



Control Number: 45870



Item Number: 1

Addendum StartPage: 0

PUC DOCKET NO. **45870**

FORMAL COMPLAINT OF KER-SEVA
LTD. AGAINST THE CITY OF
FRISCO, TEXAS

§
§
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

RECEIVED
2016 AUG 19 AM 11:26
PUBLIC UTILITY COMMISSION
CLERK

FORMAL COMPLAINT AGAINST THE CITY OF FRISCO, TEXAS

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Complainant Ker-Seva Ltd. ("Complainant"), and files this Formal Complaint against the City of Frisco, Texas, pursuant to PUC Procedural Rule 22.242(e), and would respectfully show as follows:

INTRODUCTION

Complainant has sought retail water and sewer service from the City of Frisco, Texas ("City" or "Frisco") on numerous occasions but has been repeatedly denied service. Frisco continues to deny Complainant service through various tactics designed to delay and drive-up the costs of service.

PUC PROCEDURAL RULE 22.242(E) REQUIREMENTS:

- 22.242(e)(2)(A): Complainant is Ker-Seva, Ltd., a Texas limited partnership, whose general partner is Ker-Seva Management, Ltd., Co., and whose registered agent is Jastinder Jawanda.
- 22.242(e)(2)(B): Complainant does not currently have an account because the City has repeatedly refused to provide service to Complainant.

22.242(e)(2)(C): Complainant's representative is the undersigned counsel and his contact information is as follows:

Leonard H. Dougal
Jackson Walker, L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
Tel: (512) 236-2233
Fax: (512) 391-2112
Email: ldougal@jw.com

22.242(e)(2)(D): Complainant files this complaint against the City of Frisco, Texas.

22.242(e)(2)(E)-(F): Complainant is not seeking relief against an electric utility, therefore these provisions are not applicable.

22.242(e)(2)(G): Complainant attempted informal resolution through the PUC in Complaint No. CP2016010328. On February 12, 2016, the Customer Protection Division of the PUC recommended that a formal complaint be filed.

22.242(e)(2)(H): A detailed statement of facts is provided below and relevant documentation is attached hereto.

22.242(e)(2)(I): Complainant is seeking an order from the PUC requiring the City to provide water and sewer service to Complainant without further delay.

STATEMENT OF FACTS

Complainant owned approximately 8.5 acres of land in Collin County, Texas, within the extraterritorial jurisdiction ("ETJ") of Frisco, which was made up of three lots (the "Property"). Complainant conveyed Lot 3 to Frisco through a conveyance plat for future right of way expansion along Westridge Boulevard on the northern boundary of Lots 1 and 2.¹ Complainant currently owns Lot 1, Block A with the address of 9421 Westridge Boulevard ("Lot 1") and Lot

¹ Attached hereto as Exhibit "A" is a plat showing Lot 1 and Lot 2. The northern strip between Lots 1 and 2 and Westridge Boulevard is the former Lot 3.

2, Block A with the address of 9331 Westridge Boulevard ("Lot 2").² Lot 2, the subject of this complaint, is located within water certificate of convenience and necessity ("CCN") No. 11772 and sewer CCN No. 20591 issued to Frisco.

In 2006, Baljeet K. Jawanda and Daljit S. Hundle, the then-owners of the Property, entered into an Annexation Agreement with the City covering the entire Property and in 2008 entered into a Development Agreement with the City pertaining to Lot 1.³ The Annexation Agreement is an agreement running with the land and binding on future owners of the Property.⁴ The Development agreement is also a covenant running with the land and binding on successors and assigns of the then-owners.⁵ The Annexation Agreement provided that prior to annexation the Property would be developed as if it had been designated for Retail zoning. The Annexation Agreement provided that following annexation, Frisco would provide water and sewer service to the Property. The Annexation Agreement also established that the then-owner could obtain water and sewer service for the Property from the City of McKinney until such time as Frisco's lines would be available to the Property. The Development Agreement provided the then-owners would pay the costs to construct necessary water lines, sewer lines, stormwater drainage, and paving in order to provide water and sewer service to Lot 1. In doing so, the then-owners constructed the water and sewer facilities necessary to serve Lot 1 and constructed two (2) water stub-outs and sewer manhole with the intent of using those same facilities to serve Lot 2.

Complainant currently receives water and sewer service to Lot 1 through the facilities which connect to the water and sewer lines along Westridge Boulevard belonging to the City of

² Attached hereto as Exhibit "B" is the Deed of Trust demonstrating Complainant's ownership of Lot 2.

³ Attached hereto as Exhibit "C" is the Annexation Agreement; Attached hereto as Exhibit "D" is the Development Agreement.

⁴ Exhibit "B" at ¶ 11(a).

⁵ Exhibit "C" at ¶¶ 7, 24.

McKinney. On November 6, 2015, Complainant sought service for Lot 2.⁶ However, Frisco refused to provide service and since that time has repeatedly refused to provide service. Frisco indicates the City of McKinney lacks capacity to allow Complainant to set a meter on Lot 2. However, Complainant has evidence that capacity is not, in fact, a problem.⁷

Despite several requests for further information, Frisco merely references its ordinances and the sections pertaining to development within its ETJ.⁸ However, Complainant has complied with those regulations. Under Section 7 of the Ordinances, Frisco will extend water and sewer service outside of its corporate limits in certain circumstances, particularly where an annexation agreement is in place.⁹ Section 8 provides that water and wastewater extensions will be paid for by a developer. Here, Complainant's predecessor-in-interest entered into an annexation agreement that acknowledged Frisco would provide service upon annexation and allowed for temporary service through the City of McKinney's lines. Complainant's predecessor-in-interest also entered into a development agreement whereby Complainant paid for the costs to extend water and sewer facilities to connect to the City of McKinney's water and sewer lines for service. Thus, with respect to the Property, Complainant is in compliance with Frisco's ordinances. Therefore, Frisco's continued refusal to provide service is arbitrary, capricious, and in violation of its duty to provide continuous and adequate service within its CCN.

⁶ Attached hereto as Exhibit "E" is Complainant's November 6, 2015, Application for service.

⁷ Attached hereto as Exhibit "F" is a Sanitary Sewer Basin Study performed by Sanchez & Associates that demonstrates the sewer lines have sufficient capacity to handle a 248-bedroom apartment complex.

⁸ Attached hereto as Exhibit "G" are Sections 7 and 8 of Frisco's Ordinances which Frisco has provided to Complainant.

⁹ Exhibit "E" § 7.01(b)(4) and (6).

RELIEF SOUGHT

Complainant respectfully requests that the PUC order the City of Frisco to comply with its statutory duty as the CCN-holder to provide continuous and adequate service to Lot 2.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
T: (512) 236 2233
F: (512) 391-2112

ATTORNEYS FOR COMPLAINANT
KER-SEVA, LTD.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on the following parties on April 19, 2016, in the following manner:

City of Frisco
Attn: George Puerfoy, City Manager
6101 Frisco Square Blvd.
Frisco, Texas 75034

Via Certified Mail, RRR

Mallory Beck
Mallory Beck

EXHIBIT “A”



EXHIBIT “B”



20150209000137580

02/09/2015 08:52:18 AM DT 1/21



Deed of Trust, Security Agreement and Assignment of Rents

THIS DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS is executed effective as of, although not necessarily on September 20, 2014 by KER-SEVA, LTD., a Texas limited partnership ("Grantor") whose address for notice hereunder is 4588 Penbrook Ct., Plano, Texas 75204, to Joseph W. Sullivan, of Dallas County, Texas, as Trustee, for the benefit of **COMERICA BANK**, whose address for notice hereunder is at P.O. Box 650282, Dallas, Texas 75265-0282, Attention: Commercial Lending Services, Mail Code 6514 as follows:

A. DEFINITIONS.

The following terms shall have the defined meaning ascribed to such terms, as set forth below:

1. **"BANK" or "BENEFICIARY"** shall mean COMERICA BANK, as well as any subsequent holder or holders of the Note (as defined below).
2. **"BORROWER"** shall mean (and, if more than one, shall refer jointly and severally to) the person(s) named below together with each such person's heirs, personal representatives, successors and assigns: KER-SEVA, LTD. a Texas limited partnership.
3. **"CODE"** shall mean the Texas Business and Commerce Code, as now written or as hereafter amended, revised or replaced from time to time.
4. **"CONTRACTS"** shall mean any and all (a) contracts for the sale of all or any portion of the Property, whether such Contracts are now or at any time hereafter existing, and together with all payments, earnings, income, and profits arising from sale of all or any portion of the Property (defined below) or from the Contracts, and all other sums due or to become due under and pursuant thereto; (b) contracts, licenses, permits, and rights relating to utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the Property; (c) all other contracts, licenses, permits and rights which in any way relate to the use, enjoyment, occupancy, operation, maintenance, or ownership of the Property (including, if applicable, any and all leases, subleases or other agreements pursuant to which Grantor is granted a possessory interest in or the right to possess, use or enjoy any of the Property), including but not limited to restrictive covenants, easements, condominium documents, planned development documents, maintenance agreements, and service contracts; and (d) all renewals, extensions, amendments and other modifications with respect to any of the foregoing.
5. **"DEED OF TRUST"** shall mean this Deed of Trust, Security Agreement and Assignment of Rents and all renewals, extensions, amendments and other modifications hereto.
6. **"EVENT OF DEFAULT"** shall mean any occurrence described in Section D hereof.
7. **"FIXTURES"** shall mean all materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used (temporarily or permanently) in connection with any of the Improvements (as defined below) or the Land (as defined below), and all renewals, replacements, and substitutions thereof and additions thereto, including but not limited to any and all: partitions; ducts; shafts; pipes; radiators; conduits; wiring; window screens and shades; drapes; rugs and other floor coverings; awnings; motors; engines; boilers; stokers; pumps; dynamos; transformers; generators; fans; blowers; vents; switchboards; elevators; mail conveyors; escalators; compressors; furnaces; cleaning systems; sprinkler systems; fire extinguishing apparatus; water tanks; swimming pools; heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling systems; water, gas and electric equipment; disposals; dishwashers; washers; dryers; refrigerators and ranges; cafeteria equipment; recreational equipment; and facilities of all kinds, all of which property and things are hereby declared to be permanent accessions to the Land.
8. **"GOVERNMENTAL AUTHORITY"** shall mean any and all governmental or quasi-governmental entities or instrumentalities of each and every nature whatsoever, whether federal, state, county, district, city or otherwise, and whether now or hereafter in existence.
9. **"GOVERNMENTAL REQUIREMENTS"** shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and limitation, all laws, codes, ordinances, rules, regulations, orders, decrees and directives pertaining to Hazardous Materials or otherwise intended to regulate or improve health, safety or the environment.
10. **"GRANTOR"** shall mean the party or parties, whether one or more, who execute this Deed of Trust and who are identified as such in the initial paragraph of this Deed of Trust, as well as the successors, assigns, heirs and legal representatives of such party or parties. Grantor and Borrower may or may not be the same person.

representatives of such party or parties. Grantor and Borrower may or may not be the same person.

11. **"GUARANTOR"** shall mean, as the context dictates, any person(s) (other than the Borrower) who or which shall, at any time, guaranty or otherwise be or become obligated for the repayment or performance of all or any part of the Indebtedness (as defined below) including, without limitation, ~~BALJEET K. JAWANDA, DALJIT S. HUNDLE, LARISA MAKAROVA, KER-SEVA MANAGEMENT, LTD., CO. and BDK SCHOOL OF TEXAS, LLC, a Texas limited liability company,~~ whether one or more.
12. **"HAZARDOUS MATERIALS"** shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("**CERCLA**"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-1-

«DEALSID»

substance the presence of which on the Property is prohibited by any Governmental Requirement; (f) any petroleum or petroleum-based products; (g) underground storage tanks; (h) flammable explosives; (i) radioactive materials; (j) toxic materials; and (k) any other substance which by any Governmental Requirement requires special handling or notification of any Governmental Authority in its use, collection, storage, treatment, or disposal or is otherwise deemed to be a hazardous, toxic or dangerous waste, substance or material under any Governmental Requirement.

