "Proceeds") are hereby assigned to Beneficiary and Trustor agrees to execute such further assignments of the Proceeds as Beneficiary may require. The Proceeds shall be applied in accordance with the provisions of the Lease Agreement. Trustor appoints Beneficiary as its attorney-in-fact to receive and endorse the Proceeds to Beneficiary, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

16. **Environmental Condition of Property and Indemnity.**

(a) Trustor warrants and represents to Beneficiary, except as reported by Trustor to Beneficiary in writing, that: (i) Trustor has inspected and is familiar with the environmental condition of the Property; (ii) to Trustor's knowledge, the Property and Trustor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) to Trustor's knowledge, the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) to Trustor's knowledge, no Hazardous Materials (including

asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Trustor's knowledge threatened which seeks to enforce any right or remedy against Trustor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Trustor shall assure compliance therewith.

(b) Further, Trustor represents to Beneficiary that no portion of the Property is a protected wetland. Trustor agrees to notify Beneficiary immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

(c) Trustor has entered into that certain Environmental Compliance and Indemnification Agreement (the "Environmental Agreement"), dated of even date herewith, in favor of Beneficiary; and Trustor shall comply with the Environmental Agreement in all respects.

17. **Appraisals.** Trustor agrees that Beneficiary may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Beneficiary may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Beneficiary. The cost of such appraisals shall be borne by Trustor. If requested by Beneficiary, Trustor shall execute an engagement letter addressed to the appraiser selected by Beneficiary. Trustor's failure or refusal to sign such an engagement letter, however, shall not impair Beneficiary's right to obtain such an appraisal. Trustor agrees to pay the cost of such appraisal within ten (10) business days after receiving an invoice for such appraisal.

18. **Inspections.** Beneficiary, or its representatives or agents, are authorized to enter at any reasonable time after reasonable prior advance notice to Trustor upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust.

19. **Liens and Subrogation.**

(a) Trustor shall pay and promptly discharge all liens, claims and encumbrances upon the Property other than the Permitted Liens. Trustor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Trustor first deposits with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as

Beneficiary shall reasonably require; and (iii) Trustor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

(b) Beneficiary shall be subrogated to any liens, claims and encumbrances against Trustor or the Property that are paid or discharged through payment by Beneficiary or with Bond proceeds, notwithstanding the record cancellation or satisfaction thereof.

20. **Waiver of Trustor's Rights.**

(a) To the fullest extent permitted by law, Trustor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisalment before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Obligations, and any rights to hearing prior to the exercise by Beneficiary of any right, power, or remedy herein provided to Beneficiary.

(b) To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisalment, moratorium, reinstatement, forbearance, valuation, stay, extension or redemption, and Trustor for itself and its successors, successors-in-interest and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisalment, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Trustor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

21. **Payments by Beneficiary and Enforcement of Lease Agreement.** If an Event of Default (as hereinafter defined) occurs in the timely payment or performance of any of the Obligations, Beneficiary, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Trustor is obligated, including payments under the Lease Agreement and the Swap. Further, Beneficiary may pay such sums as Beneficiary deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Deed of Trust or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the Default Rate (as defined by the Indenture), and shall be secured by this Deed of Trust. Additionally, so long as the Lease Agreement is in effect, Beneficiary, as well as Trustor, shall be entitled to enforce the Issuer's obligations under the Lease Agreement.

