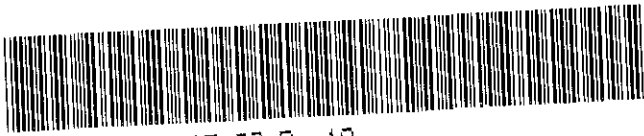





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## DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

This DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS (this "Deed of Trust") entered into as of **October 6, 2006**, among **Araceli Espericueta**, an individual, and **Francisco Espericueta**, an individual, with an address of **2682 N. 129th Circle, Omaha, Nebraska 68164** (the "Trustor") and Stewart Title, with an address of 1603 Farnam Street, Suite 219, Omaha, Nebraska 68102 (the "Trustee") for the use and benefit of LNB Commercial Capital DBA Premier Commercial, a Florida Corporation, with an address of 500 N. Maitland Ave., Suite 312, Maitland, Florida 32751 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es): **6801-03 Railroad Avenue, Omaha, Nebraska 68107** (the "Address(es)").

### 1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain **Semi-Annual Adjustable Interest Rate Term Note**, dated **October 6, 2006**, by **Araceli Espericueta** in favor of the Beneficiary in the original principal amount of **\$229,700.00** (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

The amount of principal obligations outstanding and evidenced by the Loan Documents and secured by this Deed of Trust total **\$229,700.00** as of the date of this Deed of Trust (the "Amount").

1.2 Security Interest in Property. As continuing security for the Obligations the Trustor hereby pledges, assigns and grants to the Beneficiary, and to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary, a security interest in all of the Property constituting personal property or fixtures. This Deed of Trust is and shall be deemed to be a security agreement and financing statement pursuant to the terms of the Uniform Commercial Code of Nebraska (the "Uniform Commercial Code") as to any and all personal property and fixtures and as to all such property the Beneficiary, and the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary, shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Deed of Trust constitutes a financing statement filed as a fixture filing under Section U9-502(c) of the Uniform Commercial Code covering any Property which now is or later may become a fixture.

1.3 Collateral Assignment of Leases and Rents. The Trustor hereby irrevocably and unconditionally assigns to the Beneficiary, and to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary, as collateral security for the Obligations all of the Trustor's rights and

benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Trustor shall have a license, revocable by the Beneficiary, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Beneficiary exercises its rights and remedies to collect such rents as set forth herein.

1.4 Conditions to Grant. The Beneficiary shall have and hold the above granted Property unto and to the use and benefit of the Trustee, IN TRUST, for the benefit and security of the Beneficiary, and to the Beneficiary, as the case may be, and their successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Deed of Trust are upon the express condition that, if Trustor shall irrevocably pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Deed of Trust, shall pay and perform all other Obligations as set forth in this Deed of Trust and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Deed of Trust shall be appropriately released and discharged.

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgments, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.6 Obligations. The term "Obligation(s)," as used in this Deed of Trust, shall mean all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Trustor or due from the Trustor to the Beneficiary from time to time and all advances, costs and expenses referred to in this Deed of Trust, including without limitation the costs and expenses (including reasonable attorney's fees) of enforcement of the Beneficiary's rights hereunder or pursuant to any document or instrument executed in connection herewith.

## **2. REPRESENTATIONS, WARRANTIES, COVENANTS**

2.1 Representations and Warranties. The Trustor represents and warrants that:

- (a) If the Trustor is a corporation, limited liability company, trust, limited partnership, general partnership or other entity then (i) the Trustor was duly formed, is validly existing and a) in good standing in its State of its formation or organization, b) is qualified to lawfully transact its current and contemplated business in any State where such business is transacted, and c) is

qualified to lawfully transact business in the State where the Property is located, including but not limited to the transactions covered by the Loan Documents; (ii) each signatory of the Loan Documents is duly authorized to execute and deliver the Loan Documents and to bind the Trustor and all other parties thereto without any further signature, approval, consent or authorization; (iii) true, correct and complete copies of the Trustor's formation and operating documents have been delivered to the Beneficiary and neither such formation documents nor agreements to which Trustor is a party or is bound prohibit, limit or in any manner interfere with Trustor's full and timely performance of the Loan Documents and Trustor shall not permit the modification, or amendment of any such formation or operating documents; (iv) the execution, delivery and performance of the Loan Documents have been duly authorized by all necessary corporate, partnership, trust or other authority; and (v) so long as all or any part of the Obligations shall remain outstanding the Trustor shall not take or permit the Trustor to be in breach of any of the representations set forth in this Section 2.1(a);