13. **"HAZARDOUS MATERIALS CONTAMINATION"** shall mean the contamination (whether presently existing or hereafter occurring) of the Property or any facilities, soil, groundwater, air or other elements on or of the Property by Hazardous Materials, or the contamination of any other property or the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Deed of Trust) emanating from the Property.
14. **"IMPOSITIONS"** shall mean all rates and charges (including deposits) for: insurance; taxes (both realty and personalty); water, gas, sewer, electricity, telephone and other utilities; easements, licenses, agreements and other Contracts maintained for the benefit of the Property; and all other charges (and any interest, costs or penalties with respect thereto) of each and every nature whatsoever which may now or hereafter be assessed, levied or imposed upon the Property or the Rents (as defined below) or the ownership, use, occupancy or enjoyment thereof.
15. **"IMPROVEMENTS"** shall mean any and all buildings, parking areas and other improvements, and any and all additions, alterations, or appurtenances thereto, now or at any time hereafter placed or constructed upon the Land or any part thereof.
16. **"INDEBTEDNESS"** shall mean all loans, advances, indebtedness, obligations and liabilities of Borrower or any other Loan Party to Bank under this Deed of Trust, the Note (as defined below) or any other Loan Document (as defined below), together with all other indebtedness, obligations and liabilities whatsoever of Borrower to Bank, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, voluntary or involuntary, known or unknown, or originally payable to Bank or to a third party and subsequently acquired by Bank including, without limitation, any: late charges; loan fees or charges; overdraft indebtedness; costs incurred by Bank in establishing, determining, continuing, or defending the validity or priority of any security interest, pledge or other Lien or in pursuing any of its right or remedies under any Loan Document or in connection with any proceeding involving the Bank as a result of any financial accommodation to Borrower; debts, obligations and liabilities for which the Borrower would otherwise be liable to the Bank were it not for the invalidity or unenforceability of them by reason of any bankruptcy, insolvency or other law or for any other reason; and reasonable costs and expenses of attorneys and paralegals, whether inside or outside counsel is used, and whether any suit or other action is instituted, and whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in bankruptcy, in administrative proceedings, in probate proceedings or otherwise; provided, however, that the term indebtedness shall not include any consumer loan to the extent treatment of such loan as part of the Indebtedness would violate any Legal Requirement.
17. **"LAND"** shall mean the real estate (or interest therein) as described in Exhibit "A" attached hereto and incorporated herein by this reference, all Improvements and Fixtures, and all rights, titles and interests appurtenant thereto.
18. **"LEASES"** shall mean all leases (including, oil, gas and other mineral leases), master leases, subleases

licenses, concessions, contracts or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, any portion of the Property, together with all security and other deposits or payments made in connection therewith and any and all guaranties of leases related thereto.

19. **"LEGAL REQUIREMENTS"** shall mean any and all of the following that may now or hereafter be applicable to Grantor or the Property: (a) judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority; (b) as applicable, Grantor's bylaws and articles of incorporation or regulations and articles of organization, or certificate of limited partnership, agreement of limited partnership or partnership agreement, or joint venture agreement or trust agreement or declaration of trust, or other agreements pertaining to any other form of Grantor's business entity; (c) Leases; (d) restrictions of record; and (e) other written or oral agreements or promises of any nature.
20. **"LIEN"** shall mean any valid and enforceable interest in any property, whether real, personal or mixed, securing an indebtedness, obligation or liability owed to or claimed by any person other than the owner of such property, whether such indebtedness is based on the common law or any statute or contract and including, but not limited to, a security interest, pledge, mortgage, assignment, conditional sale, trust receipt, lease, consignment or bailment for security purposes.
21. **"LOAN DOCUMENTS"** shall mean the Note, this Deed of Trust and all other instruments, documents or other writings now or hereafter evidencing, governing, securing, guaranteeing or otherwise relating to or executed pursuant to or in connection with any of the Indebtedness or any Loan Document (whether executed and delivered prior to, concurrently with or subsequent to this Deed of Trust), as such documents may have been or may hereafter be amended from time to time.
22. **"LOAN PARTY"** shall mean the Borrower, the Grantor and each other person who or which shall be liable for the payment or performance of all or any portion of the Indebtedness or who or which shall own any property that is subject to (or purported to be subject to) a Lien which secures all or any portion of the Indebtedness.
23. **"MINERALS"** shall mean any and all substances in, on, or under the Property which are now, or may become in the future, intrinsically valuable, that is, valuable in themselves, and which now or may be in the future enjoyed through extraction or removal from the Property, including without limitation, oil, gas, and all other hydrocarbons,

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-2-

«DEALSID»

coal, lignite, carbon dioxide and all other nonhydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores, upon extraction or removal from the Property. The term "Minerals" shall include "oil and gas production" and "as extracted collateral" as such terms are defined in the Code.

24. **"NOTE"** shall collectively mean the all of the promissory note (the terms of which are incorporated herein by reference) executed by Borrower and payable to the order of **COMERICA BANK** as follows: (i) Installment Note, dated July 12, 2007, in the maximum face amount of [REDACTED]; (ii) Installment Note, dated March 28, 2008, in the maximum face amount of [REDACTED]; (iii) Master Revolving Note, dated March 29, 2010, in the maximum face amount of [REDACTED]; (iv) Installment Note, dated September 29, 2011, in the maximum face amount of [REDACTED]; (v) Installment Note, dated September 20, 2014, in the original maximum face amount of [REDACTED]; and including all extensions, renewals, increases and other modifications thereof and all other notes given in substitution therefor, and including those certain Forbearance Agreements between Borrower and Comerica Bank, dated effective as of February 28, 2014 and May 1, 2014 (and all subsequent forbearance agreements between Borrower and Comerica Bank). Each Note shall mature as set forth in each Note, subject to the terms of the Forbearance Agreements, unless renewed or extended or unless prior demand for payment shall be made thereon or the maturity shall be accelerated for any reason.
25. **"PERSONALTY"** shall mean all of the right, title, and interest of Grantor in and to (a) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut and extracted Minerals); (b) general intangibles, money, insurance proceeds, accounts chattel paper (including without limit electronic chattel paper and tangible chattel paper), rights to payment evidenced by chattel paper, documents or instruments, health care insurance receivables, commercial tort claims, letters of credit, letter of credit rights, supporting obligations, and rights to payment for money or funds advanced or sold, contract and subcontract rights, trademarks, trade names, inventory; (c) all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Grantor (or otherwise existing for Grantor's benefit) with any governmental agencies, boards, corporations, providers of utility services (public or private) or other person(s) including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, **11**

reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Fixtures, Contracts, or Personality, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land and those for municipal utility district or other utility costs incurred or deposits made in connection with the Property; (d) all software (for purposes of this Deed of Trust, "software" consists of all (i) computer programs and supporting information provided in connection with a transaction relating to the program, and (ii) computer programs embedded in goods and any supporting information provided in connection with a transaction relating to the program whether or not the program is associated with the goods in such a manner that it customarily is considered part of the goods, and whether or not, by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods, and whether or not the program is embedded in goods that consist solely of the medium in which the program is embedded), and (e) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any or all of which are now owned or hereafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Property, or used in or necessary or desirable to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Property, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

26. **"PROPERTY"** shall mean the Land, Minerals, Improvements, Fixtures, Personality, Contracts, Leases and Rents, together with all or any part of, and any interest in, the following: (a) rights, privileges, tenements, hereditaments, rights-of-way, easements, licenses, appendages, and appurtenances in any way pertaining thereto, and rights, titles, and interests of Grantor in and to any streets, ways, alleys, strips of land adjoining the Land or any part thereof; (b) additions, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and (c) other security and collateral of any nature whatsoever, now or hereafter given for the repayment or performance of the Indebtedness. In the definition of Property, a reference to a type of collateral shall not be limited by a separate reference to a more specific or narrower type of that collateral.
27. **"RENTS"** shall mean the rents, revenues, income, proceeds, profits, security and other types of deposits (after Grantor acquires title thereto), and other benefits paid or payable by parties to the Contracts and/or Leases (other than Grantor) for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Property.
28. **"TRUSTEE"** shall mean Joseph W. Sullivan, Trustee, and his substitutes, successors and assigns.

B. GRANT.

To secure the full and timely payment and performance of the Indebtedness, and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid by Beneficiary to Grantor, the receipt and legal sufficiency of which is hereby acknowledged, Grantor has GRANTED, BARGAINED, ASSIGNED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, ASSIGN, SELL and CONVEY, unto Trustee the Property in trust hereunder, for the use and benefit of Beneficiary, TO HAVE AND TO HOLD the Property unto Trustee forever. It is specifically contemplated by Grantor and Beneficiary that the Indebtedness secured hereby may be increased and rearranged by subsequent amendments, restatements, supplements and other modifications and additions to the Loan Documents and that additional promissory notes and loan agreements may be issued and entered into in connection therewith. Grantor and each person who, at any time, may claim an interest in or Lien or encumbrance against all or any portion of the Property agree that all Indebtedness shall be secured by this Deed of Trust with the same priority as if all had been advanced, had arisen or had become owing or performable on the date of this Deed of Trust. This Deed of Trust shall remain in full force and effect as to all future Indebtedness and to all subsequent advances or subsequently arising portions of the Indebtedness without loss of priority until (a) the Indebtedness is fully and finally paid, performed and satisfied, and (b) all agreements and obligations, if any, of the Bank for further advances or for the extension of additional

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-3-

«DEALSID»

credit have been terminated (including, without limitation, any loans made by the Bank to the Borrower even if advances or loans thereunder shall be optional or non-obligatory), and (c) this Deed of Trust has been released of record by Beneficiary. **WITHOUT LIMITING THE FOREGOING, GRANTOR ACKNOWLEDGES AND AGREES THAT IF THIS DEED OF TRUST SECURES, AMONG OTHER THINGS, A REVOLVING LINE OF CREDIT, THEN GRANTOR, AND EACH PERSON WHO, AT ANY TIME, CLAIMS AN INTEREST IN OR LIEN OR ENCUMBRANCE AGAINST ALL OR ANY PORTION OF THE PROPERTY, AGREES THAT ALL ADVANCES MADE BY THE BANK FROM TIME TO TIME UNDER ANY OF THE LOAN DOCUMENTS AND ALL OTHER PORTIONS OF THE INDEBTEDNESS SHALL BE SECURED BY THIS DEED OF TRUST WITH THE SAME PRIORITY AS IF ALL OF THE SAME HAD BEEN ADVANCED, HAD ARISEN OR HAD BECOME OWING OR PERFORMABLE ON THE DATE OF THIS DEED OF TRUST, AND NO REDUCTION OF THE OUTSTANDING PRINCIPAL BALANCE UNDER THE NOTE OR ANY OTHER LOAN DOCUMENT SHALL EXTINGUISH, RELEASE OR SUBORDINATE ANY RIGHT TITLE INTEREST**

LOAN DOCUMENT SHALL EXTINGUISH, RELEASE OR SUBORDINATE ANY RIGHT, TITLE, INTEREST, LIEN, POWER OR PRIVILEGE CREATED OR ARISING HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT.

C. WARRANTIES, REPRESENTATIONS, COVENANTS AND OTHER AGREEMENTS.

Grantor unconditionally warrants, represents, covenants and agrees that:

1. The Indebtedness is legal, valid and binding on Borrower and, to the extent provided in the Loan Documents, on each other Loan Party, in accordance with its terms, and the execution and delivery of, and performance under, the Loan Documents to which Grantor is a party or by which Grantor or any of Grantor's property is (or is purported to be) bound: (a) are within Grantor's powers and have been duly authorized by all requisite action (corporate, partnership, trust or otherwise); (b) have received all requisite approval by all Governmental Authorities; and (c) will not violate, conflict with, breach or constitute a default under, any Legal Requirement or result in the imposition of any Lien, charge or encumbrance of any nature upon any of Grantor's assets, except as contemplated in the Loan Documents.
2. Grantor has good and indefeasible title to the Land, Improvements, Fixtures and Personalty, free and clear of any Liens, encumbrances or adverse claims (except as listed in Exhibit "B" attached hereto). This Deed of Trust shall constitute a valid, subsisting, first Lien on the Land, Improvements and Fixtures and a valid, subsisting, exclusive, perfected and prior security interest in and to the Personalty and Leases, all in accordance with the terms hereof. Beneficiary shall have the right at its option and at such time or times as it, in its sole discretion, deems necessary or desirable, to take whatever action it may deem necessary or desirable to defend or uphold the Liens of this Deed of Trust or otherwise enforce any of its rights under this Deed of Trust or any obligations secured by this Deed of Trust including, without limit, the right to institute appropriate legal proceedings for these purposes. With respect to the right, title, or Lien of any person which is superior to any Lien of this Deed of Trust, Beneficiary has the right, but not the obligation, to acquire and/or pay off the holder of such right, title or Lien and add the amount paid to the Indebtedness.
3. The Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead, is not exempt from forced sale under the laws of the State of Texas, and Grantor hereby disclaims and renounces all and every claim to the Property as a homestead.
4. Grantor and each Loan Party are now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or against any of them, and all reports, statements, cost estimates and other data, furnished by or on behalf of any of them are true and correct.
5. Grantor will promptly and fully comply with all present and future Legal Requirements, and all Improvements included or to be included in the Property comply and will comply with all Legal Requirements.
6. Grantor is validly and legally created and is authorized to do business in the State of Texas; Grantor's exact name is the name set forth in this Deed of Trust; and Grantor is, and at all times shall be, located in the following place :

