

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING A CONSENT TO COLLATERAL ASSIGNMENT OF AN AIRPORT LEASE BETWEEN MARK HICKS TRANSPORT, LLC AND GUARANTY BANK & TRUST, N.A.; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, contemporaneous with this ordinance, the City of Denton, a Texas home-rule municipal corporation (the “City”), considered and approved that certain consent to assignment of that certain Airport Lease (the “Lease”) from Petersen Hangers, LLC to Mark Hicks Transport, LLC (“Hicks Transport”); and

WHEREAS, Hicks Transport has agreed to collaterally assign its interest in the Lease to Guaranty Bank & Trust, N.A. (“Bank”) as evidenced by that certain Deed of Trust, dated May 22, 2018; and

WHEREAS, the Lease requires written consent of the City for the Collateral Assignment to be effective and Hicks Transport has requested the City for such consent; and

WHEREAS, at the April 24, 2018 meeting of the Council Airport Committee, the committee recommended that the City approve the Consent by a vote of 3-0; and

WHEREAS, the City Council deems it in the public interest to give consent to the collateral assignment contemplated above; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager or his designee is hereby authorized to execute a Consent to the Collateral Assignment of Lease in the form attached hereto as Exhibit A and made a part of this Ordinance for all purposes.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____, the ordinance was passed and approved by the following vote [__ - __]:

	Aye	Nay	Abstain	Absent
Chris Watts, Mayor:	_____	_____	_____	_____
Gerard Hudspeth, District 1:	_____	_____	_____	_____
Keely Briggs, District 2:	_____	_____	_____	_____
Don Duff, District 3:	_____	_____	_____	_____
John Ryan, District 4:	_____	_____	_____	_____
Dalton Gregory, At Large Place 5:	_____	_____	_____	_____
Paul Meltzer, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2018.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY:  _____

CONSENT TO COLLATERAL ASSIGNMENT OF LEASE

This Consent to Collateral Assignment of Lease is made between the City of Denton, Texas, a Texas home rule municipal corporation (“City” or “Landlord”), Mark Hicks Transport, LLC, a Texas limited liability company, successor in interest to Petersen Hangars (“Assignor”) and Guaranty Bank & Trust, N.A. (“Assignee”).

WHEREAS, the City is the sole owner and landlord of a pad site at Denton Enterprise Airport located at 4736 Clear Star and 4650 Clear Star (the “Property”); and

WHEREAS, the Property is subject to a ground lease, described as the Airport Lease Agreement Commercial Operator dated effective September 21, 2004, by and between the City, as Lessor, and JVC Real Estate, LLC, a limited liability company, as Lessee, which was assigned and assumed by 4736 Lockheed Associates, Ltd, a Texas limited company, by certain Assignment and Assumption of Airport Lease Agreement – Commercial Operator dated July 25, 2006, which was assigned and assumed by Petersen Hangars, LLC, a Texas limited liability company, by certain Assignment and Assumption of Airport Lease Agreement, dated September 4, 2015 and certified by the City of Denton on September 11, 2015, which was assigned and assumed by Mark Hicks Transport, LLC, a Texas limited liability company, by certain Lease Assignment of Pad Site, dated May 22, 2018 (the “Lease”); and

WHEREAS, Assignee provided financing for the purchase of the Leasehold Estate and certain improvements on such ground leased property; and

WHEREAS, for the purpose of securing and enforcing the payment obligations of Assignor to Assignee, Assignor now wishes to collaterally assign the Lease to the Assignee through the Deed of Trust attached hereto as Exhibit “A;” and

WHEREAS, Article IX of the Lease provides that it may not be collaterally assigned without the written consent of City, at City’s sole discretion, and Assignor has requested the City’s consent;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby consents to Assignor’s collateral assignment of the Lease to Assignee, through the Deed of Trust attached as Exhibit “A,” under the following terms and conditions:

1. Assignor shall pay to the City a transfer fee of Five Hundred Dollars (\$500.00) in connection with the City providing its consent to the Collateral Assignment of the Lease.
2. Assignor will pay or will have Assignee pay for all of the City’s administrative costs on handling and processing the assignment of the Lease from Assignor to Assignee.

3. Assignee shall give the City written notice of any default by Assignor under any financing agreement, promissory note, or the Deed of Trust. Any such notice shall be delivered as follows:

City Manager
City of Denton
215 E. McKinney
Denton, Texas 76201

with copies to:

Airport Manager
Denton Enterprise Airport
5000 Airport Road
Denton, Texas 76207

City Attorney
City of Denton
215 E. McKinney
Denton, Texas 76201

4. The City agrees to provide Assignee a contemporaneous copy of all written notices provided to Assignor under the Lease. Wherein a notice of default or breach has been provided by the City to Assignor and Assignee, Assignee shall be entitled, at its option, to cure such default or breach, and the City shall accept such cure from Assignee. If the default or breach is not cured as provided under the Lease, the City shall have the remedies available to it as set out therein. Any notice to be delivered from City to Assignee shall be delivered to the following:

