

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

GREAT WESTERN BANK, a bank)
chartered under the laws of the State of)
South Dakota,)

Plaintiff,)

vs.)

LA CUADRA L.L.C., a Nebraska limited)
liability company; NEWTON COMPANY,)
LLC; CLAUDIA JOSEFINA NEWTON)
FRAUSTO in her individual capacity as)
Guarantor; and EDUARDO T. TORRES,)
in his individual capacity, as Guarantor,)

Defendants.)

CASE ID _____

**COMPLAINT
(LAW)**

FIRST CAUSE OF ACTION

(Deficiency Action under Nebraska Revised Statute §76-1013)

1. Plaintiff is a bank organized and existing under the laws of the United States of America and is a duly chartered under the laws of the State of South Dakota, and is authorized to transact business in the State of Nebraska.

2. Defendant, La Cuadra L.L.C., is a Nebraska limited liability company (“La Cuadra” or “La Cuadra L.L.C.”).

3. Defendant, Newton Company, LLC is a Nebraska limited liability company (“Newton” or “Newton Company, LLC”).

4. Defendants, Claudia Josefina Newton Frausto (“Frausto” or “Claudia Josefina Newton Frausto”) and Eduardo T. Torres (“Torres” or “Eduardo T. Torres”), are wife and husband, are residents of Douglas County, Nebraska, and are Guarantors of the Notes referenced herein. Defendants, Claudia Josefina Newton Frausto and Eduardo T. Torres, are believed to be of legal age and competency, and not to be in the military services of the United States of America, or its allies.

5. On or about October 8, 2007, Newton Company, LLC, a Nebraska limited liability company, by and through its Managers, Claudia Josefina Newton Frausto and Eduardo

T. Torres, executed and delivered to then Lender, TierOne Bank, its Promissory Note (“Note #1”), in the original principal amount of \$1,300,000.00 at the then interest rate of 7.250% per annum. A true and correct copy of said redacted Note #1 is attached hereto as Exhibit “1” and is incorporated herein by this reference.

6. Payment of Note #1 was secured by a Real Estate Deed of Trust (“Deed of Trust #1”) executed by La Cuadra L.L.C. dated October 8, 2007, in favor of TierOne Bank as the Trustee and the Beneficiary, which Deed of Trust was filed on October 11, 2007, with the Register of Deeds of Douglas County, Nebraska as Instrument No. 2007115402. This Deed of Trust #1 was a first lien security interest against the Property identified therein, and legally described as:

Lot 1, La Cuadra Replat 1, an administrative subdivision, surveyed, platted and recorded in Douglas County, Nebraska n/k/a Lot 1, La Cuadra Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (the “Property”). The commonly known address is 3302 Q St., Omaha, NE. A copy of the redacted Deed of Trust #1 is attached hereto as Exhibit “2” and incorporated by reference herein.

7. TierOne Bank was closed by the Office of Thrift Supervision on June 4, 2010, and the Federal Deposit Insurance Corporation (“FDIC”) was appointed Receiver of TierOne Bank.

8. Effective June 4, 2010, the FDIC, as Receiver for TierOne Bank, Beneficiary, assigned all of its right, title and beneficial interest in the Deed of Trust to Great Western Bank, a bank chartered under the laws of the State of South Dakota. Great Western Bank, a bank chartered under the laws of the State of South Dakota, acquired the Loans, Notes, Deeds of Trust, Collateral Documents, and Guaranties from the FDIC as Receiver of TierOne Bank, pursuant to the Purchase and Assumption Agreement dated June 4, 2010. The Plaintiff became the owner, holder and beneficiary of the Loans, Notes, Deeds of Trusts, Collateral Documents and Guaranties. Great Western Bank, a bank chartered under the laws of the State of South Dakota was also appointed Successor Trustee.

9. On or about November 17, 2011, Plaintiff and Defendants entered into a Forbearance and Loan Modification/Cross-Collateralization Agreement (“Agreement”) which was filed on December 2, 2011, with the Register of Deeds of Douglas County, Nebraska as

Instrument No. 2011103864. A copy of the redacted Agreement is attached hereto as Exhibit “3” and incorporated by reference herein

10. Notwithstanding the terms of Note #1, Newton, as the Borrower, and La Cuadra, as the Trustor, failed to pay certain monthly installments due under the terms of Note #1. As a result of said default and acceleration, Plaintiff instructed the Trustee and the Trustee did initiate non-judicial foreclosure proceedings pursuant to the exercise of the power of sale set forth in the Deed of Trust.

11. The Trustee’s Sale of the Property was conducted on November 8, 2017.

12. A Trustee’s Deed was executed by the Plaintiff, as Trustee, and recorded on January 24, 2018, as Instrument No. 2018006269 with the Register of Deeds of Douglas County, Nebraska. The Trustee’s Deed reflects that the high bid and sales price of the subject Property at the Trustee’s Sale was submitted by the Plaintiff as a credit bid in the amount of \$580,000.00. A copy of the Trustee’s Deed is attached hereto as Exhibit “4” and incorporated by reference herein.

13. The debt on the Note #1 at the time of the sale was \$949,212.08. Great Western Bank credited to the indebtedness of Note #1 the sum of \$580,000.00 representing the credit bid from the Trustee’s Sale conducted upon Deed of Trust #1.

14. An appraisal was completed on the Property on October 26, 2017. As a result of the appraisal, it was determined that the Property was valued at \$770,000.00 as is, sales price. A copy of the 1st page of the Appraisal identifying the “as is” value is attached as Exhibit “5”.

15. Defendants, Newton, as the Borrower, and La Cuadra, as the Trustor, are indebted to Plaintiff, in the sum of \$179,212.08 for a deficiency resulting from the aforementioned Trustee’s Sale of the foregoing Note #1 and Deed of Trust #1. Pursuant to Nebraska Revised Statute §76-1013, such deficiency in the sum of \$179,212.08 is computed as follows: the total indebtedness on the Note #1 and Deed of Trust #1 in the sum of \$949,212.08 less the greater of: (a) the sale price in the sum of \$580,000.00; or (b) the fair market as is value of the property in the sum of \$770,000.00, i.e., $\$949,212.08 - \$770,000.00 = \$179,212.08$.

WHEREFORE, Plaintiff, for its First Cause of Action (Deficiency), prays for judgment against Defendants, Newton, as the Borrower, and La Cuadra, as the Trustor, in the amount \$179,212.08, together with interest accruing thereon at the rate of 7.250% per annum as determined pursuant to Note #1, plus the costs of this action.

SECOND CAUSE OF ACTION

(Note #2 Against Borrower)

16. Plaintiff incorporates paragraphs 1 through 15 as if restated here.

17. On or about January 9, 2008, La Cuadra, by and through its Members, Claudia Josefina Newton Frausto, Eduardo T. Torres, and Newton Company, LLC (by and through its Manager, Claudia Josefina Newton Frausto) executed and delivered to then Lender, TierOne Bank, its Promissory Note ("Note #2"), in the original principal amount of \$239,817.00 at the then interest rate of 6.750% per annum. A true and correct copy of said redacted Note #2 is attached hereto as Exhibit "6" and is incorporated herein by this reference.

18. Payment of Note #2 was secured by a Real Estate Deed of Trust ("Deed of Trust #2") executed by La Cuadra dated January 9, 2008, in favor of TierOne Bank as the Trustee and the Beneficiary, which Deed of Trust was filed on January 28, 2008, with the Register of Deeds of Douglas County, Nebraska as Instrument No. 2008007967. This Deed of Trust #2 was a second lien security interest against the Property identified therein, and legally described as:

Lot 1, La Cuadra Replat 1, an administrative subdivision, surveyed, platted and recorded in Douglas County, Nebraska n/k/a Lot 1, La Cuadra Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska

(the "Property"). The commonly known address is 3302 Q St., Omaha, NE. A copy of the redacted Deed of Trust #2 is attached hereto as Exhibit "7" and incorporated by reference herein.

19. The Plaintiff's Deed of Trust #2 was foreclosed by the foreclosure sale referenced in the First Cause of Action herein; however, the Note #2 indebtedness remains, and Plaintiff is entitled to pursue the amounts due thereunder.

20. The balance which remains due and owing to Plaintiff from La Cuadra as the Borrower under Note #2 and Deed of Trust #2 as of November 8, 2017 is \$71,312.16, together with interest thereon at the rate of 6.750% per annum as set forth in Note #2.

WHEREFORE, Plaintiff, for its Second Cause of Action (Note #2 Against Borrower), prays for judgment against Defendant, La Cuadra, as the Borrower under Note #2, in the amount of \$71,312.16 as of November 8, 2017, together with interest accruing thereon at the rate of 6.750% per annum as determined pursuant to Note #2 and the costs of this action.

THIRD CAUSE OF ACTION

(Guaranty)

21. Plaintiff incorporates paragraphs 1 through 20 as if restated here.
22. Defendant, Claudia Josefina Newton Frausto, individually executed and delivered to TierOne Bank her Commercial Guaranty of all indebtedness of Newton to TierOne Bank by way of a Guaranty signed and dated October 8, 2007 (“Frausto-Newton Guaranty - 2007”).
23. Defendant, Claudia Josefina Newton Frausto, also individually executed and delivered to TierOne Bank her Commercial Guaranty of all indebtedness of La Cuadra, to TierOne Bank by way of a 2nd Guaranty signed and dated January 9, 2008 (“Frausto-La Cuadra Guaranty - 2008”). True and correct copies of said redacted Guaranties are attached hereto as Exhibits “8” and “9”, respectively and are incorporated herein by this reference.
24. Defendant, Eduardo T. Torres, individually executed and delivered to TierOne Bank his Commercial Guaranty of all indebtedness of Newton to TierOne Bank by way of a Guaranty signed and dated October 8, 2007 (“Torres-Newton Guaranty - 2007”).
25. Defendant, Eduardo T. Torres, also individually executed and delivered to TierOne Bank his Commercial Guaranty of all indebtedness of La Cuadra, to TierOne Bank by way of a 2nd Guaranty signed and dated January 9, 2008 (“Torres-La Cuadra Guaranty - 2008”). True and correct copies of said redacted Guaranties are attached hereto as Exhibits “10” and “11”, respectively and are incorporated herein by this reference.
26. Defendant, Newton Company, LLC, executed and delivered to TierOne Bank its Commercial Guaranty of all indebtedness of La Cuadra, to TierOne Bank by way of a Guaranty signed and dated January 9, 2008 (“Newton-La Cuadra Guaranty - 2008”). A true and correct copy of said Guaranty is attached hereto as Exhibit “12” and is incorporated herein by this reference.
27. Together, the Guaranties referenced in paragraphs 22-26 herein are known as Guaranties.

28. Frausto and Torres are each obligated, jointly and severally, to Plaintiff on account of their respective Guaranties to the full extent of the outstanding obligations of Newton and La Cuadra.

29. Newton is obligated to Plaintiff on account of its respective Guaranty to the full extent of the outstanding obligations of La Cuadra.


30. The balance which remains due and owing to Plaintiff from Defendants, Claudia Josefina Newton Frausto and Eduardo T. Torres, each individually, and jointly and severally, as Guarantors, on the Newton debt after application of the bid to the total debt due and owing is \$369,912.08 (\$949,212.08 debt owed on Note #1 - \$580,000.00 credit bid), together with interest thereon at the rate of 7.250% per annum as set forth in the Note #1.

31. The balance which remains due and owing to Plaintiff from Defendants, Claudia Josefina Newton Frausto and Eduardo T. Torres, each individually, and jointly and severally, as Guarantors, on the La Cuadra debt is \$71,312.16 as of November 8, 2017, together with interest thereon at the rate of 6.750% per annum as set forth in the Note #2.

32. The balance which remains due and owing to Plaintiff from Newton, as Guarantor, on the La Cuadra debt is \$71,312.16 as of November 8, 2017, together with interest thereon at the rate of 6.750% per annum as set forth in the Note #2.

WHEREFORE, Plaintiff, for its Third Cause of Action (Guaranty), prays for judgment against Defendants, Claudia Josefina Newton Frausto and Eduardo T. Torres, each individually, and jointly and severally, as Guarantors, in the amount of \$369,912.08, together with interest thereon at the rate of 7.250% per annum as set forth in the Note #1; and for judgment against the Defendants, Claudia Josefina Newton Frausto and Eduardo T. Torres, each individually, and jointly and severally, as Guarantors in the amount of \$71,312.16 as of November 8, 2017, together with interest thereon at the rate of 6.750% per annum as set forth in the Note #2; and for judgment against the Defendant, Newton Company, LLC, as Guarantor in the amount of \$71,312.16 as of November 8, 2017, together with interest thereon at the rate of 6.750% per annum as set forth in the Note #2; and for costs of this action.