- (b) This Deed of Trust has been duly executed and delivered by the Trustor and is the legal, valid and binding obligation of the Trustor enforceable in accordance with its terms, except as limited by Bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;
- (c) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in detail in Exhibit B hereto (the "Permitted Encumbrances");
- (d) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;
- (e) The Property and all buildings and improvements thereon are in full compliance with all applicable Federal, State and local laws, judicial rulings, codes, ordinances, rules and regulations and valid certificates of occupancy(ies), permit(s), and/or license(s) cover all of the Property and the buildings and improvements thereon as well as the use of such Property, buildings and improvements;
- (f) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and
- (g) The Trustor is incurring the indebtedness solely for commercial or business purposes and this security instrument does not represent a loan used for personal, family, household or consumer purposes.

2.2 Recording; Further Assurances. The Trustor covenants that it shall, at its sole cost and expense and upon the request of the Beneficiary, cause this Deed of Trust, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Beneficiary in the Property and the rights of the Beneficiary under this Deed of Trust. Trustor will from time to time execute and deliver to the Beneficiary such documents, and take or cause to be taken, all such other or further action, as the Beneficiary may request in order to effect and confirm or vest more securely in the Beneficiary all rights contemplated by this Deed of Trust (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Beneficiary the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Trustor authorizes the Beneficiary to file financing statements, continuation statements or amendments, and any such financing statements, continuation statements or amendments may be filed at any time in any jurisdiction. The Beneficiary may at any time and from time to time file financing

statements, continuation statements and amendments thereto that describe the Property as defined in this Deed of Trust and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor; Trustor also authorizes the Beneficiary to file financing statements describing any agricultural liens or other statutory liens held by the Beneficiary. Trustor agrees to furnish any such information to the Beneficiary promptly upon request. In addition, Trustor shall at any time and from time to time, take such steps as the Beneficiary may reasonably request for the Beneficiary (i) to obtain an acknowledgment, in form and substance satisfactory to the Beneficiary, of any bailee having possession of any of the Property that the bailee holds such Property for the Beneficiary, and (ii) otherwise to insure the continued perfection and priority of the Beneficiary's security interest in any of the Property and the preservation of its rights therein. Trustor hereby constitutes the Beneficiary its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Deed of Trust terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 Restrictions on the Trustor. The Trustor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Beneficiary in each instance:

- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust in addition to all other limits on secondary financing and/or junior Deeds of Trust are expressly prohibited;
- (b) In addition to the limitations regarding the Property as provided for in this Deed of Trust, Trustor shall not sell, convey, assign, transfer, Deed of Trust, pledge, hypothecate, lease or dispose of all or any other assets or property owned by the Trustor except in connection with arms length transactions and for full and fair market consideration;
- (c) The Beneficiary will consider, in its sole and absolute discretion, granting approval to a sale or transfer of an interest in the Trustor or of the Property (herein a "Transfer"), that would otherwise violate Section 2.3(a) and/or Section 2.3(b) (a Transfer shall not include the granting of a Deed of Trust or other lien), without any adjustment to the interest rate or to any other economic terms of the Loan Documents, if prior to the Transfer, Trustor has satisfied each of the following requirements: (1) the submission to the Beneficiary of all information required by the Beneficiary to make the determination required by this Section 2.3(c); (2) the absence of any Event of Default; (3) the transferee (and any proposed guarantors) meets all of the eligibility, credit, FICO, net worth, loan to value, debt service coverage ratio, management and other standards (including any standards with respect to previous relationships between the Beneficiary and the transferee and the organization of the transferee) customarily applied by the Beneficiary at the time of the proposed Transfer in connection with the origination or purchase of similar Deeds of Trust; in no event shall the transferee be of a lesser standard than the original Trustor (the "Original Trustor") and if applicable the original guarantor(s) (the "Original Guarantors") as of the date of this Deed of Trust. Further, the Transfer must meet all of the requirements of the rating agencies, including Standard & Poor's Ratings Services, Moody's Investors Service, Inc. and Fitch, Inc. in order to assure that there shall be no likely negative rating impact as a consequence of the Transfer; (4) the Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by the Beneficiary to the approval of properties in connection with the origination or purchase of similar Deeds of Trust on comparable property types; (5) in the case of a Transfer of all or any part of the Property, or direct or indirect ownership interests in Trustor or any guarantor, the execution by the transferee or one or more individuals or entities acceptable to the Beneficiary, in the Beneficiary's sole discretion, of an assumption agreement, guaranty and other documents that is acceptable to the Beneficiary and that, among other things,