Guaranty Bank & Trust, N.A.
Attn: Legal Department
100 West Arkansas Street
Mt. Pleasant, Texas 75455

5. Should Assignee foreclose or otherwise obtain Assignor's rights and interest in the Leasehold Estate, the City will not unreasonably withhold its consent to an assignment by Assignee to future successors upon being provided with the potential successor's (i) financial statement, (ii) confirmation of no outstanding taxes, liens, or judgments, and (ii) a demonstrated history of aviation experience. The City shall be the sole judge of any potential successor's qualifications, which shall be reasonably exercised.
6. In the event of any inconsistency between the terms and conditions of the Lease and the terms and conditions of this Consent, then the Lease shall govern and control.

7. If any provisions of this Consent shall be held or deemed to be illegal, inoperative, or unenforceable, the same shall not affect any other provisions contained herein; the remaining provisions to remain in full force and effect.
8. The City hereby represents and warrants that this Consent is made with proper authority under Ordinance.
9. Assignee, its authorized representatives or agents, may, upon reasonable advanced notice (written or oral) to Assignor and City and at any reasonable times, enter the Property for the purposes of inspecting, repairing, or removing personal property. Assignee may further, upon reasonable advanced written notice to City and Assignor and at reasonable times, enter upon the Property to exhibit or conduct a sale(s) of any or all of the collateral pledged to Assignee, subject to the City's interests under the Lease.
10. This Consent to Collateral Assignment shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any action related to this Consent shall be solely in a court of competent jurisdiction in Denton County, Texas.
11. This Consent to Collateral Assignment of Lease will bind and inure to the benefit of the parties, their heirs, executors, administrators, successors in interest, and assigns.

IN WITNESS HEREOF, the parties have executed this Consent to Collateral Assignment of Lease as of the Date written below.

[Signatures on following page]

Dated: _____

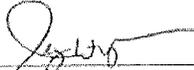
ASSIGNOR:

Mark Hicks Transport, LLC, a Texas
limited liability company

By: 
Name: Mark Hicks
Title: Manager

ASSIGNEE:

Guaranty Bank & Trust, N.A.

By: 
Name: Jeremy W. Fyke
Title: President - Denton

CITY OF DENTON, TEXAS
Landlord

By: _____
Name: _____
Title: _____

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

By: 

appurtenant thereto, for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof; all of the oil, gas and minerals, in, on or under the land; all royalties, water rights and wind rights related to the land; and all other rights and interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the above-described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Grantor with respect to such property.

It is hereby agreed that to the extent permitted by law all of the foregoing personal property and fixtures (hereinafter collectively referred to as "Collateral") are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Grantor in and to any of the above-described property is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease, and if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Leasehold Deed of Trust (the "Deed of Trust") in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. The foregoing described real and personal property is hereinafter collectively called the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property unto the Trustee and his or her successors or substitutes forever, Grantor hereby binds itself and its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto the Trustee and his or her successors and substitutes, against every person lawfully claiming or to claim the same or any part thereof.

This conveyance is made in trust, however, to secure and enforce the payment of that certain Promissory Note dated of even date herewith (hereinafter called the "Note"), executed by Grantor, payable to the order of GUARANTY BANK & TRUST, N.A. (hereinafter called "Beneficiary"), whose address is 100 West Arkansas St., Mt. Pleasant, Texas 75455, Attn: Jeremy Fykes, in the stated principal amount of ONE MILLION TWO HUNDRED NINETY-SIX THOUSAND AND NO/100 DOLLARS (\$1,296,000.00), bearing interest, being payable and maturing as more particularly set forth therein. The Note evidences, among other indebtedness, the loan governed by that certain Loan Agreement of even date herewith (the "Loan Agreement"), by and between Grantor and Beneficiary, among others. The Note, the Loan Agreement, this Deed of Trust and all of the other agreements, documents and instruments now or hereafter evidencing, governing, securing or guaranteeing any portion of the indebtedness evidenced by the Note or the performance and discharge of the obligations related hereto or thereto, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof or thereof, are collectively referred to herein as the "Loan Documents".

This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit or account of Grantor, as contemplated by any covenant or provision herein contained or contained in the Note or any of the Loan Documents, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantor to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty, or otherwise, it being contemplated that Grantor may hereafter become indebted to Beneficiary for further sums, and any security given or pledged in connection with any such other indebtedness or hereafter owing by Grantor to Beneficiary shall likewise secure all indebtedness evidenced by the Note and this Deed of Trust. All indebtedness secured hereby shall be payable at Beneficiary's address above, and, unless otherwise provided in the instrument evidencing such indebtedness, shall bear interest at the same rate per annum as the Note bears, from the date of accrual of such indebtedness until paid. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection following default or after maturity, whether matured by the expiration of time or by any option given to the Beneficiary to accelerate the maturity, Grantor agrees to pay Beneficiary's reasonable attorneys' and collection fees, and such fees shall be a part of the indebtedness secured hereby.