4588 Penbrook Ct., Plano, Texas 75204.
7. Grantor and all Loan Parties, as their interests appear and as stipulated in the Loan Documents, will duly and punctually pay and perform the Indebtedness, as and when called for in the Loan Documents, and Grantor will duly and punctually cause each of the Impositions to be paid and discharged not later than the due dates thereof and shall immediately furnish Beneficiary with evidence of such payments.
8. Grantor will cause the Property (upon the completion of the Improvements if the Indebtedness evidenced by the Note finances the construction thereof) to be maintained and operated in first-class order and condition and will make all interior and exterior repairs, replacements, additions, improvements and alterations thereof and thereto, both structural and non-structural, which are appropriate to keep same in such first-class order and condition.
9. Grantor shall obtain and maintain at Grantor's sole expense: (a) mortgagee title insurance issued to Beneficiary covering the Land, Improvements and Fixtures as required by Beneficiary; (b) all-risk insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Beneficiary may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor or Beneficiary from becoming a coinsurer, such insurance to be in "Builder's Risk" (non-reporting) form during and with respect to any construction on the Property; (c) if and to the extent any portion of the Property is in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the principal balance of the Indebtedness or the maximum amount available; (d) comprehensive general public liability insurance, on an "occurrence" basis, for the benefit of Grantor and Beneficiary as named insureds; (e) statutory worker's compensation insurance with respect to any work on or about the Property; and (f) such other insurance on the Property as may from time to time be required by Beneficiary (including but not limited to business interruption insurance, loss of rents insurance, boiler and machinery insurance, earthquake insurance, and war risk insurance) and against other

insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form satisfactory to Beneficiary, and shall require not less than thirty (30) days' prior written notice to Beneficiary of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Beneficiary and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Deed of Trust or any other Loan Document becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if Beneficiary, in good faith, believes that the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance, promptly, upon the request of Beneficiary and at Grantor's expense, obtain and deliver to Beneficiary a like policy (or, if and to the extent permitted by Beneficiary, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed of Trust or such other Loan Document, as the case may be. Without limiting the discretion of Beneficiary with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Mortgaged Property shall contain a standard mortgage clause (without contribution) naming Beneficiary as mortgagee with loss proceeds payable to Beneficiary notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured; (ii) the occupation or use of the Mortgaged Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Beneficiary under the Loan Documents; or (iv) any change in title to or ownership of the Mortgaged Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Beneficiary, a copy of the original policy and a satisfactory certificate of insurance) shall be delivered to Beneficiary at the time of execution of this Deed of Trust, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Beneficiary, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Beneficiary evidence satisfactory to Beneficiary of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this Paragraph, Beneficiary shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Beneficiary. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this Paragraph (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Beneficiary shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, and the expenses incurred by Beneficiary in the adjustment and collection of insurance proceeds shall be a part of the Indebtedness, shall be due and payable to Beneficiary on demand and shall bear interest from the date paid by Beneficiary until reimbursed at the highest rate of interest applicable to any of the Indebtedness (but not in excess of the highest rate permitted by applicable law). Beneficiary and Beneficiary's employees are each irrevocably appointed attorney-in-fact for Grantor and are authorized to adjust and compromise each loss without the consent of Beneficiary, to collect, receive and receipt for all insurance proceeds in the name of Beneficiary and/or Grantor, and to endorse Grantor's name upon any check in payment of the loss. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor.

10. Upon request from time to time and at any time, Grantor will deposit with Beneficiary each month in advance a monetary sum estimated by Beneficiary to equal on a monthly basis all or such portion of the ad valorem taxes, other Impositions and insurance premiums for the Property. At least thirty (30) days prior to the date on which any tax, Imposition or insurance premium must be paid to prevent delinquency thereof, Grantor will, on request of Beneficiary, deliver to Beneficiary the statement or statements showing the amount of tax or premium required to be paid and the concern or authority to which same is payable and will, at the same time, deposit with Beneficiary such amount as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance or tax obligations. Beneficiary shall then make payment to the applicable taxing authority, insurance carrier or other person. After the occurrence of an Event of Default, Beneficiary shall have the right (but not the obligation), at its sole discretion, to apply any or all of the foregoing deposits in payment of such insurance, taxes and other Impositions or toward payment of the Indebtedness in such manner and order of priority as Beneficiary, in its sole discretion, may elect. Beneficiary shall not be required to keep in a separate account or to pay to Grantor any interest or earnings whatever on the funds held by Beneficiary for the payment of taxes, other Impositions or insurance pursuant to this Paragraph or on any other funds deposited with Beneficiary in connection with this Deed of Trust.

11. Grantor will: (a) duly and punctually perform and comply with all representations, warranties, covenants and agreements binding upon it under the Leases and Contracts; (b) not voluntarily terminate or waive its rights under any of the Leases or Contracts; (c) use all reasonable efforts to maintain each of the Leases and Contracts in force and effect during the full term thereof; and (d) appear in and defend any action or proceeding in any manner connected with any of the Leases or Contracts.
12. Grantor will permit Trustee or Beneficiary, and their agents, attorneys, representatives and employees, to enter upon and inspect the Property at all reasonable times and intervals. If Beneficiary determines that the Property requires inspection, testing, appraisal, repair, care, alteration or attention of any kind, Beneficiary or its representatives may (but shall not be obligated to) enter upon the Property and inspect, test, appraise, repair, alter or maintain the Property as Beneficiary may deem necessary to desirable, and Grantor shall reimburse Beneficiary upon demand for all resulting costs and expenses incurred by Beneficiary. Any inspection, audit, appraisal or examination by Beneficiary or its representatives of the Property or of information or documents pertaining to the Property is for the sole purpose of protecting Beneficiary's interests under this Deed of Trust and

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-5-

«DEALSID»

is not for the benefit or protection of Grantor or any third party. Beneficiary has no obligation to provide Grantor or any third party with information concerning, or results of, any inspection, audit, appraisal or examination by Beneficiary or its representatives. If Beneficiary, in its sole discretion, discloses information to Grantor, this disclosure is for the sole protection of Beneficiary, does not constitute an agreement to further disclosure and does not create a representation or warranty by Beneficiary as to the accuracy, sufficiency or any other aspect of disclosure.

13. Grantor will defend and hold Beneficiary harmless from any action, proceeding or claim affecting the Property or the Loan Documents or the Liens created thereby. Further, Grantor will notify Beneficiary, in writing, promptly of the commencement of any legal proceedings affecting the Property, or any part thereof, and will take such action as necessary to preserve Beneficiary's rights affected thereby, and Beneficiary may, at its election, take such action on behalf of and in the name of Grantor and at Grantor's expense.
14. Grantor will promptly pay all debts and liabilities of each and every character (including, without limitation, all debts and liabilities for labor, material and equipment) incurred in the construction, operation or development of the Property and will complete in a good and workmanlike manner any improvements that may be constructed or repaired thereon.
15. Grantor will keep separate and proper books of record and account pertaining to the Property in accordance with generally accepted accounting principles and practices and set aside from its earnings for each fiscal year, and cause to be reflected in its books, reserves for depreciation, depletion, obsolescence and amortization of the Property, as well as for the Impositions and other appropriate reserves, during such fiscal year determined in accordance with generally accepted accounting principles and practices consistently applied. Beneficiary shall have the right to examine the books of account of Grantor and to discuss the affairs, finances and accounts of Grantor with, and to be informed as to the same by, its and their officers or any other party, all at such reasonable times and intervals as Beneficiary may desire. Grantor shall provide or cause to be provided to Beneficiary such financial statements, income and expense statements, cash flow statements, copies of income tax returns, operating statements, rent rolls and other reports, statements and information relating to Grantor or the Property as Beneficiary shall require, from time to time, and in the format and containing such detail as Beneficiary may require. All financial statements and information regarding Grantor or the Property delivered to Beneficiary shall be true and correct in all material respects and fairly present the financial condition of Grantor and the Property as of the date thereof. No material adverse change shall have occurred in the financial condition of Grantor or the Property reflected therein since the date thereof, and no additional borrowings shall have been made or committed to by Grantor since the date thereof other than those disclosed in a supplemental writing accompanying such financial statement.
16. Upon request from time to time and at any time, Grantor will promptly correct any defect, error or omission, which may be discovered in the contents of this Deed of Trust or the Loan Documents and will execute and deliver any and all additional instruments as may be requested by Beneficiary to correct such defect, error or omission or to identify any additional properties which are or become subject to this Deed of Trust.
17. Grantor will give immediate written notice to Beneficiary of any condemnation proceeding or casualty loss affecting the Property and, in each such instance, afford Beneficiary an opportunity to participate in any such proceeding or in the settlement of any awards thereunder.

18. Grantor will promptly pay and hold Beneficiary harmless from all appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' fees, and all other costs of every character incurred by Grantor or Beneficiary in connection with the closing of the loan evidenced by the Note or the performance of the covenants of this Deed of Trust or any other Loan Document to which Grantor is a party or the Property is or is purported to be bound, or otherwise attributable or chargeable to Grantor as owner of the Property.
19. Grantor will not use or occupy, or permit any use or occupancy of, the Property in any manner which: (a) violates any Legal Requirement; (b) may be dangerous; (c) constitutes a public or private nuisance; or (d) makes void or voidable any of the Leases or any insurance on the Property.
20. Grantor will not permit: (a) any waste or deterioration of any part of the Property (including, without limitation, any failure to repair and maintain the Property, pay property taxes or other Impositions or comply with covenants respecting the physical care, maintenance, construction, demolition or insurance of the Property); or (b) any alterations or additions or improvements to the Property of a material nature regardless of whether the alterations, additions or improvements would increase the value of the Property, without Beneficiary's prior written consent. This consent may be withheld by Beneficiary in its sole discretion. If Beneficiary consents to the making of any alterations, additions or improvements, and the same are not completed with due diligence in accordance with the plans and specifications approved in writing by Beneficiary, or if construction of the alterations, additions or improvements should cease before completion for a period of 30 days, then and in either event, it shall be an Event of Default under this Deed of Trust, and Beneficiary shall have all the rights and remedies provided in this Deed of Trust, including without limitation, the right (but not the obligation) to enter or cause entry to be made upon the Property and complete the alterations, additions or improvements, and the costs shall be added to the Indebtedness, shall be payable on demand, and shall bear interest from the date paid by Beneficiary until reimbursed at the highest interest rate per annum applicable to any of the Indebtedness, but not in excess of the highest rate permitted by applicable law. Further, if any action is threatened or commenced which affects Beneficiary's interest in the Property including, without limit, building, environmental or zoning proceedings, Beneficiary may take such action as it deems necessary or desirable to protect its interests, and its costs shall be added to the Indebtedness, shall be payable on demand and shall bear interest from the date paid by Beneficiary until repaid at the highest per annum interest rate applicable to any of the Indebtedness, but not to exceed the highest rate permitted by applicable law. Grantor further covenants and agrees that it will not permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-6-

«DEALSID»

removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of at least equal suitability and value and owned by Grantor free and clear of any other Lien.

21. Grantor will not, without the prior written consent of Beneficiary: (a) create, place or permit to be created or placed, or allow to remain, any mortgage, pledge, encumbrance or charge, conditional sale or other title retention agreement or other Lien, regardless of whether same are expressly subordinate to the Liens of the Loan Documents, with respect to the Property or the Leases; or (b) permit any person, other than Beneficiary to have possession or control (as defined in the Code) of any Property of such nature that perfection of a security interest may be accomplished by control; or (c) sell, lease, exchange, assign, convey, transfer possession of or otherwise dispose of all or any portion of the Property, or any interest therein, but if ownership of the Property or any part thereof or interest therein becomes vested in any person or entity other than Grantor, Beneficiary or any other holder of the Indebtedness may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and the Indebtedness in the same manner as with Grantor without in any way discharging Grantor or any Loan Party from the Indebtedness. Without limiting the right of Beneficiary to withhold its consent or to make other requirements prior to granting its consent, Beneficiary: (i) may require evidence satisfactory to Beneficiary that transferee is creditworthy and has such management ability as Beneficiary shall deem in its sole discretion to be necessary; and (ii) may require transferee to execute such written modification and assumption agreements with regard to the Loan Documents as Beneficiary shall deem necessary or desirable, including but not limited to provisions increasing the interest rate on the Note. No transfer of the Property, no forbearance by Beneficiary, no extension of the time for the payment or performance of the Indebtedness granted by Beneficiary, no amendment or other modification of this Deed of Trust or other Loan Document, no release of any security for or guaranty of any Indebtedness, and no exercise of any right Beneficiary may have hereunder or under any other Loan Document shall release, discharge or affect in any way Grantor's or any other Loan Party's liability hereunder or under any other Loan Document. In the event any Lien shall exist on all or any portion of the Property (no consent by Beneficiary to the existence of any such Lien shall be implied hereby) it is expressly understood and agreed that no such lienholder may exercise any rights with

so implied hereby, it is expressly understood and agreed that no such lienholder may exercise any rights with respect to the Property, and all rents and other proceeds from the Property which may be received by such lienholder shall be held in trust by such lienholder for the benefit of Beneficiary and shall be immediately paid over to Beneficiary until the release of this Deed of Trust.