requires the transferee to perform all obligations of transferor and any guarantors under the Loan Documents, and may require that the transferee comply with any provisions of this Deed of Trust or any other Loan Document which previously may have been waived by the Beneficiary; (6) if a guaranty has been executed and delivered in connection with the Note, this Deed of Trust or any of the other Loan Documents, the Trustor causes one or more individuals or entities acceptable to the Beneficiary to execute and deliver to the Beneficiary a guaranty in a form acceptable to the Beneficiary; and (7) the Beneficiary's receipt of all of the following: (A) a non-refundable review fee (the "Review Fee") in the amount equal to \$3,000, and, a transfer fee equal to two (2) percent of the outstanding Obligations immediately prior to the Transfer (the "Transfer Fee"); and (B) in addition, Trustor shall be required to reimburse the Beneficiary for all of the Beneficiary's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed the Review Fee. In no event shall this section 2.3(c) permit a voluntary or involuntary violation of Section 2.3, 2.4(f) or any other provision of this Deed of Trust. However, the occurrence of any of the following events shall not constitute an Event of Default under this Deed of Trust, notwithstanding any provision of Section 2.3(a) and Section 2.3(b) to the contrary: (A) a Transfer to which the Beneficiary has consented; (B) a Transfer that occurs by devise, descent, or by operation of law upon the death of a natural person; (C) the grant of a leasehold interest which complies with Section 2.4(f) of this Deed of Trust; (D) a Transfer of obsolete or worn out personalty or fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by the Loan Documents or consented to by the Beneficiary; (E) the grant of an easement, if before the grant the Beneficiary determines that the easement will not negatively affect the operation or value of the Property or the Beneficiary's interest in the Property, and Trustor pays to the Beneficiary, upon demand, all costs and expenses incurred by the Beneficiary in connection with reviewing the Beneficiary's request.

- (d) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or
- (e) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

2.4 Operation of Property. The Trustor covenants and agrees as follows:

- (a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;

- (b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; (v) environmental insurance and (vi) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;
- (c) Trustor shall not make any alteration to the Property if (i) such alteration is structural in nature or effects any of the Property's building systems , or (ii) is in excess of the greater of (x) five thousand and 00/100 dollars or (y) one (1%) percent of the original principal balance of the Obligations secured by this Deed of Trust. With respect to those matters set forth in clause (i) the Beneficiary may withhold its consent in its sole discretion, and with respect to those matters set forth in clause (ii) the Beneficiary shall not unreasonably withhold or delay its consent.
- (d) Trustor shall not change the use of the Property in whole or in part without the prior written consent of the Beneficiary.
- (e) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;
- (f) Trustor shall not lease any portion of the Property which is currently residential for non-residential use except with the prior written consent of the Beneficiary and the Beneficiary's prior written approval of the lease agreement. Residential leases shall not (i) exceed a term of one (1) year (including renewals), (ii) provide for less than fair market value rental, and (iii) shall include only usual and customary terms and conditions. Unless otherwise agreed to in writing by Trustor, if the lease is a non-residential lease, Trustor shall not provide for a term in excess of five (5) years (including extension rights) without Trustor's prior written approval; if a non-residential lease includes a term in excess of five (5) Trustor shall not modify the terms of, or extend or terminate, (including any lease in existence on the date of this Deed of Trust) without the prior written consent of the Beneficiary. Trustor shall, without request by the Beneficiary, deliver an executed copy of each non-residential lease to the Beneficiary promptly after such lease is signed. All leases, including renewals or extensions of existing leases,

shall specifically provide that (1) such leases are subordinate to the lien of this Deed of Trust (unless such subordination is waived in writing by the Beneficiary); (2) the tenant shall attorn to the Beneficiary and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Property by any purchaser at a foreclosure sale or by the Beneficiary in any manner; (3) the tenant agrees to execute such further evidences of attornment as the Beneficiary or any purchaser at a foreclosure sale may from time to time request; (4) the lease shall not be terminated by foreclosure or any other transfer of the Property; (5) after a foreclosure sale of the Property, the Beneficiary or any other purchaser at such foreclosure sale may, at the Beneficiary's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from the Beneficiary, pay all Rents payable under the lease to the Beneficiary.