To better secure payment of such indebtedness, Grantor does hereby covenant, warrant and represent to and agree with Beneficiary and with the Trustee as follows:

1. **Address.** Grantor's mailing address as shown in the first paragraph hereof is true and correct.
2. **Payment.** Grantor will pay all of the indebtedness secured hereby, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing, or pertaining to such indebtedness, or evidencing any renewal or extension of such indebtedness, or any part thereof, and further, Grantor shall punctually and properly perform all of Grantor's covenants, obligations, and liabilities hereunder and 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 any part thereof.
3. **Title.** Grantor has in its own right good, and indefeasible title in its leasehold estate as set forth in the policy of title insurance insuring the lien of this Deed of Trust, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and has full right to make this conveyance, and with respect to each Grantor who is an individual, no part of the Mortgaged Property constitutes any part of his business or residential homestead.
4. **Insurance.** Grantor will keep all insurable Mortgaged Property insured against the risks covered by policies of fire and extended coverage insurance and such other risks as Beneficiary may require, such insurance to be written in form and with companies acceptable to Beneficiary, with loss made payable to Beneficiary by mortgagee clauses of standard form, and will deliver the policies of insurance to Beneficiary promptly as issued; and in case Grantor fails to do so, Beneficiary, at its option, may procure such insurance at Grantor's expense. In the event the Mortgaged Property, or any portion thereof, lies within a flood plain, a flood prone area or any designated flood hazard area, Grantor shall, in addition to the foregoing insurance, obtain and maintain flood insurance in form and with companies acceptable to Beneficiary, with loss made payable to Beneficiary by mortgagee clauses of standard form. All renewal and substitute certificates of insurance shall be delivered at the office of Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. If renewal policies are not so delivered to Beneficiary, Beneficiary, while not obligated, may obtain the required insurance on behalf of Grantor (or insurance in favor of Beneficiary alone) and pay the premiums thereon. Beneficiary may rely upon any cancellation notice from any insurance carrier of any policy of insurance furnished pursuant to this provision and may, but shall not be obligated, to obtain the required insurance as authorized herein and such coverage shall continue in the company selected by Beneficiary, and Grantor shall pay on demand the premiums for such coverage notwithstanding the fact that Grantor may have procured separate or additional coverage to that obtained by Beneficiary. In case of any loss or casualty and to the extent permitted under the Ground Lease (herein so called and as defined in the Loan Agreement), (a) if Grantor is in default hereunder, Beneficiary, at its option, shall be entitled to receive and retain all proceeds of the insurance policies, and shall apply the proceeds to the indebtedness secured hereby or Beneficiary may, at its option, apply such proceeds to restore the Mortgaged Property, and (b) if Grantor is not in default hereunder, Grantor may, at its option, apply such proceeds to the indebtedness secured hereby or apply such proceeds to the restoration of the Mortgaged Property. If Grantor elects to apply such proceeds to the restoration of the Mortgaged Property, such restoration shall be promptly completed in accordance with plans and specifications approved by Beneficiary, and the costs and expenses thereof, to the extent they exceed the proceeds of the insurance policies, shall be borne by Grantor.
5. **Taxes.** Grantor will pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable (unless such payments are made by Beneficiary as hereinafter provided), and, if Grantor fails to do so, the Beneficiary may pay them (but shall have no obligation to do so), together with all costs and penalties thereon, at Grantor's expense. Grantor shall not re-finance any of the taxes and assessments against or affecting all or any portion of the Mortgaged Property using any method which maintains a superior lien on or charge against the Mortgaged Property, and Grantor shall execute, deliver and record no documents or instruments which assign, re-finance, renew or continue the lien securing or arising in connection with any taxes or assessments against all or any portion of the Mortgaged Property. Provided however, that, upon strict compliance by Grantor of the requirements stated below, Grantor may, in lieu of paying such taxes and assessments as they become due and payable, contest the validity thereof in good faith and by appropriate proceedings; and pending such contest Grantor shall not be deemed in default hereunder because of such nonpayment, if (a) prior to delinquency of the asserted tax or assessment, Grantor furnishes the Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as therein stipulated secured by a deposit in cash, or security acceptable to Beneficiary, or with surety acceptable to Beneficiary,

in the amount of the tax or assessment being contested by Grantor, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or likely to be incurred in connection therewith, (b) Grantor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final, and (c) in any event, each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

6. **Reserve Funds.** At the request of Beneficiary, Grantor shall create a fund or reserve for the payment of all insurance premiums, taxes, and assessments against or affecting the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Beneficiary, without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Grantor to Beneficiary on or before the date when such premiums, taxes, and assessments shall become delinquent. Transfer of legal title to the Mortgaged Property shall automatically transfer title to all sums deposited with Beneficiary under the provisions hereof or otherwise.