22. **Indemnification.** Trustor shall protect, indemnify and save harmless Beneficiary from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against

Beneficiary on account of or in connection with (a) the Related Documents or any failure or alleged failure of Trustor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Related Documents; (b) any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (c) any failure or alleged failure of Trustor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), (d) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Beneficiary relating in any way to or any matter contemplated by the Related Documents, except for Damages resulting from the gross negligence or willful misconduct of Beneficiary, (e) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (f) any and all liability arising from any leases related to the Property. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Beneficiary. In the event Beneficiary incurs any Damages arising out of or in any way relating to the transaction contemplated by the Related Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

23. Assignment of Rents and Leases.

(a) Trustor hereby absolutely assigns and transfers to Beneficiary all the rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Event of Default exists, Beneficiary gives to and confers upon Trustor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Trustor for all such Rents. Trustor represents there has been no prior assignment of Rents, and agrees not to further assign such Rents. Upon the occurrence of any Event of Default, the license granted to Trustor herein shall be automatically revoked without further notice to or demand upon Trustor, and Beneficiary shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Beneficiary or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Trustor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Beneficiary may determine or as otherwise provided for herein. Beneficiary's exercise of any one or more of the foregoing rights shall not cure or waive any Event of Default or notice of any Event of Default hereunder.

(b) Trustor absolutely and unconditionally assigns and transfers to Beneficiary all of Trustor's right, title and interest in, to and under all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in

force, whether oral or written, covering or affecting the Property, or any portion of the Property, and all modifications, extensions or renewals (collectively, the "Leases"), including Trustor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. Trustor represents there has been no prior assignment of Leases, and agrees not to further assign such Leases. It is the intention of Trustor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Trustor's right, title and interest in, to and under the Leases. Trustor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the Property. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State of Nebraska, then the Leases shall be included as a part of the Property and it is the intention of Trustor that in this circumstance this Deed of Trust create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust. Although this assignment is effective immediately, so long as no Event of Default exists, Trustor shall have all rights, power and authority granted to Trustor under any Lease (except as otherwise limited by this Section or any other provision of this Deed of Trust), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Trustor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Upon the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State of Nebraska, Beneficiary immediately shall have all rights, powers and authority granted to Trustor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(c) Trustor shall comply with and observe Trustor's obligations under all Leases, including Trustor's obligations pertaining to the maintenance and disposition of any tenant security deposits.

(d) Trustor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Section shall not be construed to make Beneficiary a mortgagee-in-possession of the Property so long as Beneficiary has not itself entered into actual possession of the Land and the improvements thereon. The acceptance by Beneficiary of the assignment of the Leases pursuant to this Section shall not at any time or in any event obligate Beneficiary to take any action under this Deed of Trust or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Beneficiary's actual entry into and taking possession of the Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property

or any portion of the Property. The execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

24. **Due on Sale or Further Encumbrance or Transfer of an Interest in Trustor.**

Without the prior written consent of Beneficiary in each instance, Trustor shall not (a) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (b) cause or permit any transfer of the Property or any part thereof (other than equipment and other personal property sold or replaced in the ordinary course of Trustor's business), whether voluntarily, involuntarily or by operation of law, or (c) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (i) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (ii) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (iii) if Trustor or any general partner or member of Trustor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity that results in a change of control in Trustor, including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly; (iv) if Trustor, or any general partner or member of Trustor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (v) an agreement by Trustor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Beneficiary's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate determined under the Indenture, an extension or curtailment of the maturity of the Obligations, or other modification of this Deed of Trust or the other Related Documents.

25. **Events of Default.** The terms "Event of Default" or "Events of Default," wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Subject to any applicable notice and cure period as may be set forth in the Bonds, this Deed of Trust or the other Related Documents, failure by Trustor to pay as and when due and payable any portion of the Obligations;

(b) Failure to maintain insurance as provided for in Section 10 of this Deed of Trust or as required by any other Related Document;

(c) A violation of Section 24;

(d) The occurrence of a "Default" or "Event of Default" under the Lease Agreement or any other Related Document (other than this Deed of Trust) or under any

loan agreement, assignment of leases or any other agreement (other than this Deed of Trust) now or hereafter evidencing, securing or otherwise relating to the Obligations (or any portion thereof) beyond any applicable grace or cure period thereunder;

