

# TexasNotes

281-221-7383  
603 W. 11<sup>th</sup> Street, Ste. 110  
Houston, Texas 77008

January \_\_, 20\_\_

GF No. :1234567

To: Escrow Officer: [exampletitle@exampletitle.com](mailto:exampletitle@exampletitle.com)

Title Company: Example Title, LLC  
1234 Main Street Ste 100  
San Antonio, Texas 12345  
123-456-7890

Closing Date: January 6, 2022 Loan Number: 12345678910

Borrower(s): Doe Family Holdings, LLC

Collateral Property: 1234 Sesame Street, Houston, Texas 78910

The following pages consist of the Lender's Closing instructions which include the Borrower(s) name(s) and how they must read and match all of Lender's documents, Title Company provided documents and third-party documents.

Also included are the closing requirements, title requirements, insurance evidence requirements, fees to be collected on behalf of the Lender, and funding instructions which must be complied with prior to any disbursements.

Please note that this is a Commercial Transaction and will require the use of a HUD-1 Settlement Statement rather than a Closing Disclosure.

If you have not already provided your wire instructions, please immediately send via email to [hello@texasnotes.com](mailto:hello@texasnotes.com). You will receive the document closing package separately if it is not included after these instructions.

Please contact our office immediately if you have any questions or are unable to comply with any instructions provided herein.

Thank you,

Texas Notes Team

**Closing Document Index, Checklist and Stacking Order**

Borrower: Doe Family Holdings, LLC

Guarantor: Jane Doe

Indicated if Included	Document Title	Required Signature(s)	Recording Required:	Required for Funding authorization:
<input type="checkbox"/>	Lender Closing Instructions			
<input type="checkbox"/>	Funding Requirements			
<input type="checkbox"/>	Direct Debit Enrollment Form	B		
<input type="checkbox"/>	Attorney Invoice			
<input type="checkbox"/>	Attorney Representation Letter	B		
<input type="checkbox"/>	Non-Homestead Affidavit	B		
<input type="checkbox"/>	Signature Affidavit & AKA Statement	B	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Warranty Deed with Vendor's Lien	S	X	
<input type="checkbox"/>	Real Estate Lien Note	B,G	<input type="checkbox"/>	
<input type="checkbox"/>	Deed of Trust (Security Agreement and Financing Statement) with Riders, if any	B	X	<input type="checkbox"/>
<input type="checkbox"/>	PUD Rider	B	X	<input type="checkbox"/>
<input type="checkbox"/>	Assignment of Warranties, Permits, Licenses and Contracts and Absolute Assignment of Leases and Rents	B	X	<input type="checkbox"/>
<input type="checkbox"/>	UCC Financing Statement (not in package – see note below)	B,L	X	<input type="checkbox"/>
<input type="checkbox"/>	UCC Financing Statement Exhibit "A" (not in package – see note below)	B,L	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Certificate of Company Resolution	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Errors, Omissions, and Correction Agreement	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Environmental Certificate with Representations, Covenants and Warranties	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Collateral Protection Insurance Disclosure	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Disclosure for Balloon Mortgages	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Taxes and Insurance Escrow Letter	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Fee Schedule	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Guaranty	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Construction Loan Agreement	B,G,L	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Affidavit of Non-Commencement	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Business Purpose Affidavit	B,G	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Draw Request Application Cover			
<input type="checkbox"/>	Draw Request Application			
<input type="checkbox"/>	Notice of Final Agreement	B,G,L	<input type="checkbox"/>	<input type="checkbox"/>
	<b>NOTE:</b> UCC Financing Statement and Exhibit "A" will be a separate document			

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## Lender's Closing Instructions

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### Loan Summary:

Lender: TEXAS NOTES, LLC  
1006 W. 9th St., Unit B, Houston, TX 77007

Borrower(s): Doe Family Holdings, LLC

Authorized Signor: Jane Doe Title: Manager

Guarantor: Jane Doe

Collateral Property: 1234 Sesame Street, Houston, Texas 78910

Loan Amount: \$400,000.00; \$100,000.00 of which is being withheld by Lender for Rehab

Payments: Monthly Interest only payments of \$3,663.33 per month or as reflected on monthly statement if rehab/construction with draws.

Interest: 10.99% / 365 Default Rate: 17.99%

Late Fees: 5% of monthly payment amount after 10 days

Collect Prepaid Interest due, at closing, through first payment date.

First payment Date: March 01, 2022

Maturity Date: October 06, 2022

No prepayment penalty; No escrows

**Loan Purpose:** Investment Property Purchase and Rehab/Construction

**Payment Address:** 603 W. 11<sup>th</sup> Street, Suite 110, Houston, Texas 77008

**Extension/Modifications:** None will be allowed. Borrower must request any extension which may only be granted at Lender's sole and absolute discretion and through the execution of a Loan Modification Agreement.

**Powers of Attorney:** Not Approved

Collect the following amounts at closing on behalf of the Lender.

ITEM	PAYABLE TO	AMOUNT
Origination Fee	TEXAS NOTES, LLC	TBD
Underwriting Fee	TEXAS NOTES, LLC	TBD
Document Preparation	ATTORNEYS	TBD
UCC Recording Fees	TEXAS NOTES, LLC	TBD

**There will be no table funding. Lender requires original executed closing documents prior to funding approval. If the documents are received by 12:00 pm CST, Lender can do same day funding. If documents are received AFTER 12:00 P.M. CST, the loan will fund the following business day.**

### WIRE INSTRUCTIONS

Bank:  
Central Bank Houston  
P. O. Box 801263  
Houston, TX 77280-1263

Routing Number:  
[REDACTED]

Account Number:  
[REDACTED]

Please reference the property address and Borrower Name.

#### **Insurance evidence Requirements:**

1. Hazard; Flood; and Builder's Risk Insurance Policies are required.
2. **TEXAS NOTES, LLC** shall be listed as Loss Payee/additional insured/Mortgagee.
3. Minimum Coverage: \$400,000.00.
4. Effective date must be on or prior to closing date and valid through and including October 06, 2022.
5. Acceptable documentation that insurance policies are paid in full or premiums must be collected from Borrower(s) at closing.
6. Insured name to read exactly as Borrower(s) name(s) appear on loan documents.
7. Subject property address must be identified as the insured property and match the address on the survey and tax certificate.

#### **Title, Tax, HOA and Survey Requirements:**

1. Mortgagee Title Policy coverage in the amount of \$400,000.00.
2. Mortgagee to read: TEXAS NOTES, LLC its successors and/or assigns.
3. Borrower(s) name(s) to appear exactly as stated on the Deed of Trust.

GOT QUESTIONS? Call us at 281-221-7383 or email us at [hello@texasnotes.com](mailto:hello@texasnotes.com)

4. Approved Survey with street address and legal description to match title commitment and tax certificate.
5. All conditions, restrictive covenants, building lines, and violated easements must be reflected along with affirmative coverage against monetary loss of forfeiture of Property.
6. Policy Endorsement Requirements:
  - a) T-3 Down Date endorsement
  - b) T-19 (Full coverage) Restrictions, Encroachments and Minerals
  - c) T-27 Assignment of Rents and Leases
  - d) T-30 Tax Exception Deletion
  - e) T-36 Environmental Protection Lien
  - f) Any and all other State specific requirement or endorsement required to clear title
7. Insure TEXAS NOTES, LLC Security Instruments as a valid FIRST LIEN for the loan amount of \$400,000.00.
8. Pay all liens attached to the subject property.
9. ALL TAXES, including any delinquent taxes and/or Late Fee Assessments that are due and payable, MUST BE PAID.

**Closing Requirements:**

1. Title Company to furnish any required Warranty Deeds to satisfy title. Lender's Attorney will prepare Warranty Deed for this transaction.
2. Lender funding approval required prior to any and all disbursements.
3. Obtain color images of individual Borrower valid photo IDs.
4. The loan documents are invalid and the Lender's funds must be returned if the loan does not close and fund within THREE (3) business days of the date on the loan documents.
5. If the loan does not close and fund, please email [hello@texasnotes.com](mailto:hello@texasnotes.com).
6. It is your responsibility to make the required Lender copies for our closing package and a full copy package of the signed documents for each Borrower.
7. You must provide the HUD Settlement Statement for approval at least 24 hours prior to closing.
8. You must provide your wire instructions prior to the date of closing.
9. Lender requires originals, one (1) certified copy and one (1) electronic copy of all documents. **Closing packages with recorded documents must be returned to Lender at the following address within SEVEN (7) days of closing/funding:**

**Post-Closing Department**

**603 W. 11<sup>th</sup> Street, Houston, Texas 77008**

10. **Final Title policies are to be forwarded to the following address within 120 days of closing/funding:**

**Title Policies**

**603 W. 11<sup>th</sup> Street, Houston, Texas 77008**

11. Verify that you have all documents listed on the Closing Document Index, Checklist and Stacking Order and that you are compliant with these instructions prior to Borrower execution.
12. Fill in blanks for the Date of each Document wherever required.

13. **Borrower must complete the DIRECT DEBIT ENROLLMENT FORM or the loan will not fund.**
14. Authorized Signor for Borrowing Entity must execute all closing documents.
15. Guarantor must sign Personal Guaranty and all closing documents with the exception of the Deed of Trust and the Assignment of Warranties and Absolute Assignment of Rents and Leases
16. Borrower to fill in blanks in Paragraph 1 of the *Certificate of Company Resolution*.
17. Verify Lender Attorney Fee in the amount of \$350.00, payable to ATTORNEYS is on the final HUD and paid by separate check. Attorney Invoice included in this package.
18. Update Commitment; Clear Sch C.
19. Sch B, item 5 to state 2022.
20. Sch B, items 10b and 10c OTP Only.
21. Seller to sign Survey Affidavit as survey is over 90 days old.

**SAMPLE**  
Texasnotes

# Texas Notes, LLC

## Funding Requirements

1. Scan and email executed documents to:

[hello@texasnotes.com](mailto:hello@texasnotes.com)

2. You must have the Borrower execute the ACH/Direct Debit Enrollment Form. If not executed by the Borrower, the loan **WILL NOT FUND**.
3. You will either receive a request to correct or a funding authorization email;
4. You must obtain a funding authorization prior to any disbursements; and,
5. The loan documents are invalid and the Lender's funds must be returned if the loan does not close and fund within THREE (3) business days of the date on the loan documents.

For your records, protection and ours, write your funding authorization information received by our office and authorized person's name here:

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# **FRIENDLY REMINDER!**

**PLEASE SEND  
ORIGINAL CLOSING  
DOCUMENTS TO:**

**603 W 11<sup>TH</sup> STREET, Ste. 105  
HOUSTON, TX 77008**

**All recorded documents should be sent  
to the same address as shown above.**

**THANK YOU!**



**\*\*\*FRIENDLY REMINDER\*\*\***

**THE ACH FORM ON  
THE NEXT PAGE IS**

**A FUNDING**

**REQUIREMENT.**

**KINDLY FULLY**

**COMPLETE TO**

**AVOID**

**UNNECESSARY**

**FUNDING DELAYS.**

If incomplete, please note the loan  
will not fund.

Thank you!

# TexasNotes

## DIRECT DEBIT ENROLLMENT FORM

To enroll in Direct Debit, simply complete this form and give it to your Loan Servicer ("Company"). Supply a voided check for the account listed below. This will help ensure that payment(s) are applied correctly.

**IMPORTANT! Please read and sign before completing and submitting.**

I hereby authorize \_\_\_\_\_, hereinafter called "Company", to initiate debits to my deposit account as described by me below. Further, I authorize the Bank identified below ("Bank") to accept such debits initiated by Company and to debit my account(s) as described below. In the event that Company debits funds from my account erroneously, I authorize Company to credit my account for an amount not to exceed the original amount of the erroneous debit. This authorization is to remain in full force and effect until Company and Bank have received written notice from me of its termination in such time and in such manner as to afford Company and Bank reasonable opportunity to act upon it.

Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Monthly Mortgage Payment to be debited on the first of each month beginning \_\_\_\_\_

*\*interest will be charged on unpaid principal until the full amount of Principal has been paid\**

**Account Information:**

Bank Name: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Routing/Transit/ABA #: \_\_\_\_\_

Account #: \_\_\_\_\_

Checking Account  Savings Account

I agree to notify Company in writing of any changes to my account information or termination of this authorization at least 15 days prior to the next billing date. If the above noted payment date falls on a weekend or holiday, I understand that the payments may be executed on the next business day. For ACH debits to my checking/savings account, I understand that because these are electronic transactions, these funds may be withdrawn from my account as soon as the above noted periodic transaction dates. In the case of an ACH Transaction being rejected for Non-Sufficient Funds (NSF), I understand that Company may at its discretion attempt to process the charge again within 30 days, and agree to an additional \$25 charge for each attempt returned NSF which will be initiated as a separate transaction from the authorized recurring payment. I acknowledge that the origination of ACH transaction to my account must comply with the provisions of U.S. law. I certify that I am an authorized user of this bank account and will not dispute these scheduled transactions with my bank so long as the transactions correspond to the terms indicated in this authorization form.

I understand that this authorization will remain in effect until I cancel it in writing.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

TEXAS NOTES, LLC – 603 W. 11<sup>th</sup> Street, Ste. 110, Houston, TX 77008 – [info@texasnotes.com](mailto:info@texasnotes.com) – 281-221-7383

GOT QUESTIONS? Call us at 281-221-7383 or email us at [hello@texasnotes.com](mailto:hello@texasnotes.com)

**Attorneys**

456 Main Street City, Texas 12345  
123-456-7890  
FAX 123-456-7890

January 5, 2022

**Please Remit Payment To:**

Attorneys  
456 Main Street  
City, Texas 12345

TO: Example Title, LLC

ATTN: Escrow Officer : 123-456-7890  
email: [REDACTED]  
email: [REDACTED]

GF NO.: 1234567

LOAN NO.: 123456789101112

BORROWER(S): Doe Family Holdings, LLC

PROPERTY: 1234 Sesame Street, Houston, Texas 78910

For Services Rendered  
Document Preparation and Legal Documents

Total Due \$350.00

IF THIS LOAN DOES NOT CLOSE, PLEASE CONTACT ATTORNEYSAT 123-456-7890.

**ACKNOWLEDGMENT OF ATTORNEY REPRESENTATION**

1. **Counsel to Lender: Preparation of Loan Documents.** Some of the documents evidencing, securing and pertaining to the Loan from Lender to Borrower which is secured by the Property (“Loan Documents”) have been prepared at the request and on behalf of Lender by Lender’s attorney. Borrower hereby acknowledges that said attorney has acted only as counsel to Lender and has not in any manner undertaken to assist or render legal advice to Borrower with respect to the Property, the Loan, the Lien created by the Loan Documents or any of the Loan Documents.

2. **Counsel to Borrower.** Borrower hereby acknowledges that Borrower is free to retain its own counsel regarding the Property and Loan Documents.

3. **Proper Conveyance (if applicable).** Borrower hereby acknowledges its responsibility for ascertaining that the Warranty Deed accurately conveys to Borrower the property which Borrower agreed to purchase.

4. **Payment of Legal Fees.** Borrower hereby acknowledges its responsibility for payment of the legal fees incurred by Lender in connection with the preparation of the Loan Documents (specifically excluding, however, any disclosure required by the Real Estate Settlement and Procedures Acts and Truth-in-Lending Act) and hereby agrees to pay Lender’s attorney, through the settlement agent, at closing of the Loan.

5. **Accuracy of Statements.** Borrower’s signature below evidences the accuracy of the statements contained herein.

**Property Address:** 1234 Sesame Street, Houston, Texas 78910

**Loan No.:** 123456789101112

**Borrower:**

\_\_\_\_\_  
Jane Doe, Manager of Doe Family Holdings, LLC

\_\_\_\_\_  
Date

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**AFFIDAVIT**

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Jane Doe who after being duly sworn by me did state under oath that the following statements were true:

"My name is JANE DOE. I claim, use, occupy, and designate the following described property as my homestead:

\_\_\_\_\_"

"The following described property is not my homestead:

1234 Sesame Street, Houston, Texas 78910"

\_\_\_\_\_  
Jane Doe

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Jane Doe.

\_\_\_\_\_  
Notary Public in and for the State of Texas

After recording, return to:  
Example Title, LLC  
1234 Main Street Ste 100  
San Antonio, Texas 12345

# SIGNATURE AFFIDAVIT AND AKA STATEMENT

## SIGNATURE AFFIDAVIT

I, JANE DOE  
certify that this is my true and correct signature:

Jane Doe  
Borrower

\_\_\_\_\_  
Sample Signature

## AKA STATEMENT

I, JANE DOE  
further certify that I am also known as:

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

\_\_\_\_\_  
Name Variation (print)

\_\_\_\_\_  
Sample Signature (Variation)

*(continued from previous page)*

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Jane Doe.

Notary Public in and for the State of Texas



**SAMPLE**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**WARRANTY DEED WITH VENDOR'S LIEN**

THE STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_       §

KNOW ALL MEN BY THESE PRESENTS:

That [REDACTED] BY SPOUSE, IF ANY, AS SUBJECT PROPERTY CONSTITUTES NO PART OF THE HOMESTEAD ("Grantor") for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid to Grantor by Doe Family Holdings, LLC ("Grantee"), the receipt of which is hereby acknowledged, and the further consideration of the execution and delivery by Grantee of one promissory note of even date herewith in the principal sum of \$400,000.00 payable to the order of TEXAS NOTES, LLC ("Payee") and secured by the vendor's first lien herein retained and a Deed of Trust of even date herewith to Matthew Haddock, Trustee, for the benefit of Payee, has GRANTED, SOLD, and CONVEYED, and by these presents does GRANT, SELL, and CONVEY, to Grantee, the following described real property in BEXAR County, Texas, together with any improvements thereon, (collectively "Property"), to-wit:

**"LEGAL DESCRIPTION"**

This conveyance is made and accepted subject to all restrictions, covenants, mineral or royalty conveyances or reservations, and easements, if any, relating to the Property, but only to the extent that they are still in force and effect and are visible, apparent, or shown of record in the herein above mentioned County and State, and to all zoning laws, regulations, and ordinances of municipal or other governmental authorities, if any, relating to the Property.

To have and to hold the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee and Grantee's heirs, successors, or assigns forever; and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property unto Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

But it is expressly agreed that the vendor's lien and superior title in and to the Property are retained against the Property until all indebtedness described above is fully paid according to the terms thereof, when this deed shall become absolute.

Payee having advanced and paid in cash to Grantor that portion of the purchase price of the Property evidenced by the note described above, the vendor's lien and superior title are retained for the benefit of, and the same are hereby transferred and assigned to, Payee.



When the context requires, singular words include the plural.

DATED \_\_\_\_\_, 2022.

\_\_\_\_\_

Mailing address of each grantee:

Jane Doe

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

§  
§  
§

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by

\_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Texas

**AFTER RECORDING RETURN TO:**

Example Title, LLC  
1234 Main Street Ste 100  
San Antonio, Texas 12345

**REAL ESTATE LIEN NOTE**

**THIS LOAN IS PAYABLE IN FULL AT MATURITY. BORROWER MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. BORROWER WILL, THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT BORROWER MAY OWN, OR BORROWER WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER BORROWER HAS THIS LOAN WITH, WILLING TO LEND BORROWER THE MONEY. IF BORROWER REFINANCES THIS LOAN AT MATURITY, BORROWER MAY HAVE TO PAY SOME OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A REFINANCE EVEN IF BORROWER OBTAINS REFINANCING FROM THE SAME LENDER.**

**Date: January 6, 2022**

**City: SAN ANTONIO**

**State: TEXAS**

**1234 Sesame Street, Houston, Texas 78910**

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. **\$400,000.00**, or the unpaid principal balance outstanding from all sums advanced against this Note (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is **TEXAS NOTES, LLC**. This Note anticipates multiple advances. All sums which I must pay to Lender, pursuant to this Note or the Deed of Trust which secures this Note, including late charges, fees of any kind, including but not limited to inspection fees, and all sum for which I am responsible and that Lender pays on my behalf, including but not limited to taxes, assessments, and insurance, shall be added to Principal.

The principal amount of this Note shall be advanced incrementally according to the agreement with Lender. Unless I fail to request rehabilitation funds within 90 days, the Principal required to be paid by this Note shall not exceed the sum of all advances made by Lender under this Note (including, without limitation, any advances made and retained by Lender in payment of interest or fees), and interest shall accrue and be charged only upon the amount of outstanding principal as it changes from time to time. Within 90 days of Closing, I will have requested (such request to include satisfaction of all conditions set forth in the Construction Loan Agreement) all funds intended for rehabilitation of or construction on the subject property, and if I have failed to request all such funds, then I must elect one of the following options: I must either (i) waive the remainder of the Rehabilitation Budget and pay interest only on the outstanding loan balance as Principal under the Note; or (ii) begin incurring interest on the full loan amount, whether or not disbursed, such total amount to be deemed Principal under this Note, and I may continue to request draws as provided in the Construction Loan Agreement and elsewhere in the documents executed in connection herewith.

By signing here, I acknowledge that I have read and understand the paragraph above:

By: \_\_\_\_\_  
Jane Doe, individually and as Manager of  
Doe Family Holdings, LLC,

I will make all payments under this Note in the form of cash, check or money order, or electronic funds transfer.

I understand that the lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.99%.

The interest rate required by this Section 2 is the rate I will pay before any default described in Section 6(B) of this Note.

The rate I will pay after any default, including without limitation on any matured unpaid principal and interest, and any other amounts owed under this Note and the Deed of Trust securing this Note, is 17.99%.