7. **Condemnation.** To the extent permitted by the Ground Lease, all judgment, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Beneficiary, who shall apply the same to the indebtedness secured hereby, first to interest accrued as of the date of application of the condemnation proceeds and then to principal outstanding, provided however, in the event Grantor is not in default hereunder, Grantor may apply proceeds to the indebtedness secured hereby or may apply same to restore the Mortgaged Property, to the extent, but only to the extent, that such restoration is commercially feasible. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. In the event Beneficiary, as a result of any such judgment, decree or award, believes that the payment of any indebtedness or performance of any obligation secured by this Deed of Trust is impaired, Beneficiary may, after any applicable notice, cure or grace period, declare all of the indebtedness secured hereby immediately due and payable.

8. **Defense of Title.** If, while this trust is in force, the title of the Trustee to, or the interest of Beneficiary in, the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attacked directly or indirectly, Grantor hereby authorizes Beneficiary, at Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such title or interest. At any time 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, Grantor shall immediately pay all such taxes, or cause same to be paid or reimburse Beneficiary for the payment of same immediately upon written notice from Beneficiary. Grantor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, and stating that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

9. **Reimbursement.** If, in pursuance of any covenant contained herein or in any other instrument executed in connection with the Loan evidenced by the Note or in connection with any other indebtedness secured hereby, Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of such covenant or agreement, Grantor will repay the same to Beneficiary immediately upon demand at the place where the Note or other indebtedness secured hereby is payable, together with interest thereon at the rate of interest payable under the Note or on account of such other indebtedness in the event of a default thereunder from and after the date of Beneficiary's expenditure. The sum of each such payment shall be added to the indebtedness hereby secured and

thereafter shall form a part of the same, and it shall be secured by this Deed of Trust and by subrogation to all of the rights of the person or entity receiving such payment.

10. **Maintenance of Property.** Grantor will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end; but Grantor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property; and Grantor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

11. **Prohibition of Transfer or Encumbrance.** The sale, transfer, disposition or encumbrance, whether by operation of law or otherwise, of all or any part of the Mortgaged Property (other than items of personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new) without the written consent of Beneficiary shall constitute a default hereunder. Grantor shall not grant any easement or encumbrance or impose any restriction whatsoever with respect to any of the Mortgaged Property without the joinder therein of Beneficiary, nor shall Grantor rent or lease any of the Mortgaged Property for any purpose whatsoever without the prior written consent of Beneficiary. In the event Grantor is a corporation or a limited liability company, it agrees that the sale, conveyance, hypothecation, transfer or disposition of more than ten percent (10%) of its issued and outstanding capital stock or ownership interests, without the prior written consent of Beneficiary, shall constitute a default; or, that in the event Grantor is a limited or general partnership, or a joint venture, a change of any general partner or any joint venturer, either voluntarily or involuntarily, or the sale, conveyance, transfer, disposition or encumbrance of any such general partner or joint venture interests or of more than twenty percent (20%) of the partnership or venture interests, without the prior written consent of Beneficiary, shall constitute a default. In the event Beneficiary should consent to any sale or conveyance of the Mortgaged Property, Grantor will not sell all or any portion of the Mortgaged Property unless the purchaser, as a part of the consideration, either (a) expressly agrees to assume the payment of the indebtedness hereby secured, or (b) expressly agrees that the title and rights of purchaser are and shall remain unconditionally subject to all of the terms of this Deed of Trust for the complete fulfillment of all obligations of the Grantor hereunder, and the deed effecting such transfer shall expressly set forth such agreement of the purchaser.

12. **No Discharge Upon Transfer.** If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the indebtedness hereby secured in the same manner as with Grantor without in any way vitiating or discharging Grantor's liability hereunder or upon the indebtedness hereby secured. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the indebtedness hereby secured, given by Beneficiary, shall operate to release, discharge, modify, change or affect the original liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

13. **Default in Payment or Performance** Upon the occurrence (beyond any applicable notice, cure or grace period) of any "Event of Default" (herein so called and as defined in the Loan Agreement), Beneficiary, at its option, without further notice, may pursue any rights and remedies it may have hereunder or at law, or in equity, including without limitation, filing suit on the Note and/or enforcing the power of sale granted herein, and Beneficiary may, without limitation, declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

14. **Sale by Trustee.** If Grantor pays the Note and other debt that may be owing, or causes same to be paid, and keeps and performs each and every covenant, condition and stipulation contained herein and in the Note, then this Deed of Trust shall become null and void; otherwise to be and remain in full force and effect. If there is a default hereunder, or under the Note or the Loan Agreement, then the Note, together with all other sums secured hereby, shall at the option of the Beneficiary, become at once due and payable without demand, notice or judicial hearing except as may be required by law (such requirement of law being hereby waived to the extent permitted by law), and the Trustee, when requested to do so by the Beneficiary after such default, shall sell the Mortgaged Property, at public auction, to the highest bidder, for cash at the county courthouse of the county in Texas in which the Mortgaged Property or any part

thereof is situated as herein described in the area in such courthouse designated for real property foreclosure sales in accordance with applicable law (or in the absence of such designation, in the area set forth in the notice of sale hereinafter 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 (or the first Wednesday if the first Tuesday falls on January 1 or July 4), after giving notice of the time, place and terms of said sale, and of the property to be sold in accordance with applicable laws in the State of Texas in effect at the time such notice is given, provided however, such sale shall begin at the time stated in such notice or within three (3) hours thereafter.