22. Grantor represents and covenants that Grantor has not used Hazardous Materials on or affecting the Property in any manner which violates any Governmental Requirement and that there is no condition concerning the Property which could require remediation pursuant to any Governmental Requirement, and that neither Grantor nor, to Grantor's knowledge, any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Property or any part thereof in any manner that violates any Governmental Requirement. No part of the Property is being used or, to Grantor's knowledge, has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials, and no part of the Property is affected by any Hazardous Materials Contamination. To the best of Grantor's knowledge, no property adjoining the Property is or has ever been used for the disposal, storage, treatment, processing, manufacturing or other handling of Hazardous Materials, and no other property adjoining the Property is affected by Hazardous Materials Contamination. To the best of Grantor's knowledge, no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Property. The Property is not currently on, and has never been on, any federal or state "Superfund" or "Superlien" list. Notwithstanding that one or more of the foregoing warranties and representations are "to Grantor's knowledge", the existence at or with respect to the Property of any Hazardous Materials which is in violation of any Governmental Requirement or Hazardous Materials Contamination at any time during the term of the Indebtedness shall constitute an Event of Default hereunder. Grantor covenants and agrees that neither it nor any occupant of all or any portion of the Property shall use, introduce or maintain Hazardous Materials on the Property unless done in strict compliance with all Governmental Requirements. Grantor shall conduct and complete all investigations, environmental audits, studies, sampling and testing, and all remedial removal and other actions necessary to clean up and remove all Hazardous Materials on or affecting the Property, whether caused by Grantor or a third party, in accordance with all Governmental Requirements to the satisfaction of Beneficiary and in accordance with the orders and directives of all Governmental Authorities, and Grantor shall notify Beneficiary in writing prior to taking, and continually after that of the status of, all such actions. Grantor shall, promptly upon Beneficiary's request, provide Beneficiary with copies of the results of all such actions and all related documents and information. Any remedial, removal or other action by Grantor shall not be deemed a cure or waiver of any default under this Deed of Trust or Event of Default due to the presence or use of Hazardous Materials on or affecting the Property. Grantor has never received any notice ("Environmental Complaint") of any potential violation of any Governmental Requirement with respect to Grantor or the Property (and within five days of receipt of any Environmental Complaint, Grantor shall give Beneficiary a copy of it), and to the best of Grantor's knowledge, there have been no actions commenced or threatened by any party with respect to Grantor or the Property for noncompliance with any Governmental Requirement. In the event this Deed of Trust is foreclosed or Grantor tenders a deed in lieu of foreclosure, Grantor shall deliver the Property to Beneficiary, the purchaser or the grantee, as the case may be, free of Hazardous Materials so that the condition of the Property shall not be in violation of any Governmental Requirement.
23. Grantor will (a) give notice to Beneficiary immediately upon Grantor's acquiring knowledge of the presence of any Hazardous Materials on or affecting the Property or of any Hazardous Materials Contamination with a full description thereof, and (b) promptly comply with all Governmental Requirements relating to the Property including, without limit, any Hazardous Materials or Hazardous Materials Contamination affecting the same, and (c) provide Beneficiary with satisfactory evidence of such compliance.

D. EVENTS OF DEFAULT.

The term "Event of Default," as used in this Deed of Trust, shall mean the occurrence at any time, and from time to time, of any one or more of the following:

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-7-

«DEALSID»

1. Any failure to pay the Indebtedness or any other indebtedness when due, by acceleration, demand having been made, the passage of time or otherwise.
2. Any failure to comply with or breach of or default under, any term of this Deed of Trust or any other Loan Document.
3. Any warranty, representation, financial statement or other information made, given or furnished to Beneficiary, by

3. Any warranty, representation, financial statement or other information made, given or furnished to Beneficiary by or on behalf of Grantor, Borrower or any other Loan Party shall be, or shall prove to have been, false or materially misleading when made, given or furnished.
4. Any loss, theft, substantial damage or destruction to or of any of the Property or any other security for all or any portion of the Indebtedness or the issuance or filing of any attachment, levy, garnishment or the commencement of any proceeding in connection with any of the Property or any other security for all or any portion of the Indebtedness or of any other judicial process of, upon or in respect of Grantor, Borrower or any other Loan Party, or any of the Property or any other security for all or any portion of the Indebtedness.
5. Any sale or other disposition by Borrower, Grantor or any other Loan Party of any substantial portion of its assets or Property or voluntary suspension of the transaction of its business or the death, dissolution, termination of existence, merger, consolidation, insolvency, business failure, or assignment for the benefit of creditors of or by Borrower, Grantor or any other Loan Party, or commencement of any proceedings under any state or federal bankruptcy or insolvency law or laws for the relief of debtors by or against Borrower, Grantor or any other Loan Party or the appointment of a receiver, trustee, court appointee, sequestration or otherwise for all or any part of the property of Borrower, Grantor or any other Loan Party.
6. Default under any deed of trust, mortgage, security agreement or other Lien instrument against all or any portion of the Property.
7. Beneficiary deems itself insecure, in good faith believing that the prospect of payment of the Indebtedness or any portion thereof or the performance of this Deed of Trust is impaired or shall fear deterioration, removal, or waste of the Property or any part thereof.
8. Grantor shall dissolve or liquidate, merge with or be consolidated into any other corporation or entity, or transfer any portion of or interest in the Property, or shall attempt to do any of the same without the prior written consent of Beneficiary, or if Grantor, Borrower or any other Loan Party shall die or become mentally incompetent.
9. The Property is (a) abandoned or (b) substantially damaged so that in Beneficiary's judgment it cannot be restored with available funds to its value and to approximately the same condition and character that existed immediately prior to such damage within thirty (30) days after such occurrence.
10. The holder of any Lien on any part of the Property (notwithstanding that the creation of the same may constitute a separate default hereunder) institutes foreclosure or other proceedings for the enforcement of its remedies.
11. Any condemnation proceeding is instituted which would, in Beneficiary's sole judgment, materially impair the use or enjoyment of the Property for its intended purposes and Grantor does not cause such proceeding to be dismissed within sixty (60) days of filing.
12. If Grantor shall cause or permit any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntary or involuntary, whether by operation of law or otherwise, except sales or other transfers of items of Personal Property which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Grantor, having a value equal to or greater than the replaced items when new, or if Grantor shall cause or permit the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Grantor (or if Grantor is a partnership or limited partnership, any general partner of Grantor) without the prior written consent of the Bank.
13. If Grantor defaults under any Lease of the Property or any portion thereof and such default is not cured within the applicable grace or notice and opportunity to cure period, if any, contained therein.

Grantor Acknowledges that all or a portion of the Indebtedness is or may be payable on a demand basis and that the Beneficiary, at any time, without notice and with or without reason, may demand that such Indebtedness be immediately paid in full. The demand nature of such Indebtedness shall not be modified by reference to a default or an Event of Default in this Deed of Trust or in any other Loan Document. For such purposes, references to defaults and Events of Default are for the purpose, among others, of permitting the Beneficiary to accelerate Indebtedness not on a demand basis and to receive interest at the default rate provided in the applicable Loan Documents. It is expressly agreed that the Beneficiary may exercise its demand rights under the Loan Documents evidencing such Indebtedness whether or not a default or a Event of Default has occurred. The Beneficiary, with or without reason and without notice, may from time to time make demand for partial payments of such portion of the Indebtedness, and such demand shall not preclude the Beneficiary from demanding at any time that such Indebtedness immediately be paid in full.

E. DEFAULT AND FORECLOSURE.

To the fullest extent permitted in equity or at law, by statute or otherwise:

1. If an Event of Default shall occur, Beneficiary may, at Beneficiary's sole election and by or through Trustee or otherwise, exercise any or all of the following:

- (a) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable without further notice, presentment, protest, demand, notice of demand or intent to demand, or notice of acceleration or intent to accelerate or action of any nature whatsoever (each of which is hereby expressly waived by Grantor), whereupon the same shall become immediately due and payable. Subject to Section N, Paragraph 8 of this Deed of Trust, acceleration of any Indebtedness shall trigger any applicable pre-payment premium or formula. Without limiting when a pre-payment premium may be due, it is agreed that, at any time after acceleration, a tender of payment of the amount necessary to satisfy the entire Indebtedness must include any applicable pre-payment premium or formula subject, however, to the terms and provisions of Section N, Paragraph 8 of this Deed of Trust.
- (b) Enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and if necessary to obtain such possession, Beneficiary may invoke any and all legal remedies to dispossess Grantor including, specifically, one or more actions for forcible entry and detainer trespass to try title and writ of restitution.
- (c) Hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, in such manner, for such time and upon such other terms as Beneficiary may deem necessary or desirable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking such other action from time to time as Beneficiary shall deem necessary or desirable) and apply all Rents collected in connection therewith in accordance with the provisions of Paragraph 7 of this Section E.
- (d) Sell or offer for sale the Property in such portions, order and parcels as Beneficiary may, in its sole discretion, determine, with or without having first taken possession of same, to the highest bidder for cash at public auction. Such sale or sales shall be made at the courthouse door of the county where the Land is situated (or if the Land is situated in more than one county, then such Property may be sold at the courthouse door of any of such counties as designated in the notices of sale provided for herein) on the first Tuesday of any month between 10:00 A.M. and 4:00 P.M. after giving adequate legal notice of the time, place and terms of sale, by posting or causing to be posted written or printed notices thereof at least twenty-one (21) days preceding the date of any such sale at the courthouse door of the foregoing county, and if the Land is situated in more than one county, one notice shall be posted at the courthouse door of each county in which the Land is situated, and by Beneficiary serving written notice of such proposed sale on each debtor obligated to pay the Indebtedness at least twenty-one (21) days preceding the date of said sale by certified mail at the most recent address for such parties in the records of Beneficiary, or by accomplishing all or any of the aforesaid in such manner as permitted or required by V.T.C.A. Property Code Section 51.002 (as now written or as hereafter amended or succeeded) relating to the sale of real estate and/or by Chapter 9 of the Code relating to the sale of collateral, or by any other present or subsequent laws. At any such sale: (i) Trustee shall not be required to have physically present, or to have constructive possession of, the Property to be sold (Grantor hereby covenanting and agreeing to deliver to Trustee any portion of the Property not actually or constructively possessed by Trustee immediately upon demand by Trustee) and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Grantor; (iii) each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and appointment of any successor Trustee hereunder; (iv) any and all prerequisites to the validity of such sale shall be conclusively presumed to have been performed; (v) the receipt of Trustee or of such other party making the sale shall be a sufficient discharge to the purchaser for the purchase money, and no such purchaser, or the Purchaser's assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof; (vi) Grantor shall be completely and irrevocably divested of all right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the Property sold, and such sale shall be a perpetual bar both at law and in equity against Grantor and against any and all other persons claiming or to claim the Property sold, or any part thereof; and (vii) Beneficiary may be a purchaser at any such sale.
- (e) Upon, or at any time after, commencement of foreclosure of any Lien provided for herein, or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right

proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Property or any other security for the repayment of the indebtedness, for appointment of a receiver of the Property, and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases.

- (f) Exercise any and all other rights, remedies and recourses granted under the Loan Documents or as maybe now or hereafter existing in equity or at law, by virtue of statute or otherwise.
- 2. Should the Property be sold in one or more parcels, the right of sale arising out of any Event of Default shall not be exhausted by any one or more such sales, but other and successive sales may be made until all of the Property has been sold or until the Indebtedness has been fully satisfied.
- 3. All rights, remedies and recourses of Beneficiary granted in the Loan Documents or otherwise available at law or equity: (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Grantor or any Loan Party, or against the Property, or against any one or more of them, at the sole discretion of Beneficiary; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) shall be non-exclusive.

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-9-

-DEALSID-

- 4. Beneficiary may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the Liens evidenced by the Loan Documents or affecting the obligations of Grantor or any other Loan Party to pay or perform the Indebtedness. For payment of the Indebtedness, Beneficiary may resort to any of the security therefor in such order and manner as Beneficiary may elect. No security heretofore, herewith or subsequently taken by Beneficiary shall in any manner impair or affect the security given by the Loan Documents, and all security shall be taken, considered and held as cumulative.
- 5. Grantor hereby irrevocably and unconditionally waives and releases: (a) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any default or Event of Default (except as may specifically be required by a Loan Document) or of Beneficiary's or Trustee's exercise of any right, remedy or recourse provided for under the Loan Documents or otherwise; and (c) any right to a marshaling of assets or a sale in inverse order of alienation.
- 6. In case Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents or otherwise and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do, and in such event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.
- 7. Any proceeds of any sale of, and any Rents, except as may otherwise be provided in Paragraph 2 of Section H, or other amounts generated by the holding, leasing, operation or other use of the Property shall be applied in the such order of priority as Beneficiary, in its sole discretion, may elect including, without limitation, the following order of priority: (a) first, to the payment of all costs and expenses of taking possession of the Property and of holding, leasing, operating, using, repairing, improving and selling the same including, without limitation, fees of the Trustee and attorneys retained by Beneficiary or Trustee (whether inside or outside counsel is used); fees of any receiver or accountants; recording and filing fees; court costs; costs of advertisement; and the payment of any and all Impositions, Liens or other rights, titles or interests equal or superior to the Liens of this Deed of Trust (without in any way implying Beneficiary's consent to the creation thereof); (b) second, to the payment of all accrued and unpaid interest due on the Note; (c) third, to the payment of the unpaid principal balance of the Note; (d) fourth, to the payment of all amounts, other than unpaid principal and accrued interest on the Note, which may be due to Beneficiary under the Loan Documents, together with interest thereon as provided therein; (e) fifth, to the payment of any Indebtedness remaining unpaid; and (f) sixth, to Grantor or such other person who may be entitled thereto by law.
- 8. In addition to the remedies set forth in this Section E, upon the occurrence of an Event of Default the Beneficiary and Trustee shall have available to them the remedies set forth in Sections G and H herein as well as all other remedies available to them at law or in equity.