(e) Any warranty of Trustor contained in this Deed of Trust, the Lease Agreement or the other Related Documents or contained in any loan agreement, assignment of leases or any other agreement now or hereafter evidencing or securing or otherwise relating to the Obligations (or any portion thereof) or this Deed of Trust or the other Related Documents proves to be untrue or misleading in any material respect;

(f) The Property is subjected to material waste, or except as may otherwise be provided for herein, any material part thereof is removed, demolished or altered by Trustor (other than as permitted hereunder or under the other Related Documents) without the prior written consent of Beneficiary, and the continuance of such condition for thirty (30) days after written notice of such condition from Beneficiary;

(g) The filing by Trustor or any endorser or guarantor of the Obligations (or any portion thereof) of a voluntary petition in bankruptcy or the filing by Trustor or any such endorser or guarantor of the Obligations (or any portion thereof) of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Trustor's or any such endorser's or guarantor's seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Trustor or of such endorser or guarantor or of all or any substantial part of the Property or of any other property or assets of Trustor or of such endorser or guarantor or of any or all of the income, rents, issues, profits or revenues thereof, or the making by Trustor or any such endorser or guarantor of any general assignment for the benefit of creditors, or the admission in writing by Trustor or by any such endorser or guarantor of its inability to pay its debts generally as they become due, or the commission by Trustor or any such endorser or guarantor of an act of bankruptcy;

(h) The filing of a petition against Trustor or any endorser or guarantor of the Obligations (or any portion thereof) seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator of Trustor or of any such endorser or guarantor or of all or any substantial part of the Property or of any or all of the income, rents, issues, profits or revenues thereof unless such petition shall be dismissed within 90 days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition;

(i) Trustor or any endorser or guarantor of the Obligations (or any portion thereof) (if a corporation) is liquidated or dissolved or its charter expires or is revoked, or Trustor or such endorser or guarantor (if a partnership or business association) is dissolved or partitioned, or Trustor or such endorser or guarantor (if a trust) is terminated or expires, or Trustor or such endorser or guarantor (if an individual) dies;

(j) Commencement of any foreclosure proceedings, judicial or non-judicial, on the Property pursuant to any junior and/or senior lien or encumbrance upon the Property, which proceedings have not been dismissed and/or terminated (as may be applicable) within thirty (30) days after the commencement of such proceedings, but in any event, prior to actual foreclosure on the Property;

(k) Other than Section 9, which shall have no notice or cure periods, and except for any Event of Default described in foregoing subparagraphs (a) through (j), the failure by Trustor duly to observe or perform any term, covenant, condition or agreement of this Deed of Trust, and the continuance of such failure for thirty (30) days after written notice of such condition from Beneficiary; or

(l) Default by Trustor in the payment of any amount when due in respect of any Indebtedness (as defined in the Continuing Covenant Agreement) owed to the Bank; default under any mortgage, agreement or other instrument under or pursuant to which such Indebtedness is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or the occurrence of any act or omission by Trustor under any such mortgage, agreement or other instrument which results in such Indebtedness becoming, or being capable of becoming, immediately due and payable.

26. **Remedies of Beneficiary upon Event of Default.**

(a) ***Remedies.*** Upon the occurrence of an Event of Default, the following remedies are available, without limitation, to Beneficiary, subject to the provisions of the Nebraska Trust Deeds Act (the "Act"), **WHICH INCLUDES THE RIGHT TO EXERCISE THE POWER OF SALE:**

(i) Beneficiary may exercise any or all of Beneficiary's remedies under this Deed of Trust or the other Related Documents including, without limitation, acceleration of the maturity of all payments and Obligations;

(ii) Beneficiary may take immediate possession of the Property or any part thereof (which Trustor agrees to surrender to Beneficiary) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (A) the Obligations, together with all costs and attorneys' fees; (B) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (C) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Beneficiary in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property;