GREAT WESTERN BANK, a bank chartered under the laws of the State of South Dakota, Plaintiff,

By: 
Camille R. Hawk, Attorney at Law (#20395)
WALENTINE O'TOOLE, LLP
11240 Davenport Street, P.O. Box 540125
Omaha, Nebraska 68154-0125
(402) 330-6300
(402) 330-6303 (FACSIMILE)
chawk@walentineotoole.com

COMMERCIAL PROMISSORY NOTE

TierOne Bank
 1235 N' St / PO Box 83009
 Lincoln, Nebraska 68501
 (402)475-0521

REDACTED

LOAN NUMBER	NOTE DATE	PRINCIPAL AMOUNT	LOAN TERM	MATURITY DATE
	October 8, 2007	\$1,300,000.00	123 months	January 1, 2018

LOAN PURPOSE: Refinance loan from American National Bank

BORROWER INFORMATION

NEWTON COMPANY, L.L.C
 11621 DREXEL ST
 Omaha, NE 68137

NOTE. This Commercial Promissory Note will be referred to in this document as the "Note".

LENDER. "Lender" means TierOne Bank whose address is 1235 N' St / PO Box 83009, Lincoln, Nebraska 68501, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Note.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This loan will be paid according to the following schedule: 3 consecutive payments of interest only varying between \$6,021.52 and \$7,854.17 beginning on November 1, 2007 and continuing on the same day of each month thereafter. This will be followed by 119 consecutive payments of principal and interest in the amount of \$9,396.49 beginning on February 1, 2008 and continuing on the same day of each month thereafter. One final payment shall be due on the Maturity Date in an amount equal to the then unpaid principal and accrued and unpaid interest. All payments received by the Lender from the Borrower for application to the Loan may be applied to the Borrower's obligations under the Loan in such order as determined by the Lender.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The interest rate on this Note will be fixed at 7.250% per annum.

Beginning on January 1, 2008, this Note will be subject to a variable rate of interest that will be based on Treasury Constant Maturity 1 Year in effect on the Change Date (the "Index") plus 2.500 percentage points (the "Margin"). This interest rate may change on October 1, 2008, and on the same day of each year thereafter. Each date on which the interest rate may change is called the "Change Date." On each Change Date, Lender will calculate the new interest rate in the same manner as described above.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rates will result in a higher payment amount. Interest on this Note is calculated on a 360/360 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to 2% above the existing interest rate at the time of maturity.

LATE PAYMENT CHARGE. If any required payment is more than 15 days late, then at Lender's option, Lender will assess a late payment charge of 5% of the principal and interest portion of the amount past due.

PREPAYMENT PENALTY. This Note may be prepaid, in full or in part, at any time, without penalty.

SECURITY TO NOTE. Security (the "Collateral") for this Note is granted pursuant to the following security document(s):

- Deed of Trust in the amount of \$1,300,000.00, dated October 8, 2007 evidencing security interest in the property located at 3302 Q ST Omaha NE 68107.
- Assignment of Leases and Rents dated October 8, 2007 evidencing security interest in the property at 3302 Q ST Omaha NE 68107.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Note, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of setoff may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DISHONORED ITEM FEE. If Borrower makes a payment on the loan with a check or preauthorized charge which is later dishonored, a fee in the amount of \$20.00 will be charged.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Note to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Note or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Note or any other agreement, security agreement executed in connection with this Note (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (l) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Note is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.



GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Note is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Note is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Note without invalidating the remainder of either the affected provision or this Note.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefit of its successors and assigns, and this Note shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Note or any of its rights and powers under this Note without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Note or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. A credit agreement must be in writing to be enforceable under Nebraska law. To protect the parties from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forbear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

GOVERNING LAW. This Note is governed by the laws of the state of Nebraska except to the extent that federal law controls.

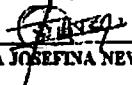
HEADING AND GENDER. The headings preceding text in this Note are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Note shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Note, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Note hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Note or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.

By signing this Note, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.


NEWTON COMPANY, LLC


By: CLAUDIA JOSEFINA NEWTON
FRAUSTO
Its: Manager

Date

10/08/07

NEWTON COMPANY, LLC


By: EDUARDO T. TORRES, attorney in fact
CLAUDIA JOSEFINA NEWTON FRAUSTO, Manager



MTG 2007115402



OCT 11 2007 08:29 P 5

Filed: AS RECEIVED

Handwritten notes and stamps including "11/11/07", "15.36.18.35.21379", and "SCAN" with a checkmark.

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/11/2007 08:29:18.40
2007115402

LOAN NUMBER **REDACTED** (Space Above This Line For Recording Data)

No P.O.A. Attached

COMMERCIAL REAL ESTATE DEED OF TRUST

This **COMMERCIAL REAL ESTATE DEED OF TRUST** ("Security Instrument") is made on October 8, 2007 by **LA CUADRA L.L.C.**, a Nebraska Limited Liability Company, whose address is 5802 S 159TH ST, Omaha, Nebraska 68135 the grantor(s) ("Grantor"). The trustee is TierOne Bank whose address is 1235 'N' St / P.O. Box 83009, Lincoln, Nebraska 68501, ("Trustee"). The beneficiary is TierOne Bank whose address is 1235 'N' St / PO Box 83009, Lincoln, Nebraska 68501 ("Lender"), which is organized and existing under the laws of United States of America. Grantor in consideration of loans extended by Lender up to a maximum principal amount of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the following described property located in the COUNTY of DOUGLAS, State of Nebraska:

Address: 3302 Q ST, Omaha, Nebraska 68107
Legal Description: LOT ONE (1), LA CUADRA REFLAT 1, ADMINISTRATIVE SUBDIVISION, AS SURVEYED, FLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA

Together with all easements, appurtenances abutting streets and alleys, improvements, buildings, fixtures, tenements, hereditaments, equipment, rents, income, profits and royalties, personal goods of whatever description and all other rights and privileges including all minerals, oil, gas, water (whether groundwater, subterranean or otherwise), water rights (whether riparian, appropriate or otherwise, and whether or not appurtenant to the above-described real property), wells, well permits, ditches, ditch rights, reservoirs, reservoir rights, reservoir sites, storage rights, dams and water stock that may now, or at any time in the future, be located on and/or used in connection with the above-described real property, payment awards, amounts received from eminent domain, amounts received from any and all insurance payments, and timber which may now or later be located, situated, or affixed on and used in connection therewith (hereinafter called the "Property").

RELATED DOCUMENTS. The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, prior deeds of trust, business loan agreements, construction loan agreements, resolutions, guaranties, environmental agreements, subordination agreements, assignments of leases and rents and any other documents or agreements executed in connection with this Security Instrument whether now or hereafter existing. The Related Documents are hereby made a part of this Security Instrument by reference thereto, with the same force and effect as if fully set forth herein.

INDEBTEDNESS. This Security Instrument secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto, including future advances and every other indebtedness of any and every kind now or hereafter owing from Grantor and **NEWTON COMPANY, LLC** to Lender, howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out of such indebtedness, as well as the agreements and covenants of this Security Instrument and all Related Documents (hereinafter all referred to as the "Indebtedness").

FUTURE ADVANCES. To the extent permitted by law, this Security Instrument will secure future advances as if such advances were made on the date of this Security Instrument regardless of the fact that from time to time there may be no balance due under the note and regardless of whether the Lender is obligated to make such future advances.

CROSS COLLATERALIZATION. It is the expressed intent of Grantor to cross collateralize all of its indebtedness and obligations to the Lender, howsoever arising and whensoever incurred.

WARRANTIES. Grantor, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

Performance of Obligations. Grantor promises to perform all terms, conditions, and covenants of this Security Instrument and Related Documents in accordance with the terms contained therein.

Defense and Title to Property. At the time of execution and delivery of this instrument, Grantor is lawfully seized of the estate hereby conveyed and has the exclusive right to mortgage, grant, convey and assign the Property. Grantor covenants that the Property is unencumbered and free of all liens, except for encumbrances of record acceptable to Lender. Further, Grantor covenants that Grantor will warrant and defend generally

REDACTED

EXHIBIT
2

the title to the Property against any and all claims and demands whatsoever, subject to the easements, restrictions, or other encumbrances of record acceptable to Lender, as may be listed in the schedule of exceptions to coverage in any abstract of title or title insurance policy insuring Lender's interest in the Property.

Condition of Property. The Grantor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition and will from time to time, make all needful and proper repairs so that the value of the Property shall not in any way be impaired.

Removal of any Part of the Property. Grantor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

Alterations to the Property. Grantor promises to abstain from the commission of any waste on the Property. Further, Grantor shall make no material alterations, additions or improvements of any type whatever to the Property, regardless of whether such alterations, additions or improvements would increase the value of the Property, nor permit anyone to do so except for tenant improvements and completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Grantor will comply with all laws and regulations of all public authorities having jurisdiction over the premises relating to the use, occupancy and maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

Due on Sale - Lender's Consent. Grantor shall not sell, further encumber or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of Lender. If any encumbrance, lien, transfer or sale or agreement for these is created, Lender may declare immediately due and payable, the entire balance of the Indebtedness.

Insurance. Grantor promises to keep the Property insured against such risks and in such form as may within the sole discretion of Lender be acceptable, causing Lender to be named as loss payee or if requested by Lender, as mortgagee. The insurance company shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Grantor may be required to produce receipts of paid premiums and renewal policies. If Grantor fails to obtain the required coverage, Lender may do so at Grantor's expense. Grantor hereby directs each and every insurer of the Property to make payment of loss to Lender with the proceeds to be applied, only at Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by Lender to Grantor.

Payment of Taxes and Other Applicable Charges. Grantor promises to pay and to discharge liens, encumbrances, taxes, assessments, lease payments and any other charges relating to the Property when levied or assessed against Grantor or the Property.

Environmental Laws and Hazardous or Toxic Materials. Grantor and every tenant have been, are presently and shall continue to be in strict compliance with any applicable local, state and federal environmental laws and regulations. Further, neither Grantor nor any tenant shall manufacture, store, handle, discharge or dispose of hazardous or toxic materials as may be defined by any state or federal law on the Property, except to the extent the existence of such materials has been presently disclosed in writing to Lender. Grantor will immediately notify Lender in writing of any assertion or claim made by any party as to the possible violation of applicable state and federal environmental laws including the location of any hazardous or toxic materials on or about the Property. Grantor indemnifies and holds Lender harmless from any liability or expense of whatsoever nature incurred directly or indirectly as a result of Grantor's violation of applicable local, state and federal environmental laws and regulations or Grantor's involvement with hazardous or toxic materials.

Financial Information. Grantor agrees to supply Lender such financial and other information concerning its affairs and the status of any of its assets as Lender, from time to time, may reasonably request. Grantor further agrees to permit Lender to verify accounts as well as to inspect, copy and to examine the books, records and files of Grantor.

Lender's Right to Enter. The Lender or Lender's agents shall have the right and access to inspect the Property at all reasonable times in order to attend to Lender's interests and ensure compliance with the terms of this Security Instrument. If the Property, or any part thereof, shall require inspection, repair or maintenance which the Grantor has failed to provide, the Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on the Lender's demand by the Grantor.

ASSIGNMENT OF LEASES AND RENTS. As additional security for the payment of the Indebtedness and the performance of the covenants contained herein, Grantor hereby assigns and transfers over to Lender all rents, income and profits ("Rents") under any present or future leases, subleases or licenses of the Property, including any guarantees, extensions, amendments or renewals thereof, from the use of the Property. So long as Grantor is not in default, Grantor may receive, collect and enjoy all Rents accruing from the Property, but not more than one month in advance of the due date. Lender may also require Grantor, tenant and any other user of the Property to make payments of Rents directly to Lender. However, by receiving any such payments, Lender is not, and shall not be considered, an agent for any party or entity. Any amounts collected may, at the Lender's sole discretion, be applied to protect the Lender's interest in the Property, including but not limited to the payment of taxes and insurance premiums and to the Indebtedness. At Lender's sole discretion, all leases, subleases and licenses must first be approved by Lender.

CONDEMNATION. Grantor shall give Lender notice of any action taken or threatened to be taken by private or public entities to appropriate the Property or any part thereof, through condemnation, eminent domain or any other action. Further, Lender shall be permitted to participate or intervene in any of the above described proceedings in any manner it shall at its sole discretion determine. Lender is hereby given full power, right and authority to receive and receipt for any and all damages awarded as a result of the full or partial taking or appropriation and in its sole discretion, to apply said awards to the Indebtedness, whether or not then due or otherwise in accordance with applicable law. Unless Lender otherwise agrees in writing, any application of proceeds to the Indebtedness shall not extend or postpone the due date of the payments due under the Indebtedness or change the amount of such payments.

GRANTOR'S ASSURANCES. At any time, upon a request of Lender, Grantor will execute and deliver to the Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as Lender may require, in Lender's sole discretion, to effectuate, complete and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Security Instrument.

ATTORNEY-IN-FACT. Grantor appoints Lender as attorney-in-fact on behalf of Grantor. If Grantor fails to fulfill any of Grantor's obligations under this Security Instrument or any Related Documents, including those obligations mentioned in the preceding paragraph, Lender as attorney-in-fact may fulfill the obligations without notice to Grantor. This power of attorney shall not be affected by the disability of the Grantor.

EVENTS OF DEFAULT. The following events shall constitute default under this Security Instrument (each an "Event of Default"):

- (a) Failure to make required payments when due under Indebtedness;
- (b) Failure to perform or keep any of the covenants of this Security Instrument or a default under any of the Related Documents;
- (c) The making of any oral or written statement or assertion to the Lender that is false or misleading in any material respect by Grantor or any person obligated on the Indebtedness;
- (d) The death, dissolution, insolvency, bankruptcy or receivership proceeding of Grantor or of any person or entity obligated on the Indebtedness;
- (e) Any assignment by the Grantor for the benefit of the Grantor's creditors;
- (f) A material adverse change occurs in the financial condition, ownership or management of Grantor or any person obligated on the Indebtedness; or
- (g) The Lender deems itself insecure for any reason whatsoever.

REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by Grantor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of the Property to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A SECURITY INSTRUMENT BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT THE LENDER EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT OF LEASES AND RENTS, THE GRANTOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

Upon the occurrence of an Event of Default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and sufficient at law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. The recitals in the trustee's deed shall be prima facie evidence of the truth of the statements made in it. If Lender chooses to invoke the power of sale, Lender or Trustee will provide notice of sale pursuant to applicable law. Any such sale or a sale made pursuant to a judgment or a decree for the foreclosure hereof may, at the option of Lender, be made en masse. The commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed as exercise of the above option.

Upon the occurrence of an Event of Default, Lender shall immediately be entitled to make application for and obtain the appointment of a receiver for the Property and of the earnings, income, issue and profits of it, with the powers as the court making the appointments confers. Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor.

NO WAIVER. No delay or failure of Lender to exercise any right, remedy, power or privilege hereunder shall affect that right, remedy, power or privilege nor shall any single or partial exercise thereof preclude the exercise of any right, remedy, power or privilege. No Lender delay or failure to demand strict adherence to the terms of this Security Instrument shall be deemed to constitute a course of conduct inconsistent with Lender's right at any time,

before or after an event of default, to demand strict adherence to the terms of this Security Instrument and the Related Documents.

SUBSTITUTE TRUSTEE. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

JOINT AND SEVERAL LIABILITY. If this Security Instrument should be signed by more than one person, all persons executing this Security Instrument agree that they shall be jointly and severally bound, where permitted by law.

SURVIVAL. The Lender's rights in this Security Instrument will continue in its successors and assigns. This Security Instrument is binding on all heirs, executors, administrators, assigns and successors of the Grantor.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Security Instrument unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Grantor waives notice of Lender's acceptance of this Security Instrument, defenses based on suretyship, any defense arising from any election by Lender under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where the Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other notice.

TO THE EXTENT PERMITTED BY LAW, GRANTOR WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS SECURITY INSTRUMENT.

WAIVER OF APPRAISEMENT RIGHTS. Grantor waives all appraisement rights relating to the Property to the extent permitted by law.

LENDER'S EXPENSES. Grantor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the indebtedness, this Security Instrument or in the event Lender is made party to any litigation because of the existence of the indebtedness or this Security Instrument, as well as court costs, collection charges and reasonable attorneys' fees and disbursements.

ASSIGNABILITY. Lender may assign or otherwise transfer this Security Instrument or any of Lender's rights under this Security Instrument without notice to Grantor. Grantor may not assign this Security Instrument or any part of the Security Instrument without the express written consent of Lender.

GOVERNING LAW AND JURISDICTION. This Security Instrument will be governed by the laws of the State of Nebraska.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Security Instrument is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of the Security Instrument without invalidating the remainder of either the affected provision or this Security Instrument.

WAIVER OF JURY TRIAL. All parties to this Deed of Trust waive any right to trial by jury to the extent allowed by law. This jury trial waiver applies to any claims or disputes related or incidental to the relationship established between the parties to this Deed of Trust.

UNIFORM COMMERCIAL CODE (U.C.C.) Grantor grants to Lender a security interest in all goods that Grantor owns now or in the future and that are or will become fixtures related to the Property. Grantor agrees that this Security Instrument shall suffice as a financing statement and may therefore be filed of record as a financing statement for the purposes of Article 9 of the Uniform Commercial Code. Grantor authorizes Lender to file any financing statements required under the Uniform Commercial Code.

ENTIRE AGREEMENT OF THE PARTIES. This agreement, including all agreements referred to or incorporated into this agreement, constitutes the entire agreement between the parties relating to the subject matter of this agreement. This agreement supersedes all prior oral or written agreements, commitments and understandings between the parties relating to the subject matter of this agreement and cannot be changed or terminated orally, and shall be deemed effective as of the date noted above.

ADDITIONAL PROVISIONS. REQUEST FOR NOTICE. Grantor and Lender hereby request that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Grantor and Lender at their respective mailing addresses set forth above.

By signing this Security Instrument, each Grantor acknowledges that all provisions have been read and understood. Signed and sealed by Grantor (s):

LA CUADRA L.L.C. EDUARDO T. TORRES FOR ATTORNEY IN FACT FOR;
 By: CLAUDIA JOSEFINA NEWTON FRAUSTO Date: 10/08/07
 Its: Member By: EDUARDO T TORRES Date: 10/08/07
 Its: Member

By: NEWTON COMPANY, LLC, Member
 By: CLAUDIA JOSEFINA NEWTON FRAUSTO Date: 10/18/07
 Its: Manager EDUARDO T. TORRES FOR ATTORNEY IN FACT FOR;

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
 COUNTY OF DOUGLAS)

This instrument was acknowledged on the 8th day of October, 2007, by: EDUARDO T. TORRES FOR ATTORNEY IN FACT FOR; CLAUDIA JOSEFINA NEWTON FRAUSTO, Member on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: _____



(Official Seal)

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
 COUNTY OF DOUGLAS)

This instrument was acknowledged on the 8th day of October, 2007, by: EDUARDO T TORRES, Member on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: _____



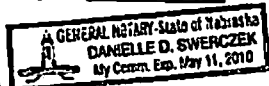
(Official Seal)

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
 COUNTY OF DOUGLAS)

This instrument was acknowledged on the 8th day of October, 2007, by: EDUARDO T. TORRES FOR ATTORNEY IN FACT FOR; CLAUDIA JOSEFINA NEWTON FRAUSTO, Manager of NEWTON COMPANY, LLC, on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: _____

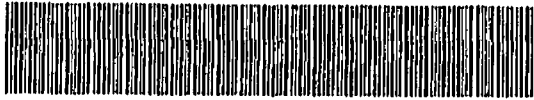


(Official Seal)

**** FILED: AS IS**

THIS INSTRUMENT PREPARED BY:
 TierOne Bank / Andrea Parson
 1235 N Street
 Lincoln, NE 68508

AFTER RECORDING RETURN TO:
 TierOne Bank / Credit Admin. Dept.
 1235 N Street
 Lincoln, NE 68508



MISC 2011103864



DEC 02 2011 13:54 P 13

MISC
FEE 6800 FB see attached
13 BHP C/O COMP BW
6 DEL SCAN PV
A

James J. Bemis, Jr.
Walentine, O'Toole, McQuillan & Gordon
11240 Davenport Street
Omaha, NE 68154

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
12/2/2011 13:54:18.53
 2011103864

**FORBEARANCE AND
LOAN MODIFICATION/CROSS-COLLATERALIZATION AGREEMENT**

This Forbearance and Loan Modification/Cross-Collateralization Agreement ("Agreement") is entered into this 17 day of November, 2011, by and between (i) Newton Company, LLC, a Nebraska limited liability company, La Cuadra, L.L.C., a Nebraska limited liability company (collectively "Borrowers"); (ii) Claudia Josefina Newton Frausto and Eduardo T. Torres, and Newton Company, LLC, a Nebraska limited liability company (collectively "Guarantors"); and (iii) Great Western Bank, a bank chartered under the laws of the State of South Dakota, successor in interest to the loans of TierOne Bank, a federally chartered savings bank, by acquisition of assets from the FDIC as Receiver of TierOne Bank, which was closed by the Office of Thrift Supervision on June 4, 2010 ("Lender").

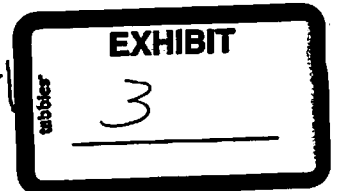
RECITALS

1. Newton Company, LLC, as borrower, obtained from TierOne Bank, a federally chartered savings bank ("TierOne Bank") a loan (Loan No. redacted 719) in the original principal amount of \$300,000.00 as evidenced by that certain Universal Note dated August 18, 2006 as modified by that Change in Terms Agreement dated September 10, 2007 and that Change in Terms Agreement dated October 10, 2008 and secured, among other things, by that certain Real Estate Deed of Trust dated August 18, 2006, and recorded on August 25, 2006, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2006097612, covering the real estate more specifically identified on Exhibit "A" attached hereto and by this reference incorporated herein. This Note matured on August 18, 2009 and the principal loan balance and accrued interest remains due and outstanding. In addition, Claudia Josefina Newton Frausto and Eduardo T. Torres executed and delivered to TierOne Bank their respective Guaranties dated August 18, 2006, thereby guaranteeing the payment and performance of this Loan No. redacted 719.

2. La Cuadra, L.L.C., as borrower, obtained from TierOne Bank, a federally chartered savings bank ("TierOne Bank") a loan (Loan No. redacted 597) in the original principal amount of \$1,300,000.00 as evidenced by that certain Commercial Promissory Note dated October 8, 2007 which Commercial Promissory Note was modified by that Assumption Agreement dated January 9, 2008 and secured, among other things, by that certain Commercial Real Estate Deed of Trust dated October 8, 2007, and recorded on October 11, 2007, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2007115402, covering the real estate more specifically identified on Exhibit

REDACTED,

WALE



"A" attached hereto and by this reference incorporated herein. In addition, Claudia Josefina Newton Frausto and Eduardo T. Torres executed and delivered to TierOne Bank their respective Commercial Loan Guaranties dated October 8, 2007 and Newton Company, LLC executed and delivered to TierOne Bank its respective Commercial Loan Guaranty dated January 9, 2008, thereby guaranteeing the payment and performance of this Loan No. ~~redacted~~ 597.

3. La Cuadra, L.L.C., as borrower, obtained from TierOne Bank, a federally chartered savings bank ("TierOne Bank") a loan (Loan No. ~~redacted~~ 678) in the original principal amount of \$239,817.00 as evidenced by that certain Commercial Promissory Note dated January 9, 2008 and secured, among other things, by that certain Commercial Real Estate Deed of Trust dated January 9, 2008, and recorded on January 28, 2008, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2008007967, covering the real estate more specifically identified on Exhibit "A" attached hereto and by this reference incorporated herein. In addition, Claudia Josefina Newton Frausto, Eduardo T. Torres, and Newton Company, LLC, executed and delivered to TierOne Bank its respective Commercial Loan Guaranties dated January 9, 2008, thereby guaranteeing the payment and performance of this Loan No. ~~redacted~~ 8.

4. The Loans identified in Paragraphs 1 through 3 above shall be herein collectively referred to as the "Loans". The Notes referred to in Paragraphs 1 through 3 shall be herein collectively referred to as the "Notes" and the foregoing deeds of trust, and all other instruments, documents or agreements securing the Notes shall be herein referred to collectively as the "Collateral Documents" and the guaranties referred to in Paragraphs 1 through 3 together with all other guaranties now or hereafter guaranteeing any of the Loans shall be herein collectively referred to as the "Guaranties". The real estate identified on Exhibit "A" shall be collectively referred to as the "Real Property" and the Real Property along with all personal property covered by the Collateral Documents, whether now existing or hereafter arising, shall be collectively referred to as the "Property".

5. TierOne Bank was closed by the Office of Thrift Supervision on June 4, 2010 and the Federal Deposit Insurance Corporation was appointed Receiver of TierOne Bank. Great Western Bank acquired the Loans, and the Notes, Collateral Documents, and Guaranties from the Federal Deposit Insurance Corporation, as Receiver of TierOne Bank, pursuant to that certain Purchase and Assumption Agreement dated June 4, 2010. Great Western Bank is the current owner, holder and beneficiary of such Loans, Notes, Collateral Documents and Guaranties.

6. As a result of the default in payments by Borrower, Newton Company, LLC of the Loan identified in Paragraph 1 above, Lender has commenced non-judicial foreclosure proceedings against Newton Company, LLC under the Newton Company Real Estate Deed of Trust and the real estate set forth therein.

7. Borrowers and Guarantors have requested that Lender forbear from exercising its rights under the Newton Company, LLC Note, Real Estate Deed of Trust and Guaranties. Lender, acting in good faith, has agreed to forbear from exercising its rights under the Newton Company, LLC Note, Real Estate Deed of Trust and Guaranties for a limited period of time, in consideration of the terms and provisions of this Agreement, including the loan modification and cross-collateralization provisions set forth herein, and subject to Borrowers' and Guarantors' continued compliance with the terms and conditions of this Agreement. Lender has no obligation to and makes no assurances that it will continue to forbear from exercising its rights under the Notes, Collateral Documents and Guaranties after the expiration of the time provided for in this Agreement or in the event Borrowers or Guarantors fail to comply with any terms or conditions of this Agreement.

AGREEMENT

8. **Recitals:** Borrowers and Guarantors hereby reaffirm and admit the recitals set out above, which recitals are hereby incorporated into this Agreement.