9. The remedies in this Section E are in addition to other remedies available to the Beneficiary, and the exercise of the remedies in this Section shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to the Beneficiary. The remedies in this Section E are available under and governed by the real property laws of Texas and, except as described in Section G hereof, are not governed by the personal property laws of Texas, including but not limited to, the power to dispose of personal property in a commercially reasonable manner under Section 9.504 of the Code until July 1, 2001 and Section 9.610 of the Code on and after July 1, 2001. No action by Beneficiary taken pursuant to this Section E shall be deemed to be an election to dispose of personal property under Section 9.505 of the Code until July 1, 2001 or Section 9.620 of the Code on and after July 1, 2001.
10. In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or non-judicial foreclosure sale, Grantor and each other Loan Party hereby make the agreements as set forth in this paragraph. Notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantor and each other Loan Party agree that Beneficiary shall be entitled to seek a deficiency judgment from such party, to the extent such party would otherwise be liable therefor, equal to the difference between the amount of the indebtedness and the amount for which the Property was sold pursuant to judicial or non-judicial foreclosure sale. Grantor and each other Loan Party expressly recognize that this Paragraph constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantor and/or other persons against whom recovery of deficiencies is sought to present competent evidence of the fair market value of the Property that was sold as of the date of the foreclosure sale and offset, against any deficiency, the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor and each other Loan Party further recognize and agree that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property that was sold for purposes of calculating deficiencies owed by Grantor and others against whom recovery of a deficiency is sought.
11. In the event the waiver provided for in the immediately preceding Paragraph is determined by a court of competent jurisdiction to be unenforceable and under every circumstance where any of the Property which is the subject matter of a disposition under this Deed of Trust gives rise to a calculation of any surplus or deficiency under Section 9.615 (f) of the Code (as in effect on or after July 1, 2001), the following shall be the basis for the finder of fact's (a) determination of the fair market value of the Property that was sold as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time) and (b) calculation of surplus or deficiency under Section 9.615 of the Code (as in effect on or after July 1, 2001): (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-10-

«DEALSID»

the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than 30 days in the case of Personalty and 12 months in the case of all other Property) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, whether inside or outside counsel is used, and marketing costs; (iv) the gross fair market value of the Property that was sold shall be further discounted to account for any estimated holding costs associated with maintaining such Property pending sale including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least 5 years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above. Furthermore, for purposes of determining the amount of proceeds which would have been realized in a disposition to a transferee other than a secured party, a person related to a secured party or a secondary obligor under Section 9-615(f) of the Code (as in effect on or after July 1, 2001), the value of Property that is the subject of the disposition shall be determined in accordance with this Paragraph.

F. INSURANCE AND CONDEMNATION PROCEEDS AND OTHER AWARDS.

All proceeds of insurance and all judgments, decrees or awards now or hereafter arising or resulting from or in connection with any injury, damage, taking or other loss to the Property, or awards, settlements or other compensation now or hereafter made by any Governmental Authority, including those for any variation of, or change of grade in, any streets

affecting the Land or the Improvements, are hereby assigned in their entirety to Beneficiary and shall be paid directly to Beneficiary. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Beneficiary and each of Beneficiary's employees is irrevocably appointed attorney-in-fact and is duly authorized and empowered to receive, receipt for, discharge and satisfy any judgment, decree or award, whether joint or several, on behalf of Grantor. Beneficiary shall not be liable for failure to collect any judgment, decree or award, regardless of the cost of such failure. Any proceeds received by Beneficiary from any insurance, judgment, decree or award or otherwise arising or resulting from any injury, damage, taking or other loss to the Property shall, after deduction therefrom of all reasonable expenses actually incurred by Beneficiary, including attorneys' fees, whether inside or outside counsel is used, at Beneficiary's sole option (unless otherwise expressly provided herein), (a) be released to Grantor, or (b) applied (upon compliance with such terms and conditions as may be required by Beneficiary) to repair or restoration, either partly or entirely, of the Property, or (c) applied to the payment of the Indebtedness in such order and manner as Beneficiary, in its sole discretion, may elect, whether or not due. In any event, any unpaid portion of the Indebtedness shall remain in full force and effect, and the payment thereof shall not be excused or postponed. Prepaid amounts shall constitute voluntary prepayments and shall, subject to Section N, Paragraph 8 of this Deed of Trust, be subject to applicable prepayment premiums or formulas. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Grantor shall give prompt notice thereof to Beneficiary, and Grantor shall promptly, at Grantor's sole cost and expense and regardless of whether insurance, condemnation or other proceeds (if any) shall be available or sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Property to its value and, as nearly as possible, to its condition and character immediately prior to the damage, loss or destruction. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Loan Document, (i) if the Property shall be damaged or destroyed or if a portion thereof shall be taken by condemnation or an agreement reached under threat of condemnation, and (ii) if the Beneficiary in good faith determines that the insurance or condemnation proceeds together with such additional cash amounts that Grantor shall make available for the repair or restoration of the Property and shall pledge to Beneficiary as additional security for the payment and performance of the Indebtedness are sufficient to restore, repair, replace and rebuild the Property within thirty (30) days following the occurrence of the damage, destruction or taking to its value immediately prior to such damage, loss or destruction and to approximately the same condition and character that existed immediately preceding such damage, loss or destruction, and (iii) provided that no default or Event of Default shall exist, then the insurance and condemnation proceeds together with such additional cash amounts provided by Grantor shall be placed in a special depository account (which may be a non-interest bearing account) with Beneficiary (or, at Beneficiary's option, a financial institution approved by Beneficiary) and disbursed in scheduled payments approved by Beneficiary to restore, repair, replace and rebuild the Property to a value at least equal to that which existed immediately prior to the damage, loss or destruction and to approximately the same condition and character which existed immediately prior to such damage, loss or destruction. Notwithstanding the foregoing, Beneficiary shall have no obligation to disburse any such proceeds or other cash amounts if the total disbursements made prior to completion of the work would exceed 90% of the value of the work then completed, and each disbursement shall be conditioned upon receipt by Beneficiary (in form and content satisfactory to Beneficiary) of architect certificates, contractor and subcontractor sworn statements and waivers and releases of Liens together with satisfactory evidence of the total cost to complete the work, evidence of costs paid by Grantor as the work progresses, evidence that the work is being completed Lien free and in a good and workmanlike manner, and evidence that the proceeds and other cash amounts then on deposit are sufficient for the completion of the work. The special depository account and all amounts deposited therein together with all interests and profits, if any, accruing with respect thereto and all rights, privileges and benefits existing with respect thereto shall be and are hereby pledged as additional security for the payment and performance of the Indebtedness. All work to be performed in connection with the repair, restoration, replacement or rebuilding of the Property shall be performed pursuant to a written contract, which contract shall be subject to the prior written approval of the Beneficiary and which shall set forth the manner and schedule of payments to be made thereunder. If, at any time, the Beneficiary determines that the insurance or condemnation proceeds together with other cash amounts made available by the Grantor are insufficient to repair, restore, replace and rebuild the Property to the value and condition required hereunder, Grantor shall deposit additional cash amounts to the special depository account established (or to be established) for such purpose.

G. SECURITY AGREEMENT.

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-11-

-DEALSID-

Grantor hereby grants to Beneficiary a security interest in and to certain property as follows:

1. If this Deed of Trust secures future advances to be used for construction of Improvements on the Land, this Deed of Trust constitutes a "construction mortgage" under the Code. This Deed of Trust shall also constitute and serve

as a "security agreement" on personal property and a "fixture filing" within the meaning of, and shall constitute a first and prior security interest under, Chapter 9 of the Code with respect to the Personality, Fixtures, Contracts and Leases. To this end, Grantor grants to Beneficiary, as a secured party, a first and prior security interest in, to and under the Personality, Fixtures, Contracts and Leases, to secure the full and timely payment and performance of the Indebtedness.

2. Grantor agrees to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, request to create, perfect, and preserve the security interest herein granted, and Beneficiary may cause any financing statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to create, perfect and preserve such security interest. Without limiting the foregoing, Grantor shall, upon request of Beneficiary take such actions as Beneficiary shall request to establish exclusive control (as defined in the Code) by Beneficiary over any Property which is of such a nature that perfection of a security interest may be accomplished by control. Furthermore, Grantor (a) irrevocably appoints Beneficiary or any agent of Beneficiary (which appointment is coupled with an interest) the true and lawful attorney of Grantor (with full power of substitution) to act in the name, place and stead of, and at the expense of, Grantor and (b) authorizes Beneficiary or any agent of Beneficiary, in its own name, at Grantor's expense, to do any of the following, as Beneficiary, in its sole discretion, deems appropriate: (i) to demand, receive, sue for, and give receipts or acquittances for any moneys due or to become due on any Property (including, without limit, to draft against Property) and to endorse any item representing any payment on or proceeds of the Property; (ii) to execute and file in the name of and on behalf of Grantor all financing statements or other filings or collateral control agreements deemed necessary or desirable by Beneficiary to evidence, perfect, or continue the security interests granted in this Deed of Trust; and (iii) to do and perform any act on behalf of Grantor permitted or required under this Deed of Trust.
3. Beneficiary, as well as Trustee on Beneficiary's behalf, shall have all the rights, remedies and recourses with respect to the Personality, Fixtures, Contracts and Leases afforded a "secured party" by Chapter 9 of the Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded Beneficiary and/or Trustee by the Loan Documents.
4. The security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a party in possession of any portion of the Property or to obligate Trustee or Beneficiary to lease the Property or to take any other action or to incur any expenses or to perform any obligation whatsoever under any of the Contracts or Leases or otherwise.
5. Upon the occurrence of an Event of Default and at any time thereafter:
 - (a) Trustee and Beneficiary shall have, with regard to the Personality, Fixtures, Contracts and Leases the remedies provided in this Deed of Trust and in the Code (no such remedy granted by the Code being excepted, modified or waived herein). Trustee and Beneficiary may, respectively, use his or its discretion in exercising the rights and electing the remedies; provided, however, all acts shall be in compliance with the standards of the Code where applicable and required. For purposes of the notice requirements of the Code and this Section G, it is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates is reasonable notice.
 - (b) Trustee and Beneficiary shall, respectively, be entitled, acting in his or its sole discretion, to apply the proceeds of any disposition of the Personality, Fixtures, Contracts and Leases in the order set forth in Chapter 9 of the Code, or, if allowed by the Code, in the order set forth in Paragraph 7 of Section E hereof. Grantor agrees that Beneficiary shall be under no obligation to accept any noncash proceeds in connection with any sale or disposition of Property unless failure to do so would be commercially unreasonable. If Beneficiary agrees in its sole discretion to accept noncash proceeds (unless the failure to do so would be commercially unreasonable), Beneficiary may ascribe any commercially reasonable value to such proceeds. Without limiting the foregoing, Beneficiary may apply any discount factor in determining the present value of proceeds to be received in the future or may elect to apply proceeds to be received in the future only as and when such proceeds are actually received in cash by Beneficiary.
 - (c) Notwithstanding anything herein to the contrary, Beneficiary, or the Trustee acting on Beneficiary's behalf, may at its or his option, dispose of the Fixtures, Personality, Contracts and/or Leases and other items of personal property covered by this Deed of Trust in accordance with Beneficiary's rights and remedies in respect of and together with the Land, collectively as the Property, pursuant to the provisions of Section E of this Deed of Trust in lieu of proceeding under the Code.
6. Beneficiary may require Grantor to assemble the Personality, Fixtures, Contracts and Leases and make them available to Beneficiary or Trustee at a place to be designated by Beneficiary that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Personality, Fixtures, Contracts and Leases and the like which are incurred or paid by Beneficiary as authorized or permitted hereunder, including also all reasonable attorneys' fees, whether inside or outside counsel is used, legal expenses and costs, shall be added to the Indebtedness, and Grantor shall be liable therefore. At any sale or other disposition of any Property, Beneficiary disclaims all warranties which would otherwise be given under the Code, including without limit, a disclaimer of any warranty

relating to title, possession, quiet enjoyment or the like, and Beneficiary may communicate these disclaimers to a purchaser at such disposition. This disclaimer of warranties will not render the sale commercially unreasonable.

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-12-

«DEALSID»

7. As to the Personalty, Fixtures, Contracts and Leases, this Deed of Trust shall be effective as a financing statement when filed for record in the official real property records of any county in which any portion of the Land is located. The record owner of the Land is Grantor, whose mailing address for purposes of such financing statement is set forth in the opening recital herein above. Information concerning the security interest created by this Deed of Trust may be obtained from Beneficiary at its address similarly set forth in such opening recital. Beneficiary or Trustee may file a carbon, photographic or other reproduction of this Deed of Trust as a financing statement.
8. Except as otherwise expressly provided in this Deed of Trust, all terms in this Deed of Trust which are defined in the Code shall have the meanings assigned to them in Article 9 (or, absent definition in Article 9, in any other Article) of the Code, as those meanings may be amended, revised or replaced from time to time. Notwithstanding the foregoing, the parties intend that the terms used herein which are defined in the Code have, at all times, the broadest and most inclusive meanings possible. Accordingly, if the Code shall in the future be amended or held by a court to define any term used herein more broadly or inclusively than the Code in effect on the date of this Deed of Trust, then such term, as used herein, shall be given such broadened meaning. If the Code shall in the future be amended or held by a court to define any term used herein more narrowly, or less inclusively, than the Code in effect on the date of this Deed of Trust, such amendment or holding shall be disregarded in defining terms used in this Deed of Trust.