(iii) Beneficiary may, as a matter of strict right, apply to any court of competent jurisdiction for the appointment of a receiver for all purposes

including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Trustor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Trustor, without regard to whether Trustor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Trustor or any other person, firm or corporation who or which may be liable for the payment of the Obligations. The receiver shall have all of the rights and powers permitted under the laws of the State of Nebraska;

(iv) **FORECLOSURE BY POWER OF SALE.** Beneficiary may exercise the power of sale contained herein. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee true and correct copies of this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as Trustee may require. Thereafter, and only in accordance with or as permitted by the Act:

(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 and any other notice or document or instrument as then required by law and/or by this Deed of Trust, Trustee shall, without demand on Trustor, after such time as may then be required by law and after recordation and/or delivery of such notice of default, notice of sale and/or any other notice required by law, sell the Property 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 Trustee 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 a good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. Any person, including, without limitation, Beneficiary (but specifically excluding the Trustor), may purchase at such sale, and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers;

(B) Trustee may in the manner provided by law postpone sale of all or any portion of the Property.

(v) Sale of any portion of the Property which shall consist of personal property shall be made in accordance with the laws of the State of Nebraska relating to the sale of real estate or by Article 9 of the UCC relating to the sale of collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or

enactments relating to same. With respect to any notices required or permitted under the UCC, Trustor agrees that five (5) days' prior written notice shall be deemed commercially reasonable. At any such sale (i) whether made under the power herein contained, the UCC, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Beneficiary or Trustee to be physically present at or to have constructive possession of the Property (Trustor shall deliver to Beneficiary any portion of the Property not actually or constructively possessed by Beneficiary immediately upon demand by Beneficiary), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Beneficiary had been actually present and delivered same to purchaser at such sale, (ii) each instrument of conveyance executed by Beneficiary shall contain a general warranty of title, binding upon Trustor, (iii) each recital contained in any instrument of conveyance made by Trustee or Beneficiary shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Obligations and advertisement and conduct of such sale in the manner provided herein and otherwise by law, (iv) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (v) the receipt of Trustee, Beneficiary or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (vi) to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Trustor. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Obligations in lieu of paying cash. If Beneficiary so elects, Trustee may sell the personal property covered by this Deed of Trust at one or more separate sales in any manner permitted by the UCC. In no event shall Beneficiary be required to exhibit, present or display at any such sale any of the personalty described herein to be sold at such sale. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Beneficiary may at its option exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Beneficiary may determine. Notwithstanding the foregoing provisions of this paragraph, any sale and notice of any sale that complies with the requirements of the applicable laws of the State of Nebraska in effect at the time of such sale shall satisfy the requirements of this Deed of Trust.

(vi) If an Event of Default shall have occurred and be continuing, Beneficiary may, in addition to and not in abrogation of the rights covered under

(b) ***Application of Proceeds of Sale.*** After deducting all costs, fees and expenses of Trustee under this Deed of Trust, Trustee (or receiver, if one is appointed) shall apply the proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use do the Property in the following order unless otherwise required by applicable law:

(i) to the payment of the costs and expenses of taking possession of the Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (A) Beneficiary's and receiver's fees and expenses, (B) court costs, (C) reasonable attorneys' and accountants' fees and expenses, (D) costs of advertisement and (E) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments, or other charges subject to which the Property shall have been sold;

(ii) to the payment of all amounts (including interest), which may be due to Beneficiary under this Deed of Trust and the other Related Documents;

(iii) to the payment of any other Obligations and the performance of Trustor's obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and the balance, if any, to the payment of Trustor or the persons legally entitled thereto.

(c) ***Acceleration of Maturity.*** If an Event of Default shall occur and be continuing, then Beneficiary may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Beneficiary hereunder, declare, without further notice, all Obligations immediately due and payable with interest thereon at the Default Rate (as defined by the Indenture), whether or not such Event of Default is thereafter remedied by Trustor, and Beneficiary may immediately proceed to foreclose this Deed of Trust and to exercise any right provided by this Deed of Trust or the other Related Documents. Trustor hereby waives notice of intent to accelerate the maturity of the Obligations and notice of acceleration of the maturity of the Obligations.