Interest accrues beginning on the first day of each and every month beginning with the first payment date described below.

### **3. PAYMENTS**

#### **(A) Time and Place of Payments**

I will pay interest only by making a payment every month.

I will make my monthly payment on the first day of each month beginning on March 01, 2022. The principal is due and payable on or before October 06, 2022 (the "Maturity Date"). I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal.

I will make my monthly payments to Lender at 603 W. 11<sup>th</sup> Street, Suite 110, Houston, Texas 77008 or at a different place if required by the Note Holder.

#### **(B) Amount of Monthly Payments**

My monthly payment of interest only will be in the amount of U.S. \$3,663.33.

#### **(C) Callable; Maturity**

The Maturity Date of this Note is October 06, 2022. This Note is callable at the option of Lender from the date hereof until the Maturity Date. It is payable in full upon the earlier of (i) when called by Lender, if called by Lender, or (ii) at the Maturity Date, at which time I must repay the entire principal balance of this Note, any unpaid interest owed, and any other sums I owe Lender pursuant to the terms of the lien securing this Note. Lender is under no obligation to refinance this Note at that time. I will therefore be required to make a payment out of other assets I may own, or I will have to find another lender willing to lend me the money at the then prevailing rates, which may be considerably higher than the interest rate of this Note.

#### **(D) Application of Payments**

Prior to the time that I am in default under this Note, payment on the Note shall be credited first to any unpaid costs, fees and charges due to Lender in accordance with the terms of the Loan Agreement of even date herewith, then accrued and unpaid interest, then to any principal that is not secured by the hereinafter-described liens, and the remainder to the remaining part of the principal; but after default, Lender may credit payment in whatever lawful manner it chooses. Lender's crediting of payments on this Note, as between interest and principal, shall be provisional until this Note, and all sums owed to Lender in connection with this Note and any security instrument which secures this Note, is fully paid, when a final and binding crediting shall be made.

#### **(E) Calculation of Interest**

(i) 365 Day Base Method. All payments of interest shall be computed on the per annum basis of a year of 365 days and for the actual number of days elapsed unless such calculation would result in a usurious rate, in which case interest shall be re-calculated to eliminate the usurious portion. (ii) True Daily Earnings Method. Interest will be computed according to the true daily earnings method. The true daily earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the amount financed. The earned finance charge is computed by multiplying the daily rate by the number of days the actual principal balance is outstanding. The daily rate is the equivalent contract rate for a year with the number of days indicated in (E)(i) above.

### **4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

Provided I am not in default hereunder, I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to any costs, fees, or charges due under this Note, or to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment,

there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

#### **5. LOAN CHARGES, USURY**

Regardless of any contingency, event, or agreement between Lender and me, the interest contracted for, taken, received, reserved or charged, directly and indirectly, by Lender, in connection with this Note, shall never exceed the maximum, non-usurious amount Lender may contract for, take receive, reserve and charge under applicable law. If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

#### **6. BORROWER'S FAILURE TO PAY AS REQUIRED**

##### **(A) Late Charge for Overdue Payments; Non-Sufficient Funds Fees**

If the Note Holder has not received the full amount of any monthly payment by the end of ten (10) calendar days after the date it is due, I will pay a late charge to the Note Holder in addition to the regularly scheduled payment. The amount of the charge will be 5% of the unpaid portion of the regularly scheduled payment. I will pay this late charge promptly but only once on each late payment. If not prohibited by applicable law, I agree to pay an amount charged by Lender not to exceed \$50.00 (or the maximum amount allowed by applicable law if applicable law limits said fee to an amount less than \$50.00) for each check, draft, order or other instrument or form of remittance made in payment on this Note that is returned to Lender unpaid or dishonored for any reason. I agree with Lender that the charges set forth herein are reasonable compensation to Lender for the handling of such late payments and insufficient funds.

##### **(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

If I fail to make timely any payment required by this Note, or to perform timely any other obligation owed to Lender, or if any person breaches any covenant made in any Deed of Trust or other security document that secures payment of any of this Note, or if any person breaches any covenant made in any guaranty agreement by which payment of this Note is guaranteed, I will be in default.

If I am in default, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount.

##### **(C) No Notice of Intent to Accelerate or Notice of Acceleration**

The proceeds of this Note are advanced by Lender solely for business and commercial purposes and Property described above is not, nor do I intend to use it as, and in fact I hereby represent that I do not intend to use the Property as, my residence, and this representation is a condition precedent to the advancement of funds under this Note. If I am in default, only the notice required by the Texas Property Code for foreclosure sales that are not the debtor's residence shall be given to me by Lender, which notice requirements are set forth more particularly in the security instrument securing this Note.

##### **(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

##### **(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, or if I bring suit against the Note Holder and do not prevail, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

#### **7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the address appearing beneath my signature hereon, or at a different address if I give the Note Holder a notice of my different address. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different

address if I am given a notice of that different address. Any notice in connection with this Note shall not be deemed to have been given to Lender until actually received by Lender.

#### **8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

Each of the Borrowers, each guarantor of this Note, and each person who grants any lien or security interest to secure payment of this Note: (A) agrees to application of any bank balance of Borrowers, or any of them, to payment of the Note before or after maturity; and (B) agrees that with regard to the Note, and any other indebtedness owed by Borrowers, or any of them, to Lender, none of certain actions by or at the request of one or more of Borrowers, whether with or without notice and whether before or after maturity, shall release or diminish any obligation or liability owed by him, to Lender, such certain actions being as follows: any and all renewals, extensions, rearrangements, modifications (including, without limitation, changes in interest rate), partial payments, indulgences of any kind, releases of any other person(s) obligated to pay any of the Indebtedness, and releases or substitutions of security, in whole or part. Any one or more of Borrowers may deliver this Note to Lender and receive advances hereunder.

#### **9. WAIVERS**

Except as expressly provided herein, I and any other person who has obligations under this Note waive all notices, including without limitation, notice of intent to accelerate, notice of acceleration, notice of dishonor, right to demands for payment, presentment, protest and diligence in bringing suit and in the handling of any security. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

#### **10. SECURED NOTE; DUE ON TRANSFER**

In addition to the protection given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Borrower shall be in default hereunder and Lender may require immediate payment in full of all sums due hereunder and enforce all its rights under the Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

#### **11. CROSS COLLATERALIZATION**

##### **(A) My Other Loans**

If I am a party to any other notes or loan agreements between me and Lender (all of these other loan agreements being collectively referred to as "My Other Loans"), all items serving as security for My Other Loans shall serve as security for this Note, and all items serving as security for this Note shall serve as security for My Other Loans.

##### **(B) Condition and Consideration**

I acknowledge that the Lender is unwilling to extend the loan evidenced by the Note to me unless I agree that My Other Loans, together with this Note, will be treated as a single transaction through cross-collateralization and cross-default provisions. I further acknowledge that Lender's agreement to extend the loan evidenced by this Note is in partial consideration for the cross-collateralization and cross-default provisions set forth herein below.

##### **(C) Cross-Collateral**

I hereby agree and consent that as additional security to the Lender, each and every one of My Other Loans and this Note shall be subject to the various loan documents executed in connection with each indebtedness, and any and all subject property serving as security for each and every indebtedness just described shall be considered part of the "Property" under this Note, the Deed of Trust executed in

connection herewith, and each and every other Deed of Trust or other security instrument between me and Lender.

(D) Cross-Default

I agree and consent that if I am in default on this Note or on the security instrument executed in connection with this Note, then I shall be in default on each and every one of My Other Loans, and if I am in default on any one of My Other Loans, then I shall be in default on this Note and all of My Other Loans. No notice shall be required to be given to me in connection with such default except as may be required by the respect Deed of Trust or security instrument, and Lender shall have the right, in its sole and absolute discretion, to exercise and perfect any and all rights in and under the documents with regard to any or all of My Other Loans and this Note, including but not limited to a sale of any portion of any property securing any of My Other Loans or this Note.

(E) Request for Release

I may request that Lender make a determination whether any of My Other Loans may be released from the cross-collateral and cross-default provisions of this Note and such determination shall be made by Lender at its sole discretion. Notwithstanding any provision of this Section to the contrary, I shall not be permitted to request a release of any of My Other Loans from the cross-default and cross-collateral provisions of this Note if, at the time of such request, a default exists or has occurred under any of My Other Loans or this Note. No release under this paragraph shall be permitted by Lender unless I have paid all costs and expenses of Lender incurred in connection with Lender's processing of the requested release, including without limitation all title endorsement premiums, recording fees, inspection fees, and attorney fees.

**12. USE OF MONEY**

In connection with this Note, I am neither seeking nor obtaining from Lender anything other than the use of money, and all consideration paid or to be paid by me to Lender, including, without limitation, all agreements, contracts and other documents executed in connection with this Note, shall be solely for such use of money. If Lender provides anything other than the use of money, including any goods and/or services, in connection with this Note, the providing thereof shall be solely at Lender's option, for Lender's exclusive benefit and without Lender's receipt of any consideration therefor.

**13. GOVERNING LAW**

All agreements, contracts and other documents executed in connection with any indebtedness or obligations owed by me to Lender, including, without limitation, all agreements, contracts and other documents executed in connection with this Note, shall be subject to, governed by, and construed in accordance with, the laws of the State of Texas and the United States. All legal proceedings brought to enforce or interpret this Note shall be in the appropriate court located in the County where the Property described above is located. In the event of a conflict between any provision of this Note and applicable law, the applicable law shall control to the extent of such conflict and the conflicting provisions contained in this Note shall be modified to the extent necessary to comply with applicable law. All other provisions in this Note will remain fully effective and enforceable.

**14. NO ORAL AGREEMENTS**

**THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN AGREEMENT REPRESENTS 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.**

*The remainder of this page left blank intentionally.*

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

BORROWER:

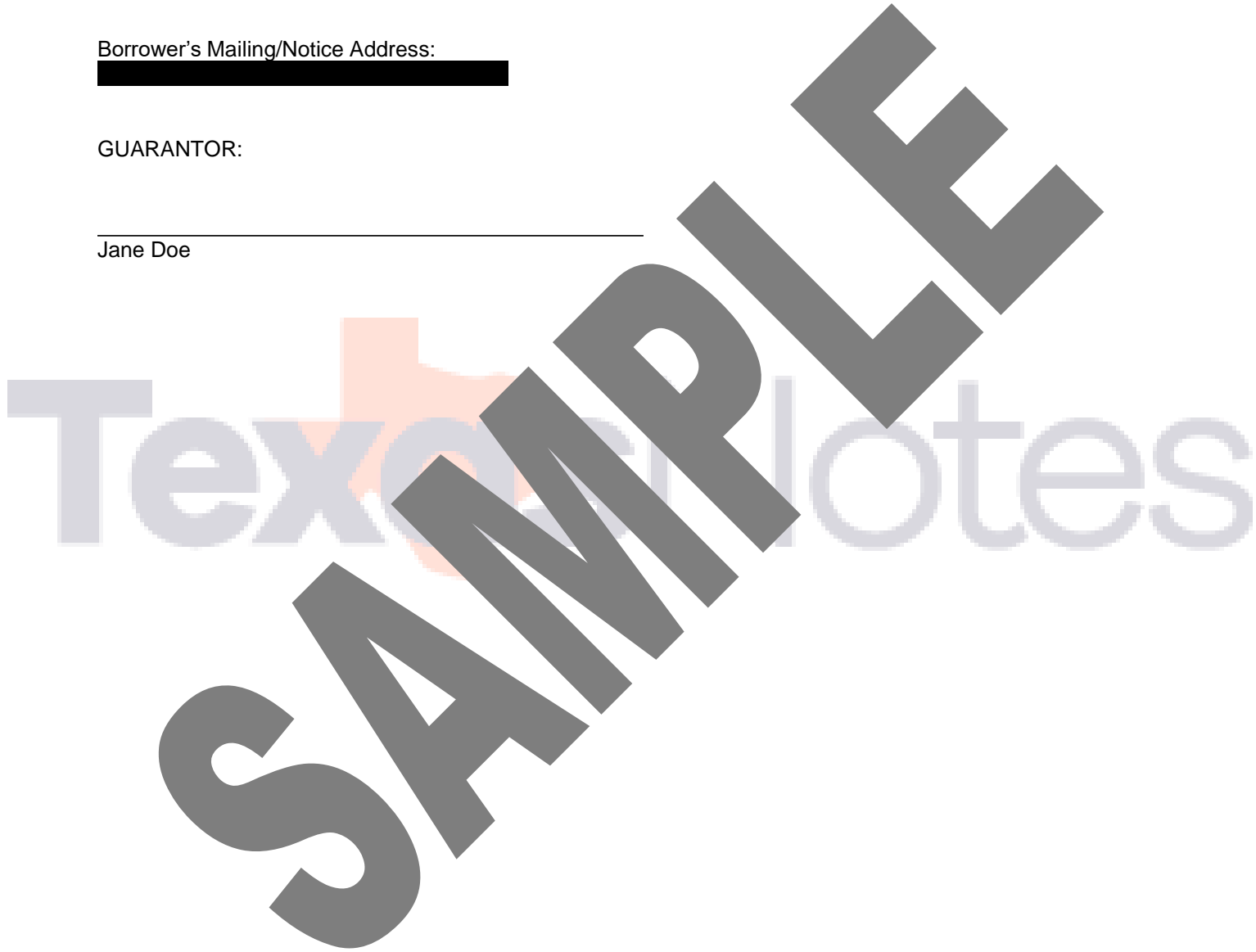
Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

Borrower's Mailing/Notice Address:  
\_\_\_\_\_

GUARANTOR:

\_\_\_\_\_  
Jane Doe



After recording, return to:  
Texas Notes, LLC  
603 W. 11<sup>th</sup> St., Ste. 110  
Houston, Texas 77008

Prepared by:  
Attorneys

[REDACTED]

Title Order No.: GF# 1234567  
LOAN #: 123456789101112

[Space Above This Line For Recording Data]

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AND INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

## **DEED OF TRUST (SECURITY AGREEMENT AND FINANCING STATEMENT)**

### **DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

**(A) "Security Instrument"** means this document, which is dated **January 6, 2022**, together with all Riders to this document.

**(B) "Borrower"** is **Doe Family Holdings, LLC**.

Borrower is the grantor under this Security Instrument.

**(C) "Lender"** is **TEXAS NOTES, LLC**.

Lender is a **Limited Liability Company**, organized and existing under the laws of **TEXAS**.

Lender's address is **603 W. 11<sup>th</sup> Street, Suite 110, Houston, Texas 77008**

Lender includes any holder of the Note who is entitled to receive payments under the Note.

**(D) "Trustee"** is **Attorneys**.

Trustee's address is **4500 Mercantile Plaza Drive, Suite 300, City, TX 12345**.

**(E) Intentionally left blank.**

**(F) "Note"** means the promissory note signed by Borrower and dated **January 6, 2022**. The Note states that Borrower owes Lender **FOUR HUNDRED THOUSAND DOLLARS AND NO/100 Dollars (U.S.**



**\$400,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **October 06, 2022**.

**(G) "Property"** means the property that is described below under the heading "Transfer of Rights in the Property" and as further defined under such heading.

**(H) "Loan"** means the debt evidenced by the Note, including any renewal or extension or modification thereof, plus interest, any prepayment charges and late charges due under the Note, and all sums due under the Security Instrument, plus interest.

**(I) "Riders"** means all Riders to this Security Instrument that are executed by Borrower.

**(J) "Applicable Law"** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**(K) "Community Association Dues, Fees, and Assessments"** means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

**(L) "Electronic Funds Transfer"** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

**(M) "Escrow Items"** means those items that are described in Section 3.

**(N) "Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

**(O) "Mortgage Insurance"** means insurance protecting Lender against the nonpayment of, or default on, the Loan.

**(P) "Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (iii) any amounts under Section 3 of this Security Instrument.

**(Q) "RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

**(R) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### **TRANSFER OF RIGHTS IN THE PROPERTY**

The beneficiary of this Security Instrument is the Lender. This Security Instrument secures to Lender: (i) the repayment of the Loan; (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note; (iii) all sums advanced, or costs or expenses incurred by Lender which are made or incurred pursuant to or allowed by, the terms of this instrument, plus interest thereon as provided in the Note; (iv) all promissory notes evidencing additional loans which Lender may hereinafter make to Borrower ("Additional Loans") (although it is understood that Lender is under no obligation to do so); and (v) all other indebtedness and liabilities of all kinds of Borrower to Lender now existing or hereafter arising (including overdrafts in bank accounts), whether fixed or contingent, joint and/or several, direct or indirect, primary or secondary, and regardless of how created or evidenced, or whether they may, prior to acquisition by Lender, be or have been payable to, or be or have been in favor of some other person, or have been acquired by Lender in a transaction with a party other than Borrower ("Other Indebtedness"). For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of **BEXAR**:

## “LEGAL DESCRIPTION”

which currently has the address of **1234 Sesame Street, Houston, Texas 78910** (“Property Address”):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. Borrower understands and agrees that all awnings, door and window screens, storm window screens, storm windows and doors, mantels, cabinets, rugs, carpeting, linoleum, wall and in-a-door beds, stoves, shades, blinds, oil and other fuel-burning systems and equipment, water heaters, radiator covers, and all plumbing, heating, lighting, cooking, ventilating, cooling, air-conditioning and refrigerating apparatus and equipment, and such goods and chattels and personal property as are ever furnished by landlords in letting or operating an unfurnished building, or which are or shall be attached to said building by nails, screws, bolts, pipe connections, masonry or in other manner, and all specifications, are and shall be deemed to be fixtures and accessions to the Property, being hereby agreed to be immovable and a part of the realty as between the parties hereto, and shall be deemed to be a part and portion of the Property. All of the foregoing is referred to in this Security Instrument as the “Property.” To the extent permitted by law, this Deed of Trust shall be construed to be a security agreement and financing statement.

## ADDITIONAL SECURITY

The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same Loan, or any part thereof. The taking of additional security, or the extension or renewal of the Loan secured hereby, or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder, and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the Loan secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Property not expressly released until the Loan secured hereby is completely paid.

As additional security for the payment of the Loan, Additional Loans, and Other Indebtedness, Borrower hereby transfers and assigns to the Lender each of the following:

(a) **bonuses, rents and royalties:** all bonuses, rents and royalties accrued or to accrue under all oil, gas or mineral leases, now existing or which may hereafter come into existence, and Borrower directs payment of the same to the Lender, at the option of the Lender and upon written demand of the Lender therefor, to be applied to the Loan, Additional Loans, and Other Indebtedness, in such manner as Lender elects, until paid, whether due or not, and either before or after any default under the terms of this Deed of Trust or Note; Borrower’s rights, if any, in all oil, gas, and other minerals that might be produced from the Property covered by this Deed of Trust, which Deed of Trust (i) is to be filed in the real property records of the county in which the land is located, (ii) covers all “as-extracted collateral,” as defined in Texas Business and Commerce Code §9.102 (as amended or replaced), attributable to the land, (iii) serves as a security agreement covering the as-extracted collateral, (iv) serves as an assignment of all payments made for damages or anticipated damages to the land, and (v) serves as a financing statement covering as-extracted collateral and fixtures as provided in Texas Business and Commerce Code §9.502; and the provision of this subparagraph are cumulative of all other provisions of this Deed of Trust.

(b) **rents and profits:** all of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Property (whether now existing or hereafter arising) or arising from the use thereof or from any lease or agreement pertaining thereto (hereinafter called the “Rents and Profits”) are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Lender to be applied by Lender in payment of the principal and interest and all other sums payable on the Loan, Additional Loans, and Other Indebtedness secured hereby. It is intended that this assignment is absolute, unconditional and presently effective and that it shall never be necessary for Lender to institute legal proceedings of any kind whatsoever to enforce the provisions of this subsection (b) under Additional Security. Prior to the

occurrence of any default hereunder, Borrower shall collect and receive all Rents and Profits as Trustee for the benefit of Lender and Borrower, and Borrower shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Loan and in payment of all Additional Loans and Other Indebtedness secured hereby, and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of the Borrower. Borrower will not (i) execute an assignment of any of its right, title or interest in the Rents or Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Property or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any lease may be canceled, provided that 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 lessee whose lease was canceled, on substantially the same terms as the terminated or canceled lease, or (iii) modify any lease of the Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Property or the security of this Deed of Trust. Borrower 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 of the Property now or hereafter existing on the part of lessor thereunder to be kept and performed. Borrower shall furnish to Lender, within ten (10) days after a request by Lender 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. Lender shall have no liability or obligation with respect to any lease of the Property or any part thereof;

(c) All of Borrower's interest in, to, and under any and all leases, tenant contracts, construction contracts and other contracts, licenses and permits, whether written or oral, now or hereafter affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in Borrower becoming entitled to the payment of money for the use of the Property or any part thereof, whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees and licensees are hereafter referred to collectively as "Tenants" and individually as "tenant" as the context requires), which Leases cover all or any portion of the Property. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender further to evidence and confirm said assignment; and will also pay any attorney's fees and expenses reasonably incurred in connection with the assignment to Lender of any leases which by the terms hereof are required to be assigned to Lender as additional collateral to secure payment of the Loan herein secured; provided, however, that acceptance of any such assignment shall not be construed as a consent by Lender to any Lease, or to impose upon Lender any obligation with respect thereto; and provided, further, that permission is hereby given to Borrower unless and until Borrower is in default as provided herein, to collect the income, rents, issues and profits to the Property as they become due and payable but not in advance, except as provided herein below.