9. **Conditions Precedent:** This Agreement and Lender's obligations hereunder are subject to Borrowers and Guarantors satisfaction of the following:

- (a) Payment to Lender on December 7, 2011 and thereafter on or before the 7th day of each month thereafter through May 7, 2012 in the amount of \$1,280.00 representing all accrued and outstanding interest currently due and owing to Lender pursuant to Loan No. 01-44007719;
- (b) Payment to Lender on December 7, 2011 and thereafter on or before the 7th day of each month thereafter through May 7, 2012 in the amount of \$6,014.13 representing all accrued and outstanding interest and principal currently due and owing to Lender pursuant to Loan No. 01-09251678;
- (c) Newton Company, LLC shall execute and deliver to Lender, as security for Notes Deeds of Trust, which cover the following described real estate:

"Lot 77, Brookhaven West, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and
Lot 468, Meadow Ridge, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska."

and which Deeds of Trust shall be subject to the terms of this Agreement;

- (d) Payment of all real estate taxes as they become due and outstanding will be paid to the Douglas County Treasurer with proof of payment delivered to Great Western Bank; and
- (e) Co-Prepared Financial Statements of Borrowers and Guarantors within 30-days of the calendar year end.

10. **Forbearance:** Subject to the Borrowers' and Guarantors' compliance with the conditions and agreements as hereinafter set forth and except as provided in Paragraphs 9 and 14 of this Agreement, Lender agrees that it will forbear from exercising its rights to collect the indebtedness evidenced by the Notes or arising under the Collateral Documents until May 7, 2012. In the event the Borrowers or Guarantors fail to comply with the terms and conditions of this Agreement, Lender shall be entitled to immediately declare an event of default pursuant to Paragraph 14 of this Agreement and proceed immediately with exercise of all of its rights and remedies under the Notes, Collateral Documents and Guaranties. Except as modified in this Agreement, all terms and provisions of the Notes and Collateral Documents and any prior amendments, modifications or change in terms thereof, and the Guaranties shall remain in full force and effect and are ratified hereby.

11. **Cross-Collateralization:** Borrowers acknowledge that a condition of Lender agreeing to forbear from exercising its rights and remedies under the Newton Company Note, Real Estate Deed of Trust and Guaranties until May 7, 2012 is that the Property shall serve as collateral for each of the Loans and Borrowers are executing this Agreement to satisfy such condition. Borrowers further acknowledge that the benefits derived by Borrowers from this Agreement are equivalent to the burdens imposed upon Borrowers and the Property by this Agreement, notwithstanding that the Loans may be of differing

amounts. Each Collateral Document is hereby amended to provide that each Collateral Document secures each and every Loan identified in this Agreement. Proceeds of the enforcement or foreclosure of any Collateral Document shall be applied to the payment of the Loans in such order as Lender may determine in Lender's sole discretion. No judgment obtained by Lender in any proceeding enforcing any Note or Collateral Document shall merge any of the other Loans into that judgment, and all Loans that remain unpaid shall remain a continuing obligation of Borrowers. Notwithstanding any judicial or non-judicial foreclosure of any Collateral Document, Borrowers shall remain bound under this Agreement. The enforcement of any Note or Collateral Document shall not constitute an election of remedies and shall not limit or preclude the enforcement of any other Note or Collateral Document, through one or more additional proceedings. Lender may bring an action or proceeding, including, but not limited to non-judicial or judicial foreclosure proceedings, without regard to the fact that one or more other proceedings may have been commenced elsewhere with respect to Property or any portion thereof. Borrowers, for themselves and for any and all persons or entities now or in the future holding or claiming any lien upon, security interest in, or other interest or right of any nature in or to any of the Property, hereby unconditionally and irrevocably waive any right Borrowers may have, now or in the future, whether at law or in equity, to require Lender to enforce or exercise any of Lender's rights or remedies under this Agreement or under the Notes or Collateral Documents, in any particular manner or order or in any particular state or county, or to apply the proceeds of any non-judicial or judicial foreclosure in any manner or order. Borrowers and any party who now or in the future acquires a lien on, security interest or other interest in any of the Property hereby unconditionally and irrevocably waives any and all right to require the marshalling of assets or to require that any portion of the Property be sold in the inverse order of alienation or in parcels or as an entirety in connection with the exercise of any such remedies.

Each Collateral Document is further modified to provide that it shall secure a maximum principal indebtedness, not including sums advanced to protect the security of each such Collateral Document, in the amount of \$1,616,626.00. Any provision of a Collateral Document which sets forth a secured maximum principal amount or which provides for a total principal amount, including future advances, which is secured by such Collateral Document, is hereby amended to increase such maximum principal amount or total principal amount to \$1,616,626.00.

12. **Cross-Default:** Borrowers and Guarantors agree that in the event of default under the terms of any of the Borrowers' or Guarantors' obligations, including but not limited to the Notes Collateral Documents and Guaranties, such default shall be deemed a default under all of Borrowers and Guarantors obligations, at the option of Lender.

13. **Borrowers' and Guarantors' Rights of Subrogation:** Until all Loans have been paid in full and there has expired the maximum possible period thereafter during which any payment to Lender with respect to the Loans could be deemed a preference under the United States Bankruptcy Code, Borrowers and Guarantors shall have no right of, and hereby waive any claim for, subrogation, contribution, reimbursement or indemnity (whether contractual, statutory, equitable, under common law or otherwise) which Borrowers or Guarantors have now or may have in the future against any of the Borrowers or any of the Property or against any Guarantors.

14. **Events of Default:** The occurrence of any of the following events shall constitute an "event of default" hereunder and entitle Lender to immediately exercise all of its rights and remedies under the Notes, Collateral Documents and Guaranties:

- (a) Commencement of foreclosure or other action to repossess or execute upon any collateral on which Lender holds a lien under the Collateral Documents by any creditor, other than Lender, of Borrowers or Guarantors holding a lien against such collateral;

- (b) Borrowers and/or Guarantors (i) make a general assignment for the benefit of creditors; or (ii) any case, proceeding or other action under the federal bankruptcy laws or under similar laws now or hereafter in effect is instituted by any of them or against any of them seeking liquidation, winding up, reorganization, adjustment, protection or relief or seeking the entry of an order for relief or for the appointment of a receiver, trustee or other similar official for Borrowers and Guarantors or any of them or for any substantial part of their property;
- (c) Borrowers' or Guarantors' default in the observance or performance of any covenant or any other agreement of Borrowers or Guarantors herein set forth or any subsequent default under the Notes, Collateral Documents or Guaranties;
- (d) Borrowers, without notice to Lender and without first obtaining Lender's written approval, grants a mortgage, deed of trust or security interest to, or allow the affixing of a lien or other encumbrance, on any property constituting Lender's collateral under this Agreement to any other entity or person;
- (e) If any representation, warranty, certificate, schedule or other information made or furnished by Borrowers or Guarantors herein or pursuant to this Agreement is or shall be untrue or misleading in any material respect; and
- (f) The sale of any of Borrowers' or Guarantors' assets outside the ordinary course of business without Lender's written permission.

15. **Reaffirmation; No Defenses:** Borrowers and Guarantors hereby:

- (a) Agree that this Agreement has been made at Borrowers' and Guarantors' request and shall not be construed as a waiver by Lender of any defaults as they may exist or continue to exist under the terms of any Notes, Collateral Documents or Guaranties currently existing or hereafter executed by and between the parties to this Agreement. This Agreement shall not constitute a course of dealing with respect to any defaults or any right, power or privilege under the Notes, Collateral Documents or Guaranties. Finally, this Agreement shall not preclude any other or further exercise of any right, power or privilege under the Notes, Collateral Documents or Guaranties, except as expressly provided herein;
- (b) Reaffirm, acknowledge and admit their respective indebtedness to Lender under the Notes, Collateral Documents and Guaranties, as the case may be, as the same are amended hereby and as the same may from time to time hereafter be supplemented, amended, modified, restated or extended;
- (c) Acknowledge and admit that Borrowers and Guarantors have no defenses, offsets or claims whatsoever in respect to the Notes, Collateral Documents and Guaranties.
- (d) Acknowledge that Lender has acted in good faith in the administration of the Notes, Collateral Documents and Guaranties and the negotiations and execution of this Agreement and has not made any representations or promises of any further or additional concessions, including, but not limited to, extensions, reductions in principal, substitutions or release of collateral and that Borrowers and Guarantors have no expectations of any such concessions from Lender.

- (e) Acknowledge and agree that the Notices of Default filed by Lender with the Office of the Register of Deeds of Douglas County, Nebraska against the Real Estate identified are true and accurate, and are in compliance with the Nebraska Trust Deeds Act, and Borrowers and Guarantors received proper notification thereof in accordance with the Nebraska Trust Deeds Act.

16. **Affirmative Covenants:** So long as any obligations under the Notes remain outstanding Lender shall have the right to schedule a trustee's sale for any of the Real Property secured by the Collateral Documents so long as such trustee's sale is scheduled for a date after May 7, 2012.

17. **General Release:** Borrowers and Guarantors, for themselves and their respective predecessors, heirs, successors, assigns, beneficiaries, legatees, legal representatives and for all those who now claim or could claim by, through or under or by virtue of any one of them or any interest in any one of them, do hereby RELEASE, RELINQUISH, WAIVE, ACQUIT, REMISE and forever DISCHARGE Lender and the Federal Deposit Insurance Corporation, in its corporate capacity and as Receiver of TierOne Bank, and TierOne Bank, and their respective predecessors, successors, agents, employees, officers, directors, trustees, representatives, beneficiaries, parent company, subsidiaries, affiliates, shareholders, attorneys, entities in privity with them and entities under their control or under the control of any of the foregoing as well as their respective heirs, successors, assigns, beneficiaries, legatees, legal representatives and those acting on their behalf or on behalf of any one of them from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, defenses, offsets, responsibilities, rights, actions, and causes of action, at law or in equity (including, without limitation, fraud, duress, mistake, usury or control) whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud or violation of any statute or law, commission of any tort, or any other matter whatsoever or thing done, omitted or suffered to be done which relates to, in whole or in part, directly or indirectly, to the transactions or events described in or contemplated by this Agreement, the Notes, Collateral Documents, and Guaranties, or any other documents or instruments executed as security for or otherwise in connection with any of the foregoing, which has occurred in whole or in part, or was initiated at any time from the beginning of time up to and immediately preceding the moment of execution of the Agreement. Borrowers and Guarantors agree to waive and do hereby waive their rights to institute any action, claim or suit against Lender or any other person or entity regarding any claim released or any other claim which is based upon the act or omission of Lender occurring prior to the moment of execution hereof. Further, Borrowers and Guarantors agree not to file or aid in the institution or prosecution of any claim regarding any matter released hereunder and to be forever barred from asserting or bringing or aiding in the bringing of any claim released hereunder; all claims, if any, against parties who are not specifically released herein are hereby assigned in full to Lender. Borrowers and Guarantors acknowledge and agree that they understand the effects of the release contained in this paragraph and are doing so of their own free will and accord without coercion, duress or undue influence and have not relied upon any statements or promises, warranties or representations (other than those expressly set forth in this Agreement) made by Lender or its representatives, but is doing so upon such knowledge of the facts as Borrowers and Guarantors deem relevant, following the opportunity to confer with counsel, for the purposes and consideration set forth in this Agreement, realizing that this is the final and complete release of those matters set forth in this paragraph.

18. **Consultation with Advisors:** Borrowers and Guarantors acknowledge that each of them have reviewed this Agreement in its entirety, have consulted such legal, tax or other advisors as they deem appropriate and understand and agree to each of the provisions of this Agreement and further acknowledge that they have entered into this Agreement voluntarily. The Borrowers and Guarantors are legally responsible for any and all tax liabilities, whether federal or state, arising out of this Agreement or

any other transactions with Lender. The Borrowers and Guarantors further acknowledge that the Lender, its officers, directors, employees, agents and attorneys have made no representation to the Borrowers or Guarantors with respect to any tax liability, in connection with or related to this Agreement, to induce the Borrowers or Guarantors to execute this Agreement.

19. **WAIVER OF JURY TRIAL:** LENDER, BORROWERS AND GUARANTORS HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THE NOTES, COLLATERAL DOCUMENTS, GUARANTIES AND THIS AGREEMENT. THE BORROWERS, GUARANTORS, AND LENDER EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

20. **Entire Agreement:** This Agreement reflects the entire understanding of the parties with respect to the subject matter herein contained and supersedes any prior agreements, whether written or oral in regard thereto. This Agreement does not constitute a novation and does not discharge the Borrowers' and Guarantors' indebtedness or obligations under the Notes, Collateral Documents and Guaranties.

21. **No Waiver; Remedies:** No failure on the part of Lender to exercise, and no delay in exercising, any right under the Notes, Collateral Documents, Guaranties or this Agreement will operate as a waiver thereof; nor will any single or partial exercise of any right under the Notes, Collateral Documents, Guaranties or this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Notes, Collateral Documents, Guaranties and this Agreement, are cumulative and not exclusive of any remedies provided by law.

22. **Legal Expenses:** Borrowers agree to reimburse Lender for all fees and out-of-pocket disbursements incurred by Lender in connection with the preparation, execution, delivery, administration and enforcement of this Agreement.

23. **Confidentiality:** The parties agree that the provisions of this Agreement shall be confidential and shall not be disclosed or otherwise divulged by either party hereto except as shall be necessary (a) to enforce or defend any provision of this Agreement or (b) to comply with any regulatory or other governmental authority.