(d) ***Trustor as Tenant Holding Over.*** In the event of any such foreclosure sale or sales under the power herein granted, Trustor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

(e) **Leases.** Beneficiary, at its option, is authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Trustor, a defense to any proceedings instituted by Beneficiary to collect the Obligations.

(f) **Discontinuance of Proceedings.** In case Beneficiary shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise or in the event Beneficiary commences advertising or advertisement of the intended exercise of the sale under power provided hereunder, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Beneficiary, then in every such case (i) Trustor and Beneficiary shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Beneficiary continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall and shall be deemed to be a continuing Event of Default and (iv) neither this Deed of Trust nor any of the other Related Documents nor the Obligations, nor any other Deed of Trust concerned therewith, shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Trustor hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

(g) **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to or for the benefit of Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(h) **Waiver.**

(i) No delay or omission by Beneficiary (or by any successor or assignee of Beneficiary under the this Deed of Trust or any of the other Related Documents) to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such breach or Event of Default, or acquiescence therein, and every right, power and remedy given by this Deed of Trust to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary. No consent or waiver, expressed or implied, by Beneficiary to or of any breach or Event of Default by Trustor in the performance of the obligations of Trustor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or any other obligations of Trustor hereunder. Failure on the part of Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not

constitute a waiver by Beneficiary of its rights hereunder or impair any rights, powers or remedies of Beneficiary hereunder.

(ii) No act or omission by Beneficiary shall release, discharge, modify, change or otherwise affect the original liability under this Deed of Trust and/or any of the other Related Documents, or any other obligation of Trustor or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Deed of Trust except as expressly provided in this Deed of Trust or an instrument or instruments executed by Beneficiary. Without limiting the generality of the foregoing, Beneficiary may: (A) grant forbearance or an extension of time for the payment of all or any portion of the Obligations; (B) take other or additional security for the payment of the Obligations; (C) waive or fail to exercise any right granted in this Deed of Trust or any of the other Related Documents; (D) release any part of the Property from the security interest or lien of this Deed of Trust or otherwise change any of the terms, covenants, conditions or agreements of this Deed of Trust or the other Related Documents; (E) consent to the filing of any map, plat or replat affecting the Property; (F) consent to the granting of any easement or other right affecting the Property; (G) make or consent to any agreement subordinating the security interest or lien hereof; or (H) take or omit to take any action whatsoever with respect to this Deed of Trust or any of the other Related Documents, the Property or any document or instrument evidencing, securing or in any way relating to the Obligations; all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Beneficiary from exercising any such right, power or privilege or affecting the security interest or lien of this Deed of Trust. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Beneficiary, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing and/or discharging any liabilities, obligations or undertakings.

(i) ***Suits To Protect the Property.*** Beneficiary shall have the power to institute and maintain such suits and proceedings as it may deem expedient (i) to prevent any impairment of the Property by any acts which may be unlawful or constitute an Event of Default under this Deed of Trust, (ii) to preserve or protect its interest in the Property and in the incomes, rents, issues, profits and revenues arising therefrom and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Beneficiary.

(j) ***Proofs of Claim.*** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire amount of the Obligations at the date of the institution of such proceedings and for any additional amount of the Obligations after such date.