H. ASSIGNMENT OF RENTS.

Grantor does hereby absolutely and unconditionally assign, transfer and convey to Beneficiary, as well as to Trustee on Beneficiary's behalf, all Rents under the following provisions:

1. Grantor reserves the right, unless and until an Event of Default occurs under this Deed of Trust, to collect such Rents as a trustee for the benefit of Beneficiary, and Grantor shall apply the Rents so collected in the order set forth in Paragraph 7 of Section E hereof. All rents collected by Grantor shall be deposited by Grantor in Grantor's operating accounts maintained with Beneficiary. All security deposits collected by Grantor shall be maintained in an account with Beneficiary for such purpose.
2. Beneficiary, or Trustee on Beneficiary's behalf, may at any time following an Event of Default, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Property or any part thereof and, in its own name, sue for or otherwise collect such Rents. Grantor hereby agrees with Beneficiary that the other parties under the Leases may, upon notice from Trustee or Beneficiary of the occurrence of an Event of Default, thereafter pay direct to Beneficiary the Rents due and to become due under the Leases and attorn to all other obligations thereunder direct to Beneficiary, or Trustee on Beneficiary's behalf, without any obligation on their part to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Beneficiary, or Trustee acting on Beneficiary's behalf, shall be applied as provided for in Paragraph 7 of Section E above; provided however, that if the costs, expenses and attorneys' fees, whether inside or outside counsel is used, shall exceed the amount of Rents collected, the excess shall be added to the Note, shall bear interest as provided in Paragraph 5 of Section N below and shall be immediately due and payable. The entering upon and taking possession of the Property, the collection of Rents, or the application thereof as aforesaid shall not cure or waive any default or Event of Default, if any, hereunder or invalidate any act done pursuant to such notice. Failure or discontinuance of Beneficiary, or Trustee on Beneficiary's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, and no exercise of any right, power or authority herein granted to Beneficiary, or Trustee on Beneficiary's behalf, shall be or be construed to be, an affirmation by it of any tenancy, lease, or option, or an assumption of liability under or the subordination of the Lien or charge of this Deed of Trust to any such tenancy, lease, or option.
3. Grantor will not (a) execute an assignment of any of its right, title or interest in the Rents, or (b) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any Lease, and except further, any Lease may be canceled if, promptly after the cancellation or surrender thereof a new Lease is entered into with a new lessee having a credit standing, in the judgment of Beneficiary, at least equivalent to that of the

lessee whose Lease was canceled, on substantially the same or better terms as the terminated or canceled Lease, or (c) modify any Lease affecting the Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of the Rents, or (d) accept prepayments of any Rents in excess of one month, except prepayments in the nature of security for the performance of the lessee under any Lease, or (e) in any other manner impair the value of the Property or the security of this Deed of Trust. Grantor will not execute any Lease of all or any substantial portion of the Property except for actual occupancy by the lessee thereunder and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and agreement contained in each Lease now or hereafter existing on the part of lessor thereunder to be kept and performed. Grantor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, a written statement containing the names of all lessees of the Property, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder.

4. No action taken by Beneficiary under this Deed of Trust shall make Beneficiary a "Mortgagee in Possession."

I. THE TRUSTEE.

The following provisions shall govern with respect to the Trustee:

1. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable to Grantor under any circumstances whatsoever. Furthermore, Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted, upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-13-

«DEALSID»

taken or proposed to be taken by him hereunder and believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties **INCLUDING ANY CLAIMS, LOSSES, DAMAGES, SUITS, PENALTIES, COSTS, LIABILITIES, OBLIGATIONS AND EXPENSES, RESULTING FROM TRUSTEE'S OWN NEGLIGENCE**; provided, however, that the foregoing indemnification shall not be applicable, and Grantor shall not be liable for any such claims, losses, damages, suits, penalties, costs, liabilities, obligations or expenses, to the extent (but only to the extent) the same arise or result from any gross negligence or willful misconduct of Trustee.

2. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any money received by him hereunder.
3. Trustee may resign at any time with or without notice. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the afore named Trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estates, rights, powers and duties of the afore named Trustee.
4. Any new Trustee or Trustees appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its, his or their predecessor in the rights hereunder with like effect as if originally named as Trustee herein, but nevertheless, upon the written request of Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act and shall duly assign, transfer and deliver any of the property and money held by such Trustee to the successor Trustee so appointed in his place.

J. SITE ASSESSMENTS.

If Beneficiary shall ever in good faith believe that there may be a possibility of Hazardous Materials or Hazardous Materials Contamination affecting any of the Property, Beneficiary (by its officers, employees and agents) at any time and from time to time after notice to Grantor of same (except in an emergency or where not practical under applicable law in which case notice is waived), either prior to or after the occurrence of a default or an Event of Default, may contract for the

25

services of persons (the "**Site Reviewers**") to perform environmental site assessments ("**Site Assessments**") on the Property for the purpose of determining whether any environmental condition exists which could result in any liability, cost or expense to the owner, occupier or operator of such Property. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Grantor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Property for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials and such other tests as may be necessary to conduct the Site Assessments in the opinion of the Site Reviewers. Grantor will supply to the Site Reviewers such historical and operational information regarding the Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Grantor. The cost of performing such Site Assessments shall be paid by Grantor upon demand of Beneficiary. Any such obligations shall be Indebtedness secured by this Deed of Trust, shall be payable by Grantor upon demand and shall bear interest from the date paid by Beneficiary until reimbursed at the highest per annum interest rate applicable to any of the Indebtedness but not to exceed the highest rate permitted by applicable law.

K. INDEMNIFICATION.

Regardless of whether any Site Assessments are conducted hereunder, Grantor shall defend, indemnify and hold harmless Beneficiary and Trustee and their respective employees, agents, shareholders, officers and directors from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs and expenses (including, without limitation, consultants' fees, investigation and laboratory fees, reasonable attorneys' fees, whether inside or outside counsel is used, expenses and remedial costs), suits, costs of any settlement or judgment and claims of each and every kind whatsoever which may now or in the future (whether before or after the release of this Deed of Trust) be paid, incurred or suffered by or asserted against Beneficiary or Trustee or such other indemnified party by any person or entity or Governmental Authority for, with respect to, or as a direct or indirect result of (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from or affecting the Property or the soil, water, air, vegetation, building, personal property, persons or animals on the Property, (b) any personal injury (including, without limit, wrongful death) or property damage (real or personal) arising out of or related to Hazardous Materials, (c) any law suit brought or threatened, settlement reached or government order related to Hazardous Materials, (d) the cost of removal of Hazardous Materials from any portion of the Property, (e) taking necessary precautions to protect against the release of Hazardous Materials on or affecting the Property, (f) complying with all Governmental Requirements, and/or (g) any violation of any Governmental Requirement or requirements of this Deed of Trust which are in any way related to Hazardous Materials including, without limit, attorney's fees (whether inside or outside counsel is used) and consultants' fees (the attorneys and consultants to be selected by Beneficiary), investigation and laboratory fees and environmental studies required by Beneficiary (whether prior to foreclosure, or otherwise) **INCLUDING ANY CLAIMS, LOSSES, DAMAGES, SUITS, PENALTIES, COSTS, LIABILITIES, OBLIGATIONS OR EXPENSES, RESULTING FROM BENEFICIARY'S, TRUSTEE'S OR SUCH OTHER INDEMNIFIED PARTY'S OWN NEGLIGENCE**; provided, however, that the foregoing indemnification shall not be applicable, and Grantor shall not be liable for any such claims, losses, damages, suits, penalties, costs, liabilities, obligations or expenses, to the extent (but only to the extent) the same arise or result from any

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-14-

«DEALSID»

gross negligence or willful misconduct of the indemnified party. The representations, covenants, warranties and indemnification contained in this Section K shall survive the release of this Deed of Trust.

L. BENEFICIARY'S RIGHT TO REMOVE HAZARDOUS MATERIALS.

Beneficiary shall have the right but not the obligation, without in any way limiting Beneficiary's other rights and remedies under this Deed of Trust or any other Loan Document, to enter onto the Property or to take such other actions which are required by Legal Requirements or Governmental Requirements (and as Grantor deems necessary or advisable) to investigate or test for, clean up, remove, resolve or minimize the impact of, advise any Governmental Authority of the possible existence of, or otherwise deal with any Hazardous Materials or Hazardous Materials Contamination on or affecting the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Property or any part thereof which, if true, could result in an order, notice, suit, imposition of a Lien on the Property or other action and/or which, in Beneficiary's sole opinion, could adversely affect Beneficiary's security under this Deed of Trust. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be Indebtedness secured by this Deed of Trust, shall be payable by Grantor upon demand and shall bear interest from the date paid by Beneficiary until reimbursed at the highest per annum interest rate applicable to any of the Indebtedness but not to exceed the highest rate permitted by applicable law. Any such actions conducted by Beneficiary shall be solely for the benefit of and to protect the interests of Beneficiary and shall not be rele

conducted by Beneficiary shall be solely for the benefit of and to protect the interests of Beneficiary and shall not be relied upon by Grantor, Borrower, any other Loan Party or any third party for any purpose. By conducting any such actions, Beneficiary does not assume control over the environmental affairs or operations of Grantor or assume any liability of Grantor, Borrower, any Loan Party or any third party. The provisions of this Section shall be in addition to all other obligations and liabilities Grantor may have to Beneficiary at common law or pursuant to any other agreement and shall survive (a) the repayment and performance of the Indebtedness, (b) the satisfaction of all other obligations of Grantor under this Deed of Trust and under any other Loan Document, (c) the discharge of this Deed of Trust, and (d) the foreclosure of this Deed of Trust or acceptance of a deed in lieu of foreclosure.

M. ASSIGNMENT OF CONTRACTS AND SALES PROCEEDS.

1. Grantor hereby collaterally sells, assigns, transfers and sets over unto Beneficiary, its successors and assigns, all of Grantor's right, title and interest in, to and under any and all Contracts, including all of Grantor's rights to receive payments, receipts, revenues, interest and income of any kind under the Contracts (hereinafter collectively called the "**Proceeds**") including but not limited to (a) any and all rights of Grantor to receive the Proceeds, and (b) any and all rights and remedies which Grantor may have against any other party to any of the Contracts, whether related to the payment of any portion of the Proceeds or otherwise.
2. These presents are given to additionally secure payment and performance of the Indebtedness. Grantor shall not cancel or amend any of the Contracts or permit any of them to terminate if they are necessary or desirable for the operation of the Property without first obtaining the written approval of the Beneficiary. This Section shall not be applicable to any Contract that terminates if it is assigned without the consent of another party (other than Grantor) unless this consent has been obtained. Furthermore, this Section shall not be construed as a present assignment of any Contract that Grantor is required by law to hold.
3. Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Grantor under any of the Contracts, and Grantor hereby agrees to indemnify Beneficiary for, and to save Beneficiary harmless from, any and all liability arising from any of the Contracts or from this assignment **INCLUDING ANY CLAIMS, LOSSES, DAMAGES, SUITS, PENALTIES, COSTS, LIABILITIES, OBLIGATIONS OR EXPENSES, RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE**; provided, however, that the foregoing indemnification shall not be applicable, and Grantor shall not be liable for any such claims, losses, damages, suits, penalties, costs, liabilities, obligations or expenses, to the extent (but only to the extent) the same arise or result from any gross negligence or willful misconduct of Beneficiary. This assignment shall not place responsibility for the control, care, management or repair of the Property upon Beneficiary or make Beneficiary responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or damage or injury or death to any party.
4. The failure of Beneficiary to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Beneficiary shall have the full right, power and authority to enforce this assignment, or any of the terms, covenants or conditions hereof, at any time or times that Beneficiary shall deem fit.

N. MISCELLANEOUS.

The following provisions shall also apply to and govern this Deed of Trust and the interpretation hereof:

1. Each and every portion of the Indebtedness shall survive the execution and delivery of the Loan Documents and the consummation of the loans called for therein and shall continue in full force and effect until the Indebtedness shall have been paid and performed in full except for the representations, covenants, warranties and indemnification contained in Section K and Section Q which shall survive the payment and performance of the Indebtedness as specified therein.
2. Grantor, upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper, in Beneficiary's judgment, to carry out more effectively the purposes of the Loan Documents and to subject to the Liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property. Grantor will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges, including those for Lien searches.