Notice of such proposed sale shall be given by posting written notice of the sale at the courthouse, and, except as otherwise permitted or required by applicable law, by filing a copy of the notice in the office of the county clerk of the county in which the sale is to be made at least twenty-one (21) days preceding the date of the sale. If the property to be sold is situated in more than one county, a notice shall be posted at the courthouse and filed with the county clerk of each county in which the property to be sold is situated. In addition, Beneficiary shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on each debtor obligated to pay the debt secured hereby according to the records of Beneficiary. Service of such notice 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 Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. 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.

Any notice that is required or permitted to be given to Grantor may be addressed to Grantor at Grantor's address as stated above. Any notice that is to be given by certified mail to any other debtor may, if no address for such other debtor is shown by the records of Beneficiary, be addressed to such other debtor at the address of Grantor as is shown by the records of Beneficiary. The Trustee may appoint any attorney-in-fact or agent to act in his or her stead as Trustee to perform all duties of the Trustee authorized herein. Grantor authorizes and empowers the Trustee to sell the Mortgaged Property, together or in lots or parcels, as the Trustee shall deem expedient; to receive the proceeds of said sale; and to execute and deliver to the purchaser or purchasers thereof good and sufficient deeds of conveyance thereto by fee simple title, with covenants of general warranty, and Grantor binds himself or herself to warrant and forever defend the title of such purchaser or purchasers. The proceeds of such sale shall be applied in the following order:

- (a) to the payment of all necessary costs and expenses incident to the execution of said trust, including a reasonable fee to the Trustee not exceeding five percent (5%) of the gross proceeds of the sale of the Mortgaged Property;
- (b) 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;
- (c) the remainder, if any, to Grantor or such other person or persons entitled thereto by law.

15. **Appointment of Receiver.** Upon the commencement of any action to enforce the lien herein given, Beneficiary shall have the additional right to have a court of competent jurisdiction appoint a receiver to take possession of the Mortgaged Property. This provision is a right created by this contract and is cumulative of, and shall not affect in any way, the right of the Beneficiary to the appointment of a receiver given the Beneficiary by law.

16. **Election of Remedies.** Upon the occurrence of a default hereunder, Beneficiary shall have the option to proceed with foreclosure in satisfaction of such delinquent or then matured debt, either through the courts or by directing the Trustee to proceed as if under a foreclosure, conducting the sale as herein provided and without declaring the whole debt due, and provided that if said sale is made because of such default, such sale may be made subject to the unmatured part of the Note and debt secured by this Deed of Trust; such sale, if so made, shall not in any manner affect the unmatured part of the debt secured by this Deed of Trust, it being the purpose to provide for a foreclosure and the sale of the Mortgaged Property for any matured portion of said debt, without exhausting the power of foreclosure, and to sell the Mortgaged Property for any other part of said debt whether matured at the time or subsequently maturing.

17. **Prerequisites to Sale.** In case of any sale hereunder, all prerequisites to the sale shall be presumed to have been performed, and in conveyance given hereunder, all statements of facts or other recitals made therein as to any of the following, shall be taken in all courts of law or equity as *prima facie* evidence that the facts so stated or recited are true; i.e., the nonpayment of money secured; the request to the Trustee to enforce this trust; the proper and due appointment of any substitute trustee; the advertisement of sale or time, place and manner of sale; or any other preliminary fact or thing. Trustee shall not be liable for any action taken or omitted to be taken by Trustee in good faith and reasonably believed to be within the discretion or power conferred upon Trustee by this Deed of Trust and shall be answerable only for losses occurring through his or her gross negligence or willful misconduct. Grantor agrees to save and hold the Trustee and Beneficiary harmless from all loss and expense, including reasonable attorneys' fees, costs of a title search or abstract, and preparation of survey, incurred by reason of any action, suit or proceeding (including an action, suit or proceeding to foreclose or to collect the debt secured hereby) in and to which Trustee or Beneficiary may be or become a party by reason hereof, including but not limited to, condemnation, bankruptcy and administration proceedings, as well as any other proceeding wherein proof of claim is required by law to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust, and in each such instance, all money paid or expended by Trustee or Beneficiary, together with interest thereon from date of such payment at the rate set forth in said Note or at the legal rate, whichever is higher, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Grantor.

18. **Substitute Trustee.** Beneficiary may, at its option, appoint a successor or substitute Trustee without any formality or notice (except as may be required by law) other than a designation in writing of such appointment to such successor or substitute trustee who shall thereupon become vested with and succeed to all the powers and duties named herein, the same as if the successor or substitute had been named original Trustee herein; such right to appoint a successor or substitute trustee shall exist as often and whenever the Beneficiary desires. If the Beneficiary is a corporation, it may act through any authorized officer or by any agent or attorney-in-fact properly authorized by any such officer.