- (g) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and
- (h) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

2.5 Payments/Imposition Deposits. (a) The Trustor covenants to pay when due: all Federal, state, municipal, real property and other taxes, betterment and improvement assessments and other governmental levies (herein collectively "Taxes"), water rates, sewer charges, insurance premiums and other charges on the Property, this Deed of Trust or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. Unless waived in writing by the Beneficiary subject to 2.5(b) below, the Trustor shall deposit from time to time with the Beneficiary sums determined by the Beneficiary to be sufficient to pay when due the amounts referred to in this Section. The Trustor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Beneficiary's request, provides the Beneficiary with adequate cash security, in the Beneficiary's reasonable judgment, against the enforcement thereof. The Trustor shall furnish to the Beneficiary the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Trustor shall also furnish to the Beneficiary evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Beneficiary. If Trustor shall fail to pay such sums, the Beneficiary may, but shall not be obligated to, advance such sums. Any sums so advanced by the Beneficiary shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Deed of Trust.

(b) Trustor shall deposit with the Beneficiary on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by the Beneficiary), until the Obligations are paid in full, an additional amount sufficient to accumulate with the Beneficiary the entire sum required to pay, when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as the Beneficiary may require under Section 2.3(b), (3) Taxes, and (4) amounts for other charges and expenses which the Beneficiary at any time reasonably deems necessary to protect the Property, to prevent the imposition of liens on the Property, or otherwise to protect the Beneficiary's interests, all as reasonably estimated from time to time by the Beneficiary. The amounts deposited under the preceding sentence are collectively referred to in this Deed of Trust as the "Imposition Deposits". The obligations of Trustor for which the Imposition Deposits are required are collectively referred to in this Instrument as "Impositions". The amount of the Imposition Deposits shall be sufficient to enable the Beneficiary to pay each Imposition before the last date upon



which such payment may be made without any penalty or interest charge being added. The Beneficiary shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by the Beneficiary are held for the purpose of paying Taxes, insurance premiums and each other obligation of Trustor for which Imposition Deposits are required. Any waiver by the Beneficiary of the requirement that Trustor remit Imposition Deposits to the Beneficiary may be revoked by the Beneficiary, in the Beneficiary's discretion, at any time upon notice to Trustor.

(c) Imposition Deposits shall be held in an institution (which may be the Beneficiary, if the Beneficiary is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. The Beneficiary shall not be obligated to open segregated accounts and shall be able to commingle Imposition Deposits with other borrowers, nor shall the Beneficiary be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. The Beneficiary shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, the Beneficiary shall not be required to pay Trustor any interest, earnings or profits on the Imposition Deposits. Trustor hereby pledges and grants to the Beneficiary a security interest in the Imposition Deposits as additional security for all of Trustor's obligations under this Instrument and the other Loan Documents. Any amounts deposited with the Beneficiary under this Section 2.5 shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by the Beneficiary for that purpose under Section 2.5(f).

(d) If the Beneficiary receives a bill or invoice for an Imposition, the Beneficiary shall pay the Imposition from the Imposition Deposits held by the Beneficiary. The Beneficiary shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by the Beneficiary. The Beneficiary may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(e) If at any time the amount of the Imposition Deposits held by the Beneficiary for payment of a specific Imposition exceeds the amount reasonably deemed necessary by the Beneficiary, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by the Beneficiary for payment of a specific Imposition is less than the amount reasonably estimated by the Beneficiary to be necessary, Trustor shall pay to the Beneficiary the amount of the deficiency within 15 days after notice from the Beneficiary. The Beneficiary reserves the right without obligation to fund any shortfalls, and to the extent permitted by law charge interest on such shortfall equal to the aggregate of 4.0% plus the rate of interest that the Trustor is paying at the time of default until the shortfall is repaid in full.