27. State Law Provisions, Waivers and Agreements.

(a) This Deed of Trust constitutes a fixture financing statement pursuant to the UCC. For purposes of this Section, this Deed of Trust is to be filed and recorded in the real estate records of the county in which the Property is located and the following information is included: (1) the Trustor shall be deemed the "Debtor" with the address set forth for the Trustor on the first page of this Deed of Trust which the Trustor certifies is accurate; (2) the Beneficiary shall be deemed to be the "Secured Party" with the address set forth for the Beneficiary on the first page of this Deed of Trust and shall have all of the rights of a secured party under the UCC; (3) this Deed of Trust covers goods which are or are to become fixtures, including any proceeds thereof; (4) the land upon which the fixtures are located is described in Exhibit A; (5) the name of the record owner of the Property is the City of Hastings, Nebraska; and (6) the Debtor is a limited liability company, organized under the laws of the State of Delaware. The Debtor hereby authorizes the Beneficiary to file any fixture financing statements and terminations thereof or amendments or modifications thereto without the signature of the Debtor, where permitted by law.

(b) 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 Property is located and by otherwise complying with the provisions of the applicable law of the State of Nebraska, substitute a successor or successors to the Trustee named herein or acting hereunder.

(c) Upon written request of Beneficiary stating that all sums secured hereby have been paid, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

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

(e) Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Deed of Trust for debts contracted or liability for 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 any action taken or proposed to be taken by it hereunder or believed by it in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Trustor will, from time to time, pay compensation due Trustee hereunder and reimburse Trustee for and save and hold it harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by it in the performance of its duties. 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 law) and Trustee shall be under no liability for interest on any moneys received by it hereunder.

(f) This Deed of Trust is a construction mortgage under the UCC, to secure an obligation incurred for the construction of improvements on the Land, including the acquisition costs of the Land. This Deed of Trust secures a construction financing in accordance with the terms of the Lease Agreement and Continuing Covenant Agreement. Any materials, equipment or supplies used or intended for use in the construction, development, or operation of the Property, whether stored on or off the Property, shall also be subject to the lien of this Deed of Trust and Trustor, or Trustor's contractor if advances are paid directly to such contractor, shall apply such advances to the payment of lawful claims for labor and material furnished for such construction.

(g) In the event that any provision in this Deed of Trust shall be inconsistent with any applicable provision of the Nebraska foreclosure laws ("Foreclosure Laws"), the applicable provisions of the Foreclosure Laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Foreclosure Laws.

(h) If any provision of this Deed of Trust shall grant to Beneficiary (including Beneficiary acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Deed of Trust, any rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Beneficiary or such receiver under the Foreclosure Laws in the absence of said provision, Beneficiary and such receiver shall be vested with the rights granted under the Foreclosure Laws to the full extent permitted by law.

(i) Without limiting the generality of the foregoing, all expenses incurred by Beneficiary to the extent reimbursable under the Foreclosure Laws, whether incurred before or after exercise of the power of sale or any decree or judgment of foreclosure, and

whether or not provided for elsewhere in this Deed of Trust, shall be added to the indebtedness secured by this Deed of Trust or by the judgment of foreclosure.

The statutes referred to above in this section shall include any further statutes amending, supplementing or supplanting same. The waivers and agreements contained in this section and elsewhere in this Deed of Trust are given by Trustor knowingly, intelligently and voluntarily, upon advice of counsel, to induce Beneficiary to accept certain terms of the Related Documents which are more favorable to Trustor than would be acceptable to Beneficiary in the absence thereof, and accordingly are intended to be broadly and liberally construed in favor of Beneficiary.

28. **Notices.** Any notice required or permitted to be given under this Deed of Trust shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section). Each such communication shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

If to Trustor: Bubba Foods, LLC
4339 Roosevelt Blvd., Suite 400
Jacksonville, Florida 32210
Attention: William H. Morris, President/CEO
Facsimile: (904) 354-1287

With copy to: Foley & Lardner LLP
One Independent Drive, Suite 1300
Jacksonville, Florida 32202
Attention: Gardner F. Davis, Esq.
W. Christopher Rabil, Esq.
Facsimile: (904) 359-8700

If to Beneficiary: Wells Fargo Bank, National Association
225 Water Street, 2nd Floor (MAC Code: Z3055-022)
Jacksonville, Florida 32202
Attention: Linda D. Coley, SVP
Facsimile: (904) 489-3130