24. **Binding Effect:** This Agreement will be binding upon and inure to the parties hereto and their respective successors, assigns, heirs, representatives and estates.

25. **Counterparts:** This Agreement may be executed in one or more counterparts, all of which shall constitute one agreement.

26. **Receipt of Copies:** Borrowers and Guarantors hereby acknowledge receipt of a copy of this Agreement.

A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN

CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

Dated as of the date first set forth above.

LENDER:

GREAT WESTERN BANK, a bank chartered under the laws of the State of South Dakota, successor in interest to the loans of TierOne Bank, a federally chartered savings bank, by acquisition of assets from the FDIC as Receiver of TierOne Bank, which was closed by the Office of Thrift Supervision on June 4, 2010

By: [Signature]
Its: [Signature]

BORROWERS:

NEWTON COMPANY, LLC,
a Nebraska limited liability company

By: [Signature]
Claudia Josefina Newton Frausto, Manager

LA CUADRA, L.L.C., a Nebraska limited liability company

By: [Signature]
Eduardo T. Torres, Member

By: [Signature]
Claudia Josefina Newton Frausto, Member

GUARANTORS:

NEWTON COMPANY, LLC, a Nebraska limited liability company

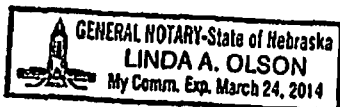
By: [Signature]
Claudia Josefina Newton Frausto, Manager

[Signature]
Claudia Josefina Newton Frausto, an Individual

[Signature]
Eduardo T. Torres, an Individual

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

On this 2nd day of Dec, 2011, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came CLAIR ACUER the LOAN OFFICER of Great Western Bank, a bank chartered under the laws of the State of South Dakota, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the Bank.



Linda A. Olson
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

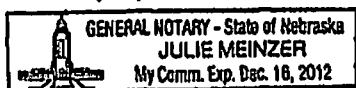
On this 17th day of November, 2011, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Claudia Josefina Newton Frausto the Manager of Newton Company, LLC, to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be her voluntary act and deed on behalf of the Company.



Julie Meinzer
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 17th day of November, 2011, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Claudia Josefina Newton Frausto, Member of La Cuadra, L.L.C., to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be her voluntary act and deed on behalf of the Company.



Julie Meinzer
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 17th day of November, 2011, before me, the undersigned, a Notary Public, duly commissioned and qualified for in said county, personally came Eduardo T. Torres, Member of La Cuadra, L.L.C., to me known to be the identical person whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of the Company.



Julie Meinzer
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 17th day of November, 2011, before me, the undersigned, a notary public in and for the State of Nebraska, personally appeared Claudia Josefina Newton Frausto, to me personally known, who, being by me duly sworn, acknowledged the execution of this instrument to be by her voluntarily act and deed.



Julie Meinzer

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 17th day of November, 2011, before me, the undersigned, a notary public in and for the State of Nebraska, personally appeared Eduardo T. Torres, to me personally known, who, being by me duly sworn, acknowledged the execution of this instrument to be by his voluntarily act and deed.



Julie Meinzer

Notary Public

EXHIBIT "A"
Legal Description of Real Property

Loan No. 01-44007719

Real Estate Deed of Trust dated August 18, 2006, and recorded on August 25, 2006, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2006097612, securing the following described real estate in Douglas County, Nebraska:

"Parcel I M1-04753
Lot 80, Brookhaven West, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and

Parcel II M1-04753
Lot 79, Brookhaven West, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and

Parcel III M1-04753
Lot 117, Brookhaven West, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska."

Real Estate Deed of Trust dated November ^{15 BTA JSB} 17, 2011, and recorded on ^{December BTA JSB} November 2, 2011, in the office of the Registers of Deeds of Douglas County, Nebraska, as Instrument No. 2011¹⁰³⁸⁶² securing the following described real estate in Douglas County, Nebraska: ²⁰¹¹⁰³⁸⁶³

"Lot 77, Brookhaven West, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and Lot 468, Meadow Ridge, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska." ^{M1-04753} ⁰⁵⁻²⁵⁰³⁰

Loan No. 01-09251597

Commercial Real Estate Deed of Trust dated October 8, 2007, and recorded on October 11, 2007, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2007115402, securing the following described real estate in Douglas County, Nebraska:

"Lot One (1), La Cuadra Replat 1, Administrative Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska." ³⁵⁻²¹³⁷⁹

Loan No. 01-40251678

Commercial Real Estate Deed of Trust dated January 9, 2008, and recorded on January 28, 2008, in the office of the Register of Deeds of Douglas County, Nebraska, as Instrument No. 2008007967, securing the following described real estate in Douglas County, Nebraska:

"Lot One (1), La Cuadra Replat 1, Administrative Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska."

With a copy to:

Sheridan Martinez
PO BOX 7537
Omaha NE 68107

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered (a) on the first business day after the business day of scheduled delivery by a recognized overnight courier service in the manner described above, (b) upon delivery if delivered personally to the address as provided above, or (c) on the third business day after the day on which such mail is postmarked if delivery is by certified or registered mail.



-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

CORRECTIVE TRUSTEE'S DEED

(To correct the Deed of Trust Information foreclosed and NOD filed information)
 RETURN TO: Forecl. Dept, Valentine O'Toole, LLP, 11240 Davenport Street, P.O. Box 540125, Omaha, NE 68154

KNOW ALL MEN BY THESE PRESENTS:

That a Deed of Trust was made and entered into on or about October 8, 2007, by and between La Cuadra, L.L.C., a Nebraska Limited Liability Company, as Trustor, and TierOne Bank, Beneficiary, wherein TierOne Bank was named Trustee. This Deed of Trust was recorded October 11, 2007 in the Records of the Register of Deeds of Douglas County, Nebraska as Instrument No. 2007115402.

Effective June 4, 2010, FEDERAL DEPOSIT INSURANCE CORPORATION (the "FDIC"), as Receiver for TierOne Bank, Beneficiary, assigned all of its right, title and beneficial interest in the Deed of Trust to Great Western Bank, a bank chartered under the laws of the State of South Dakota. The Assignment was recorded in the office of the Register of Deeds of Douglas County, Nebraska.

A Forbearance and Loan Modification/Cross-Collateralization Agreement dated November 17, 2011 and recorded December 2, 2011 as Instrument No. 2011103864 in the office of the Register of Deeds of Douglas County, Nebraska was entered into by and between Newton Company, LLC and La Cuadra, L.L.C., Borrowers, Claudia Josefina Newton Frausto and Eduardo T. Torres and Newton Company LLC, Guarantors and Great Western Bank, successor in interest to the loans of TierOne Bank, Lender.

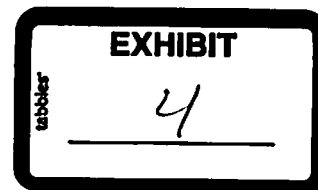
Great Western Bank has been appointed Successor Trustee, pursuant to a Substitution of Trustee filed for record with the Register of Deeds of Douglas County, Nebraska. Hereinafter the Successor Trustee, Great Western Bank will be referred to as GRANTOR.

The GRANTOR in consideration of Five Hundred Eighty Thousand Dollars and No Cents (\$580,000.00) and other valuable consideration received from Great Western Bank, a bank chartered under the laws of the State of South Dakota, hereinafter GRANTEE, does hereby grant, bargain, sell, convey and confirm unto GRANTEE the following described real property in Douglas County, Nebraska:

Lot 1, La Cuadra Replat 1, an administrative subdivision, surveyed, platted and recorded in Douglas County, Nebraska n/k/a Lot 1, La Cuadra Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska

To have and to hold the above-described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the GRANTEE, and to the GRANTEE'S successors and assigns forever.

GRANTOR does hereby covenant with the GRANTEE and with the GRANTEE'S successors and assigns:



(1) That La Cuadra, L.L.C., a Nebraska Limited Liability Company, as Trustor, failed to pay the Beneficiary payments which were contractually due, and the GRANTOR, at the request of the Beneficiary, elected to declare the entire unpaid principal balance, together with interest thereon, at once immediately due and payable.

(2) That a Notice of Default was recorded by GRANTOR on March 3, 2016, as Instrument No. 2016015570, in the records of the Register of Deeds, Douglas County, Nebraska. Within ten (10) days thereafter, a copy of the recorded Notice of Default was mailed by certified mail, postage prepaid, to all parties entitled to notice, pursuant to said Deed of Trust and in compliance with Neb. Rev. Stat. § 76-1008.

(3) That Trustor, La Cuadra, L.L.C., a Nebraska Limited Liability Company, failed to cure the default referenced in the Notice of Default within 30 days after the recording of the Notice of Default.

(4) That a Notice of Trustee's Sale was executed by GRANTOR. At least twenty (20) days prior to the date of sale, a copy of the Notice of time and place of the Trustee's Sale was mailed by certified mail, postage prepaid, to all parties entitled to notice, pursuant to said Deed of Trust and in compliance with Neb. Rev. Stat. § 76-1008.

(5) GRANTOR published the Notice of Trustee's Sale, to be originally held on October 4, 2017 at 10:00 a.m., at the Roskens Room (Room F02) located in the northeast corner of the Farnam level North entrance of the Douglas County Courthouse, Omaha-Douglas Civic Center, 1819 Farnam Street, Omaha, Douglas County, Nebraska, which notice was published in *The Daily Record* of Omaha, Nebraska, once a week for five (5) consecutive weeks, commencing on August 21, 2017, and ending September 18, 2017. The sale was postponed on October 4, 2017 to November 8, 2017. The last publication of Notice was at least ten (10) days prior to the originally scheduled Trustee's Sale, originally scheduled for October 4, 2017, and said original sale was not later than thirty (30) days after the last publication of Notice.

(6) GRANTOR conducted the sale of the real property at public auction on November 8, 2017 at or about 10:00 a.m., at the Roskens Room (Room F02) located in the northeast corner of the Farnam level North entrance of the Douglas County Courthouse, Omaha-Douglas Civic Center, 1819 Farnam Street, Omaha, Douglas County, Nebraska. GRANTOR accepted the bid of Great Western Bank, a bank chartered under the laws of the State of South Dakota, in the sum of Five Hundred Eighty Thousand Dollars and No Cents (\$580,000.00) as the highest bid upon said real property. GRANTOR has complied with the requirements of Neb. Rev. Stat. §§ 76-1001 through 76-1018, in the exercise of the sale of the real property described herein at the Trustee's Sale held on November 8, 2017.

This Deed shall operate to convey to the GRANTEE, the GRANTOR'S title and all right, title, interest and claim of the Trustor, and his or her successors in interest and of all persons claiming by, through or under him or her, in and to the above-described real property, including all such right, title, interest and claim in and to such property acquired by the Trustor or his or her successors in interest subsequent to the execution of the Deed of Trust.

This Deed is subject to all easements, restrictions or covenants of record which GRANTOR is not entitled to convey pursuant to Neb. Rev. Stat. § 76-1010(2).

DATED this 23 day of January, 2018.

Great Western Bank, Successor Trustee

By: Sarah Spiker
Sarah Spiker (Name)
Authorized Officer (Title)

STATE OF NEBRASKA]
] ss.
COUNTY OF Lancaster]

On this 23 day of January, 2018, before me the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Sarah Spiker (Name), Authorized officer (Title) of Great Western Bank, Successor Trustee, and personally known to me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said entity.

WITNESS my hand and notarial seal the date last aforesaid.

Sharon K Nelson
Notary Public





MITCHELL & ASSOCIATES, INC.

ROBERT F. MITCHELL, SR., 1893-1983
ROBERT F. MITCHELL, JR., SRPA
R. GREGG MITCHELL, SRA

D. RICK WHITESIDES, MAI, SRA
W. BRUCE WILKIE
BETH ANDERSEN
RICHARD C WITTMANN

KEVIN P. HERMSEN
DAVID C. WELLSANDT, MAI
JOEL W. PERRY
MELISSA L. RUTHERFORD

October 30, 2017

Mr. Randall B. Wilcox
Great Western Bank
1235 'N' Street
Lincoln, Nebraska 68508

RE: File #00172295 - Appraisal
Strip Center property
3302 'Q' Street
Omaha, Nebraska 68107

Dear Mr. Wilcox:

At your request, and for the purpose of estimating the Market Value of the above referenced property, I made an inspection of the property's exterior only, reviewed the leases and operating statement provided to us for an earlier appraisal, then conducted an analysis of the matters pertinent to the "as is" market value of the property. My findings are submitted in the following report of 75 pages, plus supporting Addenda.

This appraisal report is intended to be in compliance with the 2016-2017 Uniform Standards of Professional Appraisal Practice (USPAP). It is independently prepared so is not based on a requested minimum value, specific valuation or the approval of a loan. It is also in conformity with the laws and Minimum Standards of the State of Nebraska where I am licensed.

Your attention is directed toward the sections titled Limiting Conditions and Assumptions, Definitions, and Appraiser's Certification, which also address contingencies of the appraisal report. Additional contingencies may be interspersed throughout the report where appropriate; therefore, this document should be considered in its entirety.