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record; and that Borrower will make such further assurance of title as may be necessary to fully confirm to the Trustee the title to the Property.

#### **GENERAL COVENANTS**

Borrower and Lender covenant and agree as follows:

##### **1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.**

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. If required by Lender, Borrower shall also pay

funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, prior to default, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) unpaid costs, fees, and charges due Lender in accordance with the terms of the Loan Agreement, the Note, and this Security Instrument; (b) interest due under the Note; (c) principal due under the Note; (d) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note. Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

After default, Lender may credit payment in whatever lawful manner it chooses.

**3. Funds for Escrow Items.** If called upon by the Lender to do so, Borrower shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against or affecting the Property by paying to Lender, with each installment payment under the Note prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the general liability and hazard insurance policies covering the Property, or any part thereof, plus taxes and assessments next due on the Property, or any part thereof, as estimated by Lender, less all sums paid previously to Lender therefor, divided by the number of installment payments to be made before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Lender, without interest, unless interest is required by applicable law, for the purpose of paying such premiums, taxes and assessments. Any excess reserve shall be credited by Lender on subsequent reserve payments and any deficiency shall be paid by Borrower to Lender before one month prior to the date when such premiums, taxes and assessments shall become delinquent. Transfer of legal title to the Property, if allowed under this Deed of Trust, shall automatically transfer the interest of Borrower in all sums deposited with Lender under the provisions hereof or otherwise. If the maturity of the Loan is accelerated under the terms of any of the Loan Documents, Lender may apply any funds in said account against the Loan in such manner as Lender, in its sole discretion, shall determine. Furthermore, unless otherwise required by applicable law, Lender shall be entitled to hold such funds in a common escrow account and shall not be required to maintain a separate account, and Lender shall not be required to pay over to Borrower any interest which may accrue on said account. All deposits made pursuant to this paragraph shall be held by the Lender as additional security for the payment of the debt described herein and shall not be assigned, attached or otherwise alienated except when transferred by Borrower to a new owner of the Property concurrently with a bona fide sale of the Property, if such sale is allowed under this Deed of Trust.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens; Bills for Labor and Materials.** Borrower shall pay, prior to delinquency, all taxes, assessments, charges, fines, and impositions attributable to the Property, or the interest created therein by this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any, and exhibit the receipts therefor to the Lender (unless such payments are made by the Lender as hereinafter provided). The word "assessments" as used in this Deed of Trust, whether in this paragraph or elsewhere, shall include not only assessments by political subdivisions, but also maintenance charges, regular assessments and special assessments assessed by subdivision restrictions, homeowner's declarations for planned unit developments and assessments by condominium agreements, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall not enter into any agreement with any third party for the payment of the ad valorem taxes imposed on the Property or authorize, in any manner, the transfer of the lien for such taxes to any third-party.

Borrower shall defend the title and possession of the Property to the end that this Deed of Trust shall be and remain a first lien on the Property until the debt is paid.

Borrower shall pay when due all bills for labor and materials incurred in connection with the Property and subject to Borrower's right to contest, shall never permit to be fixed against the Property or any part thereof, any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill which may be legally due and payable, (it being understood that so long as Borrower is contesting such lien in good faith that the existence thereof shall not create an event of default).

Borrower will not, without the prior written consent of Lender, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Property (hereinafter called "Subordinate Mortgage"). In the event of consent by Lender to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Borrower will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Lender not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect: (a) that the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof; (b) that if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no tenant of any portion of the Property will be named as a party defendant, nor will any action be taken with respect to the Property which would terminate any occupancy or tenancy of the Property without the prior written consent of Lender; (c) that the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Deed of Trust, including principal and interest due and owing on or to become due and owing on the Note and the other indebtedness secured hereby and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Property; and (d) that if any action or proceedings shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Lender contemporaneously with the commencement of such action or proceeding.

Lender may require Borrower to pay charges for any real estate tax verification and/or reporting service used by Lender in connection with this Loan.

Lender may, at Lender's option, without demand or notice and without waiver of any right, pay or discharge any lien or claim upon the Property or pay any delinquent tax or assessment, and, upon payment of any such lien, claim, or delinquent tax or assessment, said amounts shall be deemed to be added to the principal of the Note and to be included in the definition of "Loan" in this Deed of Trust, and Lender shall be subrogated to the rights of the holder of such lien, claim, tax, or assessment.

**5. Property Insurance; Workers' Compensation Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time

charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

Unless Borrower has provided a survey of the Property or a Flood Certificate which shows to the contrary, Borrower represents and warrants that none of the Property, or any part thereof, is situated within a flood plain, flood prone area, special flood hazardous area or the like, as so designated by the applicable Flood Hazard Boundary Map or any such similar map or plat issued or controlled by The Flood Insurance Administration and/or any other federal agency appointed to regulate such matters under the Federal Flood Disaster Protection Act, as amended, and Borrower hereby indemnifies and holds Lender harmless, from any claims and/or costs arising against or waived by Lender if the Property is, in fact, determined to be in such an area. In the event that any portion of the Property is situated within a flood plain, a flood prone area, a special flood hazardous area or the like, or in any FEMA Zone other than Zone X, Borrower will keep the Property insured for the protection of Lender against loss by flood, and the provisions of this Deed of Trust concerning amounts of coverage, payment of premiums, endorsements, payment and application of insurance proceeds, and other matters regarding hazard insurance shall apply with equal force to Borrower's obligation herein to obtain flood insurance.

Borrower shall maintain, or cause to be maintained, workers' compensation insurance covering all persons, if any, employed by Borrower working on the Property and Borrower shall provide Lender with proof of insurance, notice of cancellation, and other information relating to such insurance coverage, in the same manner as required with respect to other insurance obligations of Borrower described in this Deed of Trust.

Lender may advance any unpaid insurance premiums, and, if Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall

be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Intentionally left blank.**

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property, and inspection of all records relating thereto, which records Borrower shall furnish to Lender immediately upon Lender's request. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's False Statements.** Borrower shall be in default if, during the Loan application process, or in the Note, this Deed of Trust, or in any writing delivered to Lender in connection with the Loan, Additional Loans, or Other Indebtedness secured hereby, whether in the form of a statement, representation, or other form, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave or gives materially false, misleading, or inaccurate information or statements to Lender (or failed or fails to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's use of the property for business or commercial purposes and not as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If, while this Deed of Trust is in force, (a) the title of the Trustee to, or the interest of Lender in, the Property hereby conveyed or any part thereof, shall be endangered or shall be attached directly, or indirectly, or (b) Borrower fails to perform the covenants and agreements contained in this Security Instrument, then Borrower hereby authorizes Lender, at Borrower's expense, to take all necessary and proper steps for the defense and protection of such title or interest, including, but not limited to, the employment of counsel, the prosecution or defense of litigation (including to protect its secured position in a bankruptcy proceeding), the payment of any sums secured by a lien which has priority over this Security Instrument, the compromise or discharge of claims made against such title or interest, protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

At any time, if any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, or any other indebtedness secured hereby, Borrower shall immediately pay all such taxes;

provided that, in the alternative Borrower may, in the event of the enactment of such a law, and must, if it is unlawful for Borrower to pay such taxes, prepay the Note, and any other indebtedness secured hereby, in full within TEN (10) days.

Borrower shall, at any time and from time to time, furnish promptly, upon request, a written statement or affidavit in such forms as may be required by Lender, stating the unpaid balance of the Note, and any other indebtedness secured hereby, and that there are no offsets or defenses against full payment of the Note, and any other indebtedness secured hereby, and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

#### **10. Intentionally left blank.**

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.



**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges; Expenses; Indemnification; Usury.** To the extent not prohibited by applicable law, Borrower will pay all costs and expenses and reimburse Lender for any and all expenditures of every character, including, but not limited to, the fees and expenses of counsel for Lender, incurred or expended from time to time, regardless of whether a default or event of default shall have occurred, in connection with: (a) Lender's evaluating, monitoring, administering and protecting the Property, (b) Lender's creating, perfecting or realizing upon Lender's security interest in and liens on the Property, and (c) all costs and expense relating to Lender's exercising any of its rights and remedies under this or any of the other security instruments or at law, including, without limitation, all inspection and valuation fees, appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, title review and abstract fees, Uniform Commercial Code search fees, other fees and expenses incident to title searches, reports and security interests, escrow fees, attorney's fees, legal expenses, court costs, any and all fees and expenses reasonably incurred relating to future advances and/or transfer of title to the Property and similar matters, fees and expenses incurred in connection with it; provided, that no right or option granted by Borrower to Lender or otherwise arising pursuant to any provision of this or any other instrument shall be deemed to impose or admit a duty on the Lender to supervise, monitor or control any aspect of the character or condition of the Property or any operations conducted in connection with it for the benefit of Borrower or any other person or entity other than the Lender. Fees charged hereunder specifically include, but are not limited to, a Collection Fee of \$450.00 payable to Lender/Service for engagement of an attorney for default proceedings, which fee does not include the actual attorney fees; a Force Place Fee of \$450.00 payable to Lender/Service as compensation for placement of insurance on the property, which fee does not include the actual insurance costs; a Loan Payoff Fee of \$75.00 payable to Lender/Service for preparation of Loan Payoff Statements; and a Recording Fee of \$100 payable to Lender/Service for handling documentation, transfers, estoppel agreements, entity changes, etc., which fee does not include actual recording costs payable to the appropriate County or other legal entity. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law. Borrower agrees to indemnify, defend and hold the Lender, its directors, officers and employees (collectively, "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency and expense (including interest, penalties, attorneys' fees and amounts paid in settlement), regardless of whether the same was caused in whole or in part by the negligence of any of the Indemnified Parties, to which the Indemnified Parties may

become subject arising out of or in connection with this Agreement, the Note, any other security instruments hereto or any transaction contemplated herein (other than those which arise by reason of the gross negligence of the Lender). Any amount to be paid hereunder by the Borrower to the Lender shall be a demand obligation owing by the Borrower to the Lender and shall bear interest from the date of expenditure at the rate as prescribed by the Note.

If the Loan, which for purposes of this Section 14 includes any Additional Loan and Other Indebtedness, is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower (Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge); and (c) any provisions in this Deed of Trust which do, or would, presently and prospectively, operate to make this Deed of Trust or any part thereof void, voidable or ineffective, then such provisions only shall be held for naught and as though not herein contained and shall be without effect upon or prejudice to the remaining provisions, which shall nevertheless remain operative.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail, or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the address appearing beneath Borrower's signature hereon, unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of any gender shall mean and include all genders and corresponding neuter words; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

It shall be a default hereunder if all or any part of the Property or any Interest in the Property, other than sales of standard inventory items of personal property in the ordinary course of Borrower's business, is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, in which case Lender may require immediate payment in full of all sums secured by this Security Instrument, regardless of whether the purchaser or transferee

assumes the indebtedness hereby secured or takes subject to such indebtedness. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender does not exercise this option, Lender may, without notice to Borrower, deal with such successor in interest with reference to this Deed of Trust and to said debt in the same manner as with Borrower without in any way discharging Borrower's liability hereunder or upon the debt; no sale of the Property shall operate to release, modify, change, or affect the original liability of Borrower, either in whole or in part.

**19. Intentionally left blank.**

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. This paragraph shall not operate as to modify any provision of Section 22 below and shall not operate to require any notice regarding the matters set forth in Section 22 in addition to the notice requirements contained therein.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined, or become defined, as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, each as amended from time to time; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary

remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Borrower shall indemnify, defend and hold Lender harmless from and against; (a) any loss, costs, expense, claim or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, remedial or restoration work ("Remedial Work") required by Lender, or any non-governmental entity or person, or any governmental agency or political subdivision which requires Remedial Work upon a reasonable belief that the Remedial Work is required by the Environmental Laws; and (b) any claims of third parties for loss, injury, expense or damage arising out of the use, presence, treatment, generation, release, discharge, disposal or transportation of any Hazardous Substance on, under, in, above, to or from the Property. In the event any Remedial Work is so required under applicable Environmental Laws, Borrower shall perform or cause to be performed the Remedial Work in compliance with all Environmental Laws. All Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each contractor and the consulting engineer being selected by Borrower and approved in advance in writing by Lender. Borrower shall promptly provide the Lender with copies of the remedial plan and allow the Lender to attend meetings among Borrower, the consulting engineer, the contractors and any regulatory authority. In the event Borrower shall fail to commence the Remedial Work in a timely fashion or fail to prosecute diligently the Remedial Work to completion, Lender may, but shall not be required to, cause the Remedial Work to be performed, subject fully to the indemnification provisions of this section. It shall not be necessary for the Lender to incur any expense to enforce this indemnification, and the indemnification contained herein shall survive repayment of the Note and release of the lien of this Deed of Trust and shall be fully applicable notwithstanding any negligence on the part of any Indemnified Party. The liabilities and covenants of Borrower hereunder may not be assigned, and any such assignment shall be null and void without the Lender's prior written consent.

**22. Default, Breach, Remedies.** Following Borrower's default or breach of any covenant or agreement in this Security Instrument, Lender, at its option, without notice, may pursue any rights and remedies it may have hereunder or at law, or in equity, and Lender may, without limitation and without notice of any kind (including notice of intention to accelerate maturity), declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable, and may invoke the power of sale, and any other remedies permitted by applicable law, and Borrower hereby authorizes and empowers the Trustee, and any successor Trustee, at the request of Lender, at any time during the continuance of any default, to sell all or any portion of the Property, at public auction, to the highest bidder, for cash, at the door of the County Courthouse of the county in Texas in which such Property or any part thereof is situated, as herein described, between the hours of 10:00 o'clock a.m. and 4:00 o'clock p.m. on the first Tuesday of any month after giving notice of the time, place and terms of said sale, and the property to be sold, as follows: If Lender invokes the power of sale, Lender, its designee, or Trustee shall give notice, at least 21 days before the date of the sale, of the date, time, place and terms of sale as provided in Chapter 51 of the Texas Property Code, by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold, filing in the office of the county clerk of each county in which the property is located a copy of the notice posted at the courthouse door, and serving written notice of the sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt, which service shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of Lender, in a post office or official depository under the care and custody of the United States Postal Service, and the affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

**Waivers.** Borrower waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Property, commonly known as Appraisal Laws, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of said debt or creating or extending a period of redemption from any sale made in collecting said debt, commonly known as Stay Laws and Redemption Laws, and Borrower hereby agrees and contracts that the laws of the State of Texas, save as above excepted, now in force relative to the collection of said debt and the application to the payment thereof, are expressly adopted and made a part hereof. To the extent that Borrower may lawfully do so, Borrower agrees that Borrower shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other

matter whatever to defeat, reduce or affect the right of Lender, under the terms of this Deed of Trust, to sell the Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or right of Lender, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Borrower expressly waives and relinquishes any right or remedy which it or they may have or be able to assert by reason of the provisions of Chapter 43 of the Civil Practice and Remedies Code of the State of Texas, as amended or re-codified, pertaining to the rights and remedies of sureties.

Notwithstanding any notice provisions elsewhere herein, notice of such sale given in accordance with the requirements of the applicable law of the State of Texas in effect at the time of such sale shall constitute sufficient notice of such sale.

Lender or its designee may purchase the Property at any sale.

**Trustee.** Borrower hereby authorizes and empowers the Trustee to sell all or any portion of the Property, together or in lots or parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such property, good and sufficient deeds of conveyance of fee simple title with covenants of general warranty made on behalf of the Borrower, and Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. In no event shall the Trustee be required to exhibit, present or display at any such sale any of the Personalty described herein to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (i) first, he shall pay the reasonable expense of executing this trust including a reasonable Trustee's fee for commission and attorney's fees and costs of title evidence; (ii) second, he shall pay, so far as may be possible, the indebtedness secured hereby, discharging first that portion of the indebtedness arising under the covenants or agreements herein contained and not evidenced by the Note; (iii) third, he shall pay the residue, if any, to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the obligation of the purchaser at such sale therefor, and such purchaser shall not be bound to look after the application thereof. The sale or sales by the Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and if the proceeds of such sale or sales of less than the whole of such Property shall be less than the aggregate of the indebtedness secured hereby and the expense of executing this trust, this Deed of Trust and the lien, security interest and assignment hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale or sales had been made; provided, however, that Borrower shall never have any right to require the sale or sales of less than the whole of the Property but Lender shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Property.

**Deficiency.** Regardless of whether all or any portion of the Property is sold pursuant to this Deed of Trust, or any action is taken by Lender to mitigate its damages, or Lender receives anything of value from any party to be applied to the Loan, Additional Loans, or Other Indebtedness, or any other debt secured hereby, Borrower shall remain personally liable for such Loan, Additional Loans, Other Indebtedness, or other debt, and Borrower hereby waives any law, statute, or provision which purports to relieve Borrower of the obligation to pay the same, and Borrower remains liable for any remaining deficiency.

**Unmatured.** If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item either through judicial proceedings or by directing the Trustee to proceed as if under a full foreclosure, conducting the sale as herein provided without declaring the entire indebtedness secured hereby due and if sale is made because of default of an installment, or a part of an installment, such sale may be made subject to the unmatured part of the Note and other indebtedness secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the indebtedness secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the indebtedness secured hereby.

In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured, or as to the request to the Trustee to enforce this trust, or as to the property

and due appointment of any substitute Trustee, or as to the advertisement of sale, or time, place, and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

The purchaser at any Trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or lease contract.

**Tenancy.** In the event of a Trustee's sale hereunder and if at the time of such sale the Borrower, or any person holding possession of the Property through Borrower, occupies, or otherwise fails to immediately surrender possession of the Property to the purchaser at that sale the portion of the Property so sold, or any part thereof, the same shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Property; and this agreement and any Trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

**Other actions.** Following Borrower's default or breach of any covenant or agreement in this Security Instrument, Lender or Trustee, in addition to any rights and powers set forth elsewhere herein, shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. The Borrower agrees, to the full extent that they or it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Lender shall have the right and power to enter into and upon and take possession of all or any part of the Property in the possession of Borrower, their or its successors or assigns, or its or their agents or servants and may exclude the Borrower, its or their successor assigns and all persons claiming under the Borrower, and its or their agents or servants, wholly or partly therefrom; and holding the same, the Lender may use, administer, manage, operate and control the Property and conduct the business thereof to the same extent as the Borrower, its successors or assigns, might at the time do and may exercise all rights and powers of the Borrower, in the name, place and stead of the Borrower, or otherwise as the Lender shall deem best; and in the exercise of any of the foregoing rights and powers Lender shall not be liable to Borrower for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Lender.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall provide a release of this Security Instrument to Borrower or Borrower's designated agent in accordance with Applicable Law. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**24. Substitute Trustee; Trustee Liability.** All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law.

Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

**25. Subrogation.** Any of the proceeds of the Note used to take up outstanding liens against all or any part of the Property have been advanced by Lender at Borrower's request and upon Borrower's representation that such amounts are due and are secured by valid liens against the Property. Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or

holder of any outstanding liens and debts, regardless of whether said liens or debts are acquired by Lender by assignment or are released by the holder thereof upon payment.

**26. Partial Invalidity.** In the event any portion of the sums intended to be secured by this Security Instrument cannot be lawfully secured hereby, payments in reduction of such sums shall be applied first to those portions not secured hereby.

**27. Purpose of Loan.** No part of the Property shall be occupied by Borrower, or Borrower's spouse, as its primary residence. Borrower agrees that no part of the property is the homestead or primary residence of Borrower or Borrower's spouse. The purpose of the Loan, Additional Loans, Other Indebtedness, and any other debt secured by this Deed of Trust is solely business and/or commercial.

**28. Intentionally left blank.**

#### **ADDITIONAL COVENANTS**

**1. Cross-Default.** That Borrower shall punctually and properly form all of Borrower's covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof.

**2. Compliance.** That Borrower will comply with all valid governmental laws, ordinances and regulations applicable to the Mortgaged Premises and its ownership, use and operation and to comply in all material respects with easements, restrictions agreements, covenants and conditions encumbering the Property.

**3. Further Assurances.** Borrower shall, upon request by Lender at any time and from time to time, execute and deliver to Lender any and all additional instruments and further assurances, and do all other acts and things as may be necessary or proper in Lender's reasonable opinion to effect the intent of this Deed of Trust, more fully evidence and perfect the rights, titles, liens and security interests herein created or intended to be created and protect the rights, remedies, powers and privileges of Lender hereunder.

**4. Financial Statements.** Borrower shall, upon request of Lender at any time and from time to time, furnish to Lender, within FIVE (5) days of such request, the current financial statements itemizing the income and expenses of the Property in such detail as shall be reasonably satisfactory to Lender, and such financial statements and reports relating to Borrower and Borrower's business affairs as Lender may reasonably request.

**5. Corporate Good Standing.** Borrower shall, if Borrower is a corporation, maintain continuously Borrower's corporate existence, good standing, and its right to do business in Texas and in each other state where any part of the Property is situated.