With copy to: Schiff Hardin LLP
1201 West Peachtree Street, Suite 2300
Atlanta, Georgia 30309
Attention: Han C. Choi, Esq.
Facsimile: (404) 437-7100

Any communication so addressed and mailed or sent shall be deemed to be given on the earliest of (i) when actually delivered, (ii) on the first Business Day (as defined in the Indenture) after deposit with an overnight air courier service, or (iii) on the third Business Day after deposit

in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Beneficiary. If given by facsimile, a notice shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section. Any party may designate a change of address by written notice to the other parties by giving at least ten (10) days' prior written notice of such change of address.

29. **Miscellaneous Provisions.** Trustor agrees to the following: (a) all remedies available to Beneficiary with respect to this Deed of Trust or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Beneficiary in exercising any remedy shall operate as a waiver of that remedy or of any Event of Default. Any payment by Beneficiary or acceptance by Beneficiary of any partial payment shall not constitute a waiver by Beneficiary of any Event of Default; (b) Trustor represents that Trustor (i) is a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Deed of Trust and any other Related Document to which it is a party; (c) the provisions hereof shall be binding upon and inure to the benefit of Trustor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Beneficiary, its successors and assigns and any future holder of the Bonds or other Obligations; (d) this Deed of Trust may be terminated or modified only by an instrument in writing signed by Beneficiary and Trustor; (e) all references to "Beneficiary" shall mean to "Beneficiary (for itself and its affiliate)"; (f) the captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Deed of Trust; (g) if the lien of this Deed of Trust is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Deed of Trust shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (h) this Deed of Trust shall be governed by and construed under the laws of the State of Nebraska; (i) Trustor by execution and Beneficiary by acceptance of this Deed of Trust agree to be bound by the terms and provisions hereof; (j) Trustor agrees that Trustor's telephone communications with Beneficiary may be monitored and/or recorded to improve customer service and security; (k) this Deed of Trust and the other Related Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties; and (l) time is of the essence

with respect to each and every covenant, agreement and obligation of Trustor under this Deed of Trust and/or any of the other Related Documents.

30. **Waiver of Trustor's Rights.** BY EXECUTION OF THIS DEED OF TRUST, TRUSTOR EXPRESSLY (A) ACKNOWLEDGES THE RIGHT OF BENEFICIARY TO ACCELERATE THE OBLIGATIONS EVIDENCED BY THE RELATED DOCUMENTS AND ANY OTHER OBLIGATIONS AND THE POWER OF SALE AND POWER OF ATTORNEY GIVEN HEREIN TO BENEFICIARY TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON ANY EVENT OF DEFAULT BY TRUSTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST; (B) WAIVES ANY AND ALL RIGHTS WHICH TRUSTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY BENEFICIARY OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO BENEFICIARY, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT TRUSTOR HAS READ THIS DEED OF TRUST AND ANY AND ALL QUESTIONS OF TRUSTOR REGARDING THE LEGAL EFFECT OF THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO TRUSTOR, AND TRUSTOR HAS CONSULTED WITH COUNSEL OF TRUSTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF TRUSTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY TRUSTOR AS PART OF A BARGAINED FOR TRANSACTION AND THAT THIS DEED OF TRUST IS VALID AND ENFORCEABLE BY BENEFICIARY AGAINST TRUSTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

31. **Greater Estate.** In the event that Trustor is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the Obligations and the cancellation of this Deed of Trust of record, Trustor obtains a fee estate in such portion of the Property, then, such fee estate automatically, and without further action of any kind on the part of Trustor, shall be and become subject to the security interest and lien of this Deed of Trust.

32. **Assignment.** This Deed of Trust is assignable by Beneficiary, and any assignment hereof by Beneficiary recorded in the Official Records of Adams County, Nebraska, shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Beneficiary.