Conditional upon my standard Certification, Assumptions and Limiting Conditions, the estimated exposure time as stated in this report, an extraordinary assumption that the property is "grandfathered" from the maximum impervious coverage as outlined within the context of its zoning district and that it is actually as described within this report, it is my opinion the "as is" Market Value of the property's Fee Simple Estate, as described herein, as of October 26, 2017 was:

**SEVEN HUNDRED SEVENTY THOUSAND DOLLARS
(\$770,000)**

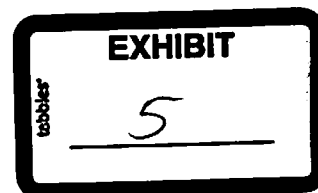
Respectfully submitted,

D. Rick Whitesides, MAI, SRA
Certified General Appraiser - NE CG920142
IA CG01439

S:\Reports\2017\00172295\Report

Real Estate Appraisers & Consultants

14611 West Center Road | Omaha, Nebraska 68144 | PH. 402-330-4500 | FAX 402-330-7207



COMMERCIAL PROMISSORY NOTE

TierOne Bank
 1235 'N' St / PO Box 83009
 Lincoln, Nebraska 68501
 (402)475-0521

LOAN NUMBER	NOTE DATE	PRINCIPAL AMOUNT	LOAN TERM	MATURITY DATE
REDACTED	January 9, 2008	\$239,817.00	168 months	November 1, 2021
LOAN PURPOSE: REFINANCE LOAN				

BORROWER INFORMATION

LA CUADRA L.L.C.
 3302 Q ST.
 Omaha, NE 68107

NOTE. This Commercial Promissory Note will be referred to in this document as the "Note".

LENDER. "Lender" means TierOne Bank whose address is 1235 'N' St / PO Box 83009, Lincoln, Nebraska 68501, its successors and assigns.

BORROWER. "Borrower" means each person or legal entity who signs this Note.

PROMISE TO PAY. For value received, receipt of which is hereby acknowledged, on or before the Maturity Date, the Borrower promises to pay the principal amount of Two Hundred Thirty-nine Thousand Eight Hundred Seventeen and 00/100 Dollars (\$239,817.00) and all interest and any other charges, including service charges, to the order of Lender at its office at the address noted above or at such other place as Lender may designate in writing. The Borrower will make all payments in lawful money of the United States of America.

PAYMENT SCHEDULE. This loan will be paid according to the following schedule: 2 consecutive payments of interest only beginning on May 1, 2008 and continuing on the same day of each semi-annual period thereafter. The initial payment will be in the amount of \$5,011.52. This will be followed by 25 consecutive payments of principal and interest in the amount of \$14,001.39 beginning on May 1, 2009 and continuing on the same day of each semi-annual period thereafter. This will be followed by 1 payment of principal and interest on November 1, 2021. The unpaid principal balance of this Note, together with all accrued interest and charges owing in connection therewith, shall be due and payable on the Maturity Date. All payments received by the Lender from the Borrower for application to the Loan may be applied to the Borrower's obligations under the Loan in such order as determined by the Lender.

INTEREST RATE AND SCHEDULED PAYMENT CHANGES. The initial variable interest rate on this Note will be 6.750% per annum. This interest rate may change on January 1, 2011, and every 36 months thereafter. Each date on which the interest rate may change is called the "Change Date." Beginning with the first Change Date, Lender will calculate the new interest rate based on Treasury Constant Maturity 3 Year in effect on the Change Date (the "Index") plus 3.000 percentage points (the "Margin"). If the Index is not available at that time, Lender will choose a new Index which is based on comparable information. The Index is used solely to establish a base from which the actual rate of interest payable under this Note will be calculated, and is not a reference to any actual rate of interest charged by any lender to any particular borrower.

Nothing contained herein shall be construed as to require the Borrower to pay interest at a greater rate than the maximum allowed by law. If, however, from any circumstances, Borrower pays interest at a greater rate than the maximum allowed by law, the obligation to be fulfilled will be reduced to an amount computed at the highest rate of interest permissible under applicable law and if, for any reason whatsoever, Lender ever receives interest in an amount which would be deemed unlawful under applicable law, such interest shall be automatically applied to amounts owed, in Lender's sole discretion, or as otherwise allowed by applicable law. An increase in the interest rates will result in a higher payment amount. Interest on this Note is calculated on a 365/365 day basis. The unpaid balance of this loan after Maturity, whether by acceleration or otherwise, shall be subject to a Post-Maturity Rate of interest equal to 2% above the existing interest rate at the time of maturity.

LATE PAYMENT CHARGE. If any required payment is more than 15 days late, then at Lender's option, Lender will assess a late payment charge of 3% of the principal and interest portion of the amount past due.

PREPAYMENT PENALTY. This Note may be prepaid, in full or in part, at any time, without penalty.

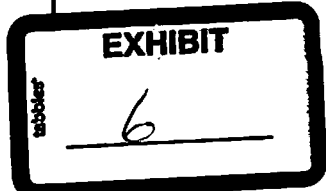
SECURITY TO NOTE. Security (the "Collateral") for this Note is granted pursuant to the following security document(s):

- Security Agreement dated January 9, 2008 evidencing security interest in REDEVELOPMENT PROMISSORY NOTE DATED OCTOBER 30, 2006 IN THE PRINCIPAL AMOUNT OF \$239,817.00 EXECUTED BY THE CITY OF OMAHA AND MADE PAYABLE TO DEBTOR/BORROWER, TOGETHER WITH ALL MODIFICATIONS, EXTENSIONS, RENEWALS OR REFINANCINGS THEREOF OR SUBSTITUTIONS THEREFORE, AND ALL PROCEEDS THEREOF..
- Deed of Trust in the amount of \$239,817.00, dated January 9, 2008 evidencing security interest in the property located at 3302 Q ST Omaha NE 68107.

RIGHT OF SET OFF. To the extent permitted by law, Borrower agrees that Lender has the right to set off any amount due and payable under this Note, whether matured or unmatured, against any amount owing by Lender to Borrower including any or all of Borrower's accounts with Lender. This shall include all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. Such right of setoff may be exercised by Lender against Borrower or against any assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor of Borrower, or against anyone else claiming through or against Borrower of such assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of setoff has not been exercised by Lender prior to the making, filing or issuance or service upon Lender of, or of notice of, assignment for the benefit of creditors, appointment or application for the appointment of a receiver, or issuance of execution, subpoena or order or warrant.

DISHONORED ITEM FEE. If Borrower makes a payment on the loan with a check or preauthorized charge which is later dishonored, a fee in the amount of \$20.00 will be charged.

DEFAULT. Upon the occurrence of any one of the following events (each, an "Event of Default" or "default" or "event of default"), Lender's obligations, if any, to make any advances will, at Lender's option, immediately terminate and Lender, at its option, may declare all indebtedness of Borrower to Lender under this Note to be immediately due and payable without further notice of any kind notwithstanding anything to the contrary in this Note or any other agreement: (a) Borrower's failure to make any payment on time or in the amount due; (b) any default by Borrower under the terms of this Note or any other agreement, security agreement executed in connection with this Note (individually, a "Loan Document" and collectively, the "Loan Documents"); (c) any default by Borrower under the terms of any other loan agreement, security agreement, mortgage or other document in favor of Lender; (d) the death, dissolution, or termination of existence of Borrower or any guarantor; (e) Borrower is generally not paying Borrower's debts as such debts become due; (f) the commencement of any proceeding under bankruptcy or insolvency laws by or against Borrower or any guarantor or the appointment of a receiver; (g) any default under the terms of any other indebtedness of Borrower to any other creditor; (h) any writ of attachment, garnishment, execution, tax lien or similar instrument is issued against any collateral securing the loan, if any, or any of Borrower's property or any judgment is entered against Borrower or any guarantor; (i) any part of Borrower's business is sold to or merged with any other business, individual, or entity; (j) any representation or warranty made by Borrower to Lender in any of the Loan Documents or any financial statement delivered to Lender proves to have been false in any material respect as of the time when made or given; (k) if any guarantor, or any other party to any agreement or instrument with or in favor of Lender



entered into or delivered in connection with the Loan terminates, attempts to terminate or defaults under any such agreement or instrument; (f) Lender has deemed itself insecure or there has been a material adverse change of condition of the financial prospects of Borrower or any collateral securing the obligations owing to Lender by Borrower.

OTHER APPLICABLE AGREEMENTS. If this Note is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, it is subject to all the terms thereof.

GENERAL WAIVERS. To the extent permitted by law, the Borrower severally waives any required notice of presentment, demand, acceleration, intent to accelerate, protest and any other notice and defense due to extension of time or other indulgence by Lender or to any substitution or release of collateral. No failure or delay on the part of Lender, and no course of dealing between Borrower and Lender, shall operate as a waiver of such power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

JOINT AND SEVERAL LIABILITY. If permitted by law, each Borrower executing this Note is jointly and severally bound.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Note is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of this Note without invalidating the remainder of either the affected provision or this Note.

SURVIVAL. The rights and privileges of the Lender hereunder shall inure to the benefits of its successors and assigns, and this Note shall be binding on all heirs, executors, administrators, assigns and successors of Borrower.

ASSIGNABILITY. Lender may assign, pledge or otherwise transfer this Note or any of its rights and powers under this Note without notice, with all or any of the obligations owing to Lender by Borrower, and in such event the assignee shall have the same rights as if originally named herein in place of Lender. Borrower may not assign this Note or any benefit accruing to it hereunder without the express written consent of the Lender.

ORAL AGREEMENTS DISCLAIMER. A credit agreement must be in writing to be enforceable under Nebraska law. To protect the parties from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forbear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

GOVERNING LAW. This Note is governed by the laws of the state of Nebraska except to the extent that federal law controls.

HEADING AND GENDER. The headings preceding text in this Note are for general convenience in identifying subject matter, but have no limiting impact on the text which follows any particular heading. All words used in this Note shall be construed to be of such gender or number as the circumstances require.

ATTORNEYS' FEES AND OTHER COSTS. If legal proceedings are instituted to enforce the terms of this Note, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorneys' fees, to the extent permitted by law.

WAIVER OF JURY TRIAL. All parties to this Note hereby waive, to the fullest extent permitted by law, any right to trial by jury with respect to any dispute, whether in contract, tort, or otherwise, arising out of, in connection with, related to, or incidental to the relationship established between them in this Note or any other instrument, document, or agreement executed or delivered in connection herewith or the transaction related hereto.


By signing this Note, Borrower acknowledges reading, understanding, and agreeing to all its provisions and receipt thereof.

LA CUADRA L.L.C.


By: EDUARDO TORRES 01-09-08 Date
Its: Member


By: CLAUDIA JOSEFINA NEWTON 01-09-08 Date
FRAUSTO
Its: Member

By: NEWTON COMPANY, LLC, Member


By: CLAUDIA JOSEFINA NEWTON 01-09-08 Date
FRAUSTO
Its: Manager



MTG 2008007957



JAN 28 2008 11:07 P 5

FEE 25.50 FB 35-21379
 S BRP _____ CO _____ COM _____
 1 DEL _____ SCAN _____ FY _____

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 1/28/2008 11:07:42.81



2008007957

LOAN NUMBER (Special Above This Line For Recording Data)

REDACTED

COMMERCIAL REAL ESTATE DEED OF TRUST

68107

This COMMERCIAL REAL ESTATE DEED OF TRUST ("Security Instrument") is made on January 9, 2008 by LA CUADRA L.L.C., a Nebraska Limited Liability Company, whose address is 6802 S 159TH ST, Omaha, Nebraska 68135 the grantor(s) ("Grantor"). The trustee is TierOne Bank whose address is 1235 N St / P.O. Box 83009, Lincoln, Nebraska 68501, ("Trustee"). The beneficiary is TierOne Bank whose address is 1235 N St / PO Box 83009, Lincoln, Nebraska 68501 ("Lender"), which is organized and existing under the laws of United States of America. Grantor in consideration of loans extended by Lender up to a maximum principal amount of Two Hundred Thirty-nine Thousand Eight Hundred Seventeen and 00/100 Dollars (\$239,817.00) ("Maximum Principal Indebtedness"), and for other valuable consideration, the receipt of which is acknowledged, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the following described property located in the COUNTY of DOUGLAS, State of Nebraska:

Address: 3302 Q ST, Omaha, Nebraska 68107

Legal Description: LOT ONE (1), LA CUADRA REPLAT 1, ADMINISTRATIVE SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA

Together with all easements, appurtenances abutting streets and alleys, improvements, buildings, fixtures, tenements, hereditaments, equipment, rents, income, profits and royalties, personal goods of whatever description and all other rights and privileges including all minerals, oil, gas, water (whether groundwater, subterranean or otherwise), water rights (whether riparian, appropriate or otherwise, and whether or not appurtenant to the above-described real property), wells, well permits, ditches, ditch rights, reservoirs, reservoir rights, reservoir sites, storage: rights, dams and water stock that may now, or at any time in the future, be located on and/or used in connection with the above-described real property, payment awards, amounts received from eminent domain, amounts received from any and all insurance payments, and timber which may now or later be located, situated, or affixed on and used in connection therewith (hereinafter called the "Property").