(f) If an Event of Default has occurred and is continuing, the Beneficiary may apply any Imposition Deposits, in any amounts and in any order as the Beneficiary determines, in the Beneficiary's discretion, to pay any Impositions or as a credit against the Indebtedness. Upon payment in full of the Indebtedness, the Beneficiary shall refund to Trustor any Imposition Deposits held by the Beneficiary.

2.6 Notices; Notice of Default. The Trustor will deliver to the Beneficiary, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Trustor is in default in the performance or observance of any of the terms hereof or that the Trustor or any tenant is in default of any terms of the Leases. The Trustor further agrees to deliver to the Beneficiary written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.7 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Trustor shall immediately give written notice to the Beneficiary, describing the nature and extent thereof.

The Beneficiary may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Trustor shall immediately give to the Beneficiary copies of all notices, pleadings, determinations and other papers relating thereto. The Trustor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Trustor shall not settle any such claim without the Beneficiary's prior written consent. The Trustor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Beneficiary and immediately pay the same to the Beneficiary. The Trustor authorizes any award or settlement due in connection with a Taking to be paid directly to the Beneficiary in amounts not exceeding the Obligations. The Beneficiary may apply such amounts to the Obligations in such order as the Beneficiary may determine.

2.8 Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Beneficiary and, at the option of the Beneficiary, be applied to the Obligations in such order as the Beneficiary may determine; provided, however, that if the Beneficiary shall require repair of the Property, the Beneficiary may release all or any portion of such proceeds to the Trustor for such purpose. Any insurance proceeds paid to the Trustor shall be held in trust for the Beneficiary and promptly paid to it.

### 3. CERTAIN RIGHTS OF THE BENEFICIARY

3.1 Legal Proceedings. The Beneficiary shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Beneficiary's reasonable judgment, might affect the Property or any of the rights created or secured by this Deed of Trust. The Beneficiary shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Beneficiary deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies.

3.3 Credit Reports. The Trustor authorizes the Beneficiary to obtain credit reports on Trustor at any time including without limitation so-called Fair Isaac & Co. ("FICO") scores and/or similar credit ratings.

3.4 Financial Statements. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Beneficiary from the Trustor or any guarantor of any of the Obligations and the Trustor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Beneficiary.

3.5 Substitution of Trustee. The Beneficiary may from time to time, without notice to the Trustor or Trustee and with or without cause and with or without the resignation of Trustee, substitute a successor or successors to the Trustee named herein or acting hereunder. Upon such appointment, the successor trustee shall be vested with all title, powers and duties conferred upon the Trustee named herein or acting hereunder. Each such appointment and substitution shall be made by a writing executed by Beneficiary and when duly recorded in the appropriate office shall be conclusive proof of proper appointment of such successor Trustee. The procedure herein provided for substitution of the Trustee shall be conclusive of all other provisions for substitution, statutory or otherwise.

3.6 Tax Return. Trustor shall provide the Beneficiary with copies of Trustor's filed Federal and state tax returns for the prior year within 30 days after the end of the prior calendar year.

3.7 Leases and Rent Roll. The Trustor shall deliver to the Beneficiary (i) during each calendar year and at such other times as the Beneficiary shall request a rent roll for the Property, in form acceptable to the Beneficiary, listing all tenants and occupants and describing all of the Leases; and (ii) at such times as the Beneficiary shall request executed copies of all the Leases.

#### 4. DEFAULTS AND REMEDIES

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:

- (a) default of any liability, obligation, covenant or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary;
- (b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents;
- (c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;
- (d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary;
- (e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party;
- (f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false or misleading in any material respect when made;
- (g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;
- (h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;
- (i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;
- (j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;
- (k) a judgment or judgments for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgment shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
- (l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;

- (m) the termination or revocation of any guaranty of the Obligations; or
- (n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Trustor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Beneficiary, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Trustor or any guarantor of the Obligations to the Beneficiary has been or may be impaired.