[signatures follow on subsequent page]

IN WITNESS WHEREOF, Trustor has executed this instrument under seal as of the day and year first above written.

TRUSTOR:

BUBBA FOODS, LLC, a Delaware limited liability company

By: William H. Morris

Name: William H. Morris

Title: President

STATE OF Georgia
COUNTY OF Camden

The foregoing Deed of Trust was acknowledged before me on this 22 day of April, 2010, by William H. Morris, as President of Bubba Foods, LLC, on behalf of said Bubba Foods, LLC.



Kathleen Cuthbertson
Notary Public

ISSUER CONSENT AND ACKNOWLEDGEMENT

By execution of this Consent and Acknowledgement, which is attached to that certain Leasehold Deed of Trust, Security Agreement and Fixture Financing Statement, dated as of even date herewith made by Bubba Foods, LLC, as trustor ("Trustor") for the benefit of Wells Fargo Bank, National Association, as beneficiary ("Beneficiary") ("Deed of Trust"), the City of Hastings, Nebraska (the "Issuer") consents to the assignment of the Lease Agreement and other Property by Trustor for the benefit of Beneficiary, as provided in the Deed of Trust, and agrees to recognize any purchaser of the Property upon foreclosure (which may be Beneficiary) as the "Company" under the Bond Documents. The Issuer shall have no financial obligations or financial liability whatsoever under the foregoing Deed of Trust. All terms not defined herein shall have the meaning set forth in the Deed of Trust.



ISSUER:

CITY OF HASTINGS, NEBRASKA

By: _____

Vern Powers, Mayor

Attest: _____

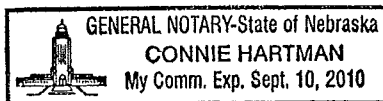
By: _____

Connie Hartman, Clerk

STATE OF NEBRASKA

COUNTY OF ADAMS

The foregoing Issuer Consent and Acknowledgement was acknowledged before me on this 22nd day of April, 2010, by Vern Powers, as the Mayor of the City of Hastings, Nebraska, on behalf of said City of Hastings, Nebraska.



Notary Public

EXHIBIT A

LEGAL DESCRIPTION

All of Lots Three (3), Four (4), Five (5), and Six (6), Ten (10), Eleven (11) and Twelve (12), all in Block One (1), Hastings Industrial Park West, in the City of Hastings, Adams County, Nebraska, according to the recorded plat thereof.

EXHIBIT B

PERMITTED LIENS

Those items listed in Schedule B of Old Republic National Title Insurance Company Proforma Loan Policy (File No. TA-56958A) insuring the lien of this Deed of Trust and issued to Beneficiary.

EXHIBIT C

SCHEDULE 1

DESCRIPTION OF DEBTOR AND SECURED PARTY

A. Debtor:

1. The name and corporate structure of Grantor is: Bubba Foods, LLC, a Delaware limited liability company.
2. The residence or principal place of business of Debtor is: 4339 Roosevelt Blvd., Suite 400, Jacksonville, Florida 32210.
3. Debtor has been using or operating under said name and identity or corporate structure without change for the following time period: Since July 13, 2000.
4. Debtor's organizational identification number is: 3259660.

B. Secured Party:

Wells Fargo Bank, National Association
225 Water Street, 2nd Floor (MAC Code: Z3055-022)
Jacksonville, Florida 32202
Attn: Linda D. Coley, SVP

EXHIBIT C

SCHEDULE 2

NOTICE MAILING ADDRESSES OF DEBTOR AND SECURED PARTY

A. The mailing address of Debtor is:

Bubba Foods, LLC
4339 Roosevelt Boulevard
Suite 400
Jacksonville, Florida 32210
Attn: William H. Morris, President/CEO

B. The mailing address of Secured Party is:

Wells Fargo Bank, National Association
225 Water Street, 2nd Floor (MAC Code: Z3055-022)
Jacksonville, Florida 32202
Attn: Linda D. Coley, SVP

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