19. **Waiver of Deficiency Statute.** To the extent permitted by law, Grantor expressly waives and relinquishes any and all rights and remedies under Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as amended or re-codified ("Deficiency Statutes"), including without limitation, the right to seek a credit against or offset of any deficiency judgment based on the fair market value of the Mortgaged Property sold at any judicial or non-judicial foreclosure; and to the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and/or any other party obligated on the indebtedness secured hereby equal to the difference between the amount owing on the indebtedness secured hereby and the foreclosure sales price. Alternatively, in the event the foregoing waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by any of the Deficiency Statutes: (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but not later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including without limitation, brokerage commissions, title insurance premiums, cost of a survey, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including without limitation, utilities expenses, property management fees, security, taxes and assessments (without duplication), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property and taking into consideration the factors set forth above.

20. **No Waiver.** The exercise of any option given under the terms of this Deed of Trust shall not be considered a waiver of the right to exercise any other option herein; and the filing of a suit to foreclose this Deed of Trust, either on any matured portion of the debt or for the whole debt, shall never be considered an election of remedies

so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the prosecution of a later suit thereon.

21. **Creation of Landlord - Tenant Relationship.** Any sale of the Mortgaged Property under this Deed of Trust shall, without further notice, create the relation of landlord and tenant at sufferance between the purchaser at such sale as landlord, and Grantor as tenant; and upon failure to surrender possession thereof, Grantor may be removed by a writ of possession at suit by the purchaser.

22. **Disaffirm Encumbrances.** 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 Mortgaged Property free from, and despite the terms of, such easement or rental, lease or other contract.

23. **Beneficiary May Bid.** Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any Trustee's or foreclosure sale hereunder.

24. **Right of Entry.** The Grantor agrees, to the full extent that Grantor 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 Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Grantor, Grantor's successors and assigns; and, holding the same, the Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as the Grantor, Grantor's successors or assigns, might at the time do and may exercise all rights and powers of the Grantor, in the name, place and stead of the Grantor, or otherwise as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

25. **Release.** Any part of the Mortgaged Property may be released by the Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness 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 lien holder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

26. **Waiver of Marshalling, Etc.** To the extent that Grantor may lawfully do so, Grantor agrees that Grantor 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 any other matter whatsoever to defeat, reduce or affect the right of Beneficiary, under the terms of this Deed of Trust, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Beneficiary, under the terms of this Deed of Trust, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatsoever. Grantor expressly waives and relinquishes any right or remedy which it may have or be able to assert by reason of the provisions of Chapter 43 of the Texas Civil Practices and Remedies Code of the State of Texas, pertaining to the rights and remedies of sureties. Grantor further waives, to the extent permitted by law, the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisal before sale of any portion of the Mortgaged Premises, commonly known as Appraisal Laws, and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the debt secured hereby or creating or extending a period of redemption from any sale made in collection of said debt, commonly known as Stay Laws and Redemption Laws.

27. **Assignment of Rents, Royalties, Etc.** (a) All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents") are hereby assigned, transferred, conveyed

and set over to Beneficiary, to be applied by Beneficiary in payment of the principal and interest and all other sums payable on the Note, and any other indebtedness secured hereby. Prior to the occurrence of any default hereunder, Grantor shall collect and receive all Rents as trustee for the benefit of Beneficiary, and Grantor shall apply the funds so collected first to the payment of the principal and interest and all other sums then due and payable on the Note and payment of all other indebtedness secured hereby and then due and payable; next to the performance and discharge of the obligations of Grantor hereunder and under the other Loan Documents; and next to the payment of all costs and expenses related to the ownership, operation, management, repair and leasing of the Mortgaged Property, including without limitation, insurance premiums, property taxes, ordinary repairs, maintenance and security, and reasonable reserves therefor. Thereafter, Grantor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents.

(b) Upon receipt of a notice from Beneficiary that each such lessee under any leases of the Mortgaged Property is directed to pay to Beneficiary all Rents thereafter accruing (a "Lessee Notice"), each lessee under the leases is hereby authorized and directed to pay directly to Beneficiary all Rents thereafter accruing and the receipt of Rents by Beneficiary shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee of a Lessee Notice shall be sufficient authorization for such lessee to make all future payments of Rents directly to Beneficiary and each such lessee shall be entitled to rely on such Lessee Notice and shall have no liability to Grantor for any Rents paid to Beneficiary after receipt of such Lessee Notice. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO BENEFICIARY HEREUNDER, AND GRANTOR HEREBY INDEMNIFIES AND AGREES TO HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY DEMAND FOR PAYMENT OF RENTS MADE BY BENEFICIARY CONTEMPLATED BY THIS ASSIGNMENT.