**6. Financing Statement.** With respect to any personal property herein described, this Deed of Trust shall constitute a Security Agreement between Borrower and Lender, and, cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the Uniform Commercial Code, as amended, as to the Property. This Deed of Trust, as a Financing Statement, covers Borrower's interests in the following types of property, if any: Minerals, crops and goods that are, or are to become, fixtures as more fully described herein, and related to the Property, and it is intended that as to those goods and the proceeds thereof, this Deed of Trust shall be effective as a Financing Statement filed as a mineral, crop and fixture filing from the date of its filing for record in the Real Estate Records of the County in which the land is located. Until the lien of this Deed of Trust is released or satisfied of record, Borrower agrees, if requested by Lender, to execute one or more Financing Statements covering such personal property, in the manner and form required by law and to the satisfaction of Lender. Borrower agrees to pay Lender's charge, to the maximum amount permitted by law, for any statement by Lender regarding the obligations secured by this Deed of Trust, requested by Borrower or on behalf of Borrower. On demand, Borrower will promptly pay all costs and expenses of filing Financing Statements, continuation statements, partial releases and termination statements deemed necessary or appropriate by Lender to establish and maintain the validity and priority of the security interest of Lender or any modification thereof, and all costs and expenses of any searches reasonably required by Lender. Lender may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code, as amended, with respect to such personal property, and it is expressly agreed that if upon default Lender should proceed to dispose of the collateral in accordance with the provisions of the Uniform Commercial Code, as amended,

ten (10) days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code, as amended, requiring such notice; provided, however, that Lender may at its option dispose of the collateral in accordance with Lender's rights and remedies in respect of the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Uniform Commercial Code, as amended.

**7. Construction Mortgage.** This Deed of Trust constitutes a "construction mortgage" as defined in the Uniform Commercial Code as enacted in Texas, and secures an obligation incurred for the construction of improvements on the real property described herein. Borrower shall use the proceeds of such construction loan to construct improvements on the Property according to Plans and Specifications submitted to Lender, and any such improvements, and all building materials and supplies placed on the Property, shall constitute additional security for the repayment of such construction loan and other obligations hereby secured. Further, all plans and specifications, permits and all contracts and subcontracts, all accounts and monies due Borrower and any and all other rights, interests and privileges of Borrower in connection with said construction project shall constitute additional security for the indebtedness and obligations hereby secured. Borrower further covenants and agrees that it will comply with all state, federal and other governmental architectural barriers laws and regulations governing such construction.

THIS WRITTEN LOAN AGREEMENT REPRESENTS 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.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

EXECUTED on January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

Borrower's Mailing/Notice Address:  
[Redacted]

**ACKNOWLEDGMENT**

STATE OF TEXAS

§  
§  
§

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of January, 2022, by Jane Doe, Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas



**ASSIGNMENT OF WARRANTIES, PERMITS, LICENSES AND CONTRACTS**  
**AND**  
**ABSOLUTE ASSIGNMENT OF RENTS AND LEASES**  
**(Security Agreement)**

THIS ASSIGNMENT is made and entered into on January \_\_, 2022, by Doe Family Holdings, LLC (hereinafter collectively, called "Assignor"), to TEXAS NOTES, LLC ("Lender").

FOR VALUE RECEIVED, Borrower, as additional security for the obligations incurred and to be incurred pursuant to the real estate lien note (the "Note"), of even date herewith, and the Mortgage, Deed of Trust, Security Deed or Security Instrument (together with all exhibits, riders and addenda of even date herewith (the "Security Instrument" and together with the Note, the "Loan Documents"), relating to a loan from Lender to Borrower evidenced by the Note in the original principal amount of **\$400,000.00** hereby assigns, conveys, grants and transfers to Lender, its successors and assigns, and hereby grants to Lender and creates in favor of Lender, a security interest under the applicable Uniform Commercial Code, as enacted in the State in which the Property (as defined in the Security Instrument) is located, in and to:

**(A) Warranties, Permits, Licenses and Contracts.** All of Borrower's rights, title and interests in, to and under the construction contracts, subcontracts, and all architectural contracts and agreements with respect to the construction of the Improvements upon the Property and all governmental entitlements (including, without limitation, all zoning rights and approvals, all variances approvals and occupancy rights or approvals, all lot split rights, use and occupancy rights), rights under all permits, licenses, authorizations, consents and approvals (including without limitation all building permits, grading permits, utilities permits, franchises, demolition permits, zoning and special use or variance permits or approvals and all other governmental permits and entitlements, together with any and all plans, site plans, specifications, engineering and soils reports, and all other plans, specifications and preparation for any and all improvements now or hereafter constructed or installed, together with any and all warranties and guarantees related thereto), whether heretofore or hereafter issued to Borrower or any of its agents from time to time with respect to the Property. Defined terms used in this Assignment shall have the meanings given such terms in the Loan Documents unless otherwise expressly defined herein.

Borrower hereby represents and warrants to Lender, and covenants with Lender as follows:

1. This Assignment is made as additional security for the obligations of Borrower incurred and to be incurred under the Loan Documents and, until the occurrence of a default under the Loan Documents thereunder or under any other document or instrument evidencing, securing or pertaining to the loan referred to in the Loan Documents, Borrower shall have a revocable license to enjoy and exercise all rights, remedies, benefits and privileges under all of the governmental entitlements, permits, licenses and approvals hereby assigned, conveyed and transferred.
2. In the event of any default under the Loan Documents by Borrower, Lender shall have a revocable license to exercise all of the rights, remedies, privileges and benefits of Borrower under any and all of said governmental entitlements, permits, licenses and approvals. Borrower hereby agrees that such notice to Borrower as may be provided for in the Note regarding any default shall be commercially reasonable notice under the Uniform Commercial Code as applicable hereto.
3. Borrower hereby irrevocably constitutes, designates and appoints Lender as Borrower's true and lawful attorney-in-fact with full power of substitution and authority to undertake and exercise any rights, benefits, privileges or remedies of Borrower under any and all of such governmental entitlements, permits, licenses and approvals or as may be provided or permitted by law in regard to the rights, remedies, privileges and benefits of Borrower thereunder.
4. Upon the satisfaction, discharge and payment of all of the obligations of Borrower under the Loan Documents and the obligations of Borrower and all other parties signatory thereto under any other document or instrument evidencing, securing or pertaining to the loan

referred to in the Loan Documents, this Assignment shall be terminated and of no further force and effect.

5. Any default by Borrower hereunder or under any of the governmental entitlements, permits, licenses and approvals hereby assigned which has or may have a materially adverse effect on the Property and/or Lender's interest in the collateral securing the loan contemplated by the Loan Documents shall, at Lender's sole option, constitute a default under the Loan Documents.
6. This Assignment shall bind and inure to the benefit of Borrower, Lender and their respective successors and assigns and shall be governed by and construed in accordance with the law of the state in which the Property is located, without giving effect to conflict of laws principals.

**(B) Leases and Rents.**

1. All rights, title, interests, estates, powers, privileges, options and other benefits of Assignor in, to and under the lease agreements which now or in the future, from time to time, cover or affect all or any portion of the subject property, as defined in the security instrument, together with all renewals, extensions, modifications, amendments, subleases and assignments of such lease agreements (such lease agreements, renewals, extensions, modifications, amendments, subleases and assignments hereinafter called the "Leases"); and
2. All of the rents, income, receipts, revenues, issues, profits, receivables and other sums of money (hereinafter collectively called the "Rents") that are now and/or at any time hereafter become due and payable to Assignor under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Subject Property or any part thereof, including but not limited to minimum rents, additional rents, daily rents, or room charges, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Subject Property and all of Assignor's rights to recover monetary amounts from any leases in Bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under the Federal Bankruptcy Code, including specifically the immediate and continuing right to collect and receive each and all of the foregoing; and
3. Any and all guaranties of payment of the Rents. This Assignment is made by Assignor to provide a direct and continuing source of payment (currently and in the future) of the loan documents, obligations, indebtedness and liabilities.
4. Assignor hereby represents and warrants unto Assignee that Assignor is the sole owner of the entire lessor's interest in the Leases and has good title and good right to assign the Leases and rents hereby assigned and no other person or entity has any right, title or interest therein; that Assignor has duly and punctually performed all of the terms, covenants, conditions, and warranties of the Leases that were to be kept, observed and performed by it; that Assignor has not at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind; that Assignor has not executed any prior assignments of the Leases or the Rents thereunder; that no Rents reserved in any Lease have been anticipated and no Rents for any period subsequent to the date of this Assignment have been collected in advance of the time when the same became due under the terms of the applicable Lease, that Assignor has not performed any act or executed any other instrument which might prevent Assignee from enjoying or exercising any of its rights and privileges evidenced hereby; that each of the Leases is valid and subsisting and in full force and effect and unmodified; that there exists no defense, counterclaim or set-off to the payment of the Rents under the Leases; and that there are no defaults now existing under the Lease and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.
5. Assignor agrees that, so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Mortgage shall remain unpaid, Assignor (having no assignable rights therein) will make no attempted assignment, pledge or disposition of the Leases or the Rents thereunder, nor will Assignor attempt to subordinate any of the Leases or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee

under any Lease of and from any obligations, covenants, conditions and agreements to be kept, observed and performed by the lessee, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein; nor will Assignor incur any indebtedness to a lessee under, or guarantor of, any Lease which may under any circumstance be used as an offset against the Rents or other payments due under said Lease; nor will Assignor exercise any option required by the terms of any of the Leases without the prior written consent of Assignee; nor will Assignor receive or collect any Rents from any present or future lessee of the Subject Property or any part thereof except in trust for Assignee in accordance with the express provisions hereof, and then only for such periods not to exceed one month in advance of the date on which such payment is due; nor will Assignor cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any lessee thereunder; nor will Assignor consent to an assignment or sublease of the interest and estate of any lessee under any of the Leases, whether or not in accordance with its terms; nor will Assignor modify or change the terms of any guaranty of any of the Leases or cancel or terminate such guaranty; nor will Assignor enter into additional leases covering any portion of the Subject Property, or renew or extend the term of any Lease unless an option therefor was originally reserved by the lessee in the Lease for a fixed and definite rental, or relocate or expand the floorspace of any lessee under a Lease within the Subject Property, without first having obtained the written consent of Assignee; and any such acts, if done or permitted to be done without the prior written consent of Assignee shall be null and void.

6. Assignor covenants with Assignee, for so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Mortgage shall remain unpaid to observe and perform duly and punctually all the obligations imposed upon any lessor under the Leases and not to do or permit to be done anything to impair the value thereof; to enforce the performance of each and every term, provision, covenant, agreement and condition in the Leases to be performed by any lessee thereunder; to appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with any of the Leases, or the obligations, liabilities or duties of Assignor or any lessee under the Leases and, upon request by Assignee, to make appearance in the name and on behalf of the Assignee, but at the expense of Assignor; to exercise any option or election contained in or relating to any of the Leases which Assignee shall require; at Assignee's request to assign and transfer to Assignee by specific Assignment of Leases and Rents, in the form of this Assignment, any and all subsequent Leases upon all or any part of the Subject Property (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Assignment as provided herein); to deliver to Assignee executed copies of any and all Leases, renewals and extensions of existing Leases and any and all subsequent Leases upon all or any part of the Subject Property; and to execute and deliver at the request of Assignee all such further assurances and assignments in the premises covered by the Leases or Rents as Assignee shall from time to time require and to deliver other records and instruments, including but not limited to rent rolls and books of account, that Assignee shall from time to time require.
7. Assignor covenants to receive any and all Rents as a fund held in trust to be applied for the benefit of and as directed by Assignee for payment of the Note and Mortgage, the indebtedness evidenced thereby and the obligations of the Subject Property as set forth herein. In accordance with such trust, Assignor hereby covenants so to apply the Rents, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Subject Property before penalty or interest is due thereon; second, the cost of insurance, maintenance and repairs required by the terms of the Mortgage; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of interest and principal becoming due on the Note and the Mortgage. However, Assignor may only collect such Rents on behalf of Assignee until the occurrence of a default, and each lessee under the Leases is hereby authorized and directed to pay directly to Assignee (being the owner thereof) all Rent thereafter accruing and the receipt of Rent by Assignee as provided herein shall be a release of such lessee to the extent of all amounts

so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rents directly to Assignee and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Assignor for any Rents paid to Assignee after receipt of such Notice of Default. Rents received by Assignee after giving a Notice of Default for any period prior to foreclosure under the Mortgage or acceptance of a deed in lieu of such foreclosure shall be applied by Assignee to the payment (in such order as Assignee shall determine) of: (a) all expenses of managing the Subject Property, including but not limited to the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable; all expenses of operating and maintaining the Subject Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; all expenses incident to taking and retaining possession of the Subject Property and/or collecting the Rents due and payable under the Leases; and (b) the Note and other indebtedness secured by the Mortgage, principal, interest, attorneys' and collection fees and other amounts, in such order as Assignee in its sole discretion may determine. In no event will this Assignment reduce the indebtedness evidenced by the Note or otherwise secured by the Mortgage, except to the extent, if any, that Rents are actually received by Assignee and applied upon (after said receipt) to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Assignee may, at its option, at any time and from time to time, release to Assignor Rents so received by Assignee or any part thereof. As between Assignor and Assignee, and any person claiming by, through or under Assignor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph, this Assignment is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default specified in the Mortgage are intended solely for the benefit of each such lessee and shall never inure to the benefit of Assignor or any person claiming by, through or under Assignor (other than a lessee who has not received such notice). It shall never be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph or this Assignment.

8. Assignor covenants that at any time during which Assignor is receiving Rents directly from lessees under the Leases, Assignor shall, upon receipt of written direction from Assignee, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Assignee, as it becomes due and payable, including Rents which are past due and unpaid. In the event Assignor fails to take such action, or at any time during which Assignor is not receiving Rents directly from lessees under the Leases, Assignee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Assignor, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.
9. Assignor agrees that Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Subject Property, or any part thereof, or from any other act or omission of Assignee under or relating to the Leases, unless such loss is caused by the gross negligence or willful misconduct of Assignee, nor shall Assignee be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this instrument or the exercise of rights or remedies hereunder. Assignee shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of, Rents under the Leases, but shall be accountable only for Rents that Assignee actually receives. Assignor will indemnify and hold harmless Assignee (for purposes of this Paragraph, the term "Assignee" shall include the directors, officers, partners, employees and agents of Assignee and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Assignee) from and against, and reimburse Assignee for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including without limitation, reasonable attorneys' fees and costs of appeal) incurred under the Leases by reason of this instrument or the exercise of rights or remedies hereunder, or which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in the Leases, including specifically any obligation or responsibility for any security deposits or other deposits delivered to Assignor, by any lessee under any Lease and not actually delivered to Assignee. The indemnities contained in this Paragraph shall include claims, demands, liabilities, losses, damages,

causes of action, judgments, penalties, costs and expenses (including without limitation, reasonable attorneys' fees) resulting from the negligence of Assignee, but not the gross negligence or willful misconduct of Assignee. The foregoing indemnities shall not terminate upon release or other termination of this Assignment. Any amount to be paid under this Paragraph by Assignor to Assignee shall be a demand obligation owing by Assignor to Assignee, shall bear interest for the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal or interest on the Note and shall be secured by the Mortgage and by any other instrument securing the Note. This Assignment of Leases and Rents shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Subject Property, nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste of committed on the Subject Property by the tenants or by any other parties or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

10. Assignor agrees that this Assignment is primary in nature to the obligation evidenced and secured by the Note, the Mortgage and any other document given to secure and collateralize the indebtedness secured by the Mortgage and that any default under this Agreement is and shall be a default under the Mortgage. Assignor agrees that Assignee may enforce this Assignment without first resorting to or exhausting any security or collateral securing the payment of the Note, provided however, that nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Mortgage or exercising any other right under any document securing the payment of the Note or at law or in equity.
11. Assignor covenants and agrees that so long as the indebtedness under the Note and Mortgage or any indebtedness secured by the Mortgage remains unpaid, in the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other Federal, State, or Local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, if any Lease is so rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for rejection of any such Lease will be made payable to Assignee, to the fullest extent permitted by law, Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to the Note and other indebtedness secured by the Mortgage, principal, interest, attorneys' and collection fees and other amounts, in such order as Assignee in its sole discretion may determine.
12. Assignor agrees with Assignee that nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and the Mortgage or a waiver or curing of any default hereunder or under the Note or the Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Note and the Mortgage. The right of Assignee to collect said principal sum, interest and indebtedness and to enforce any security thereof held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.
13. If the Note and all other indebtedness secured by the Mortgage is paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in the Mortgage and in this Assignment are kept and performed, then this Assignment shall become null and void and of no further force and affect and Assignee shall then reassign all Rents to Assignor, at Assignee's expense. No lessee under the Leases shall be required to take notice of such termination until a copy of a release of the Mortgage and re-assignment of the Rents shall have been delivered to such lessee.
14. Assignor agrees that Assignee may take or release any security for the payment of this Note and other indebtedness secured by the Mortgage, may release any party primarily or secondarily liable therefor and may apply any security held by it to the satisfaction of the Note and such other indebtedness secured by the Mortgage without prejudice to any of its rights under this Agreement.
15. Assignor agrees that Assignee may at any time and from time to time in writing (a) waive compliance by Assignor with any covenant herein made by Assignor to the extent and in the manner

specified in such writing; (b) consent to Assignor doing any act which hereunder Assignor is prohibited from doing, or consent to Assignor failing to do any act which hereunder Assignor is required to do, to the extent and in the manner specified in such writing; or (c) release any part of the Subject Property and/or the Leases, or any interest therein, from this Assignment. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

16. Assignor agrees that the rights and remedies of Assignee hereunder shall not be impaired by any indulgence, including but not limited to (a) any renewal, extension or modification which Assignee may grant with respect to any indebtedness secured by the Mortgage, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Assignee may grant in respect of the Subject Property and/or the Leases and/or the Rents or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.
17. Assignor agrees that a determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.
18. Assignor agrees that notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Subject Property, (b) the operation of law or (c) any other event, lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such Lease as assigned by this Assignment.
19. Assignor agrees and covenants with Assignee that this Assignment and the terms, provisions, representations and warranties herein contained shall be binding upon Assignor and Assignor's successors and assigns, and all subsequent owners of the Subject Property and shall inure to the benefit of Assignee and Assignee's successors and/or assigns, including all subsequent holder of the Note and the Mortgage. All reference in this Assignment to Assignor or Assignee shall be deemed to include all such successors and assigns of such respective party.
20. Assignor agrees that within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless the context otherwise requires.
21. Assignor agrees that this Assignment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.
22. Assignor agrees and covenants with Assignee that this Agreement shall not be construed or deemed made for the benefit of any third party or parties.
23. This Assignment shall be construed in accordance with and shall be subject to the laws of the State of Texas.
24. This Assignment contains the entire agreement concerning the assignment by Assignor of the Leases and the Rents thereunder between the parties hereto. No variations, modifications, or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by or on behalf of such party.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Warranties, Permits, Licenses and Contracts and Absolute Assignment of Leases and Rents as of the date first above written.

ASSIGNOR (BORROWER):

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

Mailing Address:  
\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

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§  
§

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of January, 2022, by Jane Doe, Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

## CERTIFICATE OF COMPANY RESOLUTION

I, Jane Doe, as Manager of Doe Family Holdings, LLC, certify that said company is duly organized and existing under the laws of the State of Texas; that said company has a duration of existence which is perpetual, that all franchise, margin, and other taxes required to maintain its corporate existence have been paid when due and that no such taxes are delinquent; that no proceedings are pending for the forfeiture of its Certificate of Formation or for its dissolution, voluntarily or involuntarily; that it is duly qualified to do business in the State of Texas and is in good standing in such State; that there is no provision of the Certificate of Formation or Company Agreement of said company limiting the power of the Manager to pass the resolution set out below and that the same is in conformity with the provisions of said Certificate of Formation and Company Agreement; that the Manager is the keeper of the records and minutes of the proceedings of the Manager of said company and that on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, there was held a meeting of the Manager of said company, which was duly called and held in accordance with the law and the Company Agreement of the company, at which meeting the required number of Managers were present; and that at said meeting the following resolution was duly and legally passed and adopted and that the same has not been altered, amended, rescinded or repealed and is now in full force and effect:

RESOLVED, that Jane Doe, is authorized in the name of the company and as its own act, to borrow the sum of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) from TEXAS NOTES, LLC, and to execute a promissory note of this company, in a form, at an interest rate and on terms as Jane Doe, may in his/her discretion determine to be in the best interest of the company; and

RESOLVED FURTHER, that as and for security for this loan, Jane Doe, is authorized and directed, on behalf of the company, to execute and deliver TEXAS NOTES, LLC, such documents, including a Deed of Trust and/or other Security Agreement, evidencing the mortgage or pledge of real and personal property more particularly described in said documents, in a form to be agreed upon by Jane Doe, and said TEXAS NOTES, LLC; and

RESOLVED FURTHER, that the Manager does hereby ratify all actions taken hereunder pursuant to this Resolution; and

RESOLVED FURTHER, that the Manager is directed to certify the minutes of this meeting and the contents of these resolutions and to deliver such certification in support of the authority of Jane Doe, to act on behalf of the company.

I further certify that the Purpose Clause of the Certificate of Formation has included in it the standard general purpose.

I further acknowledge that this Certificate of Company Resolution is executed for the purpose and consideration of inducing TEXAS NOTES, LLC, to make the referenced loan to the company.

I further certify that the person executing this instrument is the Manager of Doe Family Holdings, LLC and are authorized to act upon and sign this certificate.

***The remainder of this page left blank intentionally.***



IN WITNESS WHEREOF, I have hereunto set my hand as Manager of said company and have attached hereto the official seal of said company, this \_\_\_\_\_ day of January, 2022.