3. All notices or other communications required or permitted to be given pursuant to this Deed of Trust (except for notices of a foreclosure sale which shall be given in the manner set forth in Paragraph I(d) of Section E hereof) shall be in writing. A notice or communication shall be deemed to be given under this Deed of Trust when delivered to the applicable party or when placed in an envelope addressed to the party and deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States Postal Service or delivered to an overnight courier. The mailing shall be by overnight courier, certified or first class mail. In the event that applicable law shall obligate Beneficiary to give prior notice to the Grantor or any other Loan Party of any action to be taken under this Deed of Trust or any other Loan Document, the Grantor and other Loan Parties agree that a written notice given to Grantor or such other Loan Party at least 10 days before the date of the act shall be reasonable notice of the act unless a shorter notice period is reasonable under the circumstances. For purposes of notice, the addresses of the parties shall be as set forth in the opening Paragraph herein above; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 10 days' notice to the other party in the manner set forth herein above.
4. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor, Borrower or any other Loan Party of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor, Borrower or any other Loan Party of any and all of such terms, provisions and conditions.
5. If Grantor, Borrower or any other Loan Party shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then at any time after the applicable notice and cure periods have passed, if any, and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Property as it may deem necessary or appropriate. Grantor shall indemnify Beneficiary for all losses, expenses, damages, claims, and causes of action, including reasonable attorneys' fees, whether inside or outside counsel is used, incurred or accruing by reason of any acts performed by Beneficiary pursuant to this Paragraph 5 of Section N or by reason of any other provision in the Loan Documents **INCLUDING ANY CLAIMS, LOSSES, COSTS, DAMAGES, LIABILITIES, OBLIGATIONS, AND EXPENSES RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE**, except to the extent, but only to the extent, caused by Beneficiary's gross negligence or willful misconduct. All sums paid by Beneficiary pursuant to this Paragraph 5 of this Section N and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the highest per annum rate of interest applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by applicable law, from the date of such payment or expenditure until repaid, shall constitute additions to the Indebtedness, shall be secured by the Loan Documents and shall be paid by Grantor to Beneficiary upon demand. **TEXAS FINANCE CODE § 307.052 COLLATERAL PROTECTION INSURANCE NOTICE : (A) DEBTOR IS REQUIRED TO: (i) KEEP THE COLLATERAL INSURED AGAINST DAMAGE IN THE AMOUNT EQUAL TO THE DEBTOR'S INDEBTEDNESS TO BANK; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME THE BANK AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS; (B) DEBTOR MUST, IF REQUIRED BY BANK, DELIVER TO BANK A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF DEBTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, THE BANK MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF THE DEBTOR AT THE DEBTOR'S EXPENSE.**
6. All Obligations contained in the Loan Documents are intended by the parties to be, and shall be construed as, covenants running with the Property.
7. All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.
8. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein above shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply with the usury, and all other laws relating to the Indebtedness or Loan Documents. If, at any time, the applicable Legal Requirements render usurious any amount called for in any Loan Document, then it is Grantor's, Trustee's and Beneficiary's express intent that such document be immediately deemed reformed, and the amounts collectible be reduced or spread, without the necessity of the execution of any new documents, so as to comply with the then applicable law but so as to permit the recovery of the fullest amount otherwise called for in such Loan Documents.

9. in the event of the passage after the date of this Deed of Trust of any applicable law changing in any way the laws for the taxation of deeds of trust or mortgages and/or the debts secured thereby so as to affect this Deed of Trust, Beneficiary shall have the right, at Beneficiary's option, without limiting any other right or remedy (including, without limitation, the right to demand payment of any Indebtedness that is payable on a demand basis) to declare the Indebtedness immediately due and payable after providing Grantor with notice of such tax, and if such law permits Grantor to pay such tax, the failure of Grantor to pay such tax within ten (10) days of such notice; provided further, in the event payment of such tax by Grantor is prohibited under such law, then Grantor shall not have the option to pay such tax, and the Indebtedness shall be due and payable after the passage of ten (10) days of notice of such tax assessment from Beneficiary to Grantor.

Beneficiary as the direct or indirect result thereof. In the event of continuation or reinstatement of this Deed of Trust, Grantor agrees, upon demand by Beneficiary, to execute and deliver to Beneficiary those documents which Beneficiary determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Grantor to do so shall not affect in any way the reinstatement or continuation. If Grantor does not execute and deliver to Beneficiary upon demand such documents, Beneficiary and each employee of Beneficiary is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Grantor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Grantor.

O. INDEMNITY.

Grantor shall indemnify, defend, and hold harmless Beneficiary from and against any and all liability, damage, loss, cost, or expense (including, without limitation, attorneys' fees and expenses, whether inside or outside counsel is used), action, proceeding, claim or dispute incurred or suffered by Beneficiary, whether voluntarily or involuntarily incurred or suffered, in respect of the following: (a) any litigation concerning this Deed of Trust, the other Loan Documents or the Property, or any interest of Grantor or Beneficiary therein, or the right of occupancy thereof by Grantor or Beneficiary, whether or not any such litigation is prosecuted to a final, non-appealable judgment; (b) any dispute, including disputes as to the disbursement of proceeds of the Note not yet disbursed, among or between any of the constituent parties or other partners or venturers of Grantor (if Grantor is a general or limited partnership) or among or between any employees, officers, directors, or shareholders of Grantor (if Grantor is a corporation), or among or between any members, trustees or other responsible parties (if Grantor is an association, trust or other entity); (c) any action taken or not taken by Beneficiary or Trustee which is allowed or permitted under this Deed of Trust or any of the other Loan Documents relating to Grantor, the Property, any other Loan Party, any constituent parties or otherwise in connection with the Loan Documents including, without limitation, the protection or enforcement of any Lien, security interest or other right, remedy or recourse created or afforded by this Deed of Trust or any other Loan Document; and (d) any action brought by Beneficiary or Trustee against Grantor under this Deed of Trust or any other Loan Document, whether or not such action is prosecuted to a final, non-appealable judgment **INCLUDING ANY CLAIMS, LOSSES, COSTS, DAMAGES, LIABILITIES, OBLIGATIONS AND EXPENSES RESULTING FROM BENEFICIARY'S OWN NEGLIGENCE**, except and to the extent, but only to the extent, caused by Beneficiary's gross negligence or willful misconduct. Beneficiary and/or Trustee may employ an attorney or attorneys to protect or enforce any rights, remedies or recourses under this Deed of Trust or any other Loan Document and to advise and defend Beneficiary and/or Trustee with respect to any such action.

and other matters. Grantor shall reimburse Beneficiary and/or Trustee for their respective attorneys' fees, whether inside or outside counsel is used, and expenses (including expenses and costs for experts) immediately upon receipt of a written demand therefor, whether on a monthly or other time interval, and whether or not an action is actually commenced or concluded. Unless otherwise specified herein, all reimbursement and indemnity obligations hereunder shall become due and payable upon demand and shall bear interest from the date paid by Beneficiary until reimbursed at the highest per annum rate of interest applicable to any of the Indebtedness, but not in excess of the maximum rate permitted by law. The provisions of this Paragraph shall survive repayment and performance of the Indebtedness, the release of the Liens of this Deed of Trust, any foreclosure (or action in lieu of foreclosure) and the exercise by Beneficiary of any and all remedies set forth herein or in the Loan Documents.

P. SPECIAL PROVISIONS.

NONE.

Q. NOTICE OF FINAL AGREEMENT.

THIS AGREEMENT AND THE OTHER "LOAN AGREEMENTS" (AS SUCH TERM IS DEFINED IN SECTION 26.02(a)(2) OF THE TEXAS BUSINESS AND COMMERCE CODE, AS AMENDED) REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

R. WAIVER OF RIGHT TO TRIAL BY JURY.

GRANTOR AND BENEFICIARY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY AND FOR THE MUTUAL BENEFIT OF ALL PARTIES WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT OR THE INDEBTEDNESS.

EXECUTED as of, although not necessarily on, the day and year first above written.

GRANTOR:

KER-SEVA, LTD.,
a Texas limited partnership

By: Ker-Seva Management Ltd., Co., a Texas limited liability company
its General Partner

By: Bajwa

Bajwa K. Jawanda - Owner

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-18-

«DEALSID»

FOLLOWING RECORDATION, RETURN TO:

Comerica Bank
c/o Vincent, Lopez, Serafino
Attn: V. Charles Serafino
1601 Elm St. Ste. 4100
Dallas, Texas 75201

STATE OF TEXAS

§
§

31

4/14/2016

Texas Land Records and County Records

COUNTY OF COLLIER §

This instrument was acknowledged before me on February 3rd, 2015, by BALJEET K. JAWANDA, in his capacity as the owner of Ker-Seva Management Ltd., Co., the General Partner of KER-SEVA, LTD., a Texas limited partnership, on behalf of said limited partnership.



Notary Public - State of Texas

Dorothy Ton
(Printed Name of Notary Public)

My Commission Expires: 9-14-16



EXHIBIT "A"**O Westridge Boulevard**

Being a 4.91 tract of land being situated in the Andrew S. Young Survey, Abstract Number 1037, Collin County, Texas, same being a portion of that tract of land conveyed to Ker-Seva, LTD., of the County of Collin and State of Texas, by deed recorded in Instrument Number 20070803001079570, Official Public Records, Collin County, Texas, known as Lot 2, Block 1 of addition;

BEGINNING at 1/2 inch iron rod set for corner, said corner being along the South line of Westridge Boulevard (variable width right-of-way) and being along the West line of that tract of land conveyed to Ronald Valk, by deed recorded in Instrument Number 20140530000542600, Official Public Records, Collin County, Texas;

THENCE South 00 degrees 02 minutes 34 seconds East, along the West line of said Valk tract, a distance of 276.13 feet to a 1/2 inch iron rod set for corner, said corner being along the North line of that tract of land conveyed to Barch Interest, LP, by deed recorded in Instrument Number 20061228001826130, Official Public Records, Collin County, Texas, from which a 1/2 inch iron rod found bears North 09 degrees 01 minutes 46 seconds East, a distance of 0.89 feet for witness;

THENCE South 89 degrees 57 minutes 25 seconds West, along the North line of said Barch tract, a distance of 777.16 feet to a 1/2 inch iron rod found for corner, said corner being the Southeast corner of that tract of land conveyed to Ker-Seva, LTD., the County of Collin and State of Texas, by deed recorded in Instrument Number 20070803001079570, Official Public Records, Collin County, Texas;

THENCE North 00 degrees 02 minutes 35 seconds West, along the East line of said Ker-Seva tract, a distance of 274.95 feet to a "X" found for corner, said corner being the Northeast corner of said Ker-Seva tract and being along the South line of said Westridge Boulevard;

THENCE North 89 degrees 52 minutes 06 seconds East, along the South line of said Westridge Boulevard distance of 777.25 feet to the POINT OF BEGINNING and containing 214,147.36 square feet or 4.91 acres of land.

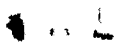
4/14/2016

Texas Land Records and County Records

TX-0003 Deed of Trust Sec Agr Assign Rents (4/2011)

-20-

-DEALSID-



AFTER RECORDING RETURN TO:

**V. CHARLES SERAFINO
VINCENT LOPEZ SERAFINO JENEVEIN, PC
1601 ELM STREET, SUITE 4100
DALLAS, TEXAS 75201**

Filed and Recorded
Official Public Records
Stacey Kemp County Clerk
Collin County, TEXAS
02/09/2016 08:52:18 AM
\$102.00 CJAMAL
20150209000137500



EXHIBIT “C”

AFTER RECORDING,
RETURN TO:
~~Scott Ingalls~~ City Secretary
City of Frisco, Texas
6101 Frisco Square Blvd - 5th Floor
Frisco, Texas 75034



20061215001762800 12/15/2006 08:39:57 AM AG 1/24

STATE OF TEXAS

§

§

COUNTY OF COLLIN

§

ANNEXATION AGREEMENT

This Annexation Agreement (the "Agreement") is made and entered into as of this 13th day of October, 2006, (the "Effective Date") by and between the City of Frisco, Texas, (the "City") and Baljeet K. Jawanda and Daljit S. Hundle (collectively the "Owner") on the terms and conditions hereinafter set forth.

WHEREAS, Owner owns approximately 8.579 acres, more or less, being Lots 1-3, Block A, Westridge Addition in the extraterritorial jurisdiction of the City, Collin County, Texas which is more particularly described in **Exhibit "A"** which is attached hereto and fully incorporated herein for all purposes (hereinafter defined as the "Property"); and

WHEREAS, City and the Owner desire that the property be developed as set forth herein; and

WHEREAS, Owner desires to construct a Montessori School on Lot 1 of the Property; and

WHEREAS, pursuant to Section 212.172 of the Texas Local Government Code, the City is authorized to make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality for purposes set forth in that section; and

WHEREAS, the parties desire to agree on the matters set forth in this Agreement pursuant to Section 212.172 of the Texas Local Government Code and for the purposes set forth in that section.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as follows:

1. Land Subject to Agreement. The land that is subject to this Agreement is approximately 8.579 acres of land, more or less, located in the Westridge Addition, Collin County, Texas and more particularly described in **Exhibit "A"**, attached hereto and incorporated herein for all purposes (the "Property"). Owner represents that there are no other owners of the Property.

Development Agreement
458197.v3

Page 1

2. Use and Development. The use and development of the Property before and after annexation shall conform to the uses, density, layout, permitting requirements (including but not limited to submittal of site plans and plats) and development standards (including but not limited to masonry requirements, parking standards and landscaping standards) set forth by the ordinances of City (including but not limited to the Comprehensive Zoning Ordinance and the Subdivision Regulations) as they exist or may be amended. Prior to annexation, the Property shall be developed as if it has been designated with Retail (R) zoning.