(c) Upon or at any time after the occurrence of Event of Default, Grantor hereby agrees that Beneficiary shall have the right (in its sole discretion), to deliver the Lessee Notice as herein provided directing each lessee to pay directly to Beneficiary the Rents due and to become due under its lease and atorn in respect of all other obligations thereunder directly to Beneficiary. Rents so received by Beneficiary for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Beneficiary to the payment of the following (in such order and priority as Beneficiary shall determine): (a) all expenses of operating the Property; and all expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable, and (b) the indebtedness secured hereby. In no event will the provisions of this Section 27 reduce the indebtedness secured hereby except to the extent, if any, that Rents are actually received by Beneficiary and applied upon or after said receipt to the indebtedness secured hereby in accordance with the preceding sentence. Without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Grantor, Rents so received by Beneficiary or any part thereof. Grantor, upon the occurrence of an Event of Default, hereby authorizes Beneficiary, at Beneficiary's option, to enter and take possession of the Mortgaged Property and to manage and operate the same; to collect as herein provided all or any Rents accruing therefrom and from the Mortgaged Property; to let or relet the Mortgaged Property or any part thereof; to cancel and modify any leases, evict tenants and bring or defend any suits in connection with the possession of the Mortgaged Property, in Beneficiary's own name or Grantor's name, pursuant to the terms of the leases; to make repairs as Beneficiary deems appropriate; and to perform such other acts in connection with the management and operation of the Mortgaged Property as Beneficiary, in Beneficiary's discretion, may deem proper. For this purpose, Grantor hereby irrevocably constitutes and appoints Beneficiary and any officer of Beneficiary, as Grantor's true and lawful attorney-in-fact, coupled with an interest, with full power of substitution to take any and all of the foregoing actions and any or all other actions designated by Beneficiary for the proper management and preservation of the Mortgaged Property.

(d) Grantor shall (a) submit any and all proposed leases to Beneficiary for approval prior to the execution thereof, except that Grantor may lease individual units in the Mortgaged Property to bona fide third-party tenants, for market rate rents and using industry-standard lease contracts or otherwise on leases and terms approved by Beneficiary in advance in writing, (b) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any lease, (c) maintain each of the leases in full force and effect during the term thereof, (d) appear in and defend any action or proceeding in any manner connected with

any of the leases, (e) deliver to Beneficiary true, correct and complete copies of each of the leases, and (f) deliver to Beneficiary such further information, and execute and deliver to Beneficiary such further assurances and assignments, with respect to the leases as Beneficiary may from time to time request.

(e) Without Beneficiary's prior written consent, Grantor shall not (a) do or knowingly permit to be done anything to impair the value of any of any leases, (b) except for security or similar deposits, collect any of the rent more than one (1) month in advance of the time when the same becomes due under the terms of any lease, (c) discount any future accruing rents, or (d) amend, modify, rescind, conceal, surrender, assign, or terminate any of the leases, except in the ordinary and prudent operation of the Mortgaged Property.

(f) These presents shall not be deemed or construed to constitute Beneficiary as a "mortgagee in possession" of the Mortgaged Property or to obligate Beneficiary to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under any of the leases of the Mortgaged Property.

28. **No Subordinate Mortgage.** Grantor will not, without the prior written consent of Beneficiary, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "Subordinate Mortgage"). In the event of consent by Beneficiary 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, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary 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 thereof;

(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 Mortgaged property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary;

(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, operation and/or maintenance of the Mortgage Property; and

(d) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary contemporaneously with the commencement of such action or proceeding.

29. **Payment of Outstanding Liens.** To the extent that proceeds of the Note are used to pay any outstanding liens, charges or encumbrances against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interest and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

30. **Usury Savings Provisions.** It is expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable on the Indebtedness (as hereinafter defined), or applicable United States federal law to the extent that such law permits Beneficiary to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law. For purposes of this provision, "Indebtedness" shall mean all indebtedness evidenced by the Note, and all amounts payable in the performance of any covenant or obligation in any of the other Loan Documents or any other communication or writing by or between Grantor and Beneficiary related to the transaction or transactions that are the

subject matter of the Loan Documents, or any part of such indebtedness. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received in respect of the Indebtedness, including by reason of the acceleration of the maturity or the prepayment thereof, then it is Grantor's and Beneficiary's express intent that all amounts charged in excess of the Maximum Lawful Rate (as hereinafter defined) shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Lawful Rate theretofore collected by Beneficiary shall be credited on the principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, refunded to Grantor), and the provisions of the Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable laws, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before the end of the stated term hereof, then Grantor and Beneficiary agree that Beneficiary shall, with reasonable promptness after Beneficiary discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Lawful Rate, either credit such excess interest against the Indebtedness then owing by Grantor to Beneficiary and/or refund such excess interest to Grantor. Grantor hereby agrees that as a condition precedent to any claim seeking usury penalties against Beneficiary, Grantor will provide written notice to Beneficiary, advising Beneficiary in reasonable detail of the nature and amount of the violation, and Beneficiary shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Indebtedness then owing by Grantor to Beneficiary. All sums contracted for, charged, taken, reserved or received by Beneficiary for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated or spread, using the actuarial method, throughout the stated term of the Note (including any and all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to the Note or any other part of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Beneficiary 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. The terms and provisions of this paragraph shall control and supersede every other term, covenant or provision contained herein, in any of the other Loan Documents or in any other document or instrument pertaining to the Indebtedness.