\_\_\_\_\_  
Jane Doe

**ACKNOWLEDGMENT**

STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

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The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Jane Doe, Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

Texasnotes

**SAMPLE**

## **ERRORS, OMISSIONS AND CORRECTION AGREEMENT**

**Borrower:** Doe Family Holdings, LLC and Jane Doe

**Lender:** TEXAS NOTES, LLC

**Loan:** Promissory Note ("Note") of even date herewith in the original principal sum of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) and related documents

For good and valuable consideration, the receipt of which is hereby acknowledged, Borrower agrees to correct or execute any documentation deemed necessary by Lender to accurately reflect the true and correct terms and conditions of the Loan. Borrower understands that this may mean correction of the existing Note, Deed of Trust or other documents securing the Note, and any other documents executed in conjunction with the Loan, or execution of a new note, deed of trust or other documents securing the Note, or additional documents. If the original Note is replaced, Lender hereby indemnifies the Borrower against any loss associated with a demand on the original Note. Borrower agrees that, upon the request of the Lender (including persons acting on behalf of the Lender) or Settlement/Escrow Agent, Borrower will comply with Lender's reasonable request to correct existing documentation, or to supply additional documentation and/or to pay Lender any additional sums previously disclosed to Borrower as a cost or fee associated with the Loan which, for whatever reason, was not collected at closing.

The Borrower hereby agrees and covenants that the terms of this Errors, Omissions and Correction Agreement constitute an additional covenant under the Note, Deed of Trust and any other documents securing the Note. In the event Borrower does not duly correct, execute and deliver any and all of the additional documents or fees referenced herein above within ten (10) days of such request, Lender may, in its sole discretion, deem Borrower's failure to timely cooperate as a default under the terms and conditions of the Note, Deed of Trust and any other documents executed in connection with the Loan. Lender may then proceed to enforce its rights under the Note, Deed of Trust or any other documents securing the Note, which enforcement may include acceleration of all sums due under the Note, and, in the event such sums are not promptly paid, foreclosure of the collateral securing the Loan.

If Borrower fails or refuses to execute, acknowledge, initial and deliver the corrected documents or provide the additional documents or fees to Lender within ten (10) days after being requested to do so by Lender, and understanding that Lender is relying on these representations, Borrower agrees to be liable for any and all loss or damage which Lender reasonably sustains thereby, including but not limited to all reasonable attorney's fees and costs incurred by Lender.

*The remainder of this page left blank intentionally.*

EXECUTED: January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

Mailing Address:  
\_\_\_\_\_

GUARANTOR:

\_\_\_\_\_  
Jane Doe

Mailing Address:  
\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of January, 2022, by Jane Doe, individually and as Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

## **ENVIRONMENTAL CERTIFICATE WITH REPRESENTATIONS, COVENANTS AND WARRANTIES**

The undersigned, Doe Family Holdings, LLC and Jane Doe, ("Borrower"), hereby execute this Certificate for the purpose of inducing TEXAS NOTES, LLC ("Lender"), to make a loan to Borrower in the stated principal sum of \$400,000.00 (the "Loan"), which Loan is to be secured by a Deed of Trust (the "Mortgage"), dated of even date herewith, to Matthew E. Haddock, as Trustee, encumbering certain real and personal property as therein described, including the land more particularly described as:

"LEGAL DESCRIPTION" (the "Property").

1. Representations, Covenants and Warranties. Borrower hereby represents, covenants and warrants to Lender and its successors and/or assigns, as follows:

- (a) To the best of Borrower's knowledge, the location, construction, occupancy, operation and use of all improvements now and hereafter attached to or placed, erected, constructed or developed as a portion of the Property (the "Improvements") do not and will not violate any applicable law, statute, ordinance, rule, regulation, policy, order or determination of any federal, state, local or other governmental authority ("Governmental Authority") or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction affecting any portion of the Property, including without limitation, any applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws, rules and regulations (hereinafter collectively called the "Applicable Laws").

- (b) Without in any way limiting the generality of (a) above, neither the Property nor the Borrower are the subject of any pending or, to the best of Borrower's knowledge, threatened investigation or inquiry by any Governmental Authority, or are subject to any remedial obligations under any Applicable Laws pertaining to health or the environment ("Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1987, as amended ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act, and this representation and warranty would continue to be true and correct following disclosure to any applicable Governmental Authority of all relevant facts, conditions and circumstances pertaining to the Property and/or the Borrower.

- (c) To the best of Borrower's knowledge, Borrower is not required to obtain any permits, licenses or authorizations to construct, occupy, operate or use any portion of the Property by reason of any Applicable Environmental Laws.

- (d) Borrower has taken all steps necessary to determine and has determined that no hazardous substances, solid wastes, or other substances known or suspected to pose a threat to health or the environment ("Hazards") have been disposed of or otherwise released on or to the Property or exist on or within any portion of the Property. No prior use, either by Borrower or to the best of Borrower's knowledge, the prior owners of the Property, has occurred, which violates any Applicable Environmental Laws. The use which Borrower makes and intends to make of the Property will not result in the disposal or release of any hazardous substance, solid waste or Hazard on, in or to the Property. The terms "hazardous substance" and "release" shall each have the meanings specified in CERCLA, and the terms

“solid waste” and “disposal” (or “disposed”) shall each have the meanings specified in RCRA; provided, however, that in the event either that CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further that, to the extent that the laws of the State of Texas establish a meaning for “hazardous substance,” “release,” “solid waste,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader definition shall apply.

(e) To the best of Borrower’s knowledge and belief, there are no on-site or off-site locations where hazardous substances, solid wastes or Hazards from the Property have been stored, treated, recycled, or disposed of.

(f) To the best of Borrower’s knowledge and belief, there has been no litigation brought or threatened nor any settlement reached by or with any parties alleging the presence, disposal, release, or threatened release, of any hazardous substance, solid wastes or Hazard from the use or operation of the Property.

(g) To the best of Borrower’s knowledge and belief after diligent investigation and inquiry, the Property is not on any federal or state “Superfund” list, nor subject to any environmentally related liens.

(h) Neither Borrower nor, to the best of Borrower’s knowledge and belief, any tenant of any portion of the Property, has received any notice from any Governmental Authority with respect to any violation of any Applicable Laws.

(i) Borrower shall not cause any violation of any Applicable Environmental Laws, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.

All of the foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date hereof through and as of the date of the final payment of all indebtedness owed by Borrower to Lender and the final performance of all obligations under all instruments evidencing, governing, securing or relating to such indebtedness, with the same force and effect as if made each day throughout such period, and all of such representations and warranties shall survive such payment and performance.

2 Covenant to Clean Up and Notify. Borrower shall conduct and complete all investigations, studies, sampling, and testing and all remedial, removal, and other actions necessary to clean up and remove hazardous substances, solid wastes or Hazards on, in, from or affecting any portion of the Property (a) in accordance with all Applicable Laws, (b) to the satisfaction of Lender, and (c) in accordance with the orders and directives of all Governmental Authorities. Borrower shall (a) give notice to Lender immediately upon (i) Borrower’s receipt of any notice from any Governmental Authority of a violation of any Applicable Laws or acquiring knowledge of the receipt of any such notice by any tenant of any portion of the Property and (ii) acquiring knowledge of the presence of any hazardous substances, solid wastes or hazards on the Property in a condition that is resulting or could reasonably be expected to result in any adverse environmental impact, with a full description thereof; (b) promptly comply with all applicable Environmental Laws requiring the notice, removal, treatment, or disposal of such hazardous substances, solid wastes or Hazards and provide Lender with satisfactory evidence of such compliance; and (c) provide Lender, within thirty (30) days after demand by Lender, with a bond, letter of credit, or similar financial assurance evidencing to Lender’s satisfaction that sufficient funds are available to pay the cost of removing, treating, and disposing of such hazardous substances, solid wastes or Hazards

and discharging any assessments that may be established on the Property as a result thereof.

3. Site Assessment. If Lender shall ever have reason to believe that there are hazardous substances, solid wastes or Hazards affecting any of the Property, Lender (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default under the Mortgage, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Property for the purpose of determining whether there exists on the Property any environmental condition that could result in any liability, cost, or expense to the owner, occupier, or operator of such Property arising under any Applicable Environmental Laws. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Borrower that 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 substances, solid wastes and Hazards on the Property and such other tests on the Property as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Borrower will supply to the Site Reviewers such historical and operational information regarding the Property as may be reasonably 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, Lender shall make the results of such Site Assessments fully available to Borrower, which (prior to an Event of Default under the Mortgage) may, at its election, participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Borrower upon demand of Lender.

4. Indemnify and Hold Harmless. Borrower hereby defends, indemnifies and holds harmless Lender, its employees, agents, shareholders, officers and directors (collectively, the "Indemnified Parties"), from and against any claims, demands, obligations, penalties, fines, suits, liabilities, settlements, damages, losses, costs or expenses (including, without limitation, attorney and consultant fees and expenses, investigation and laboratory fees and expenses, cleanup costs, and court costs and other litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (i) the presence, disposal, release, threatened release, removal or production of any hazardous substances, solid wastes or Hazards which are on, in, from or affecting any portion of the Property; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous substances, solid wastes or Hazards; (iii) any lawsuit brought or threatened, settlement reached, or order by Governmental Authority relating to such hazardous substances, solid wastes or Hazards, and/or (iv) any violation of any Applicable Laws, or demands of Governmental Authorities, or violation of any policies or requirements of Lender, which are based upon or in any way related to such hazardous substances, solid wastes or Hazards, regardless of whether or not any of the conditions described under any of the foregoing subsections (i) through (iv), inclusive, was or is caused by or within the control of Borrower. Borrower agrees, upon notice and request by an Indemnified Party, to contest and defend any demand, claim, suit, proceeding or action with respect to which Borrower has hereinabove indemnified and held the Indemnified Parties harmless and to bear all costs and expenses of such contest and defense. Borrower further agrees to reimburse any Indemnified Party upon demand for any costs or expenses incurred by any Indemnified Party in connection with any matters with respect to which Borrower has hereinabove indemnified and held the Indemnified Parties harmless. The provisions of this paragraph shall be in addition to any other obligations and liabilities Borrower may have to Lender at common law, in equity or under documentation executed in connection with the Loan, and shall survive the closing, funding and payment in full of the Loan, as well as any foreclosure of the Loan or granting of any deed in lieu of foreclosure and the recordation of

any release of the lien of the Mortgage.

5. Lender's Right to Remove Hazardous Materials. Lender shall have the right, but not obligation, without in any way limiting Lender's other rights and remedies under the Mortgage, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve, or minimize the impact of, or otherwise deal with, any hazardous substances, solid wastes or Hazards on or affecting the Property following receipt of any notice from any person or entity reasonably asserting the existence of any hazardous substances, solid wastes or Hazards pertaining to the Property or any part thereof that, if true, could result in an order, notice, suit, imposition of a lien on the Property, or other action or that, in Lender's sole opinion, could jeopardize Lender's security under the Mortgage. All reasonable costs and expenses paid or incurred by Lender in the exercise of any such rights shall be secured by the Mortgage and shall be payable by Borrower upon demand.
  
6. Reliance and Binding Nature. Borrower acknowledges that Lender has and will rely upon the representations, covenants, warranties and agreements herein set forth in closing and funding the Loan and that the execution and delivery of this Certificate is an essential condition but for which Lender would not close or fund the Loan. The representations, covenants, warranties and agreement herein contained shall be binding upon Borrower, its successors, assigns and legal representatives and shall inure to the benefit of Lender, its successors, assigns and legal representatives. Any breach of the representations, covenants or warranties or default by Borrower in the performance of its obligations herein contained shall constitute a default under the Loan and Mortgage and shall allow Lender to exercise all of its remedies set forth in said documents.

EXECUTED on January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

GUARANTOR:

\_\_\_\_\_  
Jane Doe

**COLLATERAL PROTECTION INSURANCE DISCLOSURE**

DATE: January \_\_\_\_\_, 2022

TO: TEXAS NOTES, LLC

FROM: Doe Family Holdings, LLC and Jane Doe

RE: FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) LOAN from TEXAS NOTES, LLC to Doe Family Holdings, LLC and Jane Doe

I/we evidence my/our consent and agreement to the following by my/our execution of this document:

My credit agreement with you, which includes this notice, gives you a security interest in my collateral. I am required to maintain insurance on this collateral in an amount at least equal to my indebtedness. I agree to purchase the collateral insurance from an insurer authorized to do business in Texas or an eligible surplus lines insurer. I will name you as loss payee under the policy. I may be required to deliver to you a copy of the collateral protection insurance policy and proof of payment of premiums. If I fail to meet any of these requirements, you may obtain collateral protection insurance on my behalf. If you purchase insurance for the collateral, I will be responsible for the cost of that insurance, including interest and any other charges incurred by you in connection with the placement of collateral protection insurance.

EXECUTED on January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

GUARANTOR:

\_\_\_\_\_  
Jane Doe



**DISCLOSURE FOR BALLOON MORTGAGES**

DATE: January\_\_\_\_\_, 2022

TO: TEXAS NOTES, LLC

FROM: Doe Family Holdings, LLC and Jane Doe

RE: FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) LOAN from TEXAS NOTES, LLC to Doe Family Holdings, LLC and Jane Doe

I/we evidence my/our consent and agreement to the following by my/our execution of this document:

This loan is payable on October 06, 2022. At maturity, I must repay the entire principal balance of the loan and unpaid interest then due. Lender is under no obligation to refinance the loan at that time.

I will, therefore, be required to make payment out of other assets I may own; or I will have to find a lender willing to lend me the money at prevailing market rates, which may be considerably higher than the interest rate on the loan.

EXECUTED on January\_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

GUARANTOR:

\_\_\_\_\_  
Jane Doe

**TAXES & INSURANCE ESCROW LETTER**

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DATE: January \_\_\_\_\_, 2022

TO: TEXAS NOTES, LLC

FROM: BORROWER: Doe Family Holdings, LLC  
GUARANTOR: Jane Doe

RE: FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) LOAN from TEXAS NOTES, LLC to Doe Family Holdings, LLC and Jane Doe

The above-referenced Borrower and Guarantor are aware that they will bear the responsibility for paying property taxes on the real estate each year and the cost to keep the property adequately insured, said property being described in the Deed of Trust executed in connection with the promissory note evidencing this loan.

Borrower and Guarantor acknowledge that they have been advised that Lender will not escrow any funds to pay the taxes or insurance on the real estate loan associated herewith. Borrower and Guarantor recognize that it is their responsibility to pay such taxes and insurance and to furnish Lender with proof of payment each year.

EXECUTED on January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

GUARANTOR:

\_\_\_\_\_  
Jane Doe

## FEE SCHEDULE

#	Fee	Fee Amount	Definition & Purpose
1	Late Cost	5% of payment	Payments are due on the 1 <sup>st</sup> , late after the 10th
2	NSF Cost	\$50	Cost for NSF checks and/or ACH Returns
3	Wire Cost	\$0	Cost for Wires that are sent by Lender/ Servicer
4	Initial Extension	\$0	\$0 for extension Days 0-60. NOTE: Interest Rate goes to 17.99% of loan amount if loan balloons and Extends without Lender Approval.
5	Subsequent Extension(s)	N/A	None will be allowed. Borrower must request any extension which may only be granted at Lender's sole and absolute discretion and through the execution of a Loan Modification Agreement NOTE: Interest Rate goes to 17.99% of loan amount if loan balloons and Extends without Lender Approval.
5	Collection(s)	\$450	Cost for Lender/ Servicer engaging Attorney for Default Process
6	Initial Force Place	\$450	Cost for Lender/ Servicer force placing insurance on property
7	Loan Payoff Fee	\$75	Cost for Lender/ Servicer preparing Loan Payoff Statement
8	Inspection Fees	\$0	Cost for Draw Inspections performed by Lender/ Servicer's Inspector
9	Recording Fees	\$100	Cost for handling all other documentation, transfers, Lender Estoppels Agreements, adding/ changing entity on Title etc...

**BORROWER:**

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

**GUARANTOR:**

\_\_\_\_\_  
Jane Doe

## GUARANTY

WHEREAS, Doe Family Holdings, LLC and Jane Doe, an Individual (collectively hereinafter referred to as "Borrower"), is or may become indebted to TEXAS NOTES, LLC ("Creditor");

THEREFORE, for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned (whether one or more, herein referred to as "Guarantor") hereby guarantees to Creditor the prompt and full payment of the Guaranteed Indebtedness (hereinafter defined), as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise, and at all times thereafter, this Guaranty being upon the following terms and conditions:

1. The term "Guaranteed Indebtedness", as used herein includes: (a) all indebtedness of every kind and character, without limit as to amount, whether now existing or hereafter arising, of Borrower to Creditor, regardless of whether evidenced by notes, drafts, acceptances, discounts, overdrafts, or otherwise and whether such indebtedness be fixed, contingent, joint, several, or joint and several, including, but not limited to, all sums now or hereafter due and owing pursuant to the terms of that certain promissory note and secured financing agreement executed of even date herewith, a UCC Financing Statement, and in addition to interests included and more particularly described in the loan documents, said security instruments and related documents executed by Borrower to the order of Creditor in the stated sum of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00); (b) interest on any of the indebtedness described in (a) preceding; (c) any and all costs, attorney's fees, and expenses suffered by Creditor by reason of Borrower's default in payment of any of the foregoing indebtedness; and (d) any renewal, extension, or rearrangement of the indebtedness, costs, or expenses described in (a) through (c) preceding, or any part thereof. Guarantor further unconditionally guarantees to Creditor that Borrower will perform and observe each agreement, covenant, term and condition to be performed or observed by Borrower, regardless of the cost thereof, and upon Borrower's failure to do so, Guarantor will promptly perform and observe, or will cause to be promptly performed and observed, each such agreement, covenant, term or condition.

2. This instrument shall be an absolute and continuing guaranty, and the circumstance that at any time or from time to time the Guaranteed Indebtedness may be paid in full shall not affect the obligation of Guarantor with respect to Guaranteed Indebtedness of Borrower to Creditor thereafter incurred.

3. If Guarantor becomes liable for any indebtedness owed by Borrower to Creditor, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Creditor hereunder shall be cumulative of any and all other rights that Creditor may ever have against Guarantor. The exercise by Creditor of any right or remedy hereunder or under any other instrument, or at law or equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. If, for any reason whatsoever, Borrower is now, or hereafter becomes, indebted to Guarantor, such indebtedness and all interest thereon shall, at all times, be subordinate in all respects to the Guaranteed Indebtedness, and Guarantor shall not be entitled to enforce or receive payment thereof until the Guaranteed Indebtedness has been fully paid. Notwithstanding anything to the contrary contained in this Guaranty or any payments made by any party hereunder, Guarantor shall not have any right of subrogation in or under the documents securing payments of the Guaranteed Indebtedness or to participate in any way therein, or in any right, title or interest in and to any mortgaged property or any collateral for the Guaranteed Indebtedness, all such rights of subrogation and participation being hereby expressly waived and released, until the Guaranteed Indebtedness has been fully paid.

4. In the event of default by Borrower in payment of the Guaranteed Indebtedness, or any part thereof, when such indebtedness becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor shall, on demand and without further notice of nonpayment or of dishonor, without any notice having been given to Guarantor previous to such demand of the acceptance by Creditor of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness, pay the amount due thereon to Creditor, and it shall not be necessary for Creditor, in order to enforce such payment by Guarantor, first to institute suit or exhaust its remedies against Borrower or others liable on such indebtedness, or to enforce its rights against any security which shall ever have been given to secure such indebtedness. Suit may be brought, or demand

may be made against all parties who have signed this Guaranty, or against any one or more of them, separately or together, without impairing the rights of Creditor against any other party hereto.

5. Guarantor hereby agrees that Guarantor's obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced or affected by the occurrence of anyone or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Indebtedness; (b) any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Indebtedness; (c) any partial release of the liability of Guarantor hereunder or, if there is more than one person or entity signing this Guaranty, the complete or partial release of any one or more of them hereunder; (d) the death, insolvency, Bankruptcy, disability, dissolution, termination, receivership, reorganization or lack of corporate, partnership or other power of Borrower, any of the undersigned, or any party at any time liable for the payment of any or all of the Guaranteed Indebtedness, whether now existing or hereafter occurring; (e) renewal, extension, modification or rearrangement of the payment of any or all of the Guaranteed Indebtedness, either with or without notice to or consent of Guarantor; or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Creditor to Borrower or Guarantor; (f) any neglect, delay, omission, failure, or refusal of Creditor to take or prosecute any action for the collection of any of the Guaranteed Indebtedness or to foreclose or take or prosecute any action to foreclose upon any security therefore or to take or prosecute in connection therewith any instrument or agreement evidencing or securing all or any part of the Guaranteed Indebtedness; (g) any failure of Creditor to notify Guarantor of any renewal, extension, rearrangement, modification or assignment of the Guaranteed Indebtedness or any part thereof, or of any instrument evidencing or securing the Guaranteed Indebtedness or any part thereof, or of the release of or change in any security or of any other action taken or refrained from being taken by Creditor against Borrower or of any new agreement between Creditor and Borrower, it being understood that Creditor shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Indebtedness; (h) the unenforceability of all or any part of the Guaranteed Indebtedness against Borrower, whether because the Guaranteed Indebtedness exceeds the amount permitted by law, the act of creating the Guaranteed Indebtedness, or any part thereof, is ultra vires, the officers or persons creating same acted in excess of their authority, or otherwise, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Indebtedness, or any part thereof, for any reason; or (i) any payment by Borrower to Creditor is held to constitute a preference under the Bankruptcy laws or if for any other reason Creditor is required to disgorge or refund such payment or pay the amount thereof to someone else. It is the intent of Guarantor and Creditor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Indebtedness is fully and finally paid, such obligations and liabilities shall not be discharged or released, in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

6. Guarantor also waives the benefits of any provision of law requiring that Creditor exhaust any right or remedy, or take any action, against Borrower, any Guarantor, any other person and/or property, including but not limited to the provisions of the Texas Civil Practice and Remedies Code §17.001, Texas Rules of Civil Procedure Rule 31 and the Texas Civil Practice and Remedies Code Chapter 43, as amended, or otherwise.