3. Annexation and Zoning. City will not annex the Property, unless requested to do so by Owner, during the term of this Agreement provided that Owner complies with the terms and conditions of this Agreement. The parties agree that City, in its sole discretion, shall determine whether Owner is in compliance with the Agreement and whether it will approve annexation of the Property.

4. Water and Sewer Service. Following annexation of the Property by City, City agrees to provide sanitary sewer service for the Property in the same manner and in accordance to the same regulations as any retail development in the City and in accordance with the annexation service plan. City agrees provide water service for the Property in the same manner and in accordance to the same schedule as any retail development in the City if it can lawfully do so. Owner may temporarily connect to the City of McKinney's water and sanitary sewer system to serve the Property until such time as City lines are available to the Property. Upon being requested to do so by City, Owner agrees to execute convey an easement to City on that portion of the Property reasonably needed by City, in City's sole discretion, to be used as a utility easement for water and sewer service, free from any liens or other encumbrances, for the construction and/or extension of water or sewer facilities. Said easement shall be materially in the same form as **Exhibit "B"**, attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the easement.

5. Right-of-Way Dedication for Westridge Blvd. Upon being requested to do so by City, Owner agrees to dedicate to City that portion of the Property reasonably needed by City, in City's sole discretion, to be used as right-of-way for Westridge Blvd, free from any liens or other encumbrances, for the construction and/or extension of Westridge Blvd ("ROW Property"). Said right-of-way dedication shall be by warranty deed materially in the same form as **Exhibit "C"**, attached hereto and incorporated herein for all purposes, and shall contain legal descriptions and diagrams of the right-of-way dedication.

6. Impact Fees. The Property shall be subject to impact fees adopted by Ordinance No. 05-07-53, as it exists or may be amended.

7. Other Development Fees. City ordinances covering property taxes, park dedication and/or payment in lieu of dedication of land, utility rates, permit fees and the like are not affected by this Agreement and shall be applied to the Property in the same manner as any other Property located within the City's corporate boundaries. Further this Agreement does not waive or limit any of the obligations of Owners to City under any other ordinance, whether now existing or in the future

arising.

8. Term. This Agreement is an agreement authorized by Section 212.172 of the Texas Local Government Code. The term of this Agreement shall be five (5) years from the effective date. The term of this Agreement shall not be affected by the fact that some or all of the Property is annexed into the corporate limits of the City.

9. Default. If any party breaches any of the terms of this Agreement, then that party shall be in default (the "Defaulting Party") of this Agreement (an "Event of Default"). If an Event of Default occurs, the nondefaulting party shall give the Defaulting Party written notice of such Event of Default and if the Defaulting Party has not cured such Event of Default within thirty (30) days of said written notice, this Agreement is breached. Each party is entitled to all remedies available at law or in equity.

10. Notice. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Mail, postage pre-paid, certified mail, return receipt requested, addressed to either party, as the case may be, at the addresses contained below:

City: City of Frisco
6101 Frisco Square Blvd.
Frisco, TX 75034
Attn: City Manager

With copy to: Julie Fort
Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd.
Suite 300
P.O. Box 1210
McKinney, TX 75070-1210

Owner: Baljeet K. Jawanda and Daljit S. Hundle
4588 Penbrook Court
Plano, Texas 75024

11. Miscellaneous.

(a) Assignment. This Agreement is assignable. If all or any portion of the Property is transferred, sold or conveyed, the Owner shall give notice immediately to City of the name, address, phone number and contact person of the person or entity acquiring an interest in the Property. This Agreement shall run with the land and shall be binding on and inure to the benefit of the Owners' successors and assigns.

Development Agreement
458197.v3

Page 3

(b) Compliance with Ordinances. Except as provided for in this Agreement, the parties agree that the Owners shall be subject to all ordinances of City. All construction will be in accordance with applicable ordinances and regulations of Frisco, whether now existing or in the future arising.

(c) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.

(d) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

(e) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(f) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

(g) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(h) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

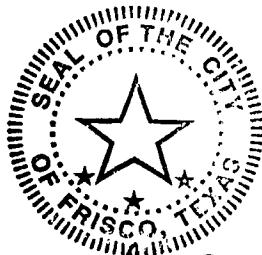
(k) Sovereign Immunity. The parties agree that the City has not waived its sovereign immunity by entering into and performing their respective obligations under this Agreement.

(l) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document

(m) Incorporation of Recitals. The Recitals above are incorporated herein as if repeated verbatim.

(n) No Chapter 245 Permit. This Agreement, and any requirement contained in this Agreement, shall not constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.



CITY OF FRISCO, TEXAS

By: George Purefoy
George Purefoy, City Manager

ATTEST:

Estela Barrera for Nan Parker
City Secretary

APPROVED AS TO FORM:

Julie Y. Fort
Julie Y. Fort
Abernathy, Roeder, Boyd & Joplin, P.C.

OWNERS:

Bhawanda
Baljeet K. Jawanda, Individually
Daljit S. Hundle
Daljit S. Hundle, Individually

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **George Purefoy**, City Manager of the City of Frisco, Texas, being the person whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **City of Frisco, Texas**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of October, 2006.

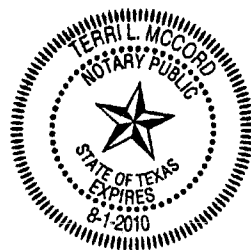


Terril L. McCord
Notary Public in and for the State of Texas
My Commission Expires:
Aug. 1. 2010

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Baljeet K. Jawanda**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4th day of October, 2006.

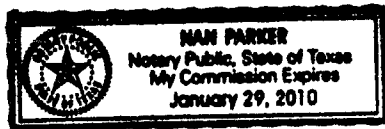


Terril L. McCord
Notary Public in and for the State of Texas
My Commission Expires:
8/1/10

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Daljit S. Hundle**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; she acknowledged to me that she has executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of October, 2006.



Nan Parker
Notary Public in and for the State of Texas
My Commission Expires:
1-29-2010

Exhibit "A"
Legal Description and Diagram

Development Agreement
458197 v3

Page 8

EXHIBIT A

LEGAL DESCRIPTION

WHEREAS Baljeet K. Jawanda and Daljits S. Hundle are the owners of a tract or parcel of land situated in the City of Frisco, Collin County, Texas, being part of the A.S. Young Survey, Abstract Number 1037, being all of that tract of land described in deed to said Baljeet K. Jawanda and Daljits S. Hundle recorded in Volume 5912, Page 6577 of the Deed Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a ½ inch iron rod with cap stamped "LONE STAR" set for corner in the southerly right-of-way line of Westridge Boulevard (a 60 foot wide right-of-way) according to the plat thereof recorded in Volume N, page 547 of the plat Records of Collin County, Texas, said iron rod being the northeasterly corner of said Jawanda/Hundle tract and the northwesterly corner of that tract described in deed to Dr. Ernest S. Martin and Janice L. Martin recorded under County Clerk's File Number 94-0061709, Deed Records of Collin County, Texas, from which a ½ inch iron rod with red plastic cap found bears North 22°41'33";

THENCE South 00°02'34" East along the common line of said Jawanda/Hundle and Martin tracts a distance of 336.13 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner in the northerly line of that tract of land described in deed to John Barch and Jana Barch in Volume 5723, Page 4783 of the Deed Records of Collin County, Texas, being the southwesterly corner of said Martin tract and the southeasterly corner of said Jawanda/Hundle tract, from which a ½ inch iron rod with red plastic cap found bears North 13°51'37" East, 0.98 feet;

THENCE South 89°57'25" West along the common line of said Jawanda/Hundle and Barch tracts a distance of 1282.98 feet to a ½ inch iron rod with red plastic cap found for corner in the monumented easterly right-of-way line of Blaise Drive (a measured 87.5 foot wide right-of-way) (unrecorded), being the northwesterly corner of said Barch tract and the southwesterly corner of said Jawanda/Hundle tract;

THENCE North 00°02'07" East along said easterly right-of-way line of Blaise Drive and the westerly line of said Jawanda/Hundle tract a distance of 50.00 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the most westerly northwesterly corner of said Jawanda/Hundle tract and the southwesterly corner of the remainder of that tract of land described in deed to William A. Mains and Paula L. Mains recorded in Volume 1024, Page 753 of the Deed Records of Collin County, Texas;

THENCE North 89°57'25" East along a northerly line of said Jawanda/Hundle tract and the southerly line of said Mains remainder tract, parallel to and 50.00 feet northerly of said Jawanda/Hundle and Barch tracts common line a distance of 190.61 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner, being the southeasterly corner of said Mains remainder tract and an ell corner of said Jawanda/Hundle tract;

THENCE North 02°55'18" East along the easterly line of said Mains remainder tract and a westerly line of said Jawanda/Hundle tract a distance of 284.86 feet to a ½ inch iron rod with cap stamped "LONE STAR" set for corner in said southerly right-of-way line of Westridge Boulevard, being the northeasterly corner of said Mains remainder tract and the most northerly northwesterly corner of said Jawanda/Hundle tract;

THENCE North 89°52'06" East along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 277.53 feet to a ½ inch iron rod with yellow plastic cap found at an angle point;

THENCE North 89°52'06" East continuing along said southerly right-of-way line of Westridge Boulevard and the northerly line of said Jawanda/Hundle tract a distance of 800.04 feet to the **POINT OF BEGINNING** and containing 373,682 square feet or 8.579 acres of land.

WESTRIDGE ANNEXATION AGREEMENT

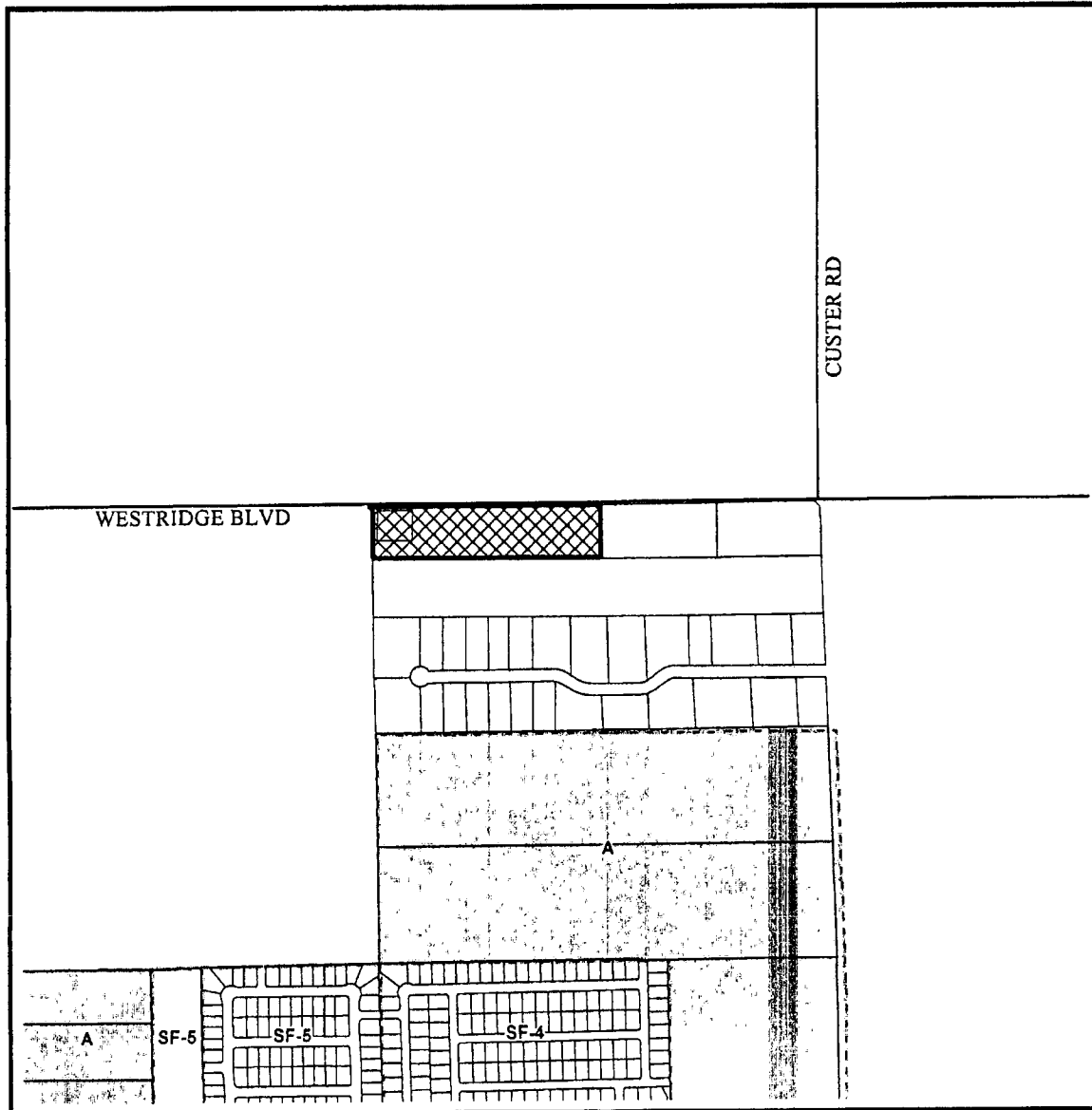


Exhibit "B"
Utility Easement Form
with Temporary Construction Easement

Development Agreement
458197 v3

Page 9