31. **Maximum Lawful Rate; Ceiling Election.** As used herein, the term "Maximum Lawful Rate" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Beneficiary in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all fees, charges and any other value whatsoever made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Beneficiary is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note or any other part of the Indebtedness, Beneficiary will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Beneficiary to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Beneficiary will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Beneficiary may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303, or under other applicable law by giving notice, if required, to Grantor as provided by such applicable law now or hereafter in effect.

32. **No Subsequent Waiver.** No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such

illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Deed of Trust shall be invalid or unenforceable, the unsecured portion of the indebtedness shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

33. **Security Agreement.** (a) With respect to any of the Collateral governed by the Uniform Commercial Code of the State of Texas (hereinafter called the "Code"), this Deed of Trust shall constitute a security agreement between Grantor as the debtor and Beneficiary as the secured party, and Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and shall bear all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then ten (10) days notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code. Additionally, but not in lieu of any other rights held by Beneficiary, Beneficiary may offset against any accounts or sums of Grantor held by Beneficiary up to the full amount of the indebtedness secured hereby, as the same becomes due.

(b) **Notice of Name, Etc.** Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor's name, identity, or structure, and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any Mortgaged Property described or referred to herein.

(c) **Fixtures.** Should some of the items of Mortgaged Property described herein be goods that are or are to become fixtures related to the real estate described herein, it is intended that, as to any such goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of the Grantor, as debtor, is as stated above.

34. **Corporate Existence.** Grantor, if a corporation, agrees that as long as it is the owner of the Mortgaged Property, it will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation under the laws of the state of its incorporation.

35. **Successors and Assigns.** The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and to any substitute Trustee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The term "Grantor" shall include in their individual capacities, and jointly, all parties hereinabove named as Grantor. The term "Beneficiary" shall also include any lawful owner, holder, pledgee or assignee of any indebtedness secured hereby. The duties, covenants, conditions, obligations and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and each Grantor if more than one, and Grantor's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust (other than Beneficiary), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Deed of Trust.

36. **Compliance with Regulations.** Grantor further agrees to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Grantor or the Mortgaged Property or any part thereof. Grantor warrants, covenants and agrees to comply with all restrictions; restrictive covenants; condominium by-laws, regimes and declarations; and/or all other rules or regulations, governmental, public or private, applicable to the Mortgaged Property and the operation or ownership thereof.

37. **Texas Law.** This instrument is executed in Texas and shall be governed by and construed in accordance with the laws of the State of Texas, except to the extent such laws have been preempted by federal laws, in which case federal laws as applied in Texas shall govern.

[REMAINDER OF PAGE LEFT BLANK - SIGNATURE PAGE FOLLOWS]

EXECUTED effective as of April ____, 2018.

GRANTOR:

MARK HICKS TRANSPORT, LLC, a Texas limited liability company

By: _____
John Mark Hicks, Manager

* * * * *

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of April, 2018, by John Mark Hicks, Manager of MARK HICKS TRANSPORT, LLC, a Texas limited liability company, known to me to be the person who executed this agreement in the capacity and for the purposes therein stated.

Notary Public, State of Texas

My Commission Expires

[S E A L]

EXHIBIT A

PROPERTY DESCRIPTION

[TO BE ATTACHED]

EXHIBIT "A"

All that certain lot, tract or parcel of land lying and being situated in the City of Denton, Denton County, Texas and being a part of Lot 1, Block 1, Southeast Airport Addition, an addition to the City of Denton, Denton County, Texas according to the plat recorded in Cabinet G, Page 295, Plat Records, Denton County, Texas and being more fully described by metes and bounds as follows;

BEGINNING at an "X" cut set in the South line of Lochheed Lane (As Posted);

THENCE along said South line, South 89 degrees 43 minutes 54 seconds East, 300.07 feet to a "X" cut found in the West line of Sky Lane, (As Posted);

THENCE along said West line, South 00 degrees 19 minutes 44 seconds West, 180.04 feet to a "X" cut found in the North line of Clear Star Street, (As Posted);

THENCE along said North line, North 89 degrees 43 minutes 53 seconds West, 299.84 feet to a ½ inch iron rod found;

THENCE North 00 degrees 15 minutes 27 seconds East, 180.04 feet to the PLACE OF BEGINNING and containing 1.24 acres of land more or less;

The Company is prohibited from insuring the area or quantity of the land described herein. Therefore, the Company does not represent that the acreage or square footage calculations are correct. References to quantity are for informational purposes only.