7. This Guaranty is for the benefit of Creditor and Creditor's successors and assigns, and in the event of an assignment of the Guaranteed Indebtedness, or any part thereof, the rights and benefits hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty is binding not only on Guarantor, but on Guarantor's heirs, personal representatives, successors and assigns, and, if this Guaranty is signed by more than one person or entity, then all of the obligations of Guarantor arising herein shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are performable in **BEXAR** County, Texas, at the place where the Guaranteed Indebtedness is payable. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Guaranty nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the

same shall be enforced to the greatest extent permitted by law. Guarantor hereby agrees with Creditor that all rights, remedies and recourses afforded to Creditor by reason of this Guaranty or otherwise are separate and cumulative and may be pursued separately, successively or concurrently, as occasion therefor shall arise, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy or recourse which Creditor may have. The Guarantor shall pay the reasonable attorney's fees and all other costs and expenses which may be incurred by Creditor in the enforcement of this Guaranty.

8. It is not the intention of Creditor or Guarantor to obligate Guarantor to pay interest in excess of that legally permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Indebtedness constitutes interest in excess of the maximum amount of interest which Guarantor (in such capacity) may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof at the maximum rate so permitted under applicable law.

9. Guarantor represents that Guarantor is the owner of a direct or indirect interest in Borrower and that this Guaranty will benefit Guarantor.

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

EXECUTED: January \_\_\_\_\_, 2022.

GUARANTOR:

\_\_\_\_\_  
Jane Doe

Mailing Address:  
\_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF TEXAS**

**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2022, by Jane Doe.

\_\_\_\_\_  
Notary Public, State of Texas

## CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (hereinafter referred to as the "Agreement") made and entered into as of January 2022, by and between TEXAS NOTES, LLC, whose address for notice hereunder is 603 W. 11<sup>th</sup> Street, Ste. 110, Houston, Texas 77008 (hereinafter referred to as "Lender"), and Doe Family Holdings, LLC, whose address for notice hereunder is 6814 Still Lake, San Antonio, Texas 78244, and Jane Doe, individually, whose address is 6814 Still Lake, San Antonio, Texas 78244, (hereinafter collectively referred to as "Borrower" whether one or more).

### WITNESSETH:

#### ARTICLE 1 DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated:

Appraisal: An appraisal of the Land and Improvements prepared on a "plans and specifications" basis, by an appraiser selected by and engaged by Lender. The Appraisal shall be solely for the benefit of the Lender and is not a representation or warranty of any kind to Borrower and shall not be relied upon by Borrower for any purpose.

Architect/Engineer: Any and all architects/engineers engaged by Borrower and approved by Lender to design, create plans and specifications, and/or manage or supervise the construction of the Improvements.

Architect/Engineer Contract: Any and all contracts and agreements, written or oral, between Borrower and the Architect/Engineer relating to the design, creation of plans and specifications, construction and management, and/or supervision of the construction of the Improvements.

Assignment of Rents and Other Income: Assignment of even date herewith, executed by Borrower, assigning all rents and other income derived from the Mortgaged Property to Lender to secure the repayment of the Indebtedness and performance of the Obligations and all amendments thereto.

Commitment: An agreement between Borrower and a financial institution or investor/builder reasonably acceptable to Lender providing for the long term financing or purchase of the Mortgaged Property, or any part thereof, upon terms and conditions reasonably acceptable to Lender. If there is no Commitment currently in effect, then the provisions of this Agreement pertaining thereto shall become effective at such time as there is an effective Commitment.

Completion: When all of the following have been delivered to Lender: (i) conditional acceptance of the Improvements by the appropriate Governmental Authority having jurisdiction over the Mortgaged Property, (ii) Certificate of Substantial Completion from the Architect/Engineer, (iii) endorsement from the Title Company deleting any exception in the Title Insurance relating to completion of the Improvements and other exceptions specified by Lender which may be deleted pursuant to applicable regulations, and (iv) an Affidavit and full release of liens in recordable form from the General Contractor and, upon request of Lender, any other contractors or subcontractors who have performed work on, or furnished materials for the Improvements.

Completion Date: The date that the Improvements are constructed to Completion, but in no event later than NINE (9) months from the date of this Agreement, unless extended as provided herein.

Completion Deposit: An amount (if any) calculated by Lender to equal the difference between (i) the amount which Lender from time to time determines to be necessary to pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation and sale or leasing of the Improvements in accordance

with this Agreement, to pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including without limiting the generality of the foregoing, interest on the Indebtedness, and to enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents and (ii) the funds then unadvanced by Lender to Borrower on the Note.

Construction Contracts: Any and all contracts and agreements, written or oral, between Borrower and the General Contractor, between Borrower and any other party, between any of the foregoing and any subcontractor and between any of the foregoing and any other person or entity relating in any way to the construction of the Improvements, including the performing of labor or the furnishing of standard or specially fabricated materials or other supplies or services in connection therewith.

Deed of Trust: The Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement of even date herewith executed by Borrower conveying the Mortgaged Property to a Trustee for Lender to secure the repayment of the Indebtedness and performance of the Obligations and all amendments thereto.

Event of Default: Any happening, or occurrence described in Article 7.

Fixtures: All materials, supplies, equipment, apparatus and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including but not limited to any and all machinery, appurtenances and equipment, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements, together with all accessions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof.

General Contractor: Any and all general contractors engaged by Borrower and approved by Lender to construct the Improvements or any part thereof.

Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

Guarantor (individually and/or collectively, as the context may require): Doe Family Holdings, LLC and Jane Doe

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from Guarantor in favor of Lender guaranteeing the repayment of all or any part of the Indebtedness or the satisfaction of, or continued compliance with, the Obligations, or both.

Improvements: Any and all structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof, being more particularly described in the Plans and being generally described as improvements to the property located at 1234 Sesame Street, Houston, Texas 78910 located in BEXAR County, Texas, and related facilities and amenities.

Indebtedness: (i) The principal of, interest on and all other amounts, payments and premiums due under or secured by the Note, the Deed of Trust, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note; (ii) such additional sums, with interest thereon, as may hereafter be borrowed from Lender, its successors or assigns, by the Borrower, when evidenced by a promissory note which, by its terms, is secured by the Deed of Trust (it being contemplated that such future indebtedness may be incurred); and (iii) any and all other indebtedness, obligations and liabilities of any kind of the Borrower to Lender, now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including, but not limited to, indebtedness, obligations



and liabilities to Lender of the Borrower as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise.

Independent Supervising Architect: The architect, engineer, agent, consultant or other inspector selected and retained by Lender, at Borrower's expense, to supervise construction of and inspect the Improvements on behalf of Lender.

Land: The following described real estate or interest therein:

"LEGAL DESCRIPTION"

and all fixtures or other improvements situated thereon and all rights, titles and interests appurtenant thereto.

Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, all or any part of the Mortgaged Property, together with all security and other deposits made in connection therewith, and all other agreements, such as engineer's contracts, utility contracts, maintenance agreements and service contracts, which in any way relate to the design, use, occupancy, operation, maintenance, enjoyment or ownership of the Mortgaged Property, save and except any and all leases, subleases or other agreements pursuant to which Borrower is granted a possessory interest in the Land.

Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (ii) any and all covenants, conditions and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof; (iii) Borrower's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement; (iv) any and all leases, and other contracts (written or oral) of any nature that relate in any way to the Mortgaged Property and to which Borrower or any Guarantor may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in the Land; and (v) any and all terms, provisions and conditions of any Commitment which are to be performed or observed by Borrower.

Mortgaged Property: The Land, Improvements, Fixtures, Personalty, Plans, Leases, Commitment and Rents, together with:

- (i) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances in anywise appertaining thereto, and all right, title and interest, if any, of Borrower in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;
- (ii) all betterments, improvements, additions, alterations, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein;
- (iii) all of Borrower's right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and

- (iv) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Agreement, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Note: The promissory note of even date herewith, executed by Borrower, payable to the order of Lender, in the amount of FOUR HUNDRED THOUSAND DOLLARS AND 00/100 DOLLARS (\$400,000.00) and any and all renewals, rearrangements, reinstatements, enlargements or extensions thereof or of any promissory note or notes given therefor.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other person or party to Lender, the Trustee under the Deed of Trust, or others as set forth in the Note, the Deed of Trust, the Assignment of Rents and Other Income, the Guaranty, the Commitment and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party in connection with the loan evidenced by the Note and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Personalty: All of the right, title and interest of Borrower in and to all furniture, furnishings, equipment, machinery, goods, general intangibles, money, insurance proceeds, accounts, contract rights, trademarks, trade names, inventory, all refundable, returnable, or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of the Texas Business and Commerce Code (Chapter 9 - Secured Transactions), which are now or hereafter located or to be located upon, within or about the land and the Improvements, or which are or may be used in or related to the planning, development, financing or operation of the Mortgaged Property, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

Plans: Any and all contracts and agreements, written or oral, between Architect/Engineer and Borrower, together with the final plans, specifications, shop drawings and other technical descriptions prepared for the construction of the Improvements, and all amendments and modifications thereof, as approved by Lender.

Rents: All of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Borrower for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property.

Security Documents: This Agreement, the Note, the Deed of Trust, the Assignment of Rents and Other Income, the Guaranty and any and all other documents now or hereafter executed by Borrower, Guarantor or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

Title Company: The issuer of the Title Insurance.

Title Insurance: A mortgagee title policy binder on interim construction loan or, in cases where the Lender so specifies, a mortgagee policy of title insurance, all in form and substance satisfactory to Lender and containing no exceptions (printed or otherwise) which are unacceptable to Lender, issued by a title company (or, if Lender so requires, by several title companies on a co-insured or reinsured basis) acceptable to Lender in the face amount of the Note and insuring that Lender has a first and prior lien on the Land and Improvements, subject only to the permitted encumbrances described in the Deed of Trust.

## ARTICLE 2

### BORROWER'S WARRANTIES AND REPRESENTATIONS

Borrower hereby unconditionally warrants and represents unto Lender as follows:

- 2.1 Information. Any and all information, reports, papers and other data (including, without limiting the generality of the foregoing, any and all balance sheets, statements of income or loss, reconciliation of surplus and financial data of any other kind) heretofore furnished, or to be furnished, Lender by or on behalf of Borrower or Guarantor are, or when delivered will be, true and correct in all material respects; all financial data have been, or when delivered will have been, prepared in accordance with generally accepted accounting principles consistently applied, and fully and accurately present, or will present, the financial condition of the subjects thereof as of the dates thereof; and, with respect to the financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein since the dates thereof.
- 2.2 Litigation. Except as may be otherwise set forth on any exhibit attached hereto, there are no actions, suits or proceedings of a material nature pending or, to the knowledge of Borrower, threatened against or affecting Borrower, any Guarantor or the Mortgaged Property, or involving the validity or enforceability of the Security Agreements or the priority of the liens and security interests created therein; and no event has occurred (including specifically Borrower's and Guarantor's execution of the respective Security Documents and Borrower's consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Mortgaged Property other than the liens and security interests created by or expressly permitted under the Security Documents.
- 2.3 Compliance with Legal Requirements. Borrower has (or prior to commencement of construction of the Improvements will have) (i) received all requisite building permits and approvals of the Plans, (ii) filed and/or recorded all requisite plats and other instruments, and (iii) in general, complied with all Legal Requirements required to be met prior to commencement of construction of the Improvements.
- 2.4 Streets, Easements, Utilities and Other Services. All approvals from Governmental Authorities for streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are (or within thirty (30) days after commencement of construction of the Improvements, will be) available to Borrower.
- 2.5 Contract and Commencement of Construction. Neither Borrower, any Guarantor nor anyone else on Borrower's behalf has (i) commenced construction of the Improvements, (ii) purchased, contracted for or otherwise brought upon the Land any materials, specially fabricated or otherwise, to be incorporated into the Improvements, (iii) entered into any Construction Contracts or (iv) made any oral or written contract or arrangement of any kind the performance of which by the other party thereto would or could give rise to a lien or claim on the Mortgaged Property, or any portion thereof.
- 2.6 Validity of Security Documents. All action on Borrower's and any Guarantor's part requisite for the due authorization, creation, issuance, execution and delivery of the Security Documents has been duly and effectively taken, and each such document constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower, Guarantor and the Mortgaged Property (as the case may be) in accordance with the terms thereof.
- 2.7 Commitment. All of the representations, warranties, agreements and obligations made or undertaken by Borrower in the Commitment, if any, are true and correct in all material respects and (to the maximum extent that the same were to be complied with) have been complied with as of the date hereof.
- 2.8 Flood Zone Notification. If required by applicable law, Borrower, as lessor or seller of the Mortgaged Property and the Improvements under any existing or future lease or sale agreement, shall promptly give written notice to all lessees or purchasers of the Mortgaged Property of the fact that the Mortgaged Property and the Improvements are or will be located in a flood hazard area. Borrower acknowledges that such written notices have been given by it or will be promptly given.

## ARTICLE 3

## BORROWER'S COVENANTS

Borrower hereby unconditionally covenants with Lender as follows:

- 31 Construction of Improvements. The construction of the Improvements will be commenced by Borrower forthwith, will be prosecuted by Borrower with diligence and continuity to completion and will be completed by Borrower in a good and workmanlike manner in substantial accordance with the Plans, the Commitment and the other provisions of this Agreement, on or before the Completion Date and free and clear from all liens, or claims for liens, other than the liens and security interests created by the Security Documents (or any of them). It is expressly understood and agreed that (i) construction of the Improvements shall not be commenced unless and until Borrower has furnished the Plans to Lender and afforded Lender the opportunity to accept them (which acceptance shall be evidenced, if at all, by the initials of an authorized representative of Lender thereon), (ii) Borrower shall cause to be executed and filed for record in the appropriate Real Property Records within ten (10) days after the commencement of construction of the Improvements an Affidavit of Commencement in compliance with the provisions of Section 53.124(c), as amended, of the Texas Property Code, (iii) when the Plans have been furnished to Lender, no material changes of a material nature will be made to them by, or be permitted to be made to them by, Borrower, Guarantor, Architect/Engineer or any other person or entity without the prior written approval of all requisite Governmental Authorities, prior compliance with all requisite Legal Requirements and prior acceptance by the Lender, which acceptance will not be unreasonably withheld or delayed, and (iv) in instances where Lender does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgment of Lender's consent to the Improvements being constructed in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by Lender that such Improvements, if so constructed, will be structurally sound, will comply with all Legal Requirements, will be fit for any particular purpose or will have a market value of any particular magnitude.
- 32 Affirmative Covenants. At all times during construction of the Improvements Borrower will (i) permit Lender, the Independent Supervising Architect and their representatives to enter upon the Land and into the Improvements, to inspect the same and all materials to be used in the construction of the Improvements and to examine the Plans, (ii) comply strictly with any and all Legal Requirements required to be complied with incidental to such construction, (iii) deliver to Lender, or its representatives, immediately upon demand, counterparts and/or conditional assignments of any and all Construction Contracts, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which Borrower claims title to any materials or supplies used or to be used in the construction of the Improvements, (iv) erect and maintain on the Land, in a reasonable size and location, a sign satisfactory to Lender, at Lender's sole cost, stating that construction financing for the Improvements has been furnished by Lender, (v) either cause each Construction Contract to contain a provision specifically subordinating any lien right against the Mortgaged Property to the liens and security interests created by the Security Documents or cause the other party thereto to execute any and all instruments, acceptable in form and substance to Lender, to accomplish the same, (vi) use all advances made to it by Lender for, and only for, payment of the costs itemized in Paragraph 6.2 hereof and under no circumstances use, directly or indirectly, any portion of such advances for any other purpose, including without limiting the generality of the foregoing, the defrayment of living expenses or the anticipation of profit to Borrower or Guarantor, (vii) obtain and maintain, in full force and effect, an owner's and contractor's liability insurance policy or policies (including worker's compensation insurance), a hazard insurance policy or policies in builder's all risk form with loss payable endorsements acceptable to Lender insuring the Improvements and all materials and supplies purchased with advances hereunder against all risks and losses, and flood insurance (as required hereunder), all such insurance policies to be issued by companies, in amounts and on terms approved by Lender, (viii) if Lender shall request, furnish Lender with a current list of original contractors, subcontractors, materialmen, vendors, artisans and laborers performing work on the Improvements, (ix) upon demand of Lender or the Independent Supervising Architect, correct any structural defect in the Improvements or any material departure from the Plans not accepted by Lender, it being understood and agreed that the advance of any loan proceeds shall not constitute a waiver of Lender's right to require compliance with this Paragraph 3.2 with respect to any such defects or departures and (x)

comply with and satisfy all the terms and conditions of the Commitment and the Leases.

- 33 Negative Covenants. At no time shall Borrower (i) use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, any portion of the Mortgaged Property for any purpose which violates any Legal Requirement or in any manner which may be dangerous unless safeguarded as required by law or which may constitute a public or private nuisance or which may make void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto, or (ii) create or place, permit to be created or placed or, through any act or failure to act, acquiesce in the creation or placing of, or allow to remain, any mortgage, lien (statutory, constitutional or contractual), pledge, security interest, encumbrance or charge or conditional sale or other title retention agreement on the Mortgaged Property (or any portion thereof) other than those created by or expressly permitted under the Security Documents, regardless of whether same is expressly subordinate to the liens and security interests created in the Security Documents. If any such mortgage, lien, pledge, security interest, encumbrance or charge is asserted against the Mortgaged Property (or any portion thereof), Borrower shall promptly, at its own cost and expense, (a) pay the underlying claim in full or take any other action necessary to cause same to be released or, if permitted by Lender in Lender's sole discretion, bonded to the satisfaction of Lender and the Title Company and (b) within five (5) days from the date such mortgage, lien, pledge, security interest, encumbrance or charge is asserted, give Lender notice thereof. The notice shall specify who is asserting such mortgage, lien, pledge, security interest, encumbrance or charge and shall detail the origin and nature of the underlying claim giving rise to the asserted mortgage, lien, pledge, security interest, encumbrance or charge.
- 34 Completion Deposit. If, in the good faith judgment of the Lender, it appears at any time or from time to time that the unadvanced loan proceeds will be insufficient to (i) pay all costs to be incurred in connection with the completion of the development of the Mortgaged Property and the construction, marketing, ownership, management, maintenance, operation and sale or leasing of the Improvements in accordance with this Agreement, (ii) pay all sums which may accrue under the Security Documents prior to repayment of the Indebtedness, including, without limiting the generality of the foregoing, interest on the Indebtedness, and (iii) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the Security Documents, Borrower shall immediately deposit, or shall make arrangements satisfactory to Lender to deposit with Lender, the Completion Deposit. The Completion Deposit may be retained by Lender in a non-interest bearing account, need not be segregated from any of Lender's other funds and may be disbursed in accordance with the provisions of the Security Documents by Lender before making any further advances on the Note.
- 35 Affidavit of Commencement. Borrower, within ten (10) days after the commencement of construction of the Improvements, but not before construction of the Improvements has actually begun, shall file in the appropriate records of the county in which the Land is situated, an Affidavit of Commencement ("Affidavit of Commencement"), in form and substance acceptable to Lender, duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be on or before the date of the Deed of Trust or on or before the date on which the Deed of Trust was recorded.
- 36 Affidavit of Completion. Borrower, within ten (10) days after construction of the Improvements has been completed, shall file in the appropriate records in the county in which the Land is situated an Affidavit of Completion ("Affidavit of Completion") in form and substance acceptable to Lender.
- 37 Financial Statements. During the outstanding term of any Indebtedness, Borrower shall provide Lender with the following financial statements:
- (i) Monthly financial statements for Borrower, including a balance sheet and income and operating statements, within fifteen (15) days after each fiscal quarter end.
  - (ii) Annual personal financial statements, including cash flow statements for each Guarantor.
  - (iii) Within the period(s) provided in paragraph 3.10 below, a compliance certificate signed by an authorized financial officer of the Borrower setting forth (a) the information and computations (in sufficient detail) to establish that each Borrower is in compliance with all financial covenants at the end of the period covered by the financial statements then being furnished and (b) whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action each Borrower is taking and proposes to take with respect thereto.

- 38 Operating Accounts. Borrower shall maintain operating account(s) with Lender for construction of the Improvements during the term of this Agreement and the outstanding term of any Indebtedness
- 39 Debt Service Coverage Ratio. Following the Completion Date, Borrower shall maintain an annual debt service coverage ratio of not less than 1.3/1 on a rolling quarterly basis, where such ratio is defined as (i) the sum of (a) Borrower's net income after taxes, plus (b) Borrower's depreciation and other non-cash expenses, plus (c) Borrower's interest expense divided by (ii) all principal and interest paid by Borrower on all indebtedness incurred by Borrower.