RELATED DOCUMENTS. The words "Related Documents" mean all promissory notes, security agreements, prior mortgages, prior deeds of trust, business loan agreements, construction loan agreements, resolutions, guaranties, environmental agreements, subordination agreements, assignments of leases and rents and any other documents or agreements executed in connection with this Security Instrument whether now or hereafter existing. The Related Documents are hereby made a part of this Security Instrument by reference thereto, with the same force and effect as if fully set forth herein.

INDEBTEDNESS. This Security Instrument secures the principal amount shown above as may be evidenced by a promissory note or notes of even, prior or subsequent date hereto, including future advances and every other indebtedness of any and every kind now or hereafter owing from Grantor to Lender, howsoever created or arising, whether primary, secondary or contingent, together with any interest or charges provided in or arising out of such indebtedness, as well as the agreements and covenants of this Security Instrument and all Related Documents (hereinafter all referred to as the "Indebtedness").

FUTURE ADVANCES. To the extent permitted by law, this Security Instrument will secure future advances as if such advances were made on the date of this Security Instrument regardless of the fact that from time to time there may be no balance due under the note and regardless of whether the Lender is obligated to make such future advances.

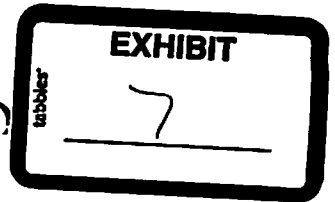
CROSS COLLATERALIZATION. It is the expressed intent of Grantor to cross collateralize all of its Indebtedness and obligations to the Lender, howsoever arising and whensoever incurred.

WARRANTIES. Grantor, for itself, its heirs, personal representatives, successors, and assigns, represents, warrants, covenants and agrees with Lender, its successors and assigns, as follows:

Performance of Obligations. Grantor promises to perform all terms, conditions, and covenants of this Security Instrument and Related Documents in accordance with the terms contained therein.

Defense and Title to Property. At the time of execution and delivery of this instrument, Grantor is lawfully seized of the estate hereby conveyed and has the exclusive right to mortgage, grant, convey and assign the Property. Grantor covenants that the Property is unencumbered and free of all liens, except for encumbrances of record acceptable to Lender. Further, Grantor covenants that Grantor will warrant and defend generally

REDACTED



the title to the Property against any and all claims and demands whatsoever, subject to the easements, restrictions, or other encumbrances of record acceptable to Lender, as may be listed in the schedule of exceptions to coverage in any abstract of title or title insurance policy insuring Lender's interest in the Property.

Condition of Property. The Grantor promises at all times to preserve and to maintain the Property and every part thereof in good repair, working order, and condition and will from time to time, make all needful and proper repairs so that the value of the Property shall not in any way be impaired.

Removal of any Part of the Property. Grantor promises not to remove any part of the Property from its present location, except for replacement, maintenance and relocation in the ordinary course of business.

Alterations to the Property. Grantor promises to abstain from the commission of any waste on the Property. Further, Grantor shall make no material alterations, additions or improvements of any type whatever to the Property, regardless of whether such alterations, additions or improvements would increase the value of the Property, nor permit anyone to do so except for tenant improvements and completion of items pursuant to approved plans and specifications, without Lender's prior written consent, which consent may be withheld by Lender in its sole discretion. Grantor will comply with all laws and regulations of all public authorities having jurisdiction over the premises relating to the use, occupancy and maintenance thereof and shall upon request promptly submit to Lender evidence of such compliance.

Due on Sale - Lender's Consent. Grantor shall not sell, further encumber or otherwise dispose of, except as herein provided, any or all of its interest in any part of or all of the Property without first obtaining the written consent of Lender. If any encumbrance, lien, transfer or sale or agreement for these is created, Lender may declare immediately due and payable, the entire balance of the Indebtedness.

Insurance. Grantor promises to keep the Property insured against such risks and in such form as may within the sole discretion of Lender be acceptable, causing Lender to be named as loss payee or if requested by Lender, as mortgagee. The insurance company shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. All insurance policies must provide that Lender will get a minimum of 10 days notice prior to cancellation. At Lender's discretion, Grantor may be required to produce receipts of paid premiums and renewal policies. If Grantor fails to obtain the required coverage, Lender may do so at Grantor's expense. Grantor hereby directs each and every insurer of the Property to make payment of loss to Lender with the proceeds to be applied, only at Lender's option, to the repair and replacement of the damage or loss or to be applied to the Indebtedness with the surplus, if any, to be paid by Lender to Grantor.

Payment of Taxes and Other Applicable Charges. Grantor promises to pay and to discharge liens, encumbrances, taxes, assessments, lease payments and any other charges relating to the Property when levied or assessed against Grantor or the Property.

Environmental Laws and Hazardous or Toxic Materials. Grantor and every tenant have been, are presently and shall continue to be in strict compliance with any applicable local, state and federal environmental laws and regulations. Further, neither Grantor nor any tenant shall manufacture, store, handle, discharge or dispose of hazardous or toxic materials as may be defined by any state or federal law on the Property, except to the extent the existence of such materials has been presently disclosed in writing to Lender. Grantor will immediately notify Lender in writing of any assertion or claim made by any party as to the possible violation of applicable state and federal environmental laws including the location of any hazardous or toxic materials on or about the Property. Grantor indemnifies and holds Lender harmless from any liability or expense of whatsoever nature incurred directly or indirectly as a result of Grantor's violation of applicable local, state and federal environmental laws and regulations or Grantor's involvement with hazardous or toxic materials.

Financial Information. Grantor agrees to supply Lender such financial and other information concerning its affairs and the status of any of its assets as Lender, from time to time, may reasonably request. Grantor further agrees to permit Lender to verify accounts as well as to inspect, copy and to examine the books, records and files of Grantor.

Lender's Right to Enter. The Lender or Lender's agents shall have the right and access to inspect the Property at all reasonable times in order to attend to Lender's interests and ensure compliance with the terms of this Security Instrument. If the Property, or any part thereof, shall require inspection, repair or maintenance which the Grantor has failed to provide, the Lender, after reasonable notice, may enter upon the Property to effect such obligation; and the cost thereof shall be added to the Indebtedness and paid on the Lender's demand by the Grantor.

ASSIGNMENT OF LEASES AND RENTS. As additional security for the payment of the Indebtedness and the performance of the covenants contained herein, Grantor hereby assigns and transfers over to Lender all rents, income and profits ("Rents") under any present or future leases, subleases or licenses of the Property, including any guaranties, extensions, amendments or renewals thereof, from the use of the Property. So long as Grantor is not in default, Grantor may receive, collect and enjoy all Rents accruing from the Property, but not more than one month in advance of the due date. Lender may also require Grantor, tenant and any other user of the Property to make payments of Rents directly to Lender. However, by receiving any such payments, Lender is not, and shall not be considered, an agent for any party or entity. Any amounts collected may, at the Lender's sole discretion, be applied to protect the Lender's interest in the Property, including but not limited to the payment of taxes and insurance premiums and to the Indebtedness. At Lender's sole discretion, all leases, subleases and licenses must first be approved by Lender.

CONDEMNATION. Grantor shall give Lender notice of any action taken or threatened to be taken by private or public entities to appropriate the Property or any part thereof, through condemnation, eminent domain or any other action. Further, Lender shall be permitted to participate or intervene in any of the above described proceedings in any manner it shall at its sole discretion determine. Lender is hereby given full power, right and authority to receive and receipt for any and all damages awarded as a result of the full or partial taking or appropriation and in its sole discretion, to apply said awards to the Indebtedness, whether or not then due or otherwise in accordance with applicable law. Unless Lender otherwise agrees in writing, any application of proceeds to the Indebtedness shall not extend or postpone the due date of the payments due under the Indebtedness or change the amount of such payments.

GRANTOR'S ASSURANCES. At any time, upon a request of Lender, Grantor will execute and deliver to the Lender, and if appropriate, cause to be recorded, such further mortgages, assignments, assignments of leases and rents, security agreements, pledges, financing statements, or such other document as Lender may require, in Lender's sole discretion, to effectuate, complete and to perfect as well as to continue to preserve the Indebtedness, or the lien or security interest created by this Security Instrument.

ATTORNEY-IN-FACT. Grantor appoints Lender as attorney-in-fact on behalf of Grantor. If Grantor fails to fulfill any of Grantor's obligations under this Security Instrument or any Related Documents, including those obligations mentioned in the preceding paragraph, Lender as attorney-in-fact may fulfill the obligations without notice to Grantor. This power of attorney shall not be affected by the disability of the Grantor.

EVENTS OF DEFAULT. The following events shall constitute default under this Security Instrument (each an "Event of Default"):

- (a) Failure to make required payments when due under Indebtedness;
- (b) Failure to perform or keep any of the covenants of this Security Instrument or a default under any of the Related Documents;
- (c) The making of any oral or written statement or assertion to the Lender that is false or misleading in any material respect by Grantor or any person obligated on the Indebtedness;
- (d) The death, dissolution, insolvency, bankruptcy or receivership proceeding of Grantor or of any person or entity obligated on the Indebtedness;
- (e) Any assignment by the Grantor for the benefit of the Grantor's creditors;
- (f) A material adverse change occurs in the financial condition, ownership or management of Grantor or any person obligated on the Indebtedness; or
- (g) The Lender deems itself insecure for any reason whatsoever.

REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, Lender may, without demand or notice, pay any or all taxes, assessments, premiums, and liens required to be paid by Grantor, effect any insurance provided for herein, make such repairs, cause the abstracts of title or title insurance policy and tax histories of the Property to be certified to date, or procure new abstracts of title or title insurance and tax histories in case none were furnished to it, and procure title reports covering the Property, including surveys. The amounts paid for any such purposes will be added to the Indebtedness and will bear interest at the rate of interest otherwise accruing on the Indebtedness until paid. In the event of foreclosure, the abstracts of title or title insurance shall become the property of the Lender. All abstracts of title, title insurance, tax histories, surveys, and other documents pertaining to the Indebtedness will remain in Lender's possession until the Indebtedness is paid in full.

IN THE EVENT OF THE SALE OF THIS PROPERTY UNDER THE PROCEDURE FOR FORECLOSURE OF A SECURITY INSTRUMENT BY ADVERTISEMENT, AS PROVIDED BY APPLICABLE LAW, OR IN THE EVENT THE LENDER EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT OF LEASES AND RENTS, THE GRANTOR HEREBY WAIVES ANY RIGHT TO ANY NOTICE OTHER THAN THAT PROVIDED FOR SPECIFICALLY BY STATUTE, OR TO ANY JUDICIAL HEARING PRIOR TO SUCH SALE OR OTHER EXERCISE OF RIGHTS.

Upon the occurrence of an Event of Default, Lender may, without notice unless required by law, and at its option, declare the entire Indebtedness due and payable, as it may elect, regardless of the date or dates of maturity thereof and, if permitted by state law, is authorized and empowered to sell or to cause the Property to be sold at public auction, and to execute and deliver to the purchaser or purchasers at such sale any deeds of conveyance good and sufficient at law, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder and all costs and charges of the sale, including attorneys' fees, rendering any surplus to the party or parties entitled to it. The recitals in the trustee's deed shall be prima facie evidence of the truth of the statements made in it. If Lender chooses to invoke the power of sale, Lender or Trustee will provide notice of sale pursuant to applicable law. Any such sale or a sale made pursuant to a judgment or a decree for the foreclosure hereof may, at the option of Lender, be made en masse. The commencement of proceedings to foreclose this Mortgage in any manner authorized by law shall be deemed as exercise of the above option.

Upon the occurrence of an Event of Default, Lender shall immediately be entitled to make application for and obtain the appointment of a receiver for the Property and of the earnings, income, issue and profits of it, with the powers as the court making the appointments confers. Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor.

NO WAIVER. No delay or failure of Lender to exercise any right, remedy, power or privilege hereunder shall affect that right, remedy, power or privilege nor shall any single or partial exercise thereof preclude the exercise of any right, remedy, power or privilege. No Lender delay or failure to demand strict adherence to the terms of this Security Instrument shall be deemed to constitute a course of conduct inconsistent with Lender's right at any time,

before or after an event of default, to demand strict adherence to the terms of this Security Instrument and the Related Documents.

SUBSTITUTE TRUSTEE. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

JOINT AND SEVERAL LIABILITY. If this Security Instrument should be signed by more than one person, all persons executing this Security Instrument agree that they shall be jointly and severally bound, where permitted by law.

SURVIVAL. The Lender's rights in this Security Instrument will continue in its successors and assigns. This Security Instrument is binding on all heirs, executors, administrators, assigns and successors of the Grantor.

NOTICES AND WAIVER OF NOTICE. Unless otherwise required by applicable law, any notice or demand given by Lender to any party is considered effective when it is deposited in the United States Mail with the appropriate postage, mailed to the address of the party given at the beginning of this Security Instrument unless an alternative address has been provided to Lender in writing. To the extent permitted by law, Grantor waives notice of Lender's acceptance of this Security Instrument, defenses based on suretyship, any defense arising from any election by Lender under the United States Bankruptcy Code, Uniform Commercial Code, as enacted in the state where the Lender is located or other applicable law or in equity, demand, notice of acceleration, notice of nonpayment, presentment, protest, notice of dishonor and any other notice.