4.2 **Remedies.** On the occurrence of any Event of Default the Beneficiary may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;
- (b) Direct the Trustee to, or enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Trustee or the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;
- (c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;
- (d) Sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. If Beneficiary elects to sell Trustor's interest in the Property by exercise of the power of sale herein contained, Beneficiary shall notify Trustee in the manner then required by law. At the direction of Beneficiary, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust. Trustee shall, only at the direction of Beneficiary and without demand on Trustor, after such time as may then be required by law and after recordation of such notice of default and after notice of

sale having been given as required by law, sell the 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 Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee and Beneficiary, may purchase at such sale. Trustee may in the manner provided by law postpone sale of all or any portion of the Property. The Trustee shall apply the proceeds of the Trustee's sale, first, to the costs and expenses of the exercising of the power of sale and of the sale, including the payment of the Trustee's fees actually incurred not to exceed an amount which is normal and customary for such sale, second, to payment of the Obligations secured by this Deed of Trust, third, to the payment of junior deeds of trust, mortgages or other lienholders, and the balance, if any, to the person or persons legally entitled thereto;

- (e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Trustor shall provide the Beneficiary or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Trustor from any responsibility therefor or given the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and
- (f) Take such other actions or proceedings as the Beneficiary deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Trustor hereby waives any right to object to such appointment) and exercise of any of the Beneficiary's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

In addition, the Beneficiary shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof by deed, assignment or otherwise.

The Trustor agrees and acknowledges that the acceptance by the Trustee or the Beneficiary of any payments from either the Trustor or any guarantor after the occurrence of any Event of Default, the exercise by the Trustee or the Beneficiary of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Trustee's or the Beneficiary's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Trustee or the Beneficiary. The Trustor agrees and acknowledges that the Trustee or the Beneficiary, by making payments or incurring costs described herein, shall be subrogated to any right of the Trustor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Trustor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

From and after and Event of Default, to the extent permitted by law, and in addition to any other remedies of the Beneficiary and only to the extent that other remedies of the Beneficiary are not limited or impaired, if Trustor shall occupy all or any part of the Property, the Trustor shall pay to the Beneficiary, if the Beneficiary has taken possession of the Property as permitted by this Deed of Trust or a receiver of

rents or other similar third party has been appointed to collect the rents or income from the Property, in advance on the first date of each month the fair market rental value for the space so occupied by the Trustor, and upon failure to pay such amounts the Beneficiary or such receiver shall be entitled to remove the Trustor from the Property in accordance with applicable law.

4.3 Advances. If the Trustor fails to pay or perform any of its obligations respecting the Property, the Beneficiary may in its sole discretion do so without waiving or releasing Trustor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Beneficiary hereunder shall be, until reimbursed by the Trustor, part of the Obligations and secured by this Deed of Trust, and shall be due and payable to the Beneficiary, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

4.4 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Beneficiary might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Trustor further agrees that the Trustee and the Beneficiary may exercise any or all of its rights or remedies set forth herein without having to pay the Trustor any sums for use or occupancy of the Property.

4.5 Trustor's Waiver of Certain Rights. To the extent permitted by applicable law, the Trustor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

4.6 Transfer of Title. Upon the completion of any sale or sales of any Property, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and assigns. The receipt by Trustee of such purchase money shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

4.8 Reconveyance. Upon written request of the Beneficiary and surrender of this Deed of Trust and any Notes to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, shall be made to the person or persons legally entitled thereto, and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

## 5. MISCELLANEOUS

5.1 Costs and Expenses. To the extent permitted by applicable law, the Trustor shall pay to the Trustee and the Beneficiary, on demand, all reasonable expenses (including attorneys' fees and

expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Trustee and the Beneficiary in connection with the Trustee's and the Beneficiary's interpretation, recordation of this Deed of Trust, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Deed of Trust and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, including, without limitation, with respect to any Bankruptcy or similar proceeding (including without limitation any fees, expenses, charges or penalties imposed upon the Beneficiary by any servicer), together with interest thereon to the extent permitted by applicable law, until paid in full by the Trustor at the highest rate set forth in any of the notes evidencing the Obligations. Any amounts owed by the Trustor hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and the Beneficiary shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Trustor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Indemnification Regarding Leases. The Trustor hereby agrees to defend, and does hereby indemnify and hold the Beneficiary, Trustee, and each of their respective directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Beneficiary to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Beneficiary or any Indemnitee or make them liable for performance of any of the obligations of the Trustor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgment. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

5.5 Waivers. The Trustor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Beneficiary in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Beneficiary's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Beneficiary of any default of the Trustor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Beneficiary, which consent makes explicit reference to this Deed of Trust. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Beneficiary and the Trustor at any time (whether before,

during or after the effective date or term of this Deed of Trust) shall be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under this Deed of Trust (nor shall anything in this Deed of Trust be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under any such other agreement or transaction) but all the Beneficiary's rights and remedies not only under the provisions of this Deed of Trust but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Beneficiary at such time or times and in such order of preference as the Beneficiary in its sole discretion may determine.