#### ARTICLE 4 INSPECTION

- 4.1 Inspection. Lender, through its officers, agents or employees, shall have the right at all reasonable times at Borrower's expense:
- (a) To enter upon the Mortgaged Property and inspect the construction to determine that it is in conformity with the Plans and all the requirements hereof; and
  - (b) To examine, copy and make extracts of, the books, records, accounting data and other documents of Borrower that relate in any way to the Mortgaged Property, including without limiting the generality of the foregoing all permits, licenses, consents and approvals of all Governmental Authorities having jurisdiction over Borrower or the Mortgaged Property and all the relevant books and records of contractors and subcontractors supplying goods and/or services in connection with the construction of the Improvements. All such books, records and documents shall be made available to Lender promptly upon written demand therefor; and, at the request of Lender, Borrower shall furnish Lender with convenient facilities for the foregoing purpose.
- 4.2 No Duty to Inspect. It is expressly understood and agreed that Lender shall have no duty to supervise or to inspect the construction of the Improvements or any books and records, and that any such inspection shall be for the sole purposes of determining whether or not the Obligations of Borrower are being properly discharged and of preserving Lender's rights hereunder. If Lender, or the Independent Supervising Architect acting on behalf of Lender, should inspect the construction of the Improvements or any books and records, Lender and the Independent Supervising Architect shall have no liability or obligation to Borrower, Guarantor or any third party arising out of such inspection. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgment or representation by Lender and the Independent Supervising Architect that there has been or will be compliance with the Plans and Legal Requirements or that the construction is free from defective materials or workmanship or a waiver of Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Legal Requirements. Lender's failure to inspect the construction of the Improvements or any part thereof or any books and records shall not constitute a waiver of any of Lender's rights hereunder. Neither Borrower, Guarantor nor any third party shall be entitled to rely upon any such inspection or review. Lender and the Independent Supervising Architect owe no duty of care to Borrower, Guarantor or any third person to protect against, or inform Borrower, Guarantor or any third person of the existence of negligent, faulty, inadequate or defective design or construction of the Improvements.
- 4.3 Borrower's Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Mortgaged Property, including without limiting the generality of the foregoing:
- (a) the quality and suitability of the Plans;
  - (b) supervision of construction of the Improvements;
  - (c) the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors and material suppliers, consultants, and property managers;
  - (d) conformance of construction of the Improvements to the Plans, to the Legal Requirements and to the requirements of this Agreement;
  - (e) the quality and suitability of all materials and workmanship; and
  - (f) the accuracy of all requests for the disbursement of loan proceeds and the proper application of disbursed loan proceeds.
- 4.4 Inspection Fee. In furtherance of Lender's rights hereunder, Lender may, at its option, require an

inspection of the Mortgaged Property by the Independent Supervising Architect (i) prior to each advance, (ii) at least once each month during the course of construction even though no advance is to be made for that month, (iii) upon completion of construction of the Improvements and (iv) at least annually thereafter. Borrower shall pay all reasonable and necessary fees for inspections of the Mortgaged Property. Furthermore, if Lender determines in connection with any such inspection that extra services will be required of the Independent Supervising Architect as a result of noncompliance with the Plans or any Legal Requirement, as a result of deviations from acceptable construction practices, or as a result of Borrower's failure to satisfy the requirements of any Commitment or any other agreement, then Borrower shall pay, in addition to the fees for such inspections, the cost of all such extra services.

ARTICLE 5  
ADDITIONAL SECURITY

- 5.1 Commitment. As additional security for payment of the Indebtedness, Borrower hereby transfers and assigns to Lender, to the extent assignable, all of Borrower's rights, title and interests in the Commitment, if any, including all refundable fees paid or deposits made thereunder. Borrower agrees to take and close the permanent loan and/or sale of the Mortgaged Property in accordance with the terms of the Commitment and prior to the expiration thereof. The Commitment shall not be modified without the prior written consent of Lender.
- 5.2 Construction and Architect/Engineer Contracts. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interests, but not its obligations, in, under and to the Construction and Architect/Engineer Contracts upon the following terms and conditions:
- (a) Borrower represents and warrants that each copy of any Construction or Architect/Engineer Contract furnished to Lender is a true and complete copy thereof and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.
  - (b) Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligations under the Construction and Architect/Engineer Contracts; and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under the Construction and Architect/Engineer Contracts. Borrower agrees to indemnify and hold Lender harmless against and from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred by Lender and resulting from any failure of Borrower to so perform.
  - (c) Lender shall have the right at any time (but shall have no obligation) to take, in its name or in the name of Borrower, such action as Lender may at any time determine to be necessary or advisable to cure any default under the Construction and Architect/Engineer Contracts or to protect the rights of Borrower or Lender thereunder. Lender shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to hold Lender free and harmless from any loss, cost, liability or expense (including, without limiting the generality of the foregoing, reasonable attorneys' fees) incurred in connection with any such action, except to the extent caused by Lender's gross negligence or willful misconduct.
  - (d) Borrower hereby irrevocably constitutes and appoints Lender as Borrower's attorney-in-fact, in Borrower's name or in Lender's name, to enforce all rights of Borrower under the Construction and Architect/Engineer Contracts; provided, however, Lender shall have no obligation to enforce such rights.
  - (e) Prior to an Event of Default, Borrower shall have the right to exercise its rights as owner under the Construction and Architect/Engineer Contracts; provided, however, Borrower shall not cancel or amend (except for change orders not to exceed \$5,000.00 in the aggregate) the Construction and Architect/Engineer Contracts, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.
  - (f) This assignment shall inure to the benefit of Lender, its successors and/or assigns, including any purchaser upon foreclosure of the Mortgaged Property or any grantee

under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

- 5.3 Plans. As additional security for the payment of the Indebtedness, Borrower hereby transfers and assigns to Lender all of Borrower's rights, title and interest in and to the Plans, and hereby represents and warrants to and agrees with Lender as follows:
- (a) Borrower represents and warrants that the original counterparts of the Plans furnished to Lender are true and complete.
  - (b) The schedule of the Plans delivered to Lender is a complete and accurate description of the Plans.
  - (c) The Plans are complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Lender, except for non- structural changes which do not change the cost of construction by more than \$5,000.00 in the aggregate.
  - (d) Lender may use the Plans for any purpose relating to the Improvements, including, but not limited to, inspections of construction and the completion of the Improvements.
  - (e) Lender's acceptance of this assignment shall not constitute approval of the Plans by Lender. Lender has no liability or obligation whatsoever in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans.
  - (f) This assignment shall inure to the benefit of Lender, its successors and/or assigns, including any purchaser upon foreclosure of the Mortgaged Property or any grantee under a deed in lieu of foreclosure, any receiver in possession of the Mortgaged Property and any corporation formed by or on behalf of Lender which assumes Lender's rights and obligations under this Agreement.

#### ARTICLE 6 LENDER'S COMMITMENT

- 61 Loan. Subject to the terms, provisions and conditions of this Agreement, Lender will make and Borrower will accept, in installments, a loan in the aggregate amount not to exceed the lesser of (i) 70% of the eligible costs as shown on the project budget submitted by Borrower and approved by Lender; (ii) 70% of the appraised value of the Land and Improvements as shown on the Appraisal; or (iii) the principal sum of the Note, it being understood that, **UNLESS EXPRESSLY PROVIDED OTHERWISE IN THE NOTE**, interest as called for in the Note shall be calculated only on sums actually advanced and only from the dates of such advances.
- 62 Advances. The advances on the Note shall be disbursed, at Lender's option, (i) by Lender's check drawn upon Lender's disbursement account and delivered to Borrower, (ii) by depositing the amount of the disbursement to Borrower's account with Lender, (iii) by direct or joint check payment to any or all persons entitled to payment for work performed on or materials delivered to or services performed in connection with the construction of the Improvements or the loan evidenced by the Note, or (iv) by any other method the Lender shall from time to time elect. Notwithstanding the Disbursement Schedule, the advance as to which Borrower shall be entitled at any one time shall not exceed the cost of the materials, supplies and equipment purchased for the Improvements, plus the cost of all materials, supplies, equipment and labor actually incorporated into the Improvements, plus any other costs and fees which have been approved for payment by Lender and which are then due or will become due within thirty (30) days thereafter minus the sum of all prior advances. Under no circumstances shall any portion of any advance be used for any purpose other than the payment of those costs and fees approved by Lender as legitimately relating to the cost of constructing the Improvements and the payment of the Indebtedness. Except as may be provided otherwise in the Disbursement Schedule or in the Promissory Note, for each advance made to Borrower hereunder for hard construction costs or as payment of any construction contract requiring retainage, Lender shall retain a sum equal to ten percent (10%) thereof (or a greater percentage, if permitted or required by any Legal Requirement) so that, until a period of thirty (30) days after completion of the Improvements (or such longer period if permitted



or required by any Legal Requirement or if, during such longer period, a lien or claim could lawfully be filed against the Mortgaged Property by anyone performing work or services, or furnishing materials or goods, during the construction of the Improvements) Lender shall have in its possession a fund equal to ten percent (10%) of such advances. Notwithstanding anything to the contrary contained in or inferable from any other provisions hereof or in any other Security Documents, if the Title Insurance initially be a binder, Lender shall have the right, at any time, to cause the binder to be converted into a policy at Borrower's cost and to use any undisbursed proceeds on the Note, any portion of the Completion Deposit and, to the extent not prohibited by law, any other sum then in Lender's possession as payment for the cost hereof.

63 First Advance. Lender shall not be obligated to make the first advance to Borrower unless and until:

(a) Lender has received true, legible and correct copies of the following:

- (i) the Plans and the final executed copies of the Construction and Architect/Engineer Contracts as approved by Lender;
- (ii) a certificate from the Architect/Engineer and, if Lender elects, the Independent Supervising Architect stating that the Plans have been approved by him or them and that the Construction Contracts are acceptable to him or them and satisfactorily provide for the construction of the Improvements and such other matters as may be required by Lender;
- (iii) all authorizations and permits which are then procurable and required by any Legal Requirement for the construction and proposed use of the Improvements;
- (iv) an original current survey of the Land setting forth a proper legal description of the Land and containing the certification of the surveyor in form and substance satisfactory to Lender and showing the perimeter of the Land by courses and distances, all easements, utility lines and rights-of-way, the boundary lines of the streets abutting the Land and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed Improvements by distances to the perimeter of the Land and the proposed building lines, all acceptable to the Title Company to modify the "areas, boundaries and encroachments" exception to the maximum extent permitted by law;
- (v) the policies of insurance required by this Agreement and the Security Documents accompanied by evidence of the payment of the premium therefor;
- (vi) a payment and performance bond or bonds, if required by Lender, from such companies and in such amounts as are satisfactory to Lender, which bond or bonds shall name Lender as an additional obligee;
- (vii) a soils investigation report from a soil engineer satisfactory to Lender;
- (viii) evidence satisfactory to Lender that the Improvements will not be located within the 100 year flood plain or area identified as a special flood hazard area as defined by the Federal Insurance Administration;
- (ix) Borrower's complete project budget ("Budget") in a form and substance satisfactory to Lender;
- (x) a copy of the executed Leases of at least fifty percent (50%) of the Improvements, if any, satisfactory to Lender;
- (xi) an executed copy of Commitments, if any, satisfactory to Lender;
- (xii) affidavit of Borrower and Contractor that no work or services have been performed or materials delivered to the Mortgaged Property that are unpaid or would constitute a lien on the Mortgaged Property;
- (xiii) a copy of the Appraisal;
- (xiv) a Phase I Environmental Site Assessment satisfactory to Lender and an Environmental Certificate executed by Borrower, if applicable;
- (xv) evidence indicating the availability of all utilities and easements relating thereto contemplated to serve the Land and Improvements satisfactory to Lender; and
- (xvi) any other documents and information as Lender may reasonably require;

provided, however, that if the first advance is only to purchase the Land, Paragraph 6.3(a)(i), (ii), (iii), (v), (vi), (ix), (xi) and Paragraph 6.3(d) herein below need not be first complied with for such advance, but rather

shall be complied with before Lender shall be obligated to make any subsequent advance;

- (b) The Security Documents have been duly authorized, executed and recorded or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to Lender all prior to the commencement of construction of the Improvements, the placing of any materials or supplies on the Land, the execution and recording of any Construction Contracts (written or oral) for any of the same or the performance of any other act which could give rise to a lien claim equal or superior to the liens and security interests created by the Security Documents;
- (c) The Title Company has issued the Title Insurance;
- (d) Borrower, Architect/Engineer and, if Lender requests, the Independent Supervising Architect have executed, or caused to be executed, and delivered to Lender a Disbursement Request Form in such form acceptable to Lender certifying in acceptable detail the expenditures made or expenses incurred by Borrower of the type described in Paragraph 6.2 hereinabove, with such supporting data as Lender may require, and that the amount requested represents sums actually spent or indebtedness actually incurred; and
- (e) Borrower pays to Lender, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this Agreement and the subject hereof, including, without limiting the generality of the foregoing, any matters set forth in Paragraph 10.1 hereof.

64 Subsequent Advances. Subject to the provision contained in Paragraph 6.3(a) hereinabove, Lender shall not be obligated to make any subsequent advance to Borrower unless and until:

- (a) Borrower shall have delivered to Lender a duplicate original of all Construction and Architect/Engineer Contracts in the forms approved by Lender.
- (b) Borrower, Architect/Engineer and, if Lender requests, the Independent Supervising Architect shall have executed, or caused to be executed, and delivered to Lender a Disbursement Request Form as described in Paragraph 6.3(d) hereinabove and the data referred to therein.
- (c) Lender shall have received (i) an endorsement (if required by virtue of the form thereof) to the Title Insurance increasing the coverage thereof to the full amount of the sum advanced and reflecting no changes in the status of title or the Title Insurance since the previous advance, or, if such endorsement cannot be obtained, an abstractor's certificate or other evidence satisfactory to Lender from the Title Company reflecting that there have been no such changes in the status of title or the Title Insurance, (ii) certification from the Architect/Engineer and, if Lender elects, the Independent Supervising Architect that, in their opinion, the construction of the Improvements theretofore performed has been in substantial accordance with the Plans, (iii) the survey called for in Paragraph 6.3(a)(iv) hereinabove and as may be required by the Title Company to issue the endorsement or other evidence referred to in Paragraph 6.4(c)(i) above, (iv) at the request of Lender, lien waivers or releases (in recordable form) from all contractors employed or furnishing materials in connection with the construction of the Improvements, (v) all amendments, modifications and revisions satisfactory to Lender in the form of tenant lease, (vi) at the request of Lender, a written certification signed by Borrower as to all Leases and the names of the tenants and rents payable thereunder, together with copies of all such Leases, and (vii) such other certifications or evidence of cost and Completion as Lender may request.
- (d) Borrower shall have satisfied, if then applicable, the provisions of Paragraph 3.4 (Completion Deposit) above.

65 Any Advance. Notwithstanding anything to the contrary contained in or inferable from any of the above, Lender shall not be required to make any advance hereunder if, at the time of the requested advance, any of the following exists:

- (a) Any Event of Default exists hereunder or under any other Security Document.
- (b) The requested advance, plus the sum of the previous advances (including retained amounts deemed to have been advanced pursuant to Paragraph 6.2 above) or other sums

- disbursed by Lender under the Security Documents, exceed the face amount of the Note.
- (c) In the good faith judgment of the Lender, the Improvements will not be completed in substantial accordance with the Plans and the other provisions of this Agreement on or before the Completion Date, regardless of the cause of such failure so to complete.
  - (d) In the good faith judgment of Lender, the sum of the unadvanced loan proceeds plus other sums being held by Lender in escrow for Borrower are insufficient to complete the Improvements in substantial accordance with the Plans and this Agreement, unless and until the provisions of Paragraph 3.4 above are satisfied.
  - (e) The Mortgaged Property (or any portion thereof) is demolished or substantially destroyed or condemnation or similar type proceedings are commenced with reference thereto.
  - (f) Any change in the status of title to the Land or the Improvements has occurred subsequent to the date hereof without Lender's prior written consent.
  - (g) Borrower is unable to satisfy all of the conditions set forth in Paragraphs 6.2, 6.3 or 6.4 above.
  - (h) Any event has occurred which has or could give rise to a lien claim of equal or superior rank to the liens and security interests intended to be created by the Security Documents.
  - (i) An order or decree in any court of competent jurisdiction exists enjoining the construction of the Improvements or enjoining or prohibiting Borrower or Lender or either of them from performing their respective obligations under this Agreement.
  - (j) Any material deviation exists in the construction of the Improvements from the Plans without the prior written approval of Lender; or it appears to Lender that there are material defects in the workmanship or materials.
  - (k) Construction has ceased prior to Completion of the Improvements for a continuous period of ten (10) days or more for causes other than those beyond the control of Borrower or consented to in writing by Lender.

66 Third Party Beneficiaries. All conditions precedent to Lender's obligation to make advances hereunder are imposed solely and exclusively for Lender's benefit. No person or entity other than Lender shall have any standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make advances absent strict compliance therewith, and any or all of such conditions may be freely waived (in whole or in part) by Lender at any time or times.

#### ARTICLE 7 EVENTS OF DEFAULT

The term "Event of Default", as used herein and in the Security Documents, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- 7.1 Payment of Indebtedness. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Security Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of ten (10) days following written notice to Borrower; provided, however, that if such installment or portion of the Indebtedness becomes due and payable as a result of Lender's accelerating the maturity of the Indebtedness in accordance with the Security Documents, the ten (10) day notice period for payment set forth in this paragraph shall not apply to the accelerated due date.
- 7.2 Performance of Obligations. If Borrower or Guarantor shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations as and when called for and such failure, refusal or neglect shall remain uncured for a period of thirty (30) days following written notice to Borrower.
- 7.3 False Representations. If any representation, warranty or statement made by Borrower, Guarantor or others in, under or pursuant to the Commitment, any of the Security Documents or any affidavit or other instrument executed in connection with the Security Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Indebtedness.
- 7.4 Voluntary Bankruptcy. If Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Borrower or

any Guarantor, shall (a) voluntarily be adjudicated as Bankrupt or insolvent, (b) file any petition or commence any case or proceeding under any provision or chapter of the Federal Bankruptcy Code or any other federal or state law relating to its or his insolvency, Bankruptcy, rehabilitation, liquidation or reorganization, (c) make a general assignment for the benefit of its or his creditors, (d) have an order for relief entered under the Federal Bankruptcy Code with respect to it or him, (e) convene a meeting of its or his creditors, or any class thereof, for the purpose of effecting a moratorium upon or extension or composition of its or his debts, (f) fail to pay its or his debts as they mature, (g) admit in writing that it or he is unable to pay its or his debts as they mature or generally not pay its or his debts as they mature, or (h) become insolvent.

- 7.5 Involuntary Bankruptcy. If (a) a petition is filed or any case or proceeding described in Paragraph 7.4 above is commenced against Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, against any of the parties comprising Borrower or any Guarantor, or against the assets of any such persons or entities, unless such petition and the case or proceeding initiated thereby is dismissed within sixty (60) days from the date of the filing, (b) an answer is filed by Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, by any of the parties comprising Borrower or any Guarantor, admitting the allegations of any such petition, or (c) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, a custodian, Trustee, agent or receiver for it or him, or for all or any part of its or his property, or authorizing the taking possession by a custodian, Trustee, agent or receiver of it or him, or all or any part of its or his property unless such appointment is vacated or dismissed or such possession is terminated within sixty (60) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Borrower or any Guarantor, or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, by such custodian, Trustee, agent or receiver, other than in the ordinary course of the business of Borrower or any Guarantor.
- 7.6 Dissolution and Change or Encumbrance of Ownership. If Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, if any of the parties comprising Borrower or any Guarantor, shall die and their estate has not assumed the Indebtedness within ninety (90) following the date of death, dissolve, terminate or liquidate, or merge with or be consolidated into any other entity, or shall hypothecate, pledge, mortgage or otherwise encumber all or any part of the beneficial ownership interest in Borrower or any Guarantor (if Borrower or any Guarantor is a corporation, partnership, joint venture, trust or other type of business association or legal entity) or shall attempt to do any of the same.
- 7.7 No Further Encumbrances. If Borrower, without the prior written consent of Lender, creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether the same are expressly subordinate to the liens of the Security Documents, with respect to the Mortgaged Property, other than the Permitted Encumbrances (as defined in the Deed of Trust).
- 7.8 Disposition of Mortgaged Property and Beneficial Interest in Borrower. If Borrower sells, leases, exchanges, assigns, conveys, transfers or otherwise disposes of (herein collectively called "Disposition") all or any portion of the Mortgaged Property (or any interest therein), or if there is a Disposition all or any part of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, joint venture, trust or other type of business association or legal entity), without the prior written consent of Lender. It is expressly agreed that in connection with determining whether to grant or withhold such consent, Lender may (but is not obligated to), among other things, (i) consider the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Mortgaged Property, consider whether or not the security for repayment of the Indebtedness and the performance of the Obligations, or Lender's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) require as a condition to granting such consent, an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Security Documents,

(iv) require that Lender be reimbursed for all costs and expenses incurred by Lender in investigating the creditworthiness and management ability of the party to whom such Disposition will be made and in determining whether Lender's security will be impaired by the proposed Disposition, (v) require the payment to Lender of a transfer fee to cover the cost of documenting the Disposition in its records, (vi) require the payment of its reasonable attorneys' fees in connection with such Disposition, (vii) require the express assumption of payment of the Indebtedness and performance of the Obligations by the party to whom such Disposition will be made (with or without the release of Borrower from liability for such Indebtedness and Obligations), (viii) require the execution of assumption agreements, modification agreements, supplemental security documents and financing statements satisfactory in form and substance to Lender, (ix) require endorsements (to the extent available under applicable law) to any existing Title Insurance insuring Lender's liens and security interests covering the Mortgaged Property, and (x) require additional security for the payment of the Indebtedness and performance of the Obligations.