TO THE EXTENT PERMITTED BY LAW, GRANTOR WAIVES ANY RIGHT TO NOTICE, OTHER THAN THE NOTICE PROVIDED ABOVE, AND WAIVES ANY RIGHT TO ANY HEARING, JUDICIAL OR OTHERWISE, PRIOR TO THE LENDER EXERCISING ITS RIGHTS UNDER THIS SECURITY INSTRUMENT.

WAIVER OF APPRAISEMENT RIGHTS. Grantor waives all appraisement rights relating to the Property to the extent permitted by law.

LENDER'S EXPENSES. Grantor agrees to pay all expenses incurred by Lender in connection with enforcement of its rights under the Indebtedness, this Security Instrument or in the event Lender is made party to any litigation because of the existence of the Indebtedness or this Security Instrument, as well as court costs, collection charges and reasonable attorneys' fees and disbursements.

ASSIGNABILITY. Lender may assign or otherwise transfer this Security Instrument or any of Lender's rights under this Security Instrument without notice to Grantor. Grantor may not assign this Security Instrument or any part of the Security Instrument without the express written consent of Lender.

GOVERNING LAW AND JURISDICTION. This Security Instrument will be governed by the laws of the State of Nebraska.

SEVERABILITY. If a court of competent jurisdiction determines any term or provision of this Security Instrument is invalid or prohibited by applicable law, that term or provision will be ineffective to the extent required. Any term or provision that has been determined to be invalid or prohibited will be severed from the rest of the Security Instrument without invalidating the remainder of either the affected provision or this Security Instrument.

WAIVER OF JURY TRIAL. All parties to this Deed of Trust waive any right to trial by jury to the extent allowed by law. This jury trial waiver applies to any claims or disputes related or incidental to the relationship established between the parties to this Deed of Trust.

UNIFORM COMMERCIAL CODE (U.C.C.) Grantor grants to Lender a security interest in all goods that Grantor owns now or in the future and that are or will become fixtures related to the Property. Grantor agrees that this Security Instrument shall suffice as a financing statement and may therefore be filed of record as a financing statement for the purposes of Article 9 of the Uniform Commercial Code. Grantor authorizes Lender to file any financing statements required under the Uniform Commercial Code.

ENTIRE AGREEMENT OF THE PARTIES. This agreement, including all agreements referred to or incorporated into this agreement, constitutes the entire agreement between the parties relating to the subject matter of this agreement. This agreement supersedes all prior oral or written agreements, commitments and understandings between the parties relating to the subject matter of this agreement and cannot be changed or terminated orally, and shall be deemed effective as of the date noted above.

ADDITIONAL PROVISIONS. REQUEST FOR NOTICE. Grantor and Lender hereby request that a copy of any notice of default and notice of sale made or executed by Trustee pursuant to the provisions hereof be sent to Grantor and Lender at their respective mailing addresses set forth above.

By signing this Security Instrument, each Grantor acknowledges that all provisions have been read and understood. Signed and sealed by Grantor (s):

LA CUADRA L.L.C.

[Signature] 01-09-08
By: EDUARDO T TORRES Date
Its: Member

[Signature] 01-09-08
By: CLAUDIA JOSEFINA Date
NEWTON FRAUSTO
Its: Member

By: NEWTON COMPANY, LLC, Member

[Signature] 01-09-08
By: CLAUDIA JOSEFINA Date
NEWTON FRAUSTO
Its: Manager

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged on the 9th day of January, 2008, by: EDUARDO T TORRES, Member on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: SEPT 15, 2008

[Signature]



(Official

Seal)

BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged on the 9th day of January, 2008, by: CLAUDIA JOSEFINA NEWTON FRAUSTO, Member on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: SEPT 15, 2008

[Signature]



(Official

Seal)

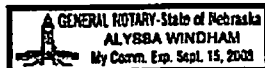
BUSINESS ACKNOWLEDGMENT

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

This instrument was acknowledged on the 9th day of January, 2008, by: CLAUDIA JOSEFINA NEWTON FRAUSTO, Manager of NEWTON COMPANY, LLC, on behalf of LA CUADRA L.L.C., a Nebraska Limited Liability Company, who personally appeared before me. In witness whereof, I hereunto set my hand and, if applicable, official seal.

My commission expires: SEPT 15, 2008

[Signature]



(Official Seal)

THIS INSTRUMENT PREPARED BY:
TierOne Bank / Andrea Parson
1235 N Street
Lincoln, NE 68508

AFTER RECORDING RETURN TO:
TierOne Bank / Credit Admin. Dept.
1235 N Street
Lincoln, NE 68508

COMMERCIAL LOAN GUARANTY

TierOne Bank
1235 'N' St / PO Box 83009
Lincoln, Nebraska 68501
(402)475-0521

LOAN NUMBER	GUARANTY DATE
11621 DREXEL	October 8, 2007

GUARANTOR INFORMATION

CLAUDIA JOSEFINA NEWTON FRAUSTO
11621 DREXEL ST
Omaha, NE 68137

Type of Entity: Individual
State of Residence: Nebraska

BORROWER INFORMATION

NEWTON COMPANY, LLC
11621 DREXEL ST
Omaha, NE 68137

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Nebraska

NOTICE TO GUARANTOR. Each undersigned Guarantor is being asked to guarantee all of Borrower's past, present and future obligations. If Borrower does not pay, any Guarantor may be required to do so. In addition, any Guarantor may be required to pay collection expenses and costs. Lender can require any Guarantor to pay without first attempting to collect from the Borrower or any other Guarantor.

UNLIMITED CONTINUING GUARANTY. The undersigned, jointly and severally hereafter called the "Guarantor" in order to induce Lender to extend or continue to extend financial accommodations to Borrower, hereby guarantees to Lender the full and prompt payment of all loans, drafts, overdrafts, notes, bills, and all other debts, obligations, and liabilities of every kind and description, whether now owing or hereafter arising out of credit previously, contemporaneously, or hereafter granted by Lender to Borrower, whether arising from dealings between Lender and Borrower, or from dealings by which Lender may become, in any manner whatever, a creditor of Borrower. The Guarantor also agrees to pay all interest, fees, charges, attorney fees, and collection costs.

This Guaranty is unconditional and absolute. It is understood that this Guaranty shall cover all obligations of Borrower to Lender. This shall be a continuing guaranty and shall not be affected by any payment made by Borrower to Lender, whether in the form of cash, property, renewal, or other consideration.

This is a guaranty of payment and not of collection.

JOINT AND SEVERAL LIABILITY. If this Guaranty is signed by more than one person, each person having executed the Guaranty acknowledges that his or her obligation hereunder shall be joint and several. Each Guarantor expressly authorizes the Lender to proceed, in its sole and absolute discretion, against each or any Guarantor, and further agrees that if the Lender proceeds against any one of them, the others waive any defense of election of remedies and agree to continue to be liable under the terms of this Guaranty for any amount remaining owing to Lender from Borrower.

CONSENT. The Guarantor consents to all extensions, renewals, and modifications made by the Lender for, or on account of, any indebtedness of Borrower to Lender. Lender may proceed directly against Guarantor in the event of any default by Borrower without resorting to any other persons, to the assets of Borrower, to any collateral security granted by Borrower to Lender, or the liquidation of any collateral security given hereunder to secure this Guaranty.

GENERAL WAIVERS. Guarantor hereby waives notice of acceptance of this Guaranty, all notices hereunder, and all notices of demand, presentment, notice of dishonor, intention to accelerate, acceleration, notice of any adverse information which Lender may have, and all notices of protest, default, and nonpayment. Guarantor waives all defenses of suretyship. Guarantor waives any defense that could be asserted by Borrower, including defenses arising out of failure of consideration, breach of warranty, fraud, payment, statute of frauds, bankruptcy, lack of capacity, statute of limitations, lender liability, accord and satisfaction, or usury.

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RIGHT OF SETOFF. To the extent permitted by law, Guarantor gives Lender the right to setoff any of Guarantor's money or property which may be in Lender's possession against any amount owed under this Guaranty. This right of setoff does not extend to any Keogh account, IRA, or similar tax deferred deposit. Further, the Lender shall have available all remedies under applicable state and federal laws, including the garnishment of wages, to the extent permitted by law.

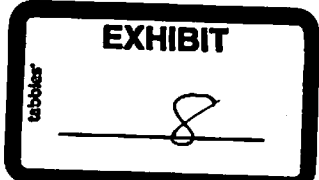
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COMMERCIAL LOAN GUARANTY

TierOne Bank
1235 N' St / PO Box 83009
Lincoln, Nebraska 68501
(402)475-0521

LOAN NUMBER	GUARANTY DATE
3302 Q51	January 9, 2008

GUARANTOR INFORMATION

CLAUDIA JOSEFINA NEWTON FRAUSTO
5802 S-157TH ST 3302 Q51
Omaha, NE 68138-63107

Type of Entity: Individual
State of Residence: Nebraska

BORROWER INFORMATION

LA CUADRA L.L.C.
5802 S-148TH ST 3302 Q51
Omaha, NE 68138-63107

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Nebraska

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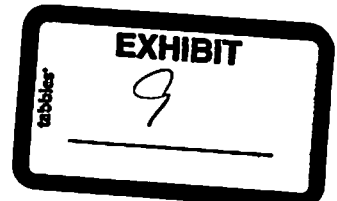
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By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.



CLAUDIA JOSEPHINE NEWTON Date: 01-09-08
FRAUSTO
Individually

COMMERCIAL LOAN GUARANTY

TierOne Bank
1235 'N' St / PO Box 83009
Lincoln, Nebraska 68501
(402)475-0521

LOAN NUMBER	GUARANTY DATE
0	October 8, 2007

GUARANTOR INFORMATION
REDACTED
 EDUARDO T TORRES
 11621 DREXEL ST
 Omaha, NE 68137

Type of Entity: Individual
State of Residence: Nebraska

BORROWER INFORMATION

NEWTON COMPANY, LLC
11621 DREXEL ST
Omaha, NE 68137

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Nebraska

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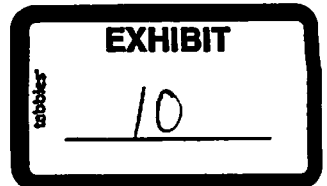
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COMMERCIAL LOAN GUARANTY

TierOne Bank
1235 'N' St / PO Box 83009
Lincoln, Nebraska 68501
(402)475-0511

LOAN NUMBER REDACTED	GUARANTY DATE January 9, 2008
--------------------------------	----------------------------------

GUARANTOR INFORMATION

EDUARDO T TORRES
5802 S 157TH ST 3202 Q St
Omaha, NE 68135 68107

Type of Entity: Individual
State of Residence: Nebraska

BORROWER INFORMATION

LA CUADRA LLC
5802 S 157TH ST 3202 Q St
Omaha, NE 68135 68107

Type of Business Entity: Limited Liability Company
State of Organization/Formation: Nebraska

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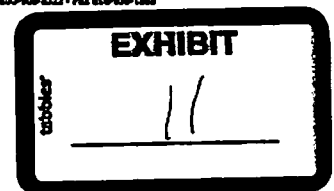
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Individually

09-09-08
Date

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(402)475-0821

LOAN NUMBER	GUARANTY DATE
REDACTED	January 9, 2008

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State of Organization/Formation: Nebraska

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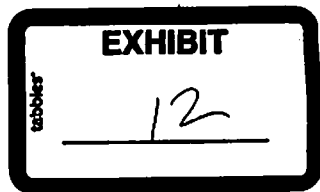
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© 2004-2008 Copyright Compliance Systems, Inc. DAED-9004 - 2006.09 70
Commercial Loan Guaranty - 02/01/11



By signing this Guaranty, Guarantor acknowledges reading, understanding, and agreeing to all its provisions.
NEWTON COMPANY, LLC


By: CLAUDIA JOSTINA NEWTON Date: 01-07-23
FRAUSTO
In: Manager

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

GREAT WESTERN BANK, a bank)
chartered under the laws of the State of)
South Dakota,)
)
Plaintiff,)
)
vs.)
)
LA CUADRA L.L.C., a Nebraska limited)
liability company; NEWTON COMPANY,)
LLC; CLAUDIA JOSEFINA NEWTON)
FRAUSTO in her individual capacity as)
Guarantor; and EDUARDO T. TORRES,)
in his individual capacity, as Guarantor,)
)
Defendants.)

CASE ID _____

**PRAECIPE
(LAW)**

TO THE CLERK OF SAID COURT:

Please issue summons to be served, along with a copy of the Complaint filed herein, by the Sheriff of Douglas County, personally, or by residential service, leaving with a person of suitable age and discretion, upon the following Defendants:


La Cuadra L.L.C., a Nebraska
limited liability company
c/o its Registered Agent, Claudia Newton
11621 Drexell St
Omaha, NE 68137

Newton Company, LLC, a
Nebraska limited liability company
c/o its Registered Agent, Claudia Newton
11621 Drexell St
Omaha, NE 68137

Claudia Josefina Newton Frausto
11621 Drexell St
Omaha, NE 68137

Eduardo T. Torres
11621 Drexell St
Omaha, NE 68137

GREAT WESTERN BANK, a bank chartered
under the laws of the State of South Dakota,
Plaintiff,

By: 

Camille R. Hawk, Attorney at Law (#20395)

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