5.6 Waiver of Homestead. To the maximum extent permitted under applicable law, the Trustor hereby waives and terminates any homestead rights and/or exemptions respecting the Property under the provisions of any applicable homestead laws.

5.7 Joint and Several. If there is more than one Trustor, each of them shall be jointly and severally liable for payment and/or performance of all obligations secured by this Deed of Trust and the term "Trustor" shall include each as well as all of them.

5.8 Severability. If any part, provision, representation, warranty or covenant of this Deed of Trust or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Deed of Trust (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby. Any part, provision, representation, warranty or covenant of this Deed of Trust that is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Further supplementing any other provision of this Deed of Trust, if any payment of any amounts required to be paid hereunder shall exceed the amount permitted by applicable law, then such payment or amount required to be paid shall be deemed reduced to the maximum amount permitted by law; however to the maximum extent permitted by law, and in the Beneficiary's sole discretion, any such excess amounts shall nevertheless be paid by the Trustor and applied to other amounts which have or may become due and payable pursuant to this Deed of Trust. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof.

5.9 Complete Agreement. This Deed of Trust and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.10 Binding Effect of Agreement. This Deed of Trust shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Beneficiary shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Beneficiary may transfer and assign this Deed of Trust and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Beneficiary; and the Beneficiary shall then be relieved and discharged of any responsibility or liability with respect to this Deed of Trust and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Deed of Trust or the other Loan Documents.

5.11 Notices. Any notices under or pursuant to this Deed of Trust shall be deemed duly received and effective if delivered in hand to any officer or agent of the Trustor or Beneficiary, or if mailed by registered or certified mail, return receipt requested, addressed to the Trustor or Beneficiary at the address set forth in this Deed of Trust or as any party may from time to time designate by written notice to the other party.



5.12 Governing Law. This Deed of Trust shall be governed by Nebraska.

5.13 Reproductions. This Deed of Trust and all documents which have been or may be hereinafter furnished by the Trustor to the Beneficiary may be reproduced by the Beneficiary by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.14 Jurisdiction and Venue. The Trustor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in Nebraska, over any suit, action or proceeding arising out of or relating to this Deed of Trust. The Trustor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Trustor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Trustor's address set forth herein or such other address as has been provided in writing to the Beneficiary and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Trustor.

5.15 SALE OF NOTE:CHANGE OF SERVICER. The Note or a partial interest in the Note (together with this Deed of Trust and the other Loan Documents) may be sold in whole or in part one or more times without prior notice to Trustor. A sale may result in a change in the loan servicer. There also may be one or more changes of the loan servicer unrelated to a sale of the Note. If there is a change of the loan servicer, Trustor will be given notice of the change.

5.16 JURY WAIVER. THE TRUSTOR AND THE BENEFICIARY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS DEED OF TRUST, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE TRUSTOR CERTIFIES THAT NEITHER THE BENEFICIARY NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BENEFICIARY WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

EXECUTED under seal as of the date first above written.

Witness:

Trustor:

\_\_\_\_\_

Araceli Espericueta  
Araceli Espericueta, individually

Witness:

Trustor:

\_\_\_\_\_

Francisco Espericueta  
Francisco Espericueta, individually

STATE OF NEBRASKA  
COUNTY OF DOUGLAS, SS.

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2006  
by Araceli Espericueta and Francisco Espericueta.

Michelle Vorpahl, NOTARY PUBLIC  
MY COMMISSION EXPIRES: 1-24-09  
MICHELLE M. VORPAHL  
TYPE OR PRINT NAME



EXHIBIT A

THE FOLLOWING DESCRIBED REAL ESTATE:

LOTS 6, 7, AND 8, EXCEPT THE WEST 7 FEET TAKEN FOR STREET PURPOSES, BLOCK 3, HOPPE'S BONANZA ADDITION, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, TOGETHER WITH 1/2 VACATED ALLEY ADJACENT TO LOT 8.

ADDRESS: 6801-3 RAILROAD AVE.; OMAHA, NE 68107 TAX MAP  
OR PARCEL ID NO.: 0125 0002 14