- 7.9 Destruction of Improvements. If the Mortgaged Property is demolished, destroyed or substantially damaged so that (in Lender's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time.
- 7.10 Foreclosure of Other Liens. If the holder of any lien or security interest on the Mortgaged Property (without hereby implying Lender's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if the Leases or Rents, or any part thereof, are seized, levied on or attached.
- 7.11 Change in Financial Condition. If Lender reasonably determines that the likelihood of payment of the Indebtedness or performance of the Obligations secured by the Deed of Trust is threatened by reason of a material adverse change in the financial condition or credit standing of Borrower or any Guarantor or, if Borrower or any Guarantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Borrower or any Guarantor, or if the estate held by Borrower in the Land is a leasehold estate, of the ground lessor.
- 7.12 Guarantor. If any Guarantor shall default in the performance of its obligations under the Guaranty.
- 7.13 Other Security Documents. If an event of default occurs under any of the other Security Documents.
- 7.14 Conditions to Advances. If, at any time, Borrower is unable to satisfy any condition or cure any circumstance specified in Article 6 above, including specifically the occurrence of any circumstance described in Paragraph 6.5, the satisfaction or curing of which being precedent to its right to receive an advance hereunder, and such inability continues for a period in excess of thirty (30) days.

## ARTICLE 8 REMEDIES

- 8.1 Rights, Remedies and Recourses. Upon the happening of any Event of Default, Lender shall have, in addition to any and all other rights, remedies and recourses available to it under any of the Security Documents or otherwise available at law or in equity, including specifically, but without limitation, the right to declare immediately due and payable the unpaid advanced principal and unpaid accrued interest on the Note and to foreclose any and all liens and security interests securing the repayment of same, the right (a) to take exclusive possession of the Mortgaged Property, (b) to use any funds of Borrower, including the Completion Deposit (if any) and any sums which may remain unadvanced hereunder, to complete the Improvements, (c) to make such changes in and revisions to the Plans as Lender may deem desirable, (d) to prosecute and defend all actions or proceedings relating to the construction of the Improvements, (e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property, or may be necessary or desirable for the completion of the Improvements or the clearance of title, (f) to execute in Borrower's name all applications, certificates and other instruments which may be required by any Construction Contracts, (g) to do any and every act with respect to the construction of the Improvements which Borrower may do in its own behalf and (h) to employ such contractors, subcontractors, agents, attorneys, architects, accountants, watchmen and inspectors as Lender may deem desirable to accomplish any of the above purposes. For these purposes, Borrower hereby constitutes and appoints Lender its true and lawful

attorney-in-fact with full power of substitution to take any and all of the above described action, which power of attorney shall be deemed to be coupled with an interest and shall be irrevocable. All sums expended by Lender for any of the above purposes shall be deemed to be advances hereunder and shall be secured by the Security Documents.

- 8.2 Cessation of Lender's Obligations. Upon the happening of any Event of Default hereunder or under any other Security Document, all obligations (if any) of Lender hereunder, including specifically any obligation to advance funds hereunder, shall immediately cease and terminate.
- 8.3 Acceleration. Notwithstanding anything to the contrary herein contained or inferable from any provision of this Agreement, upon the happening of an Event of Default as set forth in Paragraphs 7.4, 7.5 or 7.10 above, the unpaid principal and unpaid accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of Lender, and Borrower expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the Indebtedness.

## ARTICLE 9

### HAZARDOUS SUBSTANCES PROVISIONS

- 9.1 Warranties and Representations. As used below, and in any of the other Security Documents, "Hazardous Substances" shall mean and include, but shall not be limited to, all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended ("CERCLA"), The Resource Conservation and Recovery Act, as now or hereafter amended ("RCRA"), Superfund Amendments and Reauthorization Act of 1986, as now and hereafter amended ("SARA"), and Toxic Substances Control Act, as now or hereafter amended ("TSCA") or state superlien or environmental clean-up or disclosure statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Borrower warrants, represents and covenants as follows:
- (a) Borrower has had performed reasonable investigations, studies and tests as to any possible environmental contamination, liabilities or problems with respect to the Mortgaged Property, including without limitation, the storage, disposal, presence, discharge or release of any Hazardous Substances at or with respect to the Mortgaged Property, and that such investigations, studies, and tests have disclosed no Hazardous Substances or possible violations of any Environmental Laws.
  - (b) To the best of Borrower knowledge, neither the Borrower, the Mortgaged Property nor any other property owned by Borrower is (i) subject to any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Mortgaged Property or such other property, or (ii) is in, or with any applicable notice and/or lapse of time, and/or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws.
  - (c) To the best of Borrower's knowledge, no Hazardous Substances are located on or have been stored, processed or disposed of on or released or discharged from (including ground water contamination) the Mortgaged Property and no above or underground storage tanks exist on the Mortgaged Property. Borrower shall not allow any Hazardous Substances to exist or be stored, located, discharged, possessed, managed, processed or otherwise handled on the Mortgaged Property, except at levels that are acceptable under Environmental Laws, and shall comply with all Environmental Laws affecting the Mortgaged Property.
  - (d) Borrower shall immediately notify Lender should Borrower become aware of (i) any Hazardous Substance or other environmental problem or liability with respect to the Mortgaged Property, (ii) any lien, action or notice of the nature described in subparagraph (b) above, or (iii) any litigation or threat of litigation relating to any alleged unauthorized

release of any Hazardous Substance or the existence of any Hazardous Substance or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Mortgaged Property. Borrower shall, at its own cost and expense, take all actions as shall be necessary or advisable for the clean-up of the Mortgaged Property, including all removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender), and shall further pay or cause to be paid at no expense to Lender all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Mortgaged Property, the owner thereof or a lienholder secured thereby. All costs (including, without limitation, those costs set forth above), damages, liabilities, losses, claims, expenses (including attorneys' fees and disbursements) which are incurred by Lender, without the requirement that Lender wait for the ultimate outcome of any litigation, claim or other proceeding, shall be paid by Borrower to Lender within ten (10) days after notice to Borrower from Lender itemizing the amounts incurred to the effective date of such notice.

- (e) Borrower hereby covenants and agrees not to do or take any action or omit or fail to take any such action which will result in the unauthorized release of any Hazardous Substance or the existence of any Hazardous Substance or other environmental contamination, liability or problem with respect to the Mortgaged Property. Upon discovery of the existence of any such Hazardous Substance or other environmental contamination, liability or problem, Borrower agrees to promptly give written notice to Lender of the exact nature, scope and extent thereof.
- (f) Upon reasonable prior notice to Borrower, Lender, its employees, and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial proceeding) enter and inspect the Mortgaged Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath or from the Mortgaged Property; provided that Lender shall use Lender's best efforts not to disturb any tenants of the Mortgaged Property during any such entrance and inspection.

9.2 Survival. All warranties and representations above shall be deemed to be continuing and shall remain true and correct in all material respects until the Indebtedness has been paid in full, the Obligations completely satisfied, and any limitations period with respect to any claims under each of the Environmental Laws has expired. Borrower's covenants above shall survive any exercise of any remedy by Lender under the Security Documents, including foreclosure of the lien of the Deed of Trust (or deed in lieu thereof or similar actions to the same effect), even if, as a part of such foreclosure, deed in lieu of foreclosure or similar action, the Indebtedness is satisfied in full. It shall, at the option of Lender, be an Event of Default hereunder and under each of the Security Documents if any of the representations or warranties now be or at any time hereafter become untrue or misleading or if the Mortgaged Property, or any other property owned by Borrower, become subject to any claim, notice, or action of a nature described in subparagraph 9.1(b) hereof. In addition to all other remedies that Lender may have as a result of an Event of Default, Lender may accelerate payment of the Note as provided herein and in the Security Documents.

9.3 Indemnity. Borrower shall execute and deliver to Lender an Environmental Certificate, relating to violations of Environmental Laws, in form and substance acceptable to Lender.

## ARTICLE 10

### GENERAL TERMS AND PROVISIONS

10.1 Performance at Borrower's Expense. Subject to the provisions of Paragraph 10.5 hereof and except as otherwise provided in the Security Documents, Borrower shall (i) pay all legal fees incurred by Lender in connection with the preparation of this Agreement and any and all other Security Documents contemplated hereby (including any amendments hereto or thereto or consents, releases or waivers

hereunder or thereunder); (ii) pay all out-of-pocket expenses of Lender in connection with the administration of this Agreement and the other Security Documents; reimburse Lender, promptly upon demand, for all amounts expended, advanced or incurred by Lender to satisfy any obligation of Borrower under this Agreement or any other Security Documents, which amounts shall include all court costs, attorneys' fees (including, without limitation, for trial, appeal or other proceedings), fees of auditors and accountants, and investigation expenses reasonably incurred by Lender in connection with any such matter; (iii) reimburse Lender, promptly upon demand, for any and all amounts expended, advanced or incurred by Lender in connection with Lender's preliminary and subsequent reviews, investigations, analyses or evaluations of the Loan or the Mortgaged Property (including, without limitation, appraisals and soils and structural and systems reports); and (v) pay any and all other reasonable costs and expenses required to satisfy any provision of this Agreement, including, without limitation, documentary taxes and recording, brokerage, attorneys', surveyors', accountants', engineers', architects' and inspectors' fees and Title Insurance premiums. Except to the extent that certain of these costs and expenses are included within the definition of Indebtedness, the payment by Borrower of any of these costs and expenses shall not be credited, in any way or to any extent, against any portion of the Indebtedness.

- 10.2 Approval of Lender and Further Assurances. All instruments and policies of insurance to be executed and/or delivered to Lender, and all proceedings to be taken in connection with this Agreement and the loan provided for herein, and all persons or parties responsible in any way for the construction of the Improvements or any obligation to be performed hereunder or under the other Security Documents, shall be subject to the acceptance of Lender as to form, substance, coverage and identity. Immediately upon request of Lender, Borrower will execute, acknowledge and deliver to Lender such further instruments and do such further acts as Lender may deem necessary to carry out more effectively the purpose of this Agreement or to subject to the liens and security interests of the Security Documents any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Mortgaged Property.
- 10.3 No Waiver. Any failure by Lender to insist, or any election by Lender not to insist, upon Borrower's or any Guarantor's strict performance of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof; and Lender shall have the right at any time thereafter to insist upon strict performance by Borrower or any Guarantor of any and all of same. In specific, no advance by Lender of any loan proceeds hereunder absent Borrower's strict compliance with Article 6 hereinabove shall in any way preclude Lender from thereafter declaring such failure to comply to be an Event of Default hereunder.
- 10.4 Modification. This Agreement shall not be amended, waived, discharged or terminated orally but only by an instrument executed by the party against which enforcement of the amendment, waiver, discharge or termination is sought.
- 10.5 Applicable Law. This Agreement has been executed under, and shall be construed and enforced in accordance with, the laws of the State of Texas from time to time in effect except to the extent preempted by United States federal law. This Agreement and all of the Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Security Documents or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if the acceleration of the maturity of the Indebtedness or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, if the Note and all other Indebtedness have been or would thereby be paid in full, refunded to Borrower), and the provisions of Security Documents immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. All sums paid or agreed



to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the usury ceiling from time to time in effect and applicable to the Indebtedness for so long as the Indebtedness is outstanding. To the extent that Lender is relying on Section 303.001, *et seq.* of the Texas Finance Code, as amended, to determine the maximum rate ("Maximum Rate") payable on the Indebtedness, Lender will utilize the indicated (weekly) rate ceiling from time to time in effect as provided in Section 303.003, as amended of the Texas Finance Code. To the extent United States federal law permits Lender to contract for, charge or receive a greater amount of interest, Lender will rely on United States federal law instead of Section 303.001, *et seq.*, as amended, for the purpose of determining the Maximum Rate. Additionally, to the extent permitted by applicable law now in effect, Lender may, at its option and from time to time, implement any other method of computing the Maximum Rate under such Section 303.001, *et seq.*, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect. Any provision to the contrary notwithstanding, this conveyance shall not secure payment of any installment loan or revolving credit account established under Sections 342.201, *et seq.*, Sections 342.251, *et seq.*, and Section 346 of the Texas Finance Code. Notwithstanding anything to the contrary contained herein or in any of the other Security Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

- 10.6 Severability. If any provision hereof or of any of the other Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the application of such provision to any other person or circumstance nor the remainder of the instrument in which such provision is contained shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- 10.7 Rights, Remedies and Recourses Cumulative. All rights, remedies and recourses afforded Lender in the Security Documents or otherwise available at law or in equity, including specifically, but without limitation, those granted by the Uniform Commercial Code in effect in the State of Texas (a) shall be deemed cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Borrower, any Guarantor or anyone else obligated under any or all of the Security Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Lender, (c) may be exercised as often as the occasion therefor shall arise, it being understood by Borrower that the exercise, failure to exercise or election not to exercise any of the same shall in no event be construed as a waiver of same or of any other right, remedy or recourse available to Lender and (d) are intended to be, and shall be, nonexclusive.
- 10.8 Successors and Assigns. Subject to the provisions of Paragraph 7.8 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives and assigns.
- 10.9 Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee, or by prepaid telegram, telex or telecopy. Notice so mailed shall be effective upon its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth in the opening recital of this Agreement; 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 thirty (30) days' notice to the other party in the manner set forth hereinabove.
- 10.10 Participations; Sales; Disclosure. Borrower understands and agrees that Lender may elect, at any time, to sell, assign, or participate all or any part of Lender's interest in the Loan, and that any such sale, assignment or participation may be to one or more financial institutions, private investors, and/or other entities, at Lender's sole discretion. Borrower further agrees that Lender may disseminate to any such potential purchaser(s), assignee(s) or participant(s) all documents and information (including without limitation all financial information) which has been or is hereafter provided to or known by Lender with respect to: (i) the Mortgaged Property and its operations; (ii) any party connected with the Loan (including guarantor and any non-borrower trustor); and/or (iii) any lending relationship other than the

Loan which Lender may have with any party connected with the Loan.

- 10.11 Lender's Right to Perform the Obligations. If Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then Lender at any time thereafter, without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Lender may have because of same, may make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter the Land and Improvements for such purpose and to take all action with respect to the Mortgaged Property as it may deem desirable. If Lender shall elect to pay any statement, invoice or tax bill, Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or company without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Security Documents, Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Borrower shall indemnify Lender for all losses, expenses, damages, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Lender pursuant to the provisions of this Paragraph or by reason of any other provision in the Security Documents. All sums paid by Lender pursuant to this Paragraph 10.11, and all sums expended by Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate (as defined in the Note) from the date of such payment or expenditure, shall constitute advances on and additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Borrower to Lender upon demand. This indemnification shall survive the payment of all amounts payable pursuant to and secured by, the Security Documents. Payment by Lender shall not be a condition precedent to the obligations of Borrower under this indemnity.
- 10.12 Headings. The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Paragraphs or Subparagraphs.
- 10.13 Supplement to Deed of Trust. The provisions of this Agreement are not intended to supersede the provisions of the Deed of Trust but shall be construed as supplemental thereto. In the event of any inconsistency between the provisions hereof and the Deed of Trust, this Agreement shall be controlling. This Agreement shall remain in effect until the Indebtedness has been paid in full.
- 10.14 WAIVER OF CONSUMER RIGHTS. BORROWER WAIVES BORROWER'S RIGHTS UNDER THE PROVISIONS OF CHAPTER 17, SUBCHAPTER E, SECTIONS 17.41 THROUGH 17.63 INCLUSIVE OF THE TEXAS BUSINESS AND COMMERCE CODE, GENERALLY KNOWN AS THE "DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT," A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF BORROWER'S OWN SELECTION, BORROWER VOLUNTARILY CONSENTS TO THIS WAIVER. IT IS THE INTENT OF LENDER AND BORROWER THAT THE RIGHTS AND REMEDIES WITH RESPECT TO THIS TRANSACTION SHALL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE TEXAS DECEPTIVE TRADE PRACTICES CONSUMER PROTECTION ACT. THE WAIVER SET FORTH HEREIN SHALL EXPRESSLY SURVIVE THE TERMINATION OF THE REFERENCED TRANSACTION. BORROWER REPRESENTS AND WARRANTS TO LENDER THAT BORROWER (I) IS A BUSINESS CONSUMER, (II) HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE BORROWER TO EVALUATE THE MERITS AND RISKS OF THE SUBJECT TRANSACTION, (III) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH RESPECT TO THE SUBJECT TRANSACTION, AND (IV) HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL (WHO WAS NOT, DIRECTLY OR INDIRECTLY, IDENTIFIED, SUGGESTED OR SELECTED BY LENDER OR LENDER'S AGENTS) IN CONNECTION WITH THE REFERENCED TRANSACTION.
- 10.15 Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and

thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

10.16 **ENTIRE AGREEMENT. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS 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. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.**

EXECUTED as of the date first above written.

LENDER:

TEXAS NOTES, LLC

By: \_\_\_\_\_

Name: Paul A. Lamnatos

Title: Managing Member

BORROWER:

Doe Family Holdings, LLC

By: \_\_\_\_\_

Jane Doe, Manager

GUARANTOR:

\_\_\_\_\_  
Jane Doe

**Affidavit of Non-Commencement**

STATE OF TEXAS

§

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, personally came and appeared Jane Doe, individually and as Manager of Doe Family Holdings, LLC, who having been first duly sworn, upon his oath declared that he is ("Borrower"), that he made an inspection of the property (the "Land") described as:

**THE EAST 1/2 OF LOT 9, AND ALL OF LOTS 10, 11, AND 12, BLOCK 4, NEW CITY BLOCK 6527, NORTHVIEW, CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 642, PAGE 89, DEED AND PLAT RECORDS OF BEXAR COUNTY, TEXAS**

on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_m.

Affiant certifies that as of that time and date no construction work has begun, and no materials had been delivered to the property.

**BORROWER:**

Doe Family Holdings, LLC

By: \_\_\_\_\_

Jane Doe, Manager

**GUARANTOR:**

\_\_\_\_\_  
Jane Doe

**ACKNOWLEDGMENT**

STATE OF TEXAS

§

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2022, by Jane Doe, individually and as Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

**Business Purpose Affidavit**

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, personally came and appeared Jane Doe, individually and as Manager of Doe Family Holdings, LLC, who, after being by me duly sworn, upon his oath does depose and say:

Lender is making a loan to Borrower which will be secured by the above referenced Property. Borrower acknowledges that Lender will have a security interest in said Property. Borrower represents that the purpose of this loan is either for business, commercial or agricultural purposes and as such is exempt from the provisions of the Real Estate Settlement and Procedures Act, Truth in Lending Act and their Regulations X and Z. Borrower understands that Lender relies upon and accepts as true, the representations made in this Affidavit.

**BORROWER:**

Doe Family Holdings, LLC

By: \_\_\_\_\_  
Jane Doe, Manager

**GUARANTOR:**

\_\_\_\_\_  
Jane Doe

**ACKNOWLEDGMENT**

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2022, by Jane Doe, individually and as Manager of Doe Family Holdings, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

## Construction Draw Request Application Cover

Doe Family Holdings,  
LLC6814 Still Lake  
San Antonio, Texas 78244

### Construction Draw Request Application must include:

- Signed draw application
- Draw budget in Excel format
- Draw budget - hard copy signed by all parties
- All invoices for draw line items
- Permits (if applicable)
- Engineering reports (if applicable)
- Approved Site Plan (if applicable)
- Other: \_\_\_\_\_
- Lien waivers for **ALL** previous draw items

### NOTES OR SPECIAL INSTRUCTIONS:

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My signature below indicates that **ALL** applicable items above are included in this submission package. I understand that the processing of the draw will not begin until all items have been received by TEXAS NOTES, LLC.

Signature \_\_\_\_\_

Date \_\_\_\_\_

## NOTICE OF FINAL AGREEMENT

TO: Borrower and All Other Obligors with Respect to the Loan Which Is Identified Below.

1. **THE WRITTEN LOAN AGREEMENT REPRESENTS 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.**

2. As used in this Notice:

“Borrower” means Doe Family Holdings, LLC.

“Guarantor” means Jane Doe, an individual.

“Lender” means TEXAS NOTES, LLC.

“Loan” means the prospective loan by Lender which will create indebtedness evidenced by, among other things, a Real Estate Lien Note in the stated principal amount of \$400,000.00 of even date herewith, signed by Borrower, and made payable to the order of Lender.

“Loan Agreement” means one or more promises, promissory notes, loan agreements, contractor/lender agreements, guaranty agreements, other agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, relating to the Loan.

“Parties” means Lender and any one or more of Borrower and all other obligors with respect to the Loan.

This Notice is given by Lender with respect to the Loan, pursuant to Section 26.02 of the Texas Business and Commerce Code. Borrower and each other obligor with respect to the Loan who signs below acknowledges, represents and warrants to Lender that Lender has given, and such party has received and retained, a copy of this Notice on the Date of notice stated above.

*The remainder of this page left blank intentionally.*

EXECUTED: January \_\_\_\_\_, 2022.

BORROWER:

Doe Family Holdings, LLC

\_\_\_\_\_  
Jane Doe, Manager

Mailing Address:

██████████

GUARANTOR:

\_\_\_\_\_  
Jane Doe

Mailing Address:

██████████

LENDER:

TEXAS NOTES, LLC

By: \_\_\_\_\_

Name: Paul A. Lamnatos

Title: Managing Member

**SAMPLE**

Texas Notes





# TexasNotes

GOT QUESTIONS? Call us at 281-221-7383 or email us at [hello@texasnotes.com](mailto:hello@texasnotes.com)